

*Article 13. Participation of society*

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups, outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

## **CIVIL SOCIETY REPORT**

on the implementation of

Chapter II (Prevention) & Chapter V (Asset Recovery) of the

## **UNITED NATIONS CONVENTION AGAINST CORRUPTION**

### **IN PUERTO RICO**

---

by Centro de Gobernanza Pública y Corporativa

## Acknowledgments

With the objective of contributing to the national review of the United Nations Convention against Corruption (UNCAC) in Puerto Rico in its second cycle, this parallel report was prepared by the Center for Public and Corporate Governance (Governance Center) using the guidance materials and report template designed by the UNCAC Coalition and Transparency International. The preparation of this report was supported by the UNCAC Coalition, made possible by funding from the Norwegian Agency for Development Cooperation (Norad) and the Danish Ministry of Foreign Affairs (Danida).

This report was prepared by the research team of the Center for Public and Corporate Governance. The report was prepared by: Dr. Eneida Torres de Durand (academic researcher, expert in management and strategic planning), executive director of the Governance Center, and Rafael Durand Aldea, MBA (management and finance). The research team was composed of Saúl Pratts Ponce de León, PhD (public administration and planning), Mari Glory González, Ramón Torres Morales, PhD (management and global logistics). The peer review was conducted by Dr. Marcelino Rivera and Dr. Elba Meléndez. Carmen Nieves Guerrido and María Socorro Burgos served as research assistants. The team of researchers from diverse backgrounds and disciplines enriched the research process, data collection and analysis, data development and peer review. The report was reviewed by Danella Newman, MA, Project Manager of the UNCAC Coalition. This is a machine translation into English.

The conclusions of this country assessment are those of the authors, but do not necessarily reflect the views of the UNCAC Coalition and the donors that made this report possible. Every effort has been made to verify the accuracy of the information contained in this report. All information is believed to be correct as of September 15, 2023.

We are grateful for the collaboration of the agencies of the anti-corruption component of the Government of Puerto Rico and the representatives of the business sector and civil society who participated in the interview and information gathering process to prepare this report. We would like to highlight the participation of the Office of the Comptroller of Puerto Rico (OCPR) as a collaborating entity in the preparation of this report and the Office of Government Ethics, the entity that coordinates the anti-corruption group. In addition, we are grateful for the openness and willingness of the Office of the Electoral Comptroller, the Office of the Inspector General and the Office of the Independent Prosecutor's Panel for the valuable information provided for the development of the report.

### **Center for Public and Corporate Governance**

Po. Box 270353

San Juan, PR 00928

Website: <https://gobernanzapr.org/>

Facebook: <https://www.facebook.com/Centrodegobernanzapr/>

The Center for Public and Corporate Governance is a private non-profit 501 c(3) research and education entity on public and corporate governance issues that has the main purpose of contributing to the development of a culture of good governance, improving governance, strengthening public policy formulation, developing institutional capacities and improving public and corporate decision making to enhance shared prosperity and inclusive social development for the benefit of the common good of society.

## Table of Contents

<b>Abbreviations</b> .....	<b>1</b>
<b>List of persons consulted</b> .....	<b>3</b>
<b>I. Introduction</b> .....	<b>4</b>
<b>II. Executive Summary</b> .....	<b>9</b>
<b>III. Assessment of the review process for Puerto Rico</b> .....	<b>30</b>
<b>IV. Analysis of the Application of the Provisions of Chapters II, III and V</b> .....	<b>32</b>
<b>4.1 Chapter II. Corruption prevention policies and practices</b> .....	<b>32</b>
4.1.1 Article 5 - Anti-corruption policies and practices .....	32
4.1.2 Article 6 - Corruption Prevention Body or Bodies .....	37
4.1.3 Article 7.1 - Public sector employment .....	44
4.1.4 Article 7.3 - Political financing .....	49
4.1.5 Articles 7, 8 and 12 - Codes of Conduct, Conflicts of Interest and Asset Declarations .....	53
4.1.6 Article 8.4 and 13.2 - Whistleblowing and Whistleblower Protection Mechanisms .....	60
4.1.7 Article 9.1 - Public Procurement .....	62
4.1.8 Article 9.2 - Management of public finances.....	67
4.1.9 Article 10 and 13.1 - Access to information and participation of society ...	72
4.1.10 Article 11 - Judiciary and Public Prosecutor's Office .....	77
4.1.11 Article 12 - Transparency of the Private Sector .....	84
4.1.12 Article 14 - Measures to prevent money laundering.....	87
<b>4.2. Chapter V - Recovery of Assets</b> .....	<b>93</b>
4.2.1 Article 52 and 58 - Anti-money laundering .....	93
4.2.2 Article 53 and 56 - Measures for direct recovery of property .....	97
4.2.3 Article 57 - Restitution and Disposal of Assets.....	99
<b>4.3 Statistics</b> .....	<b>101</b>
<b>4.4 Brief analysis and 4.5 Information on the recovery of assets cases</b> .....	<b>102</b>
<b>V. Recent developments</b> .....	<b>103</b>
<b>VI. Conclusions and Recommendations</b> .....	<b>106</b>
<b>6.1 General</b> .....	<b>107</b>
<b>6.2 By UNCAC article</b> .....	<b>108</b>
<b>VII. Annex</b> .....	<b>114</b>
<b>7.1 Table of access to information requests</b> .....	<b>114</b>
<b>7.2 Table Partial list of memberships, committee work and collaborations     with international organizations</b> .....	<b>115</b>
<b>7.3 Bibliography</b> .....	<b>116</b>

## Abbreviations

<b>AAFAF</b>	Financial Advisory Authority and Fiscal Agency
<b>AAIF</b>	Financial Reporting Audit Area
<b>AAJL</b>	Registration Division and Legal Counsel and Litigation Area
<b>AIPA</b>	Research and Administrative Processing Area
<b>AJP</b>	Puerto Rican Judicial Academy
<b>ASG</b>	General Services Administration
<b>BM</b>	World Bank
<b>BSA</b>	Bank Secrecy Act
<b>CBS</b>	Social Benefit Corporations
<b>CDPE</b>	Center for the Development of Ethical Thinking
<b>Governance Center</b>	Center for Public and Corporate Governance
<b>CESCO</b>	Driver Service Centers
<b>CLD</b>	Centre for Law and Democracy
<b>UNCCC</b>	United Nations Convention Against Corruption
<b>COSSEC</b>	Public Corporation for the Supervision and Insurance of Cooperatives
<b>CPA</b>	Certified Public Accountant
<b>CRIM</b>	Municipal Revenue Collection Center
<b>CTR</b>	Currency Transaction Report
<b>DRNA</b>	Department of Natural and Environmental Resources
<b>USA</b>	United States
<b>ELA</b>	Commonwealth
<b>FCPA</b>	Foreign Corrupt Practices Act (Foreign Corrupt Practices Act)
<b>FDIC</b>	Federal Deposit Insurance Corporation
<b>FECA</b>	Federal Election Campaign Act
<b>FinCEN</b>	Financial Crimes Enforcement Network
<b>FOIA</b>	Freedom of Information Act,
<b>FRS</b>	Federal Reserve System
<b>GAGAS</b>	Generally Accepted Government Auditing Standards
<b>IEPR</b>	Puerto Rico Institute of Statistics
<b>IVU</b>	Sales and Use Tax
<b>JSF</b>	Fiscal Oversight Board
<b>LOOEG</b>	Organic Law of the Government Ethics Office of Puerto Rico.

<b>NIE</b>	Special Investigations Bureau
<b>OATR</b>	General Services Administration, the Office of Human Resources Management and Transformation, the Office of Human Resources Management and Transformation, and the Office of Human Resources Management and Transformation.
<b>OFAC</b>	Office of Foreign Assets Control
<b>OCE</b>	Office of the Comptroller of Elections
<b>OCIF</b>	Office of the Commissioner of Financial Institutions
<b>OCS</b>	Office of the Commissioner of Insurance
<b>OCPR</b>	Office of the Comptroller of Puerto Rico
<b>OEG</b>	Office of Government Ethics
<b>OGP</b>	Management and Budget Office
<b>OIG</b>	Office of the Inspector General
<b>NGO</b>	Non-governmental organization
<b>UN</b>	United Nations
<b>PAC</b>	Political Action Committee
<b>PFEI</b>	Independent Special Prosecutor Panel
<b>PRECO</b>	Group for the Prevention and Eradication of Corruption
<b>PROMISE</b>	Puerto Rico Economic Stability, Administration and Oversight Act
<b>RFP</b>	Request for Proposal
<b>RFQ</b>	Request for Qualifications
<b>RICO</b>	Racketeer Influenced and Corrupt Organization Act
<b>RTI</b>	Right to Information
<b>RUL</b>	Single register of bidders
<b>RUS</b>	Single Auction Registry of the Government of Puerto Rico
<b>SAR</b>	Suspicious Activity Reports
<b>SEC</b>	Securities and Exchange Commission
<b>UNCAC</b>	United Nations Convention against Corruption
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>UPR</b>	University of Puerto Rico

## List of persons consulted

Name of Agency Head	Position held	Organization or institution	Interview dates
CPA Yesmin Valdivieso Galib	Comptroller	Office of the Comptroller of Puerto Rico (OCPR)	September 15, 2022
Hannelore Y. Valentin Fortunet, CFE	Director Anticorruption and External Relations Office		
Luis Pérez Vargas	Chief Executive Officer	Office of Government Ethics (OEG)	February 16, 2023
Ms. Reyna Tejada Cordero	General Counsel		
Jesus Nieves Mitayne	Executive Board Member		
Mr. Walter Vélez Martínez	Electoral Comptroller	Office of the Comptroller of Elections * (OCE)	February 15, 2023
Sarah Rodriguez, CFE	Director Legal Affairs Office		
Nydia M. Cotto Vives, Esq.	President	Office of the Special Independent Prosecutor's Panel (PFEI)	March 14, 2023
Mrs. Ivelisse Torres Rivera	Inspector General	Office of the Inspector General (OIG)	April 18, 2023

\* The Office of the Election Comptroller participates in the anti-corruption group as a guest, as provided for in the 2018 Anti-Corruption Code.

In addition, interviews were conducted with representatives of the private business sector, an opinion survey was carried out and several formal letters of request for information were sent to public institutions, which are detailed in the annex to this report.

## I. Introduction

This parallel report analyzes Puerto Rico's implementation and enforcement of selected articles of Chapter II (preventive measures), Chapter III (criminalization and law enforcement); and Chapter V (asset recovery) of the United Nations Convention against Corruption (UNCAC) by Puerto Rico. The report's recommendations will support the government of Puerto Rico in strengthening the strategy and legal framework to prevent, combat and criminalize corruption.

The phenomenon of corruption has been affecting Puerto Rico for decades and the recent hurricane, earthquake and pandemic crises have aggravated it. Therefore, the Center for Public and Corporate Governance (Governance Center), a non-governmental organization (NGO), member of the UNCAC Coalition, has been conducting an assessment to make a rigorous and scientific diagnosis of the causes and factors that promote this unhealthy behavior, the legal framework and the strategy of Puerto Rico's anti-corruption system using platforms recognized as best practices.

Puerto Rico is a territory of the United States, with an extension of 110 land miles from west to east and 40 land miles from north to south approximately, is an archipelago part of the Caribbean region, particularly the Hispanic Caribbean. Its territorial organization has 78 municipalities and Spanish is the main language and English is the second official language. The United States signed the UNCAC in 2003 and ratified it in 2006. The United States, like other nations that have territories that make up colonies around the world such as the United Kingdom, France and New Zealand, does not usually take them sufficiently into account when applying international conventions. As an example, when analyzing the U.S. reports we find that Puerto Rico was included in the full report of the first U.S. review cycle with only brief and limited information and the report of the second cycle has not yet been published<sup>1</sup>. The U.S. civil society shadow reports<sup>2</sup> make no reference to Puerto Rico.

In the case of the United States, the term unincorporated territory is used to refer to all those territories that are under U.S. sovereignty but are not part of the national territory, which is composed only of the 50 states, the District of Columbia and the uninhabited Palmyra Atoll. The unincorporated territories are not considered part of the country and since they have no diplomatic representation, currency or defense of their own, they are not considered independent states by the international community. They are part of the colonies pending decolonization<sup>3</sup>.

Therefore, given the political-legal reality of Puerto Rico and the void of relevant information that arises as a result of not having a country report, the Governance Center prepared this report with the objective of making a rigorous diagnosis of the anti-corruption strategy to identify areas for improvement and make concrete recommendations to contribute to its effective implementation. Puerto Rico's shadow

---

<sup>1</sup> UNODC, Country Review Report of the United States of America (2013), [https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2013\\_11\\_19\\_USA\\_Final\\_Country\\_Report.pdf](https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2013_11_19_USA_Final_Country_Report.pdf).

<sup>2</sup> UNCAC Coalition, Civil Society Parallel Report on UNCAC Implementation in the USA under the 1<sup>st</sup> Review (2011), <https://uncaccoalition.org/files/cso-review-reports/year1-usa-report.pdf>.

<sup>3</sup> Wikipedia, United States Territories, [https://es.wikipedia.org/wiki/Territorios\\_de\\_los\\_Estados\\_Unidos](https://es.wikipedia.org/wiki/Territorios_de_los_Estados_Unidos), accessed November 5, 2023.

report will serve as a reference for other territories that make up the colonies of other nations.

## **1.1 Scope**

The articles and topics of the UNCAC that receive special attention in this report under Chapter II on preventive measures are those covering preventive anti-corruption policies and practices (Art. 5), preventive anti-corruption bodies (Art. 6), public sector employment (Art. 7.1), codes of conduct, conflicts of interest and asset declarations (Arts. 7, 8 and 12), reporting mechanisms and whistleblower protection (Arts. 8.1 and 8.4 and 13.2), political financing (Art. 7.3), public procurement (Art. 9.1), public financial management (Art. 9), judiciary and prosecution (Art. 11), private sector transparency (Art. 12), access to information and participation of society (Arts. 10 and 13.1), and measures to prevent money laundering (Art. 14).

Also addressed are the articles under Chapter V on asset recovery covering anti-money laundering (Arts. 52 and 58), measures for the direct recovery of property (Arts. 53 and 56), instruments of confiscation (Art. 54), international cooperation for purposes of confiscation (Arts. 51, 54, 55, 56 and 59) and the return and disposal of confiscated property (Art. 57).

The analysis of the provisions of Chapter III on criminalization and law enforcement of the UNCAC are discussed transversally in the articles related to Chapter II and Chapter V.

## **1.2 Structure**

The report begins with an executive summary (section II), which includes consolidated findings, conclusions and recommendations on the compliance assessment process, availability of information, as well as implementation of and compliance with selected UNCAC articles. Section III covers the results of the review process, as well as access to information in more detail.

Subsequently, the implementation of the Convention is reviewed and examples of good and bad practices are presented. Then, recent developments are discussed and, finally, recommendations are given for priority actions to improve UNCAC implementation.

## **1.3 Methodology**

This review report of Puerto Rico's compliance with the anti-corruption provisions of the UNCAC has the purpose of making an assessment, by an independent entity, aimed at configuring a scientific diagnosis, using the reference materials and report template designed by the UNCAC Coalition and Transparency International, to generate recommendations for the strengthening of the rule of law and the anti-corruption strategy of Puerto Rico.

Compliance assessment combines the use and application of quantitative and qualitative methodology. The purpose is to seek statistical data and at the same time collect and analyze different points of view from people involved in the subject. The quantitative method seeks answers to specific questions: what, how, when, where and why. Qualitative methodology, on the other hand, attempts to explain the causes of

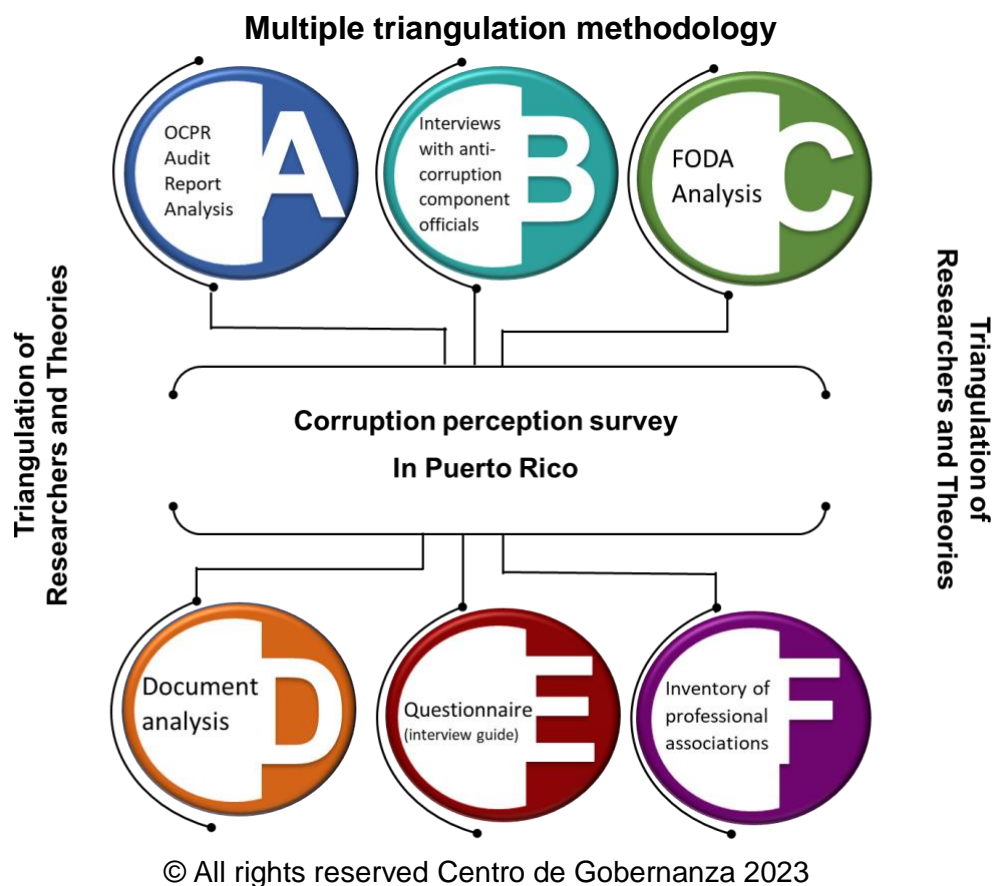


phenomena and human behavior. The participation of the subjects of study is incorporated in qualitative research.

Research methodology is a discipline of knowledge in charge of elaborating, defining and systematizing the set of techniques, methods and procedures to be followed during the development of research for the production of new knowledge. It guides the way in which we are going to approach the research and the way we are going to collect, analyze and classify the data so that the results have validity and relevance and meet the standards of scientific rigor.

The main proposal for the articulation of both methods is the one made by Denzin through his concept of *triangulation*. This author defines triangulation in research as *"the combination of two or more theories, data sources or research methods in the study of a singular phenomenon"*<sup>4</sup>.

The figure below represents the main data collection and analysis techniques used to carry out the diagnosis:



The main techniques used to conduct the study are described below:

1. **Documentary analysis.** Compilation and analysis of current legislation (Constitution of Puerto Rico, laws, regulations and other legal norms), and the

<sup>4</sup> Denzin, Norman 1970 Sociological Methods: A Sourcebook. Transaction Publishers, 2017. ISBN. 0202308405, 9780202308401.

legal framework on transparency, good governance and government corruption and review of academic literature.

2. **Analysis of the audit reports of the Office of the Comptroller of Puerto Rico (OCPR).** The audit reports of the OCPR for the years July 1, 2010 to June 30, 2019 were analyzed in order to identify the most frequent patterns and modalities of corruption.
3. **Request for public information.** The web portals of the agencies of the anti-corruption component were reviewed to review laws, public policy, reports, projects, statistics and general information related to anti-corruption policies. As a result of this analysis it was identified that the information published in the institutional pages is of a general nature.

No information was identified regarding plans and follow-up on the implementation of the anti-corruption strategy, nor are statistical data related to the implementation of the anti-corruption code in force published, with some exceptions. Much of the scarce statistical information actively published on corruption is unclear, scarce, confusing or deficient.

4. **Press releases.** Press releases were reviewed to gather updated information on some sections of the report related to the implementation of the anti-corruption code.
5. **Survey<sup>5</sup>.** Survey design to collect information on the categories, information and indicators of corruption perception used by international organizations. The survey statements collect information related to three (3) categories of information: (1) Corruption perception; (2) Transparency, access to information and media; (3) Accountability.

The purpose of the survey is to gather the opinion of those consulted, representative of the various sectors of society, on the patterns, modalities, levels and trends of government corruption in Puerto Rico with the objective of contributing to the development of public policies, programs and projects to prevent and combat it.

The survey was circulated through the Survey Monkey platform. Completing the survey took respondents only 10 minutes and the responses were handled in strict confidentiality and tabulated electronically so that the information collected will be grouped in aggregate form which ensured that no survey participant could be identified. For each premise presented, the respondent expressed his/her opinion on the premise and/or question presented by making a check mark (✓) on the statement using **YES**, **NO** or **DON'T KNOW** as an answer.

The survey included a series of multiple choice/open-ended questions where the respondent selected the answer(s) that best described his/her opinion using

---

<sup>5</sup> Center for Public and Corporate Governance (2022), The Challenges of Corruption for Governance and the Economy, <https://gobernanzapr.org/estudios-e-investigaciones/>. On the results of the Corruption Perceptions Survey, <https://gobernanzapr.org/wp-content/uploads/2022/11/Acerca-de-los-resultados-de-la-encuesta.pdf>, accessed September 1, 2023.

the alternatives presented for each question. In the case of the premises or multiple choice questions the respondent selected the answer(s) that best described his/her opinion using the alternatives presented for each question.

- 6. Questionnaire (interview guide).** The design of the questionnaire was based on the reference template designed by the UNCAC Coalition and Transparency International, which groups the information according to chapters II (prevention of corruption), III (criminalization) and V (asset recovery).

For each question or premise the respondents had the opportunity to answer: (a) "complies"; (b) "partially complies"; (c) "I have no information". In the case of the premises or multiple choice questions, the respondent had the opportunity to select the answer(s) that best described his/her opinion using the alternatives presented for each question.

The questionnaire served as a guide for interviews with public officials and former public officials who hold positions in the government's anti-corruption component. A panel of experts validated the questionnaire in terms of its content, scope and application.

- 7. Interviews.** Eleven persons were invited to be interviewed as part of the research study. A total of 5 interviews were conducted with officials from the government's anti-corruption component, 6 officials were not available for interview. In addition, 3 private sector representatives were interviewed.

The agencies of the anti-corruption component invited to be interviewed were: *Office of the Comptroller, Office of Government Ethics, Department of Justice, Independent Fiscal Panel Office, Department of the Treasury, Puerto Rico Police Bureau, Office of the Inspector General, Office of the Electoral Comptroller (participating by invitation).*

In addition, a request for information was made and the following agencies were invited to participate in an interview: Office of the Commissioner of Financial Institutions (OCIF), Office of the Commissioner of Insurance (OCS) and the Public Corporation for the Supervision and Insurance of Cooperatives (COSSEC).

- 8. Focus group<sup>6</sup>.** A focus group was conducted with the staff of the Office of the Comptroller of Puerto Rico to gather information related to the implementation in practice of the provisions of Chapters II (prevention of corruption), III (criminalization) and V (asset recovery).

- 9. SWOT analysis.** The questionnaire used as an interview guide included a section of open-ended questions to analyze Strengths, Weaknesses, Opportunities and Threats, according to the model proposed by Albert Humphrey, known as SWOT.

---

<sup>6</sup> Center for Public and Corporate Governance (2022), Self-Assessment of Puerto Rico's Compliance with the Anti-Corruption Provisions of the United Nations Convention Against Corruption (UNCAC), <https://governanzapr.org/wp-content/uploads/2022/05/Estudio-Autoevaluacion.pdf>, accessed September 1, 2023.

## II. Executive Summary

This report analyzes Puerto Rico's implementation and application of Chapters 2 (preventive measures); 3 (criminalization of corruption); and Chapter 5 (asset recovery) of the United Nations Convention Against Corruption (UNCAC). The report's recommendations will support the government of Puerto Rico in strengthening the strategy and legal framework to prevent, combat and criminalize corruption.

The Center for Public and Corporate Governance, Inc. (Governance Center) is a private non-profit 501 c(3) research and education entity on public and corporate governance issues whose main purpose is to contribute to the development of a culture of good governance, improve governance, strengthen public policy formulation, develop institutional capacities and improve decision-making at the public and corporate levels to enhance inclusive social development and shared prosperity in the country.

### Context and scope of the process

Puerto Rico is a territory of the United States, with an extension of 110 land miles from west to east and 40 land miles from north to south approximately, is an archipelago part of the Caribbean region, particularly the Hispanic Caribbean. Its territorial organization has 78 municipalities and Spanish is the main language and English is the second official language. The United States signed the UNCAC in 2003 and ratified it in 2006. The United States, like other nations that have territories that make up colonies around the world such as the United Kingdom, France and New Zealand, often do not take them sufficiently into account when implementing international conventions. As an example, when analyzing the U.S. reports we find that Puerto Rico was included in the full report of the first U.S. review cycle only includes brief and limited information and the report of the second cycle has not yet been published<sup>7</sup>. The U.S. civil society shadow reports<sup>8</sup> make no reference to Puerto Rico<sup>9</sup>.

In the case of the United States, the term unincorporated territory is used to refer to all those territories that are under U.S. sovereignty but are not part of the national territory, which is composed only of the 50 states, the District of Columbia and the uninhabited Palmyra Atoll. The unincorporated territories are not considered part of the country and since they have no diplomatic representation, currency, or defense of their own, they are not considered independent states by the international community. They are part of the colonies pending decolonization<sup>10</sup>.

Therefore, given the lack of relevant information that arises as a result of not having a country report that analyzes Puerto Rico's compliance with the provisions of the

---

<sup>7</sup> UNODC (2013), Country Review Report of the United States of America, [https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2013\\_11\\_19\\_USA\\_Final\\_Country\\_Report.pdf](https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2013_11_19_USA_Final_Country_Report.pdf).

<sup>8</sup> UNCAC Coalition, Civil Society Parallel Report on UNCAC Implementation in the USA under the 1<sup>st</sup> Review (2011), <https://uncaccoalition.org/files/cso-review-reports/year1-usa-report.pdf>.

<sup>9</sup> UNCAC Coalition, Civil Society Parallel Report on UNCAC Implementation in the USA under the 1<sup>st</sup> Review (2011), <https://uncaccoalition.org/files/cso-review-reports/year1-usa-report.pdf>.

<sup>10</sup> Wikipedia, United States Territories, [https://es.wikipedia.org/wiki/Territorios\\_de\\_los\\_Estados\\_Unidos](https://es.wikipedia.org/wiki/Territorios_de_los_Estados_Unidos), accessed November 5, 2023.

UNCAC, the Governance Center prepared this report. The objective of the report is to make a rigorous and scientific diagnosis of the anti-corruption system strategy by an independent entity to identify areas for improvement and make concrete recommendations to contribute to its effective implementation.

Puerto Rico's report will serve as a reference for other territories that make up the colonies of other nations.

The phenomenon of corruption has been affecting Puerto Rico for decades and the recent hurricane, earthquake and pandemic crises have aggravated it. For this reason, the Center for Public and Corporate Governance (Governance Center) has been conducting an assessment to make a rigorous and scientific diagnosis of the causes and factors that foster this unhealthy behavior, the legal scaffolding and the strategy of Puerto Rico's anti-corruption system using platforms recognized as best practices. The Governance Center, a non-governmental organization (NGO), is a member of the UNCAC Coalition and a supporter of the Anti-Corruption Resolution of the first United Nations General Assembly Special Session (UNGASS) against corruption, held in 202<sup>11</sup>. The UNGASS resulted in a bold, action-oriented policy statement that includes clear commitments to advance the global anti-corruption agenda.

For more than a decade, Puerto Rico has faced the unprecedented challenge of improving public governance in an environment of great economic uncertainty and dramatic changes in government structures. Since 2016 the Country faces a new order to manage its public affairs following important legal decisions at the federal level, such as the approval of the PROMESA Act<sup>12</sup> and the Puerto Rico v. Sánchez Valle opinion issued by the U.S. Supreme Court, the appointment of the Fiscal Oversight Board (FOSB)<sup>13</sup> and of a federal judge to administer Puerto Rico's bankruptcy. The rules of the game resulting from this new order underscore the pressing need to strengthen the principles of governance of public, fiscal and budgetary affairs. The fact that for fiscal year 2018-2019 the Government of Puerto Rico and the JSF have not agreed on a budget, and that the judge will ultimately determine to implement the JSF's budget, reaffirms the weaknesses of governance and the lack of political power of elected officials. Regarding the political reality of the country, Dr. Rafael Cox Alomar<sup>14</sup> states that it is imperative to resolve the colonial situation of the country in order to set the economic and social transformation of the country on track.

In recent years, Puerto Rico has made significant efforts to bring about a transformation with the triad of anti-corruption system reforms aimed at preventing, combating, and penalizing corruption. The adoption of the Anti-Corruption Code in 2018 represented a step forward to drive important changes with coordination among the government bodies responsible for the anti-corruption system. However, in practice, anti-corruption efforts have not been sufficient to discourage corrupt behavior. After the approval of the Anti-Corruption Code, the country has been experiencing an

---

<sup>11</sup> Governance Center (2021), Electronic release: UN approves policy statement to strengthen the fight against corruption, <https://governanzapr.org/wp-content/uploads/2021/06/ONU-aprueba-declaracion-UNGASS-para-fortalecer-la-lucha-1.pdf>, accessed September 1, 2023.

<sup>12</sup> PROMESA Act, <https://aldia.microjuris.com/wp-content/uploads/2017/02/ley-promesa-traducida-al-espac3b1ol.pdf>.

<sup>13</sup> Fiscal Oversight Board, <https://juntasupervision.pr.gov/>.

<sup>14</sup> Cox Alomar, Rafael (2023), *Hacia un nuevo orden de las cosas* Editorial Nomos S.A. ISBN 9798985323757.

increase in the cases and modalities of corruption identified that have impacted officials from the highest levels of government including former governors, legislators, mayors and private sector businessmen<sup>15</sup>. When analyzing these corruption cases, the following are identified as driving factors that trigger corruption: (1) the deterioration of institutional capacities at the state, municipal, legislative and judicial levels; (2) the deterioration of the justice systems; (3) the lack of transparency and citizen inclusion; and (4) the high level of impunity that reflects the obstacles still facing the gap between the practical reality and the legal reality in the fight against corruption in the country.

Likewise, since the first decade of the 21st century, the economy of Puerto Rico has been in a continuous recession, aggravated by the insolvency of the Government of Puerto Rico to comply with the payment of the public debt. Macroeconomic factors such as the reduction of the Gross National Product (GNP) since 2004, emigration to the United States (U.S.), reducing its population by nearly 400,000 people in the past decade, which has meant a 2.2% reduction in the labor force, and the decrease in consumer purchasing power due to price inflation of products (mostly imported) affecting the performance of the economy in general<sup>16</sup>.

The emigration of the professional and young population, particularly to the southeastern region of the U.S., has been one of the effects of the crisis on the local economy (Cortes Chico, 2017). For example, in 2005 the estimated population was 3,821,362 inhabitants, while in 2016 the estimated population reached 3,411,307, a population loss of over 400,000 people in just over eleven years. By then, the female population was larger (1,787,635) than the male population (1,623,672) and the poverty rate reached 46.1% of the population<sup>17</sup>.

## 2.1 Process Description

The purpose of this review report on Puerto Rico's compliance with the anti-corruption provisions of the UNCAC is to conduct an evaluation, by an independent entity, aimed at configuring a scientific diagnosis, using the application guide for the review process developed by the UNCAC Coalition, to generate recommendations for the strengthening of the rule of law and the anti-corruption strategy of Puerto Rico. The purpose of the review and diagnostic process is to present information, identify and

---

<sup>15</sup> El Vocero (2022), Corruption Perception Elevated, [https://www.elvocero.com/actualidad/otros/elevada-la-percepci-n-de-la-corrupci-n/article\\_6e895648-3243-11ed-9464-cf859dd07468.html](https://www.elvocero.com/actualidad/otros/elevada-la-percepci-n-de-la-corrupci-n/article_6e895648-3243-11ed-9464-cf859dd07468.html);

El Nuevo Día (2022), Los casos de corrupción pública que estremecieron el escenario político en el 2022, <https://gobnanzapr.org/wp-content/uploads/2023/09/Los-casos-de-corrupcion-publica-El-NUevo-Dia.pdf>;

El Vocero (2023), Multimillionaire the balance of government deterioration, [https://www.elvocero.com/economia/otros/multimillonario-el-saldo-del-deterioro-gubernamental/article\\_e45072d0-049d-11ee-b871-1bedadfd5b8d.html](https://www.elvocero.com/economia/otros/multimillonario-el-saldo-del-deterioro-gubernamental/article_e45072d0-049d-11ee-b871-1bedadfd5b8d.html);

Center for Investigative Journalism (2019), The looting of public funds behind the chat, <https://periodismoinvestigativo.com/2019/07/el-saqueo-a-los-fondos-publicos-detras-del-chat/>, accessed September 1, 2023.

<sup>16</sup> Banco Popular de Puerto Rico (2010, 2012-2014), Revista Progreso Económico, <https://newsroom.popular.com/Spanish/comunicados/comunicados-details/2016/Por-50-aos-Banco-Popular-ha-publicado-la-revista-Progreso-Economic/default.aspx>, access on September 1, 2023.

<sup>17</sup> United States Census (2020), Puerto Rico Economic Characteristics, <https://data.census.gov/table?tid=ACSDP5Y2020.DP03&q=040XX00US72>, accessed September 1, 2023.

substantiate the changes required to strengthen the legal framework and the anti-corruption strategy, and make recommendations for the formulation of public policies based on international best practices that promote the implementation of a robust anti-corruption system and strategies to prevent and combat corruption.

Likewise, the compliance evaluation is aimed at preparing a report that will serve as a guide to formulate a strategy of good governance practices and an action plan for its efficient implementation that will allow for the translation of the provisions of the UNCAC into the legal and regulatory framework of Puerto Rico and outline the reforms of governance practices, government management and public policies required to promote the common good of society. The provisions of the convention against corruption were reaffirmed and expanded in the Political Declaration adopted at the UN General Assembly Special Session (UNGASS) against corruption in 2021<sup>18</sup>.

The Political Declaration of 2021 is a step forward in addressing the challenges of corruption for governance, the economy and the common good of society. It emphasizes that corruption affects us all at the personal, institutional and national levels and poses the challenge of fighting to combat it. As the understanding of how corruption is an affront to the values and principles that distinguish us as a society and threatens the economy, government, business and institutions has grown, awareness of the importance of addressing the challenge has increased. For this reason, countries and jurisdictions have a responsibility to transform anti-corruption commitments into concrete actions by working together with government, the private sector and society to reject and combat corruption and promote a culture of public integrity.

The report was prepared by the Governance Center using the guidelines and report template designed by the UNCAC Coalition and Transparency International. The Office of the Comptroller of Puerto Rico was the collaborating entity for the development of the study. The process to produce the country's compliance assessment report used the multiple triangulation method, which includes the use of various data sources, theories and researchers from various disciplines.

## **2.2 Availability of information**

The preparation of the report on compliance with the anti-corruption provisions of the UNCAC was based on a review of Puerto Rico's anti-corruption legal and regulatory framework, documentary analysis, information requests, analysis of web portals, a questionnaire, and interviews with managers of the agencies of the government's anti-corruption component. It was identified that there is little clear information published in a proactive manner regarding the implementation of policies and regulations to combat corruption; no standards for compliance with indicators were identified. The report reveals that there is no information available on asset recovery investigation processes. Multiple international collaboration and cooperation efforts were identified.

The collection of information included a request for information through a letter of request under the Transparency and Expedited Procedure for Access to Public Information Act (Act No. 141, 2019) and the Puerto Rico Government Open Data Act

---

<sup>18</sup> See: Governance Center (2021), UN approves policy statement to strengthen the fight against corruption.

(Act No. 122, 2019). Likewise, the data collection phase included perception questionnaires circulated to several professional associations of civil society, review of press releases, review of academic articles and research studies previously conducted by the Center for Public and Corporate Governance.

The list of persons consulted for interviews is detailed at the beginning of this report and the list of formal requests for information sent to institutions and officials by letter are detailed in the annex to this report.

### 2.3 Application in law and practice

In general, Puerto Rico has a robust constitutional, legal and regulatory framework with a track record that exceeds fifty years in matters related to combating corruption and promoting sound government administration of state resources and in compliance with Chapter II (prevention of corruption), Chapter III (criminalization) and Chapter V (asset recovery) of the United Nations Convention Against Corruption (UNCAC).

The legal framework adopted is anchored in the 1952 Constitution of the Commonwealth of Puerto Rico (Article III, Section 22 and Article VI, Section 9)<sup>19</sup> and has evolved since then to address the changing environment. The Puerto Rico Legislature has passed several laws in the last decade to address this issue with legislative measures that range from penalizing the conduct of public servants, including former public servants, contractors and even the form of organization and administration of public agencies. A correlation table summarizing the legal framework and the institutional anti-corruption framework in Puerto Rico can be found in the analysis in Article 6 of this report.

In terms of ***policies and practices to prevent corruption*** Puerto Rico has had since 2018 the Anti-Corruption Code<sup>20</sup>. The Anti-Corruption Code states in its explanatory memorandum that the purpose of the legislative piece is to consolidate in a single statute the Government's public policy on corruption, which was scattered in multiple special laws. It also seeks to give more protection to those persons who report acts of corruption; to create more robust mechanisms to compensate damages to the Government of Puerto Rico for corrupt acts; and to elevate to statutory level the inter-agency cooperation necessary to be effective in combating and eradicating corruption.

The statute's explanatory memorandum states that "...most of the cases that have come before the courts, and certainly the most notable ones, are related to the awarding of contracts". Precisely to address this problem head-on, Title III of said legislation creates a Code of Ethics for contractors, suppliers, and applicants for economic incentives from the Government of Puerto Rico. In essence, the Explanatory Memorandum provides a model to be followed, defining the conduct that must be exhibited by persons wishing to contract with the government, including their ethical obligations and responsibilities. In addition, Section 3.4 of the Code of Ethics establishes an inability to contract for persons who have been convicted of corruption.

---

<sup>19</sup> Constitution of the Commonwealth of Puerto Rico, <https://irt.pr.gov/LeyesReglamentos/Leyes/CONSTITUCIONES%20DE%20ESTADOS%20UNIDOS%20DE%20AMERICA%20Y%20DE%20PUERTO%20RICO.pdf>.

<sup>20</sup> Act No. 2 of January 4, 2018, as amended known as the Anti-Corruption Code, <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Corrupci%C3%B3n/2-2018.pdf>.



Regarding **corruption prevention bodies**, the Anti-Corruption Code designates a group of agencies for the coordination of efforts to prevent, combat and penalize corruption. Title VII of the Anti-Corruption Code creates an *interagency* group called the Group for the Prevention and Eradication of Corruption. This group is composed of: (1) the Director of the Office of Government Ethics, who shall chair the group; (2) the Comptroller of Puerto Rico; (3) the President of the OPFEI; (4) the Secretary of Justice of Puerto Rico; (5) the Secretary of the Treasury; (6) the Inspector General; (7) the Commissioner of the Bureau of Police; and any other member invited by the Chairman.

This group may invite the prosecutor in charge of the Puerto Rico Office of the Federal Department of Justice and the special agent in charge of the Puerto Rico Office of the FBI to participate in its meetings. However, previous research studies conducted by the Governance Center<sup>21</sup> suggest that this statute leaves out of the anti-corruption component the link with other important agencies in the effort to fight corruption such as: The Office of the Election Comptroller, the General Services Administration, the Office of Administration and Transformation of Human Resources (OATRH), the Office of the Commissioner of Financial Institutions (OCIF), the Office of the Commissioner of Insurance (OCS), and the Puerto Rico Cooperative Insurance and Supervision Corporation (COSSEC), among others.

In accordance with the provisions of the Code, the Group for the Prevention and Eradication of Corruption (PRECO)<sup>22</sup> was created for the purpose of achieving the continued cooperation of all state and federal government agencies involved in the fight against corruption. The group is chaired by the Office of Government Ethics and aims to improve the government's ability to receive information and complaints about possible acts of corruption and to strengthen processes to prevent impunity.

As mentioned later in this report, there are still **pending issues for legislation** aimed at strengthening the scope of existing legislation and mitigating impunity, such as: the revision of the anti-corruption code, the revision of measures for the protection of whistleblowers, incentives for whistleblowing, reparation of damages caused by corruption, management of the prevention of political patronage and conflicts of interest, measures to address impunity and the strengthening of asset recovery measures.

The civil service system in Puerto Rico **governs access to the public sector** and has been in place for more than a century. The first civil service law in Puerto Rico dates back to 1907. This statute, although imperfect, established the cornerstone of the civil service in Puerto Rico. The struggles to develop a civil service system have been long and fraught with obstacles. On the one hand, attempts to achieve a civil service system that allows for the social and economic development of the country, as well as a government based on administrative rationality, efficiency and high social and human values. On the other hand, this effort has been tinged by political parties that have

---

<sup>21</sup> Center for Public and Corporate Governance (2022), Estudio Autoevaluación del cumplimiento de Puerto Rico con las disposiciones anticorrupción de la Convención de las Naciones Unidas Contra la Corrupción (CNUCC), <https://governanzapr.org/wp-content/uploads/2022/05/Estudio-Autoevaluacion.pdf>.

<sup>22</sup> Group for the Prevention and Eradication of Corruption, <https://precopr.com/>.

used the civil service as a booty to increase the power of their political organizations in order to obtain or perpetuate themselves in power. The regulation of civil service in Puerto Rico has evolved with the approval of several statutes over time<sup>23</sup>.

An analysis of the historical trajectory of the civil service system shows that Puerto Rico served as a model of efficient public administration and management for many Latin American countries. However, moments of fragility have been identified in the evolution of the personnel system that can be explained by elements of politicization of the civil service and its relationship with the appointment of temporary, contract and irregular employees, neoliberal economic policies and the lack of a strategic vision of human resources. To meet these challenges, it is imperative to address the pillars of a vigorous and depoliticized civil service system.

At present, access to the public sector is mainly regulated by Act No. 8 of February 4, 2017, known as the "Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico", repeals Act 184 - 2004, known as, "Act for the Administration of Human Resources in the Public Service of the Commonwealth of Puerto Rico", and creates the Office of Administration and Transformation of Human Resources of the Government of Puerto Rico, (OATRH)<sup>24</sup>.

This statute regulates public service at all levels of government and standardizes entry into public service based on the principle of merit. The purpose of the Act is to promote best practices in public administration and to restore transparency and credibility to public employees and the people of Puerto Rico in the human resources management system and the services offered to the people, among other purposes.

This measure makes the Government a Sole Employer so that employees would become employees of the Government and not of its different entities. This would allow the Government to better utilize human resources where there is a pressing need through mobility, without the employee having to resign from the position he/she holds and start over in another government jurisdiction in principle and eventually even in other non-government jurisdictions. However, in practice, personnel recruitment processes have remained in the hands of public agencies. That is to say, each of the public agencies and instrumentalities continues to prepare calls for applications, process and evaluate job applications, and create the registries that certify candidates who are eligible for appointment in the public service.

With regard to **political financing**, the legislative branch created the Office of the Electoral Comptroller (OCE) under Act 222-2011, as amended<sup>25</sup>. This law seeks to prevent corruption consisting of the exchange of campaign donations for official acts, promoting that electoral campaigns be financed in a transparent manner, providing the public with access to information. Under the legal framework that created the OCE, it

---

<sup>23</sup> Vera Rodríguez Hernán A., D.P.A. *El sistema de función pública en Puerto Rico: origen, esplendor, crisis y visión de futuro*. Pontificia Universidad Católica de Puerto Rico, <https://www.cgrhpr.com/wp-content/uploads/2023/08/publication.pdf>, accessed on September 1, 2023.

<sup>24</sup> Act No. 8 of February 4, 2017, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/8-2017.pdf>, accessed on September 1, 2023.

<sup>25</sup> Puerto Rico Political Campaign Finance Oversight Act," as amended, <https://oce.pr.gov/download/ley222/>.

has the power to impose administrative penalties to those who violate the limitations imposed by Law 222. Likewise, it may refer to the Secretary of Justice those cases in which the possible commission of crimes, as typified in Chapter XIII of Law 222-2011, as amended, has been identified<sup>26</sup>.

In 2012, the Legislative Assembly created the Government Ethics Office of Puerto Rico<sup>27</sup> and approved a new ethics law, known as the Organic Act of the Government Ethics Office of Puerto Rico<sup>28</sup>. This new law repealed the "Governmental Ethics Act of the Commonwealth of Puerto Rico" of 1985, which, in turn, had repealed the ethics laws of 1943 and 1948. These first ethics laws were passed prior to the Constitution of the Commonwealth of Puerto Rico, which recognized acts of public employees that could affect the proper functioning of the government.

With regard to **Codes of Conduct, conflicts of interest and asset declarations**, for almost four decades, the Office of Government Ethics of Puerto Rico<sup>29</sup> (OEG) has exercised its ministerial duty to educate and oversee the ethical performance of public servants of the Executive Branch of the Government of Puerto Rico<sup>30</sup>. In 2012, the Legislative Assembly approves a new ethics law, known as, Organic Law of the Office of Government Ethics (LOOEG) of Puerto Rico<sup>31</sup>. This law repealed the Government Ethics Act of the Commonwealth of Puerto Rico of 1985, which, in turn, had repealed the ethics laws of 1943 and 1948. These first ethics laws were passed prior to the Constitution of the Commonwealth of Puerto Rico, which recognized acts of public employees that could affect the proper functioning of the government.

The Law establishes the methodology, frequency and scope of the financial reports of the members of the Executive and Legislative Branches. It provides for the submission of reports at the time a person assumes office and when he/she leaves office, including for those who assume interim offices of more than 60 days. It also establishes the content of the reports and their swearing in. It establishes several provisions related to the terms and auditing of the reports of officials of the Executive Branch and prohibitions of enrichment up to five years after leaving office. On the other hand, the content of the financial reports corresponding to the Judicial Branch shall be determined by said Branch of Government, in accordance with its rules on ethical matters and its own regulations.

Regarding disclosure and publicity of data, the law establishes two categories for access to financial reports. In the first, a summary of the content of the financial reports

---

<sup>26</sup> Under this chapter the following offenses are criminalized: Misuse of public funds; Prohibited donations by legal persons; Executives of legal persons (establishes criminal liability for natural persons who authorize prohibited donations by legal persons); Prohibitions on persons in the process of connecting permits or franchises; or with Adjudicative Power in the Permit or Franchise Concession Process. (This offense criminalizes corruption by quid pro quo, which includes the elements of the crime of bribery); Failure to render reports.; and Submitting false reports.

<sup>27</sup> Act No. 12 of July 24, 1985, as amended, and known as the Government Ethics Act of the Commonwealth of Puerto Rico of 1985.

<sup>28</sup> Act No. 1 of January 1, 2012, as amended, and known as the Organic Act of the Government Ethics Office of Puerto Rico.

<sup>29</sup> Act No. 12 of July 24, 1985, as amended, and known as the Government Ethics Act of the Commonwealth of Puerto Rico of 1985.

<sup>30</sup> The OEG was created in 1985, with the approval of Act No. 12 of July 24, 1985, as amended.

<sup>31</sup> Act No. 1 of January 1, 2012, as amended, and known as the Organic Act of the Government Ethics Office of Puerto Rico.

of the members of the Executive Branch is available to the public through its web page<sup>32</sup>. The other category is in case of a possible violation of the provisions of the Law, where inspection and access to the reports may be allowed. This last category requires information from the applicant, including identifying or expressing the possible violation of the Law, and justifying the granting of access to the financial report, subject to possible criminal sanctions. This requirement on the citizen or entity requesting the report carries an additional burden that may discourage the requester.

The OEG's jurisdiction with respect to members of the Legislative and Judicial Branches is limited to the evaluation of financial reports. Inspection and public access to the financial reports corresponding to members of the Judicial Branch is governed by the regulations adopted by the Supreme Court of Puerto Rico. As for the members of the Legislative Branch, each House shall determine the rules governing the inspection and public access to the financial reports of its members<sup>33</sup>. It is important to note that the OEG's website contains a summary of the financial reports of all Executive Branch and members of the House of Representatives of Puerto Rico, at their request.

Regarding **Whistleblower Mechanisms and Whistleblower Protection**, in 2018 Puerto Rico approved the Anti-Corruption Code for the New Puerto Rico. This Code was proposed to consolidate the anti-corruption provisions of different laws, and also includes a Code of Ethics for Contractors, Suppliers, and Applicants of Economic Incentives of the Government of Puerto Rico, among other provisions, such as the protection of whistleblowers and repealed Act No. 14 of 2001 and Act No. 426 of 2000.

The Anti-Corruption Code in Art. 1 declared as public policy the strengthening of whistleblower protections and ensures that offenders are held accountable for their actions. This Code is discussed in sections 4.1.6 Article 8.4 and 13.2 - Whistleblower Reporting and Protection Mechanisms and 4.1.1 Article 5 - Corruption Prevention Policies and Practices. However, we highlight in this section that Art. 3.2. establishes the obligation for any person to report those actions that constitute acts of corruption, or constitute crimes of fraud, bribery, embezzlement or misappropriation of funds, and of which he/she has personal knowledge, that concern a contract, business, or transaction between the government and a contractor, supplier of goods and services or participants of economic incentives. In addition, Article 4.2 establishes the protection of whistleblowers, since no person may harass, discriminate, dismiss, threaten or suspend any benefit, right or protection to another person for the fact that such person provides information, cooperates or serves as a witness in any investigation leading to any complaint or accusation of conduct related to the illegal use of public property or funds.

The consolidation of laws represented a step forward, but not enough to prevent, combat and penalize corruption. The lack of articulation of protocols and redundant processes for receiving and processing complaints, together with the absence of a record of the processing of persons who have requested whistleblower protection under current regulations, is clear evidence of the need to review and update the legislation.

---

<sup>32</sup> Office of Government Ethics Financial Reports, <https://www.eticapr.net/informes-financieros/>.

<sup>33</sup> See, Article 5.8 of the LOOEG.

The basis for establishing the regulations surrounding **public procurement** is set forth in Act No. 73 of July 19, 2019, as amended, known as the "General Services Administration for the Centralization of Procurement of the Government of Puerto Rico Act of 2019"<sup>34</sup>. This Act creates the General Services Administration of Puerto Rico, as the agency within the Executive Branch responsible for establishing public policy related to the procurement of goods, works, and non-professional services for all Government Entities and Exempt Entities, and is also responsible for the implementation of the centralization of government procurement.

In this sense, an important qualitative leap has been made in order to adopt best practice standards in terms of procurement policies and open government. However, the opacity, the questioning of awards and the lack of transparency that promote procurement processes with the private sector under schemes that violate current regulations continue to be the main cause of government corruption. The unjustified increase of direct awards without auctions in times of hurricane, earthquake and pandemic crises has been a constant. Therefore, it is necessary to adjust the contracting strategy and promote a comprehensive and coordinated reform program that promotes a more efficient, effective and transparent process and ensures integrity in public procurement processes that highlights the need to incorporate technological advances as a measure to reform government procurement and acquisition systems and as an anti-corruption measure.

With respect to the management of **public finances**, the measures related to the governmental budget and the responsibility for the collection of the public treasury are mainly set forth in the Puerto Rico Constitution of 1952<sup>35</sup>. The Constitution of Puerto Rico establishes the Department of the Treasury as an Executive Department, which shall be headed by a Secretary of Government. However, and empowered by the Constitution, the Legislative Assembly may create other executive departments, as it did with the Office of Management and Budget, which was created by Act No. 147 of 1980<sup>36</sup>. Thus, it was proposed to achieve a new dimension in the budgetary and managerial work of the Government of Puerto Rico. The fundamental objective of said Act is defined in terms of improving and strengthening the functions related to the formulation of public policy and the direction and administration of the Government of Puerto Rico, especially in the areas of fiscal and programmatic policy, and budgetary and financial administration. The Act created the Operational Audit Division within the Office of Management and Budget, whose main function was to objectively and analytically evaluate the management, operational problems and effectiveness of government programs.

With regard to the **judicial branch and the Public Prosecutor's Office**, the Department of Justice originated in Article 45 of the Autonomous Constitution of Puerto Rico of November 25, 1897, which established four Secretaries, among others,

---

<sup>34</sup> Act No. 73 of July 19, 2019, as amended known as the "General Services Administration for the Centralization of Procurement of the Government of Puerto Rico Act of 2019, <https://bvirtualogp.pr.gov/ogp/Bvirtual/LeyesOrganicas/pdf/73-2019.pdf>.

<sup>35</sup> Constitution of the Commonwealth of Puerto Rico of 1952, <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Derechos%20Civiles/CONST/CONST.pdf>.

<sup>36</sup> Act No. 147 of June 18, 1980, as amended, known as the "Organic Act of the Office of Management and Budget", <https://ogp.pr.gov/SobreOGP/Documents/147-1980.pdf>.

the Secretary of Grace and Justice and the Secretary of the Interior. During the military regime of the United States of America, a reorganization of the prevailing system of government was carried out and by means of General Order No. 12 of February 6, 1899, the Department of Justice was created and named as it has been known up to the present.

Under this organization, the functions of the new Department would be those related to the administration of justice, the appointment of judges and notaries, penal institutions and appeals. The head of the Department of Justice would function independently of the other three constituted department heads and would report directly to the Governor General.

According to Section 3 of Act No. 205 of August 9, 2004, the Secretary of Justice, appointed by the Governor pursuant to Article IV, Section 5 of the Constitution of the Commonwealth of Puerto Rico, is the Head of the Department of Justice and as such, the chief law enforcement officer of the Commonwealth in charge of promoting compliance with and enforcement of the law, as provided in Sections 5 and 6 of Article IV of the Constitution of the Commonwealth of Puerto Rico.

The Department of Justice is responsible for carrying out the following functions: to ensure faithful compliance with the Constitution and the laws of the Commonwealth of Puerto Rico and to aspire to the highest principles of equality and human dignity; to maintain and strengthen the integrity of government institutions and their officials through legal advice and representation; to defend the people of Puerto Rico in civil and criminal cases; and to provide certainty in the legal transaction of real property. To exercise these functions with effectiveness, integrity, a sense of justice and the firmest commitment to public service.

In addition, the Department has a Public Integrity Division, Economic Crimes Division and Comptroller's Office at the central level that can assist in the filing of cases or reinforce the work of the district attorney's offices. The Public Integrity Division is in charge of the investigation and criminal prosecution of all criminal conduct committed by a public official in the exercise of his or her office, including illegal appropriation, embezzlement of public funds, crimes against civil rights, violations of the Electoral Law, the Government Ethics Law and the Controlled Substances Law, among others. It also conducts preliminary investigations of public officials whose actions fall within the framework of the Special Independent Prosecutor's Act and makes recommendations to the Secretary of Justice regarding referrals to that agency. The Economic Crimes Division investigates and criminally prosecutes persons accused of fraud against federal or state programs, among others. On the other hand, the Comptroller's Office has the authority to file before the courts of justice any civil or criminal action arising as a result of any intervention of the Comptroller in connection with the revenues, accounts and disbursements of the State and its agencies.

In analyzing the rule of law in relation to **government transparency and access to public information** in Puerto Rico, we find that accountability and fiscal responsibility continue to be deficient, weak, and insufficient. Act 141<sup>37</sup> on Transparency and

---

<sup>37</sup> Act No. 141 of August 1, 2019, known as the "Transparency and Expedited Procedure for Access to Public Information Act," <https://ogp.pr.gov/Documents/Ley-141-2019.pdf>.

Expedited Procedure for Access to Public Information and Act 122<sup>38</sup> on Open Data passed in August 2019, to regulate access to public documentation and open data, do not comply with international standards and are ambiguous and contradictory in terms of their application, most especially to municipalities.

With regard to the **participation of society**, the recognition of citizen participation has its force in the Constitution of the Commonwealth of Puerto Rico. According to our Constitution, a democratic system is understood as one in which the will of the people is the source of public power, where the political order is subordinated to the rights of man and where the free participation of citizens in collective decisions is assured.

In Puerto Rico there is no government office aimed at promoting citizen participation, much less educating on how citizens can participate, be heard and contribute to the decision-making processes of projects that impact the country. Although there are laws that promote citizen participation, in practice they are mere legal compliances and not very effective. For example, Act No. 38 of June 30, 2017, as amended, and known as the "Uniform Administrative Procedure Act of the Government of Puerto Rico" establishes in Section 2.2 that government agencies shall provide opportunity for the citizenry to submit written comments during a term of not less than thirty (30) days, counted from the date of publication of public notices on regulatory matters. Another mechanism recognized by this law is the holding of public hearings to promote citizen participation (Section 2.3). On the other hand, the Legislature has an Office of Citizen Participation that promotes and facilitates the integration of citizens in the legislative processes, mainly through training talks and the channeling of citizen opinions and ideas so that they may become bills or resolutions filed by petition. Although Act No. 141 of 2019, "Transparency and Expedited Procedure for Access to Public Information Act" recognizes the accessibility of public data to the citizenry through simple, agile and inexpensive procedural mechanisms, citizen participation goes far beyond the request for information to government agencies. There are additional instances where citizen participation is necessary, and effective, in order for the people to be part of collective decisions, for example, in the participation in committee sessions when bills are being discussed. In the same way, give priority to legislation proposed by the people.

It is also necessary to strengthen the transparency of government information and data so that the media and the general public can exercise their right to know. Press releases over the past few years highlight the lack of publication of data by the three branches of government - legislative, executive and judicial - which impedes citizen involvement and participation in solving the problems that affect them. Censorship of investigative journalists and the media continues to be an obstacle for citizens to exercise an active role in governmental decision-making, oversee government results and alert on bad government practices that open space for corruption.

Regarding the regulation of the **private sector**, the government's regulation of the transparency requirement for the private sector is fragmented and vague. The General Corporations Act, Act 164-2009, as amended, is one of the main instruments the Government has to promote transparency and accountability in economic

---

<sup>38</sup> Act No. 122 of August 1, 2019, known as the "Puerto Rico Government Open Data Act." <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/122-2019.pdf>.

development. The Act is divided into chapters, the first twelve chapters containing provisions on the form of organization and incorporation, commencement of legal personality, powers of the incorporators or managing members, and provisions on the initial bylaws and amendments thereto. In addition, it is established that every corporation organized under the laws of Puerto Rico must have available such accounting books, documents and records (including inventory records) as are sufficient to establish the amount of gross income and deductions, credits and other details related to its operations, its investments inside and outside the country, the property owned by the corporation and the amount of capital employed in carrying on business inside and outside Puerto Rico. In addition, the law establishes fines and penalties in case of noncompliance with such report, although it allows the request for extensions. The Secretary of State will use as a basis for granting certificates of good standing for domestic or foreign corporations, whether for profit or not-for-profit, the annual reports for the five years preceding the date of the request.

Other laws that affect the private sector are Act 1-2011, as amended, known as the "Internal Revenue Code of Puerto Rico of 2011", under the primary responsibility of the Department of the Treasury, which administers public policy related to tax and financial matters and the administration of public resources, and Act 146-2012, as amended, known as the "Penal Code of Puerto Rico", which in Title IV identifies crimes against governmental functions. Although many of the crimes identified are for actions of public officials or employees, former public officials or former public employees, the Penal Code also recognizes acts of corruption originating in the private sector. For example, unlawful exploitation of public works or services for the benefit of a third party (art. 252), Negotiation incompatible with the exercise of public office (art. 253) for the benefit of a third party, Undue interference in government operations (art. 254), Bribery (art. 259), Offer of bribe (art. 260), and Undue influence (art. 261). Some of these offenses carry terms of imprisonment and restitution.

On the other hand, the Anti-Corruption Code of 2018 establishes legal provisions that affect the private sector through the Code of Ethics for Contractors, Suppliers, and Applicants of Economic Incentives of the Government of Puerto Rico. In essence, this Code of Ethics regulates the behavior of the private sector whenever it deals with activities, business, services, or relations with the public sector. Under this Code, the private entity is required that every invoice for the collection of goods or services submitted to executive agencies must contain a certification that "no public servant of the government entity is a party to or has any interest in the benefits or profits resulting from the contract that is the subject of this invoice," or that it has been waived, that "the amount of the invoice is fair and correct," and that "the work has been performed" and "payment has not yet been received for it."

With respect to **anti-money laundering**, Puerto Rico, as a territory of the United States of America, has extensive legislation that regulates financial activities, such as banking and operations related to the securities market, by the federal government through the Federal Reserve System (FRS), the Federal Deposit Insurance Corporation (FDIC), the Securities and Exchange Commission (SEC), and other government agencies. In addition, the federal Patriot Act of 2001 requires many financial institutions in the United States, including Puerto Rico, to verify and record information that identifies each person who applies to open an account or add a signer to an existing account. Information such as each individual's name and address, date of birth, and other information that identifies each individual in accordance with the law



must be provided. You must also provide driver's license or other identification documents, social security number or employer identification number in the case of businesses.

The Financial Crimes Enforcement Network (FinCEN)<sup>39</sup> is a federal agency that analyzes information collected through the Bank Secrecy Act of 1970 (BSA) that requires financial institutions to report currency (cash or coin) transactions of more than ten thousand dollars (\$10,000) by or on behalf of an individual, as well as multiple currency transactions totaling more than ten thousand dollars (\$10,000) in a single day. These transactions are reported on Currency Transaction Reports (each a "CTR"). Through this information FinCEN is able to track criminals, their assets and activities and thereby find other information necessary to detect money laundering.

There are other laws in Puerto Rico that seek to address this problem that afflicts society, especially for businesses susceptible to carry out activities involving money laundering. Since 1993, Puerto Rico has been governed by the Puerto Rico Banking Act, as amended<sup>40</sup>, which is also applicable to corporations engaged in banking business. This law establishes the requirements for incorporation, commencement of operations, restrictions, minimum amount of capital to be established in Puerto Rico, requirements regarding the board of directors, name of the institution, payment of capital, shareholders, among others. It also provides for the procedure to be followed when a representative of the bank performs undue actions, either by breach of trust, or intentionally misappropriates or misapplies money, funds, or credits of the bank, or securities existing in the same, or makes false entries in any book, report or statement of the bank or foreign bank, with intent, in any such case, to injure or defraud, and any person who knowingly aids or permits any officer, agent or employee to commit any violation of this section, shall be deemed guilty of a felony, and shall be imprisoned for a term not exceeding ten years. In addition, in 2010, the Law to Regulate Money Services Businesses<sup>41</sup> was passed to more strictly and uniformly regulate everything related to money laundering. This law establishes requirements for the licensing of services, and also imposes responsibilities and prohibitions.

From the analysis conducted it emerges that the legal scaffolding and supervisory and oversight processes of the financial system need to be strengthened in areas such as: money laundering risk assessments to determine anti-money laundering risks or vulnerabilities; how those risks/vulnerabilities are addressed; open disclosure of regulated entities' compliance with national anti-money laundering provisions; what sanctions are imposed for non-compliance; disclosure of public officials' compliance data on their assets; independent verification of information; and disclosure of sanctions for non-compliance.

Regarding **Measures for the Direct Recovery of Assets**, on August 24, 2022, the Legislature approved Act No. 76<sup>42</sup> to make mandatory the imposition of the restitution penalty in cases of crimes against the treasury. This Act amended the Penal Code of

---

<sup>39</sup> Financial Crimes Enforcement Network, <https://www.fincen.gov/>.

<sup>40</sup> Act No. 55 of May 12, 1933, as amended.

<sup>41</sup> " [Act 136-2010, as amended].

<sup>42</sup> Act No. 76 of the year 2022. To amend Sections 58, 80, 182, 191, 252, 257, 259, 261, 262, 263, and 264, of Act No. 146 of 2012, Penal Code of Puerto Rico, to make mandatory the penalty of restitution, <https://www.lexjuris.com/lexlex/leyes2022/lexl2022076.htm>.

Puerto Rico, and provides for a series of penalties to be imposed in a discretionary manner by the court, among which "Restitution" is included. Prior to this Act, the Penal Code did not provide for the penalty of restitution as an option for every statutory crime for which the conduct is subject to compensation, but expressly or discretionarily provided for specific crimes that the Legislature had determined to carry such penalty. The law includes a wide range of offenses requiring restitution of assets and establishes the sanctions and penalties for each offense: aggravated unlawful appropriation, extortion, unlawful taking of public works or services, alteration or mutilation of property, bribery, undue influence, breach of duty, neglect of duty, and misappropriation of public funds.

Despite the vast legislation to address government corruption, we see that there is no agency responsible for the recovery and recovery of public funds and resources that have been misappropriated, diverted, received as a result of public corruption, deceit, fraud, or for having provided false information, among other crimes against the State. Likewise, there is no legal action, mechanism or remedy that allows the agencies, through the responsible officials, to recover the assets, funds or public resources or those belonging to municipalities and public corporations that have been disposed of.

The concept of recovery has only been seen as a process used to return to the normal conditions in which the area was before the natural disasters, as a mitigation measure, and in the process of harmonizing the efforts of the Government of Puerto Rico to provide a rapid and effective recovery. Moreover, in the face of the many laws passed in the past 20 years recognizing the country's need to improve economic development, promote private capital investment<sup>43</sup>, achieve economic recovery, foster and achieve institutions that provide quality and excellent services, promote sound public administration, effective oversight of the use of government funds and property, prevent, combat and eradicate corruption, achieve savings and recover lost credibility, the concept of asset recovery remains outside of the legislation. Even though the Fiscal Oversight Board has required that the way in which the Government provides its services be restructured and that the State be innovative in finding methods to overcome the current deficit situation,<sup>44</sup> the recovery of assets acquired through corruption and illicit activities is not perceived as a priority.

In Puerto Rico there is no specific law requiring measures for the **restitution and disposition of assets** or direct recovery of public property. However, the different laws that address this issue provide a basis for the courts, in determining guilt, to impose imprisonment, restitution, or both.

The Penal Code of Puerto Rico<sup>45</sup> defines and establishes, in Art. 58, that the restitution penalty for natural persons consists of the obligation imposed by the court to compensate the victim for the damages and losses caused to his or her person or property as a consequence of the crime. The restitution penalty does not include mental suffering and anguish. On August 24, 2022, the Legislature approved Act No.

---

<sup>43</sup> See Explanatory Memorandum to the Puerto Rico Incentives Code, Act No. 60 of July 1, 2019, as amended; "Puerto Rico Financial Advisory Authority and Fiscal Agency Act" [Act 2-2017, as amended]; "Puerto Rico Inspector General Act" Act No. 15 of February 28, 2017, as amended.

<sup>44</sup> Statement of Motives of the "Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico" [Act 8-2017, as amended].

<sup>45</sup> Act 146-2012, as amended.

76 to make mandatory the imposition of the restitution penalty in cases of crimes against the treasury. This law amended the Penal Code of Puerto Rico, and provides for a series of penalties to be imposed in a discretionary manner by the court, among which "Restitution" is included.

In cases of the Department of the Treasury, where officers and employees of the Department of the Treasury exercising their functions by authority of the Puerto Rico Internal Revenue Code of 2011<sup>46</sup> commit acts constituting a crime, as typified by the Penal Code of Puerto Rico in force, they shall be subject, in addition, to disciplinary sanctions. It also provides that in any case of conviction for any felony or misdemeanor established by this Internal Revenue Code, in addition to the restitution of the funds owed to the Secretary, including but not limited to taxes, interest, surcharges and penalties owed or withheld and not deposited. Depending on the degree of the offense and the amount, the convicted person shall be punished with a fine, or with imprisonment or both, at the discretion of the Court, plus the costs of the proceedings. In addition, the Inspector General may also impose administrative penalties for violation of the rules and laws under its authority. The OIG may also impose other sanctions, such as requiring the restitution of public funds, income earned and accrued interest. It may also require whoever obtains an economic benefit as a result of violations of the Law to pay three times the value of the economic benefit received.

In addition, failure on the part of any person to comply with the provisions of the Anticorruption Code for the New Puerto Rico<sup>47</sup> wherein he/she seeks to intervene with a public servant or former public servant to obtain an improper benefit, shall be guilty of a felony punishable by imprisonment for a fixed term of three (3) years and a fine of five thousand (5,000) dollars. In addition, the Court may impose the penalties of restitution, community service, suspension or revocation of license, permit or authorization.

In sum, **the purpose of the compliance report** is to make a diagnosis of how the government's accountability obligation in Puerto Rico is implemented, its degree of compliance with the effectiveness of the legal system and practices in the implementation of the anti-corruption system in accordance with the provisions of the United Nations Convention Against Corruption (UNCAC). The analysis shows that:

1. Puerto Rico has largely implemented the anti-corruption provisions of the UNCAC with respect to the categories of information related to Chapter II (preventive measures), Chapter III (criminalization of corruption) and Chapter V (return of assets).
2. Regarding the legal framework, it was identified that there is a compliance gap between the current legal framework and its application in practice. In spite of having a broad legal framework, areas of weakness and obscure areas in the anti-corruption legislation were identified that hinder its effective implementation.

---

<sup>46</sup> Act 1-2011, as amended.

<sup>47</sup> Act 2-2018, as amended.

3. It is perceived that the lack of transparency and access to public information hinders the implementation of good governance practices and the prevention of corruption.
4. The area of criminalization, lack of sanctions and impunity represent major challenges.
5. Great progress was identified in preventive measures to combat corruption related to the creation of an independent anti-corruption agency, the adoption of laws protecting whistleblowers, and codes of ethics for public employees.
6. The areas of greatest weakness are related to: the absence of society's participation in the formulation of the anti-corruption strategy; lack of transparency and access to information; lack of criteria and processes for recruitment and management of human resources; integrity in the judicial process; sanctions to the private sector; public access to information to society. Regulatory and oversight framework for money laundering; transparency in campaign financing; transparency, competencies and adequate systems for procurement, acquisition and finance.
7. There is a gap in the implementation of existing legislation or the legislation is not effective in terms of protecting persons who report corruption. The provisions of the existing legal framework address these issues, but their application in practice opens spaces for non-compliance with the law and impunity.

The following table summarizes the implementation of and compliance with Chapters II, III and V of the United Nations Convention Against Corruption.

**Table No. 1: Application and implementation Summary**

UNCAC Articles	Status of implementation of the legal framework	State of implementation in practice
<b>Chapter II Corruption prevention policies and practices</b>		
Article 5 - Corruption prevention policies and practices	Fully applied	Moderate
Article 6 - Corruption prevention body or bodies	Implemented to a large extent	Moderate
Article 7.1 - Employment in the public sector	Implemented to a large extent	Moderate
Article 7.3 - Political financing	Implemented to a large extent	Moderate
Article 7, 8 and 12 - Codes of conduct, conflicts of interest and declarations of assets	Fully applied	Moderate
Article 8.4 and 13.2 - Whistleblowing and whistleblower protection mechanisms	Partially implemented	Poor

UNCAC Articles	Status of implementation of the legal framework	State of implementation in practice
Article 9.1 - Procurement	Implemented to a large extent	Moderate
Article 9.2 - Management of public finances	Fully applied	Moderate
Article 10 and 13.1 - Access to information and participation of society	Partially implemented	Poor
Article 11 - Judiciary and Public Prosecutor's Office	Partially implemented	Poor
Article 12 - Transparency of the private sector	Partially implemented	Poor
Article 14 - Measures to prevent money laundering	Implemented to a large extent	Moderate
<b>Chapter III - Criminalization and Law Enforcement* Chapter III - Criminalization and Enforcement* Chapter III - Criminalization and Law Enforcement* Chapter III - Criminalization and Law Enforcement</b>		
Article 15 - Bribery of national public officials	Implemented to a large extent	Poor
Article 16 - Bribery of Foreign Public Officials and Officials of international organizations	Implemented to a large extent	Poor
Article 17 - Embezzlement, misappropriation or other detour of property by by a public official	Implemented to a large extent	Poor
Article 18 - Trading in influence	Implemented to a large extent	Poor
Article 19 - Abuse of functions	Implemented to a large extent	Poor
Article 20 - Illicit enrichment	Implemented to a large extent	Poor

UNCAC Articles	Status of implementation of the legal framework	State of implementation in practice
Article 21 - Bribery in the private sector	Implemented to a large extent	Poor
Article 22 - Embezzlement of assets in the private sector	Implemented to a large extent	Poor
Article 23 - Money laundering	Implemented to a large extent	Poor
Article 24 - Concealment	Implemented to a large extent	Poor
Article 25 - Obstruction of justice	Implemented to a large extent	Poor
Article 32 - Protecting witnesses of corruption, experts, victims of corruption	Implemented to a large extent	Poor
Article 33 - Whistleblowers against reprisals	Implemented to a large extent	Poor
<b>Chapter V - Asset Recovery</b>		
Article 52 and 58 - Combating money laundering	Implemented to a large extent	Poor
Article 53 and 56 - Measures for direct recovery of property	Implemented to a large extent	Poor
Article 57 - Restitution and disposal of assets	Implemented to a large extent	Poor

\* The analysis of the provisions of these chapters are discussed transversally in the articles related to Chapter II and Chapter V.

**Table No. 2: Performance of selected key institutions**

Name of institution	Performance in relation to responsibilities covered by the report	Brief comment on performance
Office of the Comptroller of Puerto Rico (OCPR)	Good	Reports of audit results, information on complaints and statistics available on website;

Name of institution	Performance in relation to responsibilities covered by the report	Brief comment on performance
		good technical knowledge; relevance of the findings of its reports; lack of resources.
Office of Government Ethics (OEG)	Good	Good technical expertise; relevant information on website; relevance of findings in their reports; lack of resources.
Office of the Comptroller of Elections (OCE)	Good	Good technical expertise; relevance of the findings of their reports; lack of resources.
Special Independent Fiscal Panel (SIP)	Moderate	92% convictions; limited staffing; weaknesses in processing; lack of agility to meet deadlines; lack of resources.
Office of the Inspector General (OIG)	Good	Good technical expertise; relevance of the findings of their reports, resolving role ambiguity between OIG and OCPR; lack of resources.
Department of Justice	Poor	Lack of resources, poor results; slow processing and dissemination of the results of their reports.

These agencies make up the anti-corruption group (PRECO) and their performance shows room for strengthening inter-agency coordination to improve results.

## 2.4 Recommendations for priority actions

1. Amend the 2018 Anti-Corruption Code to promote greater coherence and articulation in its implementation, promote improved results and impact to prevent, combat and penalize corruption, and promote collaboration and alignment with the institutional framework. Develop indicators and metrics to monitor and evaluate compliance with anti-corruption policies and strategies.
2. Strategically address systemic public governance deficiencies as a way to improve the country's governance, while incorporating anti-corruption policies into other key strategies, such as education, health, the energy system, public housing, public works and highways, public safety and open government.
3. Outline strategies and establish procedures to ensure the elimination of political patronage in recruitment and personnel selection practices in the public service.

To avoid political patronage, appointments of secretaries and directors of anti-corruption agencies should be term appointments.

4. Establish stricter oversight and monitoring processes to ensure transparency and accountability and require election campaigns, political parties and candidates for political office to maintain records of income and expenditures and to disclose all donations and expenditures in an open and detailed format. Require greater oversight and oversight of Political Action Committees (PACs).
5. Ensure the effective implementation of the public policy and legal framework for the protection of whistleblowers, regarding who are whistleblowers, which are the protection measures that benefit them, as well as incentives for whistleblowing, and the means of effective defense available to them in the event that the protection measures are not complied with and damages are caused.
6. Adopt international standards of transparency in contracting policies that favor open contracting and regulate situations that limit transparency and healthy competition in government contracting processes.
7. Demand the implementation of public procurement systems that are transparent, that procurement is open, that guarantee full citizen access to information and to all documents during the term of the contract.
8. Strengthen oversight, control and transparency of the formulation and execution of government budgets in all phases of the budget process in accordance with the International Budget Partnership (IBP) Standard.
9. To provide society with transparency and open data mechanisms that make true citizen participation in decision-making and governmental oversight viable in practice.
10. Review the appointment process for judges and prosecutors to eliminate political appointments. Appointments made by the governor in office link their decisions to the political party. In general terms it is recommended:
  - a. create specialized courtrooms in the courts to hear cases of public and private corruption that are equipped with technology for presentations and handling of digital evidence;
  - b. The Department of Justice should maintain specialized prosecutors in corruption cases;
  - c. the internal auditors of the municipalities answer to the Municipal Legislature or board of directors;
  - d. to give greater visibility to the ASG's public auctions and agencies;
  - e. to give teeth to the system so that the law is not a dead letter.
11. Adopt international standards to institutionalize appointment processes for judges, prosecutors and attorneys general aimed at strengthening judicial independence and combating corruption.
12. Strengthen administrative capacities and provide the Department of Justice with the resources and specialized expertise required to combat the high levels of corruption and impunity in the country. Create specialized chambers to hear corruption cases and promote their full integration.
13. Establish a publicly accessible database to facilitate real-time identification of corporate beneficial owners, measures for direct asset recovery, tools for confiscation purposes, and asset restitution and disposal.
14. Improve the practical application of state and federal anti-money laundering legislation to close the gap between the existing legal framework and its actual implementation.



### **III. Assessment of the review process for Puerto Rico**

Puerto Rico is a territory of the United States and as such does not have its own official review of the implementation of the United Nations Convention Against Corruption (UNCAC). The extent to which Puerto Rico is included in the official UNCAC review process is unknown. The government of Puerto Rico, according to the Governance Center, needs to take seriously its obligation to implement the international and constitutional right to information, and amend laws to that end.

#### **3.1 Report on the review process**

Given the lack of relevant information that arises as a result of not having a country report, the Governance Center prepared this report with the objective of making a rigorous diagnosis of the anti-corruption strategy in order to identify areas for improvement and make concrete recommendations to contribute to its effective implementation.

The United States signed the UNCAC Coalition's Transparency Commitment, committing to publish information on the timeline and the focal point, as well as to publish the key documents of the review: the self-assessment, which has been published for the second review cycle,<sup>48</sup> and the full report, which remains to be published. The Transparency Commitment also requires the government to organize a meeting with civil society representatives to discuss the findings of the report, and to support civil society participation in all Convention forums<sup>49</sup>.

However, the Governance Center made a request for information through a letter to the U.S. State Department and other related agencies and several follow-up communications without receiving a response<sup>50</sup>. Therefore, it is important to highlight that it is necessary to strengthen the processes related to the publicity of reports and the participation of civil society in the UNCAC review process.

#### **3.2 Access to information**

We note that within the Inter-American human rights system, an Inter-American Model Law on Access to Public Information has been developed. This Model Law is robust, having scored 142 out of a possible 150 points in the RTI Rating. As such, it provides an excellent benchmark for the government and other concerned parties in Puerto Rico to improve current laws.

The process to obtain the required information faced the following difficulties: lack of collection of relevant government information; government restrictions to allow access to the required information; it was difficult to find statistical information related to compliance with UNCAC provisions; much of the public information is fragmented,

---

<sup>48</sup> UNODC, Self-assessment checklist USA, [https://www.unodc.org/documents/treaties/UNCAC/SA-Report/2019\\_07\\_05\\_USA\\_SACL.pdf](https://www.unodc.org/documents/treaties/UNCAC/SA-Report/2019_07_05_USA_SACL.pdf), accessed October 9, 2023.

<sup>49</sup> UNCAC Coalition, Transparency Pledge, <https://uncaccoalition.org/uncac-review/transparency-pledge/>, accessed October 9, 2023.

<sup>50</sup> UNCAC Coalition, Access to Information Campaign, Results, USA, [https://drive.google.com/drive/folders/1Gqj5j71vqJ33UKUSDxBU7PRisNW6FF\\_q](https://drive.google.com/drive/folders/1Gqj5j71vqJ33UKUSDxBU7PRisNW6FF_q).

incomplete, unclear and not easily understood by the public; much of the necessary information was classified as reserved information.

The preparation of the report on compliance with the anti-corruption provisions of the UNCAC was based on a review of Puerto Rico's anti-corruption legal and regulatory framework, documentary analysis, information requests, analysis of web portals, a questionnaire, and interviews with managers of the agencies of the government's anti-corruption component. It was identified that there is little clear information published in a proactive manner regarding the implementation of policies and regulations to combat corruption; no standards for compliance with indicators were identified. The report reveals that there is no information available on asset recovery investigation processes. Multiple international collaboration and cooperation efforts were identified.

The collection of information included a request for information through a letter of request under the Transparency and Expedited Procedure for Access to Public Information Act (Act No. 141, 2019) and the Puerto Rico Government Open Data Act (Act No. 122, 2019). Likewise, the data collection phase included perception questionnaires circulated to several professional associations of civil society, review of press releases, review of academic articles and research studies previously conducted by the Center for Public and Corporate Governance. The interviews are detailed in the list of persons consulted at the beginning of this report and the formal requests for information sent to institutions and officials by letter are detailed in the annex to this report.

The following techniques were used to gather information and data for this report: documentary analysis; analysis of the Comptroller's Office audit reports; public information requests; press releases; surveys; questionnaires; interviews; focus groups; and SWOT analysis. The methodology and techniques for gathering information are discussed in detail in the Executive Summary of this report.

## **IV. Analysis of the Application of the Provisions of Chapters II, III and V**

This chapter analyzes the implementation of the provisions of Chapter II on Preventive Measures, Chapter III on Criminalization and Enforcement, and Chapter V on Asset Recovery of the UNCAC through the application of laws, regulations and practices in Puerto Rico, and highlights both good practices and areas for improvement.

### **4.1 Chapter II. Corruption prevention policies and practices**

#### **4.1.1 Article 5 - Anti-corruption policies and practices**

In general, Puerto Rico has a constitutional, legal and regulatory framework with a history of more than fifty years in matters related to combating corruption and promoting the sound administration of the resources of the State. The legislation adopted is anchored in the 1952 Constitution of the Commonwealth of Puerto Rico (Article III, Section 22 and Article VI, Section 9)<sup>51</sup> and has evolved since then to meet the changing environment. The Legislature of Puerto Rico has passed several laws in the last decade to address this issue with legislative measures that range from penalizing the conduct of public servants, including former public servants, contractors and even the form of organization and administration of public agencies.

It should be noted that Puerto Rico has one of the most robust and comprehensive anti-corruption regimes in Latin America and the Caribbean<sup>52</sup>. Applicable legal regulations include state and federal legislation. In terms of legal regulations that address the conduct of public servants, including former public servants, special laws include the Code of Government Ethics<sup>53</sup> aimed at public servants and former public servants of the Executive Branch; with provisions applicable to public servants and former public servants of the Judicial and Legislative Branches. Likewise, the Penal Code of Puerto Rico<sup>54</sup> also establishes provisions that penalize the conduct of public officials or employees, former public officials or former public employees, and includes private citizens, for crimes against governmental performance and against public funds.

And most recently, the Anti-Corruption Code for the New Puerto Rico<sup>55</sup> aimed at consolidating the anti-corruption provisions of different laws, and which includes a Code of Ethics for Contractors, Suppliers, and Applicants of Economic Incentives of the Government of Puerto Rico, among other provisions.

The purpose of the Anti-Corruption Code is to consolidate in a single statute the Government's public policy on corruption, which was scattered in multiple special laws.

---

<sup>51</sup> [https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Derechos\\_Civiles/CONST/CONST.pdf](https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Derechos_Civiles/CONST/CONST.pdf).

<sup>52</sup> Human Rights and Corruption (2015), <https://cdc.pr.gov/InstitutoDeEducacion/RecursosEducativos/Publicaciones/Derechos%20Humanos%20y%20Corrupción.pdf>, accessed September 1, 2023.

<sup>53</sup> Act No. 1 of January 1, 2012, as amended, and known as the Organic Act of the Government Ethics Office of Puerto Rico.

<sup>54</sup> Act 146 of July 30, 2012, as amended, and known as Penal Code of Puerto Rico, Sec. 250-266.

<sup>55</sup> Act No. 2 of January 4, 2018, as amended, and known as, Anti-Corruption Code for the New Puerto Rico.

It also seeks to give more protection to whistleblowers; create more robust mechanisms to compensate the government for damages caused by corrupt acts; and elevate to statutory level the inter-agency cooperation necessary to be effective in combating and eradicating corruption.

Its *Explanatory Memorandum* states that "the most frequent act of corruption is the improper use of public power to obtain an illegitimate advantage, generally in a secret and private manner. Other types of corruption are the illegitimate use of privileged information and patronage; bribery, influence peddling, extortion, fraud, embezzlement, prevarication, *quid pro quo*, cronyism, co-optation, nepotism, impunity and despotism. On the other hand, corruption facilitates or leads to other types of criminal activities such as drug trafficking, money laundering and prostitution, although it is not restricted to these organized crimes". Thus we see that most of the cases that have reached the courts, and certainly the most notable ones, are related to the awarding of contracts.

Precisely to address this problem, Title III of said legislation creates in Section 3.4 a *Code of Ethics for Contractors, Suppliers, and Applicants of Economic Incentives of the Government of Puerto Rico*. In essence, it provides a model to be followed by defining the conduct that must be exhibited by persons wishing to contract with the government, as well as their ethical obligations and responsibilities. This Code of Ethics disqualifies persons, natural or juridical, convicted of corruption, whether they violate the provisions of the *Organic Act of the Office of Government Ethics*, the Penal Code, and the *Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico*. Section 3.7 of the Anti-Corruption Code establishes that the violation of the provisions of the Act is sufficient cause to terminate the contract, and classifies the violations as a felony, with a fixed penalty of imprisonment for three years and a fine of up to \$5,000.

Title IV of the Anti-Corruption Code establishes protection for *whistleblowers*. The penalty stipulated for attempting against the whistleblower is a fixed term of three years or a fine of \$5,000, being also a non-prescriptive offense. The country's press releases of 2022 highlight that this provision of the Anti-Corruption Code was used in a controversy involving the then governor of Puerto Rico<sup>56</sup>. In July 2020, the Puerto Rico Department of Justice concluded in a report submitted to the Special Independent Prosecutor Panel (PFEI) that the governor had incurred in a violation of Art. 4.2 of the Anticorruption Code<sup>57</sup>.

On the other hand, Title V grants the State, through the Secretary of the Department of Justice, a civil action for damages suffered by the State. The State may bring a civil action in damages against any natural or juridical person who has incurred in negligent acts or omissions, to the detriment of the public treasury, in order to claim compensation equivalent to three times the economic damage caused. This cause of action has a statute of limitations period of fifteen years. Title VI of the Act creates a

---

<sup>35</sup> El Vocero de Puerto Rico (2022), This is the scheme charged to former Governor Wanda Vázquez, [https://www.elvocero.com/ley-y-orden/federal/este-es-el-esquema-imputado-a-la-exgobernadora-wanda-v-zquez/article\\_a238ada6-1464-11ed-9e3a-7fda49a48f50.html](https://www.elvocero.com/ley-y-orden/federal/este-es-el-esquema-imputado-a-la-exgobernadora-wanda-v-zquez/article_a238ada6-1464-11ed-9e3a-7fda49a48f50.html), access on July 26, 2023.

<sup>57</sup> PFEI Resolution July 20202 <http://panelfei.com/wp-content/uploads/2021/04/Resolución-del-Panel-Wanda-Vázquez-Garced-et-al.pdf>, accessed on September 8, 2023.

Registry of Persons Convicted of Corruption and Related Offenses, precisely to include any person convicted of the offenses described above.

Finally, Title VII of the Anti-Corruption Code creates an *interagency* anti-corruption group, called the Group for the Prevention and Eradication of Corruption (PRECO). This group is composed of the Director of the Office of Government Ethics (OEG), who shall chair the group; the Comptroller of Puerto Rico; the President of the Office of the Special Independent Prosecutor Panel (OPFEI); the Secretary of Justice of Puerto Rico; the Secretary of the Treasury; the Inspector General; the Commissioner of the Bureau of Police; and any other member invited by the Chairman. This group may invite to participate in its meetings the prosecutor in charge of the Puerto Rico Office of the Federal Department of Justice and the special agent in charge of the Puerto Rico Office of the Federal Bureau of Investigation (FBI). PRECO shall have the following functions according to Art. 7.2:

- (a) Ensure adequate inter-agency communication and cooperation in all anti-corruption efforts.
- (b) Collaborate with the Office of Government Ethics in all efforts aimed at preventing and eradicating corruption;
- (c) Improve the government's ability to receive information about possible acts of corruption; and
- (d) Strengthen processes to avoid impunity.

Information about PRECO's operations, its performance and what is shared in its meetings is considered confidential, due to the privileged and sensitive information discussed there. The meetings are aimed at exchanging information, reviewing strategies, evaluating processes and maximizing the potential for collaboration that represents the integration of the resources that each institution contributes to teamwork against corruption. At present, an educational campaign on each of the components of PRECO is also active.

The analysis shows that the Anti-Corruption Code was a step in the right direction, but not enough to fight corruption. It is observed that this legislation has failed, at the very least, to curb government corruption and improve practices for its effective implementation. We continue to see that public contracting processes involving significant sums of money and public resources continue to be attractive for acts of corruption, as illustrated by court cases in municipalities in the contracting of solid waste services and road paving involving mayors, public officials and businessmen<sup>58</sup>

Similarly, it is perceived that the selection and appointment process of officials appointed to head agencies with functions related to preventing, combating and penalizing corruption should have a more rigorous scrutiny that includes the participation and consultation of professional associations and associations, academia and the citizenry. A more rigorous process would strengthen the autonomy and

---

<sup>58</sup> El Vocero (2022), The list of mayors accused of corruption this four-year term continues to grow, [https://www.elvocero.com/ley-y-orden/federal/sigue-creciendo-el-listado-de-alcaldes-acusados-por-corrupci-n-este-cuatrenio/article\\_8410c1e0-f17f-11ec-a1be-c301ec35e70e.html](https://www.elvocero.com/ley-y-orden/federal/sigue-creciendo-el-listado-de-alcaldes-acusados-por-corrupci-n-este-cuatrenio/article_8410c1e0-f17f-11ec-a1be-c301ec35e70e.html), accessed September 9, 2023.

independence of judgment of the incumbents in public positions with oversight functions.

Likewise, the financing of political campaigns has become a source of corruption, a factor of inequity and restriction of the right to be elected, and even a limiting factor for the exercise of politics. A very critical problem is the disproportionate increase in the independent support of select millionaire businessmen who pay for electoral campaigns. Most of those who contribute are citizens far removed from the common social and economic reality and their income is up to four times more than the average citizen. These contributions go to *Super PACs*, political action committees whose purpose is to make independent expenditures for or against candidates and political parties<sup>59</sup>. In the past election we saw an increase in donations from *Super PACs* to political campaigns through shell corporations that illegally donate<sup>60</sup>. As a result, we see corruption linked to the politicization of public administration, and bribery and/or fraud. Clientelism, cronyism and nepotism are also unhealthy practices and modalities of corruption.

In 2022, a research study conducted by the Governance Center<sup>61</sup> found that the Anti-Corruption Code leaves out of the anti-corruption component important agencies in the effort such as: the Office of the Election Comptroller, the General Services Administration, the Office of Administration and Transformation of Human Resources (OATRH), the Office of the Commissioner of Financial Institutions (OCIF), the Office of the Commissioner of Insurance (OCS), and the Puerto Rico Cooperative Insurance and Supervision Corporation (COSSEC), among others. It should be noted that the Legislative Assembly is currently considering several bills to amend the Anti-Corruption Code<sup>62</sup>.

### **Summary of applicable federal legislation**

Puerto Rico, as a territory of the United States, is subject to federal anti-corruption laws. Also, as a recipient of federal funds, compliance includes infrastructure, economic and social development activities and projects. Multiple U.S. laws applicable to Puerto Rico prohibit bribery of employees and officials in specific contexts, but the most important law that directly criminalizes federal public corruption is 18 U.S.C. §

---

<sup>59</sup> Political campaign financing in Puerto Rico: limits and possibilities after Citizens United, <https://derecho.uprrp.edu/revistajuridica/wp-content/uploads/sites/4/2016/06/85-Rev.-Jur.-UPR-1233-2016.pdf>, accessed September 8, 2023.

<sup>60</sup> Center for Investigative Journalism (2020), Super Pacs and 2020 network campaigns: the thousand and one ways to circumvent oversight, <https://periodismoinvestigativo.com/2020/07/super-pacs-y-campanas-en-redes-2020-las-mil-y-una-formas-de-burlar-la-fiscalizacion/>; Center for Investigative Journalism (2020), State finds that the shell corporations that donated to Salvemos a Puerto Rico were illegally registered, <https://periodismoinvestigativo.com/2020/08/estado-encuentra-que-las-corporaciones-fantasmas-que-donaron-a-salvemos-a-puerto-rico-se-registraron-ilegalmente/>, accessed September 8, 2023.

<sup>61</sup> Center for Public and Corporate Governance (2022), Research Study Corruption Challenges for Governance and the Economy, <https://gobernanzapr.org/wp-content/uploads/2022/09/Estudio-corrupcion-web.pdf>, accessed September 8, 2023.

<sup>62</sup> Primera Hora (2022), Civic organizations file amendments against government corruption, <https://www.primerahora.com/noticias/gobierno-politica/notas/organizaciones-civicas-presentan-enmiendas-contrala-corrupcion-gubernamental/>, accessed July 26, 2023.

201, Bribery of public officials and witnesses<sup>63</sup>. Section 201(b) criminalizes the payment, offer, and receipt of bribes, and § 201(c) prohibits the payment, offer, and receipt of illegal "gratuities." Violations of § 201(b) are punished more severely than violations of the anti-gratuities provision.

The Puerto Rico government, as well as contractors and recipients of federally funded grants, must comply with mandatory disclosure requirements (in accordance with federal and agency-specific contracting and assistance regulations) and report allegations of fraud and misconduct. Federal laws provide protections and remedies for whistleblowers vary by category.

The Foreign Corrupt Practices Act of 1977 (FCPA)<sup>64</sup> makes it unlawful for any U.S. person or company to offer, pay or promise to pay money or anything of value to any foreign official for the purpose of obtaining or retaining business. In short, the FCPA's anti-bribery provisions prohibit the intentional use of the mails or any means or instrumentality of interstate commerce for corrupt purposes to promote any offer, payment, promise to pay or authorization of payment of money or anything of value to any person, knowing that all or any part of such money or thing of value will be offered, given or promised, directly or indirectly, to a foreign official to influence his or her official capacity, to induce the foreign official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage for the purpose of aiding in obtaining or retaining business for or with, or directing business to, any person. 18 U.S.C. § 201<sup>65</sup> criminalizes the payment, offer and receipt of bribes, prohibits the payment, offer and receipt of illegal "gratuities." It also sets forth violations of the statute.

The Federal Election Campaign Act of 1971 (FECA)<sup>66</sup>, also applicable to Puerto Rico, establishes limits on contributions by individuals and corporations or businesses to electoral campaigns. From the assessment conducted for this report, it appears that Puerto Rico's regulatory, oversight and supervisory agencies are active in various international organizations that work to combat corruption (see partial list in annexes).

## **BEST PRACTICES**

- The regulatory provisions to prevent, combat and penalize corruption in Puerto Rico are of constitutional rank.
- Puerto Rico has one of the most robust and comprehensive anti-corruption regimes in Latin America and the Caribbean.

---

<sup>63</sup> US Department of State, Bribery of public officials and witnesses, <https://www.justice.gov/archives/jm/criminal-resource-manual-2041-bribery-public-officials>, accessed September 8, 2023.

<sup>64</sup> See, <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act> ; <https://www.trade.gov/us-foreign-corrupt-practices-act#:~:text=Under%20the%20Foreign%20Corrupt%20Practices,of%20obtaining%20or%20retaining%20business.>

<sup>65</sup> See, <https://www.govinfo.gov/app/details/USCODE-2011-title18/USCODE-2011-title18-partI-chap11-sec201/context> ; <https://www.oge.gov/web/oge.nsf/Resources/18+U.S.C.+%C2%A7+201:+Bribery+of+public+officials+and+witnesses.>

<sup>66</sup> Federal Election Campaign Act (FECA), <https://www.fec.gov/legal-resources/legislation/> <https://www.fec.gov/resources/cms-content/documents/feca.pdf>.

- ❑ The adoption of the Anticorruption Code has made it possible to implement reforms to the anticorruption system that have favored coordination bodies to prevent, dissuade and punish corruption.
- ❑ The creation of the Group for the Prevention and Eradication of Corruption (PRECO) represents an opportunity to achieve greater articulation and coherence in the implementation of anti-corruption policies and the improvement of their implementation in practice.

## **DEFICIENCIES**

- ❑ The implementation of anti-corruption reforms has been insufficient and their implementation in practice is weak. However, the draft law to amend the Anti-Corruption Code, in order to address the reforms that cannot be postponed in order to strengthen the implementation of the reforms in practice, constitutes an opportunity to overcome the deficiencies identified to prevent, combat and penalize corruption.
- ❑ No strategic plan was identified to guide and give direction to the implementation of the Anticorruption Code.
- ❑ The lack of knowledge of citizens about their responsibilities and duties in the fight against corruption promotes the lack of citizen involvement and participation in the fight against corruption.
- ❑ There is a perceived lack of coordination in the implementation and execution of concrete cross-cutting actions to prevent, deter and sanction corruption among government agencies that make up the anti-corruption ecosystem.

### **4.1.2 Article 6 - Corruption Prevention Body or Bodies**

The Legislature has created various entities to prevent and address corruption cases, among which the Office of the Comptroller of Puerto Rico<sup>67</sup>, the Office of the Inspector General of Puerto Rico<sup>68</sup>, the Office of the Independent Prosecutor's Panel (IAP)<sup>69</sup>, the Office of Government Ethics<sup>70</sup>, the Department of Justice<sup>71</sup>, and the Department of the Treasury, among others, stand out. Through these laws, the State seeks to prevent, combat and eradicate corruption in Puerto Rico, and in a way, restore the people's trust. The correlation table below summarizes Puerto Rico's legal scaffolding and institutional anti-corruption framework:

---

<sup>67</sup> Act No. 9 of July 24, 1952, as amended, and known as the Office of the Comptroller of the Commonwealth of Puerto Rico Act.

<sup>68</sup> Act No. 15 of February 28, 2017, as amended, and known as the Puerto Rico Inspector General Act.

<sup>69</sup> Act No. 2 of February 23, 1988, as amended Special Independent Prosecutor Panel Office Act.

<sup>70</sup> Act No. 1 of January 1, 2012, as amended.

<sup>71</sup> Act No. 205 of August 9, 2004, as amended, and known as the Organic Act of the Department of Justice.



**Table No. 3: Correlation of the Legal Scaffolding and the Institutional Framework Puerto Rico Anti- corruption system**

Anti-corruption legal scaffolding	Institutional anti-corruption framework
<p>Constitution of the Commonwealth of Puerto Rico of 1952 Art. III Section 22 and Article IV Section. 4 <sup>72</sup></p> <p>Act No. 2 of January 4, 2018, as amended, known as the "Anti-Corruption Code for the New Puerto Rico"<sup>73</sup></p> <p>Act No. 141 of August 1, 2019, as amended, known as the "Transparency and Expedited Procedure for Access to Public Information Act".<sup>74</sup></p> <p>Act No. 122 of August 1, 2019, known as the "Government of Puerto Rico Open Data Act" <sup>75</sup></p>	<p>Office of the Comptroller of Puerto Rico</p> <p>Office of Government Ethics</p> <p>Office of the Special Independent Prosecutor</p> <p>Panel</p> <p>Office of the Inspector General</p> <p>Department of Justice</p> <p>Treasury Department</p> <p>Puerto Rico Police Bureau</p>
<p>Act No. 9 of July 24, 1952, as amended, known as the Office of the Comptroller of the Commonwealth of Puerto Rico Act <sup>76</sup></p> <p>Act No. 37 of January 8, 2004, An Act to Criminalize the Obstruction of an Audit by the Office of the Comptroller of Puerto Rico as a Serious Crime.<sup>77</sup></p> <p>Act No. 15 of February 28, 2017, as amended, known as the "Puerto Rico Inspector General Act" .<sup>78</sup></p>	<p>Office of the Comptroller of Puerto Rico</p> <p>Office of the Inspector General</p>
<p>Act No. 1 of January 3, 2012, as amended, known as the "<i>Organic Act of the Government Ethics Office of Puerto Rico</i>".<sup>79</sup></p>	<p>Office of Government Ethics</p>

<sup>72</sup> [https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Derechos\\_Civiles/CONST/CONST.pdf](https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Derechos_Civiles/CONST/CONST.pdf).

<sup>73</sup> <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Corrupci%C3%B3n/2-2018.pdf>.

<sup>74</sup> <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/141-2019.pdf>.

<sup>75</sup> <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/122-2019.pdf>.

<sup>76</sup> <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Auditor%C3%ADas/9-1952.pdf>.

<sup>77</sup> <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Auditor%C3%ADas/37-2004.pdf#:~:text=Ley%20N%C3%BAm.%2037%20de%208%20de%20enero%20de,de%20la%20Oficina%20del%20Contralor%20de%20Puerto%20Rico>.

<sup>78</sup> <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Auditor%C3%ADas/15-2017.pdf>.

<sup>79</sup> <https://bvirtualogp.pr.gov/ogp/Bvirtual/LeyesOrganicas/Pages/1-2012.aspx>.

Anti-corruption legal scaffolding	Institutional anti-corruption framework
<p>Reorganization Plan of the Department of the Treasury Reorganization Plan No. 3 of June 22, 1994, as amended <sup>80</sup></p> <p>Act No. 147 of June 18, 1980, as amended, known as the "Organic Act of the Office of Management and Budget" <sup>81</sup></p>	<p>Treasury Department</p> <p>Management and Budget Office</p>
<p>Act No. 8 of February 4, 2017, as amended, known as the "Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico," . <sup>82</sup></p>	<p><i>Office of Human Resources Administration and Transformation</i></p>
<p>Act No. 205 of August 9, 2004, as amended, known as the "Organic Act of the Department of Justice." <sup>83</sup></p> <p>Act No. 2 of February 23, 1988, as amended, creates the Office of the Special Independent Prosecutor Panel <sup>84</sup></p>	<p>Department of Justice</p> <p>Special Panel of the Independent Special Prosecutor</p>
<p>Act No. 20 of April 10, 2017, as amended , known as "Puerto Rico Department of Public Safety Act" <sup>85</sup></p>	<p>Puerto Rico Police Bureau</p>
<p>Act No. 222 of November 18, 2011, as amended, known as the "Puerto Rico Political Campaign Finance Oversight Act" <sup>86</sup></p>	<p>Office of the Comptroller of Elections</p>
<p>Act No. 4 of October 11, 1985, as amended, known as the "Office of the Commissioner of Financial Institutions Act," . <sup>87</sup></p> <p>Act No. 77 of June 19, 1957, as amended, known as the "Insurance Code of Puerto Rico" <sup>88</sup></p> <p>Act No. 255 of October 28, 2002, as amended Savings and Loan Cooperative Societies Act of 2002". <sup>89</sup></p>	<p>Office of the Commissioner of Financial Institutions (OCIF)*.</p> <p>Office of the Commissioner of Insurance (OCS)*</p>

<sup>80</sup> <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Contribuciones/3-1994.pdf>.

<sup>81</sup> <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Presupuesto/147-1980/147-1980.pdf>.

<sup>82</sup> <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/8-2017.pdf>.

<sup>83</sup> <http://www.justicia.pr.gov/wp-content/uploads/2015/02/Ley-Orq%C3%A1nica-del-Departamento-de-Justicia-205-2004-actualizada-al-31-de-agosto-de-2015.pdf>.

<sup>84</sup> <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/2-1988.pdf>.

<sup>85</sup> <https://bvirtualogp.pr.gov/ogp/BVirtual/LeyesOrganicas/pdf/20-2017.pdf>.

<sup>86</sup> <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Elecciones/222-2011/222-2011.pdf>.

<sup>87</sup> <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/4-10-1985.pdf>.

<sup>88</sup> <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/C%C3%B3digos/77-1957/77-1957.pdf>.

<sup>89</sup> <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Cooperativas/255-2002/255-2002.pdf>.

Anti-corruption legal scaffolding	Institutional anti-corruption framework
	Public Corporation for the Supervision and Insurance of Cooperatives of Puerto Rico (COSSEC)*.

\*Agencies that are not part of the PRECO Group with competencies related to the regulation, supervision and oversight of the financial system including functions related to money laundering, fraud and other forms of corruption.

### **Office of the Comptroller of Puerto Rico (OCPR)**

Of the governmental entities, and with a constitutional character, there is the Office of the Comptroller. The Constitution of the Commonwealth of Puerto Rico (hereinafter the Constitution), in Article III, Section 22, created the office of Comptroller of Puerto Rico. It shall be the constitutional function of the Comptroller to oversee all revenues, accounts and disbursements of the State, its agencies and instrumentalities and the municipalities, to determine whether they have been made in accordance with the law. In addition, it shall render annual reports and all special reports required by the Legislature or the Governor. Whereas, Article VI, Section 9, provides that the use of public funds and resources shall only be for public purposes and by authority of law. It is, therefore, in discharge of its oversight function, the power of the Comptroller to conduct all those investigations that will enable it to identify problems in a timely manner, seek the correction of practices and facilitate the proper administration of public property.

The Office of the Comptroller was created by Act No. 9 of July 24, 1952, as amended. This Act assigns the Office of the Comptroller to the Legislative Branch, but recognizes its administrative, budgetary and fiscal autonomy. In the performance of his or her duties, particularly in compliance audits and any other audits, the Comptroller shall use and shall comply with the highly accepted auditing standards published in the "Generally Accepted Government Auditing Standards (GAGAS)," developed and published by the Office of the Comptroller of the United States of America.

The Law also sets forth the requirements for the position of Comptroller, the powers to hire technical or professional services, and the salary involved. It also includes the handling of investigations, the appearance of witnesses, self-incrimination and immunity. It provides for the cooperation of government agencies, special reports and their publicity, regulations and the official seal, among others. In its implementation and practice, the request for information to the agencies of the anti-corruption component revealed areas for improvement in access to information and transparency and publicity of data (see list of information requests on page 124).

Although the law makes no specific reference to prevention, it is understood by society in general that it is in itself one of the main functions of this Office. Given the mission of promoting the effective, economical, efficient and ethical use of government resources for the benefit of the people, the function is inherent with essential activity. Thus, a glance at the agency's web page reveals educational information related to

transparency and measures to promote the proper use of public funds through continuing education and training.

In recognition of the importance of the functions of the Office of the Comptroller, the Legislative Assembly in 2004 passed the Act to Criminalize the Obstruction of an Audit of the Office of the Comptroller of Puerto Rico as a Felony<sup>90</sup>. The Explanatory Memorandum states that the Office of the Comptroller has proven to be a fundamental piece in the fight against government corruption, uncovering schemes for the appropriation of the people's money, which includes public officials, businessmen and private persons. It recognizes that, in the fight against government corruption, the State must provide government agencies with the necessary tools to discover, attack and eliminate complex schemes for the appropriation and misuse of public funds.

This Act establishes as a public policy to discourage obstructions and delays to the investigations and audits of the Office of the Comptroller. For this reason, it penalizes any person, public or private official, who voluntarily, and without just cause, delays, obstructs, or impedes an audit or investigation conducted by the Office of the Comptroller. Such acts are recognized as felonies, and if the person is convicted, he/she may be punished with imprisonment for a fixed term of one (1) year, or a fixed penalty of a fine of five thousand (5,000) dollars, or both penalties at the discretion of the Court.

From the analysis of the web portals and the request for information it appears that the OCPR discloses and publishes its audit reports, complaints and statistics related to its responsibility to prevent, combat and penalize corruption on its web portal<sup>91</sup>.

### **Office of the Inspector General (OIG)**

The Office of the Inspector General (OIG) was established in Puerto Rico through the approval of Act No. 15-2017, as amended, known as the *Puerto Rico Inspector General Act*. The purposes of the OIG include strengthening the mechanisms for the prevention, oversight, investigation, and audit of government management; conducting audits and consultancies in government entities aimed at achieving optimal levels of economy, efficiency, and effectiveness of their administrative and risk management, control, and direction systems; enforcing and sanctioning violations of the laws, regulations, and rules adopted by the Government of Puerto Rico on the administration of public resources and assets; and achieving reliable information, with the highest possible degree of security.

The OIG is responsible for implementing the following public policy:

- a. achieve optimal levels of integrity, honesty, transparency, effectiveness and efficiency in public service;

---

<sup>90</sup> Act No. 37 of January 8, 2004, An Act to Criminalize the Obstruction of an Audit by the Office of the Comptroller of Puerto Rico as a Serious Crime.

<sup>91</sup> <https://www.ocpr.gov.pr/>.

- b. to repudiate and reject any act, conduct or indication of corruption<sup>92</sup> on the part of public officials or employees; to point out and criminally, administratively and civilly prosecute those who incur in acts of this nature;
- c. establishing controls, as well as taking action and relevant measures to detect, prevent and act proactively to avoid corrupt activities in government agencies; and
- d. discourage embezzlement, misuse, fraud and illegal handling of public funds and property.<sup>93</sup>

As an agency, the OIG has adopted regulations, administrative orders and circular letters that promote ethics, integrity and transparency in accounting and auditing standards<sup>94</sup>. Similarly, reviews and audit reports are issued to evaluate the various transactions carried out by covered entities under the jurisdiction of the OIG. Both the regulations and the reports of completed audits are published and available to the general public on the web page [www.oig.pr.gov](http://www.oig.pr.gov).

In addition to the OIG Enabling Act, there are several laws to address corruption that are discussed in this document. These include the Puerto Rico Anti-Corruption Code, the Puerto Rico Comptroller's Office Act, the Organic Act of the Government Ethics Office, the General Services Administration Act for the Centralization of Purchases in the Government of Puerto Rico, the Puerto Rico Penal Code, among others. These agencies constitute the PRECO group<sup>95</sup> created for the purpose of achieving the continued cooperation of all state and federal government agencies involved in the fight against corruption in Puerto Rico.

A comparative analysis of the local legal framework vis-à-vis international initiatives in this area, particularly the United Nations Convention against Corruption and the Inter-American Convention against Corruption<sup>96</sup> shows that Puerto Rico is one of the jurisdictions with broad legislation aimed at the prevention and prosecution of corruption cases. The interviews conducted revealed the need to strengthen the autonomy and independence of the agencies responsible for combating corruption and to provide them with greater budgetary and personnel resources.

Despite preventive efforts, the public administration continues to experience cases of corruption. This, at the very least, shows that there are several factors of social, economic and political behavior that influence the occurrence of acts of corruption. Factors such as illegal financing of political campaigns; nepotism and the infringement of the principle of merit; undue influence in administrative processes (permits, contracts, etc.); the awarding of contracts, etc.; the granting of public

---

<sup>92</sup> Section 3 (a) of the aforementioned Act No. 15-2017 defines "corruption" as the misuse of the power of a public official or employee to obtain an illegitimate advantage. It is the practice consisting of the use of the functions and means of public organizations for the benefit, economic or otherwise, of its managers.

<sup>93</sup> Puerto Rico Inspector General Act. Act No. 15 - 2017, Art. 2, <https://www.lexjuris.com/lexlex/leyes2017/lexl2017015.htm>.

<sup>94</sup> See, <https://oig.pr.gov/PublicacionesLeyes/Reglamentos/Pages/default.aspx>.

<sup>95</sup> Group for the Prevention and Eradication of Corruption (PRECO), <https://precopr.com/>.

<sup>96</sup> [https://www.oas.org/es/sla/ddi/tratados\\_multilaterales\\_interamericanos\\_B-58\\_contra\\_Corrupcion.asp](https://www.oas.org/es/sla/ddi/tratados_multilaterales_interamericanos_B-58_contra_Corrupcion.asp); [https://www.unodc.org/documents/mexicoandcentralamecontra\\_la\\_Corrupcion.pdf](https://www.unodc.org/documents/mexicoandcentralamecontra_la_Corrupcion.pdf)., The Government of the United States ratified both treaties.

service contracts, etc., to public officials.); the awarding of contracts without real need; loyalty in exchange for public benefits; the absence of managerial and supervisory capacity; blind partisan loyalty versus the collective interest; unscrupulous officials who consciously weigh the potential benefits derived from the corrupt act against the probability of being discovered; and the possible sanctions imposed, among others, contribute to an organizational culture of illegality<sup>97</sup>.

The situation described above requires a multidisciplinary and collaborative approach to the problem. This begins with ensuring a society that is alert and aware of the causes and consequences of corruption. To ensure citizen collaboration in the prevention of corruption, the following have been strengthened: protections for whistleblowers under the Anti-Corruption Code, the increasingly frequent requirement by citizens to seek access to public information<sup>98</sup>, the frequent review and discussion of cases of public and private corruption, and the proposed laws aimed at expanding the legal basis under the policy of zero tolerance for corruption.

Other elements related to combating, preventing and penalizing corruption are included in the Penal Code of Puerto Rico, Act 146-2012, as amended, and in the Government Ethics Act, Act 1-2012, as amended.

## **BEST PRACTICES**

- The current regulatory framework establishes the clear functions, powers and procedures of the agencies involved in corruption-related matters.
- There is a scaffolding of agencies that make up the institutional framework that make up the group of anti-corruption agencies with satisfactory capacities and competencies for the proper implementation of anti-corruption policies and strategies.
- The anti-corruption group continues to work on strengthening interagency coordination mechanisms and tools to improve transparency management and access to information on corruption.

## **DEFICIENCIES**

- There is a need to strengthen the autonomy and capacity of the agencies involved in preventing, combating and penalizing corruption and to provide them with greater budgetary and personnel resources.
- Anti-corruption actions are dispersed and strategies, priorities, objectives and specific lines of action were not clearly identified.

---

<sup>97</sup> Admissions of the State in the *Explanatory Memorandum of the Anticorruption Code*. There it is stated that "[t]he most frequent act of corruption is the improper use of public power to obtain an illegitimate advantage, generally in a secret and private manner. Other types of corruption are the illegitimate use of privileged information and patronage; also bribery, influence peddling, extortion, fraud, embezzlement, prevarication, *quid pro quo*, cronyism, co-optation, nepotism, impunity and despotism. On the other hand, corruption often facilitates or leads to other types of criminal activities such as drug trafficking, money laundering and prostitution, although it is not restricted to these organized crimes". See, also, Franco Arango, Saldarriaga Uribe, S., Duncan Cruz, G., *¿Qué factores del comportamiento social, económico y político de una sociedad inciden en la ocurrencia de actos del problema global en el periodo 2012-2016*, Universidad EAFIT. School of Economics and Finance, Medellín, 2017.

<sup>98</sup> Act No. 141-2019, as amended, known as the Transparency and Expedited Process for Access to Public Information Act.

- ❑ No indicators and metrics were identified to evaluate the implementation of the anti-corruption strategy.

### 4.1.3 Article 7.1 - Public sector employment

#### Office of Administration and Transformation of Human Resources (OATRH)

The exercise of public function and management has two main components: those who plan and formulate public policy and those who implement and operate the day-to-day workings of government. The first component is based on the constitutional and republican order of our form of government, the ups and downs of electoral cycles and the appointments of confidence in the executive branch with the counterweight of legislative consent. The second must be based on the recruitment of the best talent available and on the merit system, which must be the cornerstone of being a public servant.

The civil service system in Puerto Rico has been in place for more than a century. The first civil service law in Puerto Rico dates back to 1907. This statute, although imperfect, established the cornerstone of the civil service in Puerto Rico. The struggles to develop a civil service system have been long and fraught with obstacles. On the one hand, there are the attempts to achieve a civil service system that allows for the social and economic development of the country, as well as a government based on administrative rationality, efficiency and high social and human values. On the other hand, this effort has been tinged by political parties that have used the civil service as a booty to increase the power of their political organizations in order to obtain or perpetuate themselves in power. The regulation of civil service in Puerto Rico has evolved with the approval of several statutes over time<sup>99</sup>.

An analysis of the historical trajectory of the civil service system shows that Puerto Rico served as a model of efficient public administration and management for many Latin American countries. However, moments of fragility have been identified in the evolution of the personnel system that can be explained by elements of politicization of the civil service and its relationship with the appointment of temporary, contract and irregular employees, neoliberal economic policies and the lack of a strategic vision of human resources. To meet these challenges, it is imperative to address the pillars of a vigorous and depoliticized civil service system.

For the year 2017, the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico, Act 8-2017, as amended, was approved, which institutes the Government as the sole employer and establishes the concept of mobility. This Act sought to structure and temper the public administration system, reduce agencies, and consolidate services. By that date, there were 118 executive agencies at an approximate cost of \$21.8 billion to provide 340 services. In view of this situation, this Act was passed with the aspiration of creating a system that would promote best practices in public administration and restore transparency and credibility to public employees and the people of Puerto Rico in the human resources management system and the services offered to the people, among other purposes.

---

<sup>99</sup> Vera Rodríguez Hernán A., D.P.A. *El sistema de función pública en Puerto Rico: origen, esplendor, crisis y visión de futuro*. Pontificia Universidad Católica de Puerto Rico, <https://www.cgrhpr.com/wp-content/uploads/2023/08/publication.pdf>, accessed September 8, 2023.

This measure made the Government a Sole Employer so that employees would become employees of the Government and not of its different entities. This would allow for better utilization of human resources where there is a pressing need through mobility, without the employee resigning from the position he/she held and starting over in another government jurisdiction. In this way, the recruitment and administration of human resources in the government is centralized, guaranteeing transparency in the administration of the principle of merit, publishing electronically the recruitment, selection, promotions, transfers, demotions, job classification and retention of employees of public agencies and instrumentalities; its regulation, follow-up plan and audits to the human resources administration program, provisions related to the prohibition of human resources actions during the electoral closure, among others. among other measures.

However, in practice, the recruitment and personnel administration processes have remained in the hands of the public agencies. That is to say, each public agency and instrumentality continues to prepare calls for applications, process and evaluate job applications, and determine eligibility and appointment to public service.

Notwithstanding the progress made in the regulatory framework governing human resources in the public service, those consulted continue to point out weaknesses in the recruitment and selection process and violations of the principle of merit. There is a general conception that political clientelism is used as an intermediation mechanism that leads to the exchange of favors among the three branches of government and the hiring of poorly qualified personnel<sup>100</sup>. During electoral times, legislation is recurrently passed to increase benefits and relax the requirements for appointing transitory and trust personnel to regular positions. For example, Act No. 96 of 2023<sup>101</sup>, known as the Temporary Employment in the Public Service Act, was approved for the purpose of appointing employees to regular positions. In addition, several bills are under discussion to increase the salaries of judges, legislators and employees of the executive branch<sup>102</sup>.

In connection with the retention of employees, their responsibilities and duties, Section 6.6 provides that, among the minimum essential obligations required of all employees, it includes the taking of disciplinary actions for noncompliance with their duties, and with the standards of ethical and moral conduct established in the "Puerto Rico Governmental Ethics Act of 2011", and its regulations. In accordance with the foregoing, it provides that employees may not perform, among other actions, the following: accept gifts, donations or any other reward for the work performed as a public employee except for those authorized by law, use their official position for political-partisan purposes or for other purposes not compatible with public service, perform functions or tasks that involve conflicts of interest, perform or omit any action prohibited by the Government Ethics Act, engage in improper conduct or conduct

---

<sup>100</sup> The Spokesman (2023), Repairing deep fractures to generate governance, [https://www.elvocero.com/opinion/columnas/reparar-las-profundas-fracturas-para-generar-gobernabilidad/article\\_1bf074ee-4d03-11ee-b8e2-c3df3a794188.html](https://www.elvocero.com/opinion/columnas/reparar-las-profundas-fracturas-para-generar-gobernabilidad/article_1bf074ee-4d03-11ee-b8e2-c3df3a794188.html), accessed September 8, 2023.

<sup>101</sup> Act No. 96 of 2023, known as the Transitory or Temporary Employment in the Public Service Act. <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/96-2023.pdf>.

<sup>102</sup> Microjuris.com (2023), Debate on Judicial Branch salary increases postponed until next legislative session, <https://aldia.microjuris.com/2023/06/22/debate-sobre-aumentos-salariales-en-la-rama-judicial-se-pospone-hasta-la-proxima-sesion-legislativa/>, accessed September 8, 2023.



harmful to the good name of the agency or the Government of Puerto Rico, engage in prevarication, bribery or immoral conduct, perform any act that impedes the application of the law; knowingly make or accept a false statement, certification or report, give, pay, offer, request or accept, directly or indirectly, money, services or any other value in exchange for eligibility, appointment, promotion or other personnel action, engage in conduct related to crimes against the public treasury, the public faith and function or involving public funds or property.

In addition, the Act defines persons ineligible for employment or professional service contracts in the public service. Section 6.8. establishes that persons who are part of the public service must not have incurred in misconduct punishable by law. Nevertheless, and with the principle of rehabilitation, it provides rules that make their return to public service feasible. Thus, it clarifies that any person who has incurred in dishonorable conduct, is addicted to habitual and excessive use of controlled substances and/or alcoholic beverages, has been convicted of a felony or any crime involving moral turpitude, or has been dismissed from public service is ineligible for public service.

It also establishes a list of crimes defined in the "Penal Code of Puerto Rico," and indicates that any person convicted, whether as a perpetrator or cooperater, in the jurisdiction of Puerto Rico, federal or in any state of the United States, shall be permanently ineligible for employment, contract of professional services in the public service, or to aspire to or hold elective office. This list of crimes includes sabotage of essential public services; falsification of documents; fraud; illicit enrichment; illicit enrichment of a public official; illicit exploitation of public works or services; undue intervention in government operations; negotiation incompatible with the exercise of public office; false certifications; bribery; bribe offering; undue influence and embezzlement of public funds; among others.

On the other hand, Section 6.9 recognizes the impact on public service during pre- and post-election periods. Thus, it clearly prohibits the Government from carrying out any personnel transaction that includes appointments, promotions, demotions, transfers; neither may they carry out changes or actions of remuneration, nor changes in the category of positions, nor mobility during the election period. Failure to comply with this provision shall entail the nullity of the transaction carried out. This prohibition shall cover the period of two (2) months before and two (2) months after the holding of the General Elections of Puerto Rico. As an exceptional measure, and for urgent and unpostponable need, the OEG may authorize if duly evidenced.

As indicated above, it should be noted that the Government Ethics Law establishes several prohibitions, restrictions and duties that are defined in Chapter IV-Code of Ethics and are directed to both public servants and former public servants. Art. 4.2 addresses the general prohibitions, which include not soliciting or accepting a benefit for your agency, directly or indirectly, from a private person, business or public entity, or for your private benefit. The prohibition remains in force as long as there is a beneficial relationship for the public servant. Once the beneficial relationship ends, the public servant may not intervene, directly or indirectly, in the referred matter for two (2) years. In addition, it establishes prohibitions related to legal business, contractual relationships, employment and other sources of remuneration that the public servant or public servant has by reason of the position or function he/she performs.

Article 4.4 addresses the prohibition of representing private interests that conflict with official duties and functions. While Art. 4.5 urges the duty of every public servant to inform the OEG of possible unethical or conflict of interest actions before making a decision that violates the prohibitions of Articles 4.2, 4.3 and 4.4 of the Act, and requires him/her to submit a statement to the OEG with a copy to the agency. Under the Act, the OEG evaluates the servicer's report and notifies the servicer, and the agency. The OEG will notify the public servant and the agency that a conflict of interest does not exist, or that, if it does, the disqualification mechanism is available. This provision is a clear duty as to the duty of the public servant.

In relation to former public servants, Art. 4.6 establishes prohibitions of conduct for them in actions that may be conflicting in the future due to the knowledge, participation or condition of having worked in a certain agency before which the determination of a matter dealt with by the public servant was made, a matter of which he/she had direct knowledge or participation. Among these prohibited actions are offering information, intervening, cooperating, advising in any way or representing in any capacity, directly or indirectly, a private person, business or public entity, on those official actions or matters in which he/she intervened while working as a public servant.

Agencies responsible for the implementation of the anti-corruption legal framework report significant progress and efforts in prevention. The professionalization and training of public servants provides face-to-face and virtual education opportunities through an electronic platform. Pursuant to the Public Service Human Resources Management Act, the Institute for the Training and Professionalization of Puerto Rico Government Employees (IDEA) of the OATRH has the function of identifying and providing training for public servants. Activities that we also offer for the benefit of private sector clients, without limiting the continuous updating and renewal of our training offerings and services<sup>103</sup>.

In addition, the Office of Government Ethics has the Center for the Development of Ethical Thinking (CDPE), which has the purpose of expanding and intensifying the public policy of prevention through continuing education delegated to the Office of Government Ethics (OEG). Its mission is to design and carry out educational initiatives on ethics, values and integral development for the entire society, as established in Article 3.1 of Act 1-2012, Government Ethics Act of Puerto Rico. Through the development of various face-to-face and virtual Continuing Education Methods, the CDPE promotes adequate theoretical and practical training on government ethics, values, and the sound administration of public resources. As part of its responsibilities, the CDPE validates education methods related to ethics and values, as well as the practical educational activities developed by the agencies<sup>104</sup>.

It is important to highlight the findings and results of the OCPR, OIG and OCE reports related to the deficiencies found in the management of the public administration and the implementation gaps raised during the interviews conducted for this report (see table No. 2 on page 30):

---

<sup>103</sup> Office of Human Resources Management and Transformation, Training and Continuing Education section, <https://oatrh.pr.gov/IDEA/Pages/default.aspx>.

<sup>104</sup> Center for the Development of Ethical Thinking, <https://www.eticapr.net/centro-para-el-desarrollo-del-pensamiento-etico/>.

1. Lack of continuing education of all elected officials, including members of the Legislative Assembly, on ethics issues and measures aimed at ensuring the proper use of public property and funds.<sup>105</sup>
2. Need to strengthen mandatory continuing education for all public servants of the Executive Branch (including municipalities and public corporations), under the provisions of the *Organic Law of the Office of Government Ethics of Puerto Rico*<sup>106</sup> (LOOEG).
3. Gaps in continuing education for all employees of the General Services Administration (GSA) for the Administrator's procurement authority. These personnel must take six (6) credits annually on procurement processes, uses of information technology systems, amendments to existing regulations, and the proper exercise of the use of public funds in the procurement of goods and services for the entire Government<sup>107</sup>.
4. Need to strengthen continuing education for judges through the Puerto Rican Judicial Academy (AJP) on aspects of judicial ethics and law enforcement skills<sup>108</sup>.
5. Need to strengthen the continuing education offered by the PFEI for elected officials at the municipal level (mayors and municipal legislators).
6. Need for interventions, studies, reviews and advice for government entities subject to the jurisdiction of the *Puerto Rico Inspector General Act*<sup>109</sup>.
7. Training requirements for government employees in matters of administration, management of public property, government contracting, effective pre-intervention and others, under the provisions of the OIG, by virtue of Act No. 15-2017.
8. Need for approval of regulations to require entities under the jurisdiction of the OIG to publish information on methods for reporting irregularities<sup>110</sup>.
9. Need to strengthen the establishment of a public policy aimed at training and educating all officials of the Executive Branch and municipalities with personnel supervision responsibilities, on those issues directly related to the functions they perform and that promote greater efficiency in the public service<sup>111</sup>, among others.
10. Need to expand continuing education for all elected officials, including members of the Legislative Assembly, on ethics issues and measures aimed at ensuring the proper use of public property and funds.<sup>112</sup>

---

<sup>105</sup> Effort in which the OEG, the OCPR and the fiscal entities of the Government of Puerto Rico participate.

<sup>106</sup> Act No. 1-2012, as amended.

<sup>107</sup> Article 4 (g) of Act No. 73-2019, *supra*.

<sup>108</sup> The AJP was created by virtue of Section 2.006 of Act No. 201-2003, as amended, known as the *Judiciary Act of the Commonwealth of Puerto Rico of 2003*, and by Administrative Order No. OAN-2003-06 of September 30, 2003. The AJP was operationally attached to the Office of the Administration of the Courts and was entrusted with the development of an educational program for judges, judges, attorneys and other officials of the Judicial Branch of Puerto Rico. See electronic: <https://poderjudicial.pr/index.php/oficina-administracion-de-los-tribunales/academia-judicialpuertorriquena>.

<sup>109</sup> Act No. 15-2019, as amended.

<sup>110</sup> OIG Circular Letter No. 2022-003.

<sup>111</sup> Act No. 74-2017, as amended, known as the *Public Service Supervisory Personnel Training Act*.

<sup>112</sup> Effort in which the OEG, the OCPR and the fiscal entities of the Government of Puerto Rico participate.

## BEST PRACTICES

- ❑ The current regulations on access and employment in the public service recognize merit and equality in the government's human resources system.
- ❑ The professionalization and training of public servants provides face-to-face and virtual education opportunities through an electronic platform.
- ❑ The public service personnel system establishes clear processes for training in matters related to administrative and technical responsibilities for the performance of functions, codes of ethics and general provisions for the evaluation and monitoring of the implementation of the law in practice.

## DEFICIENCIES

- ❑ Investorism, political clientelism and nepotism continue to be one of the main problems of the country that opens spaces for corruption.
- ❑ Personnel are frequently hired on fixed-term contracts that omit the requirements of merit and objective selection and encourage discretionary decision-making and clientelism.
- ❑ Budgetary resource constraints inhibit the adoption of selection and retention processes that ensure that public service personnel are selected on the basis of merit.
- ❑ The lack of transparency and access to information on selection, promotion and retention processes in the public service creates distrust in the system<sup>113</sup>.

### 4.1.4 Article 7.3 - Political financing

Political campaign financing refers to money raised to promote or challenge political parties, candidates or public policies that are part of an election. There is no perfect formula. Each country designs its method of regulating electoral financing according to its political, social, economic conditions and democratic values. However, in the United States, state legislatures are constrained by federal laws and, more importantly, the jurisprudence of the U.S. Supreme Court. The latter is because the Court recognized that independent spending is constitutionally protected speech under the First Amendment. Because of the territorial status of the country, these restrictions apply equally to Puerto Rico.

#### Office of the Comptroller of Elections (OCE)

The Office of the Comptroller of Elections (OCE) was created and is governed by Act 222 of November 18, 2011, as amended, and known as the "Act for the Control of Political Campaign Financing in Puerto Rico" available at [www.oce.pr.gov](http://www.oce.pr.gov). In accordance with the terms of said legislation, the OCE adopted the following regulations governing different aspects of campaign finance, all of which are available on the Office's website<sup>114</sup>:

---

<sup>113</sup> Center for Investigative Journalism (2022), Government has problems with compliance with Transparency and Open Data laws, <https://periodismoinvestigativo.com/2022/03/gobierno-problemas-incumplimiento-leyes-de-transparencia-y-datos-abiertos/>, accessed September 8, 2023.

<sup>114</sup> Regulations created for specific electoral events, such as referendums, plebiscites or special elections, as well as internal personnel regulations, were omitted from the list.

- A. Regulation No. 13 on adjudicative proceedings before the Office of the Comptroller of Elections.
- B. Regulation No. 14 for the imposition of administrative fines before the Office of the Comptroller of Elections.
- C. Regulation No. 20 on Disposition of Assets and Voluntary and Involuntary Dissolution of a Committee.
- D. Regulation No. 21 on General Auditing Standards of the Office of the Comptroller of Elections.
- E. Regulation No. 22 of the Specific Auditing Standards of the Office of the Comptroller of Elections.
- F. Regulation No. 24 for the Filing of Reports before the Office of the Comptroller of Elections.
- G. Regulation No. 31 on the Participation and Use of the Special Allocation for Administrative Expenses and the Special Fund for the Financing of Electoral Campaigns.
- H. Regulation No. 32 on the Use of Donations from Private Funds for Campaign Expenses.
- I. Regulation No. 33 on Debts Contracted by Committees in the Financing of Electoral Campaigns.
- J. Regulation No. 34 on Raffles, Sweepstakes and Bingos.
- K. Regulation No. 37 of the Finance Committees Appointed by the Political Committees.
- L. Regulation No. 39 for the Audit of Public Broadcasting Expenses.
- M. Regulation No. 40 on the Distribution, Participation and Use of the Transportation Fund and Other Voter Mobilization Mechanisms.

In addition to the aforementioned regulations, OCE clarifies legal regulations through rulings, circular letters, advisory opinions and newsletters, which are available on our website.

Law 222-2011, as amended, seeks to prevent corruption related to the exchange of campaign donations for official acts, promoting transparent financing of electoral campaigns and providing the public with access to information. The OCE has the power to impose administrative penalties to those who violate the limitations imposed by law. Likewise, it may refer to the Secretary of Justice those cases it considers the possible commission of crimes, as typified in Chapter XIII, such as:

- A. Misuse of public funds.
- B. Prohibited donations by legal entities.
- C. Executives of legal entities (establishes criminal liability for natural persons who authorize donations prohibited by legal entities).
- D. Prohibitions to persons in the process of connection of permits or franchises; or with adjudicative power in the process of granting permits or franchises. (This offense typifies corruption by *quid pro quo*, which includes the elements of the crime of bribery).
- E. Stop reporting.

#### F. Submitting false reports.

Regarding the recruitment of candidates and aspirants, the OCE does not intervene in such process. The evaluations of the persons interested in occupying elective positions are made by the political parties in which each candidate is a member and, subsequently, it is up to the State Elections Commission to determine whether they comply with the requirements of the Electoral Code. However, the Electoral Comptroller, in its supervisory and oversight function, is responsible for overseeing the ethical behavior of the candidates. Article 10.003 of Act 222-20111 establishes that, upon the recommendation of the Donations and Expenditures Control Board, the Electoral Comptroller may "refer the matter to any agency with jurisdiction over aspects within its competence, such as the Office of the Comptroller and the Office of Government Ethics". Likewise, he/she may provide guidance on the legal consequences of committing any ethical misconduct in the financing of political campaigns.

In a similar vein, the OCE has established a link on its web page that allows citizens to submit confidences, without the need to identify themselves<sup>115</sup>. Once the confidences are received, they are reviewed to determine if they present a possible violation of the Law. If there is no possible violation of the Law, the confidence is filed. Otherwise, it proceeds to investigate the veracity of the facts reported and to provide due process of law to the committees or persons alleged to have committed violations of the Act. Ultimately, the OCE makes a determination, which may include the imposition of administrative fines, referrals or filing of the confidence.

However, Law 222-2011 also allows the filing of formal complaints to those persons who have personal knowledge of facts that may constitute violations of the Law, as long as they are filed under oath. Under the complaint procedure, the OCE notifies the respondent of the complaint, who is provided a term to respond. Simultaneously, OCE investigates the matter presented in the complaint in order to determine whether or not there has been any violation of Act 222-2011, as amended, and, upon completion of the investigation, makes a determination, which may include the imposition of fines or referral of the matter to other agencies with jurisdiction, which is communicated to both the complainant and the respondent.

Finally, OCE is required to submit annual reports in which it renders accounts of its activities and the results of its efforts to the Legislative Assembly and the Governor of Puerto Rico. These annual reports are published and accessible to the public at<sup>116</sup>.

As we have seen, and due to its nature, campaign financing presents a great risk of corruption (known as political inversionism) and distrust on the part of citizens. To prevent these risks, four mechanisms have been formulated to regulate political campaign financing: (1) limit contributions to political campaigns; (2) limit independent spending, also known as uncoordinated spending or external spending; (3) establish donor disclosure rules; and (4) create a public financing system. The first regulation imposes limits on the donations that individuals, corporations, groups, and associations can make directly to political parties and candidates. The second option

---

<sup>115</sup> See, <https://serviciosenlinea.oce.pr.gov/Confidence/Detail>.

<sup>116</sup> See, <https://oce.pr.gov/sobre-nosotros/informes-anales/>.

is to restrict independent spending: spending that individuals, corporations, groups and associations make for or against a candidate or political party, but in which there is no coordination or agreement, at least formally, between the donor and the donee. That is, instead of giving the money to the candidate or party, the money is directed to expressing itself about them. The third measure establishes disclosure requirements for donations and independent spending. Finally, the fourth rule provides public financing to candidates and political parties, in exchange for them complying with certain conditions and voluntarily limiting their campaign spending.

Act 222 also has some gaps with respect to the coordination of independent spending. To overcome this weakness, it is ideal to adopt a specific definition of the meaning of coordination. This measure would serve to avoid political inversionism through coordination with candidates and political parties. However, its success depends on the effort with which the Electoral Comptroller observes compliance.

On the other hand, the OCE provides citizens with access to information on the financing of electoral campaigns by the different political committees, including political parties, aspirants and candidates for elective office, through the web page, [www.oce.pr.gov](http://www.oce.pr.gov), where they can find, among other matters of interest:

- A. Income and expense reports filed with the OCE.
- B. Donor search system and access to the amounts donated by donors to the various political committees.
- C. List of political committees registered with the OCE.
- D. List of administrative fines imposed by OCE, their concept and payment status.

Therefore, when stipulating the financing rules, an electoral financing system must be designed that is not only the one we need and want for our country, but also complies with the applicable federal provisions<sup>117</sup>.

## **BEST PRACTICES**

- The Code obliges political parties and movements to render accounts of political campaign income and expenses in order to guarantee transparency and proper management of financial resources.
- Supervision, auditing and imposition of sanctions for non-compliance with the Electoral Code is carried out equally and without distinction of political party.
- According to the Electoral Code, political parties must have internal regulations that establish the rules and regulate the internal actions of the political organization.
- Political parties must submit reports on income and expenses (funds received, where they were obtained, how they were used) and how they manage their budget.

## **DEFICIENCIES**

---

<sup>117</sup> Political campaign finance in Puerto Rico: limits and possibilities after citizens united, <https://derecho.uprrp.edu/revistajuridica/wp-content/uploads/sites/4/2016/06/85-rev.-jur.-upr-1233-2016.pdf>.

- ❑ Puerto Rico has an Electoral Code whose implementation results have been questioned and requires substantive revision.
- ❑ The political action committee (PAC) campaign finance issues adopted in Puerto Rico in light of a U.S. Supreme Court ruling make it difficult to identify individuals or entities that contribute amounts greater than the limits allowed by the Puerto Rico Electoral Code.

#### **4.1.5 Articles 7, 8 and 12 - Codes of Conduct, Conflicts of Interest and Asset Declarations**

##### **Office of Government Ethics of Puerto Rico (OEG)**

For almost four decades, the Office of Government Ethics of Puerto Rico<sup>118</sup> (OEG) has exercised the ministerial duty of educating and overseeing the ethical performance of public servants of the Executive Branch of the Government of Puerto Rico<sup>119</sup>. Said duty has been exercised throughout the processes of social, political, economic and governmental transformation that have traced the history of Puerto Rico in that period.

In 2012, the Legislative Assembly approved a new ethics law, known as the Organic Law of the Office of Government Ethics (LOOEG) of Puerto Rico<sup>120</sup>. This law repealed the Government Ethics Act of the Commonwealth of Puerto Rico of 1985, which, in turn, had repealed the ethics laws of 1943 and 1948. These first ethics laws were passed prior to the Constitution of the Commonwealth of Puerto Rico, which recognized acts of public employees that could affect the proper functioning of the government.

Article 1.2 (c) of the LOOEG defines *agency* as the bodies of the Executive Branch of the Government, public corporations, municipalities and their legislatures, special corporations for municipal development, municipal consortiums, boards and those entities under the jurisdiction of this Branch. Pursuant to such definition and the provisions of the *Puerto Rico Municipal Code*<sup>121</sup>, the LOOEG applies to public servants of the municipal executive branch, as well as to those of their respective legislatures, including municipal legislators. It also applies to public servants of municipal corporations and consortiums.

The Explanatory Memorandum proposes a "complete and conscientious reform that meets the challenges of an integral public service, in which the personal interests of public servants do not substitute the interests of the citizenry". Likewise, the law establishes its main objective of renewing and reaffirming the preventive and supervisory function of the Office of Government Ethics (OEG). Among the faculties and powers granted by the Law to the OEG are:

---

<sup>118</sup> Act No. 12 of July 24, 1985, as amended, and known as the Government Ethics Act of the Commonwealth of Puerto Rico of 1985.

<sup>119</sup> The OEG was created in 1985, with the approval of Act No. 12 of July 24, 1985, as amended.

<sup>120</sup> Act No. 1 of January 1, 2012, as amended, and known as the Organic Act of the Government Ethics Office of Puerto Rico.

<sup>121</sup> Act No. 107-2020, Articles 1.011, 1.017, 1.023, 2.014, 2.038, 2.052 and 2.064.



- Promote and formulate policies and programs of ethical and moral conduct for public servants.
- To promote the dissemination and understanding of ethical standards and values in public service and among citizens, as well as ethical development in all areas of social coexistence.
- To interpret, apply and enforce the provisions of this Law and the regulations created under it.
- Promulgate such regulations, rules or guidelines as may be necessary and convenient to comply with the purposes of this Act.
- To issue opinions on the provisions of this Law.
- To issue such orders as may be necessary and convenient to comply with its functions, responsibilities and duties under this Act.
- Conduct audit and forensic audit of financial reports, and recommend action to be taken to correct, prosecute or refer violations detected.
- To subpoena, examine, order, request and obtain copies of any document or evidence related to any matter under investigation or in controversy before the Office.
- To take oaths, by himself or through any public servant of his Office to whom he may delegate.
- Evaluate the reports of the Office of the Comptroller of Puerto Rico and of the Joint Committee on Special Reports of the Comptroller, which contain indications of possible violations of the provisions of this Act.
- Refer to state and federal oversight agencies, such as the Department of Justice, the Office of the Special Independent Prosecutor Panel, the Federal Bureau of Investigation, among others, findings involving possible violations of laws.

From the above list, one can perceive the breadth of the nature and scope of the functions and responsibilities exercised by the OEG. Its functions show that it is a regulatory, disciplinary, investigative, adjudicative and educational agency, with an impact on the individual (whether civil servants, public employees, former civil servants and former public employees) and on government entities. Likewise, the law provides for access to information and citizen services.

The OEG has been excluded from the application of the personnel laws of the Government<sup>122</sup>, such as Law No. 8-2017 and Law No. 184-2004. The exclusion from the application of the personnel laws, among others, is intended for the OEG to carry out the functions in an autonomous and independent manner. This autonomy has been necessary in order to promote the fiscal and administrative independence necessary to perform the functions entrusted to it. The Office must be a totally autonomous entity, free from the influence of officials who are subject to our jurisdiction<sup>123</sup>.

---

<sup>122</sup> Act for the Administration of Human Resources in the Public Service of the Commonwealth of Puerto Rico, which was repealed by Act No. 8-2017, *supra*.

<sup>123</sup> According to the legislative debate developed during the approval of the Ethics Law in 1985. In the presentation of the Secretary of Justice on the bill that originated the Ethics Law, by means of his endorsement, he expressed the following: *The Bill proposes the creation of an Office of Government Ethics. The first great virtue of this measure is the precaution taken to insulate the said office from the undue influence that other government officials may exert on it, by creating said office as a totally autonomous office [...] This administrative independence is indispensable for the public work that the Ethics Office is called upon to perform.*

In its regulatory function, the OEG has approved several regulations, such as the Regulation on Programmatic Matters, No. 8231, dated July 17, 2012, which addresses the aspects of Ethics Committees, continuing education, electronic submission of financial reports, non-compliance related to financial reports and continuing education, and the awarding procedure. The OEG also has its 2019 Human Resources Issues Manual. It highlights the conduct to be presented by each OEG public servant identified by values.

One of the challenges identified in the LOOEG is to achieve a public service of integrity, where the personal interests of public servants do not replace the interests of the citizenry. This legislation incorporated the Code of Ethics, Chapter IV of the LOOEG, to regulate the conduct of public servants and former public servants of the Executive Branch of the Government of Puerto Rico, which reaffirms, as a cardinal principle, the high public interest in proscribing improper actions that jeopardize the stability of the moral support of the State<sup>124</sup>. Pursuant to Section 4.1, the jurisdiction and scope of the Code of Ethics applies only to public servants and former public servants of the Executive Branch of the Government of Puerto Rico. Thus, the conduct of public servants and former public servants of the legislative and judicial branches shall be governed by laws and regulations adopted by said branches, according to Art. 4.8, which is why the Code of Ethics of the LOOEG does not apply to them.

The Code of Ethics establishes general prohibitions, including specifications on prohibitions related to other contracts and employment. It also establishes prohibitions on representing private interests that conflict with official duties and the obligation of the official to inform the OEG before acting and engaging in possible unethical or potentially conflicting conduct. Furthermore, in an effort to avoid ethical conflicts, temporary and permanent restrictions are established for former public officials, and the circumstances under which waivers may be granted. The provisions of the Code of Ethics to prevent conflicts of interest are complemented by the laws governing personnel administration in the public service.

The Code of Ethics includes an extensive list of criminal, civil and administrative penalties for violations of the Code, including restitution actions, prohibitions on employment and non-applicability of statutes of limitations. In addition to these penalties, the Code of Ethics allows the OEG to pursue appropriate recovery or collection actions, the collection of interest at 10% and the payment of attorney's fees.

With respect to the aforementioned Ethics Committees, provision is made for their creation and implementation in all agencies of the Government of Puerto Rico with three members elected from among the career personnel, who shall be a majority, and whose committees shall also be created in each region where they exist. The Ethics Committees are fundamental in the educational process, since they serve to support and promote continuing education. Their performance expedites the work, facilitates its continuity and helps the OEG to ensure that information is disseminated at all levels of each entity.

---

<sup>124</sup> See, *Explanatory Memorandum of the LOOEG*.

On the other hand, in its prevention function, the law creates the Center for the Development of Ethical Thinking (CDPE)<sup>125</sup> with the purpose of broadening and intensifying the public policy of prevention. The CDPE is responsible for designing, offering and providing training in ethics, values and integral development for the whole society, including researching and examining the problem of corruption. The SPDC is also required to promote academic research on all aspects related to ethics, including the influence that the ethical factor has on governmental management and its relevance and impact on global relations; and the dissemination, through publication, of the findings of any academic research on the public-public and social-ethical process. Government radio and television stations will be included in this exercise and will allocate, free of charge, a permanent time slot of at least two (2) hours per month for the dissemination of programs, projects and initiatives that promote ethics, values and public policy of the Office. The OEG also remains at the forefront with new educational initiatives *such as* recorded courses, group face-to-face courses, face-to-face courses for agencies and municipalities and courses aimed at specific groups, such as shoppers, educational campaigns, etc.

The CDPE's training sessions focus on analyzing the LOOEG regulations, highlighting the general prohibitions contained in the Code of Ethics discussed above. These trainings are complemented by general trainings aimed at fostering administrative and motivational skills and competencies. The CDPE, through its electronic portal, provides information on educational alternatives, which are accessible and available to the general public. The training catalog is presented in a categorized and descriptive manner: regulatory content, initiatives on excellence in public administration, and knowledge on professional ethics and values, among many others. The CDPE works in conjunction with the Ethics Committees and its annual work plan is aimed at the following:

- Conduct the work of the Government Ethics Committee in accordance with the functions and duties established in the LOOEG and in the OEG Programmatic Affairs Regulations<sup>126</sup>.
- Disseminate the importance of complying with the requirements of the continuing education process.
- Orient your agency staff responsible for submitting the OEG Financial Report electronically.
- Raise awareness of the need to improve the quality of life through the practice of integrity in order to build a better coexistence.

For each objective, the SPDC establishes activities that serve as a guide to achieve them. At the end of the six-month period, the Ethics Committees send the OEG a detailed report on the work carried out. The compilation of the information gathered through the reports serves as the basis for the annual report published by the OEG<sup>127</sup>.

---

<sup>125</sup> Center for the Development of Ethical Thinking, <https://www.eticapr.net/centro-para-el-desarrollo-del-pensamiento-etico/>.

<sup>126</sup> Regulation No. 8231 of July 17, 2012.

<sup>127</sup> X-rays of Corruption. Office of Government Ethics, <https://www.eticapr.net/radiografias-de-la-corrupcion/>.

In alignment with prevention, the Law establishes and requires continuing education for all public servants, who must take 20 hours of training every two years, of which 10 hours must be taken under CDPE training. On the other hand, in addition to the courses offered by the OEG, participation in the courses offered to public servants by the Office for the Administration and Transformation of Human Resources (OATRH), the Office of the Comptroller of Puerto Rico (OCPR), the Office of the Inspector General (OIG), the Puerto Rico Institute of Statistics (IEPR), and the University of Puerto Rico (UPR) is encouraged. It is pertinent to point out that the CDPE, after the corresponding evaluation, may validate the training offered by these agencies<sup>128</sup>.

In addition, as part of the public policy of prevention, the *Ethos Gubernamental Journal*, the *Research Works in Progress Series* (STIC) and the *Ethos Gubernamental Special Publications Series* stand out for their purpose of promoting ethical issues in research, the production of knowledge and analysis on global and local issues, public policies and social and economic processes that affect the quality of government management. The other phase of the public policy of prevention is served by the Registration Division and the Legal Advice and Litigation Area (AAJL). This Area handles telephone, personal and written queries submitted by public servants to the OEG.

A provision that always attracts attention in the country, and highly discussed in the media, is the obligation of public officials and public servants to file financial reports. The Government Ethics Law identifies the public officials and public servants who are required to file them, ranging from the Governor, the Comptroller, the Citizen's Ombudsman, heads of agencies, members of boards of directors, mayors, deputy mayors, among others, and including members of the Legislative Assembly and the Judicial Branch. Members of review boards and representatives of the public interest are expressly exempted from submitting financial reports.

Chapter V of the LOOEG requires members of the Legislative and Judicial Branches to submit financial reports to the OEG. Article 5.1 of the LOOEG provides that the members of the Legislature, the Director of the Office of Legislative Services and the Superintendent of the Capitol, as well as any other public servant of the Legislature required to do so by approved regulations shall file financial reports with the OEG. It also provides that members of the Judicial Branch and the Administrative Director of the Courts shall also file such reports with the same agency. Thus, the Act establishes that the OEG receives, reviews and audits the financial reports of legislators and judges as provided in Article 5.4.

The Law establishes the methodology, frequency and scope of the financial reports of the members of the Executive and Legislative Branches. It provides for the submission of reports at the time a person assumes office and when he/she leaves office, including for those who assume interim offices of more than 60 days. It also establishes the content of the reports and their swearing in. It establishes several provisions related to the terms and auditing of the reports of officials of the Executive Branch and prohibitions of enrichment up to five years after leaving office. On the other hand, the content of the financial reports corresponding to the Judicial Branch shall be

---

<sup>128</sup> See Article 3.3 of the LOOEG.

determined by said Branch of Government, in accordance with its rules on ethical matters and its own regulations.

Once the financial reports have been submitted to the OEG, the Office will evaluate and analyze the information contained therein. If, in the judgment of the Executive Directorate of the OEG, there is a possibility that a public servant of the Legislative or Judicial Branches has violated any of the provisions of the LOOEG applicable to them, the financial report together with the result of the analysis shall be forwarded to the corresponding Legislative Body or the Supreme Court of Puerto Rico, as the case may be, so that they may take the appropriate actions<sup>129</sup>.

Regarding disclosure and publicity of data, the law establishes two categories for access to financial reports. In the first, a summary of the content of the financial reports of the members of the Executive Branch is available to the public through its web page<sup>130</sup>. The other category is in case of a possible violation of the provisions of the Act, where inspection and access to the reports may be allowed. This last category requires information from the applicant, including identifying or expressing the possible violation of the Law, and justifying the granting of access to the financial report, subject to possible criminal sanctions. This requirement on the citizen or entity requesting the report carries an additional burden that may discourage the requester.

The inspection and public access to the financial reports of the members of the Judicial Branch shall be governed by the regulations adopted by the Supreme Court of Puerto Rico. As for the members of the Legislative Branch, each House shall determine the rules governing the inspection and public access to the financial reports of its members<sup>131</sup>. In light of the foregoing, it may be observed that the jurisdiction of the OEG with respect to members of the Legislative and Judicial Branches is limited to the evaluation of financial reports. It is important to note that a summary of the financial reports of all the members of the Executive Branch and the members of the House of Representatives of Puerto Rico is available on the OEG's website, at their request.

This law also includes provisions for persons who are candidates for elective office and nominated by the governor. It includes the obligation to file a report of economic solvency and absence of conflicts. In the case of certified candidates, the obligation arises within 20 days, and for officials nominated by the Governor of Puerto Rico, the obligation arises after 30 days. Similarly, all are required to take 7.5 hours of Ethics Education within 30 days of their certification or appointment<sup>132</sup>.

In terms of auditing, one of the essential functions of the OEG is the power to investigate, adjudicate and its judicial review. Chapter VIII establishes the procedure and terms under which the investigation originates, and the process for its adjudication. The opinions issued by the OEG are public and can be found on the OEG's website<sup>133</sup>.

In view of its independence and autonomy, the OEG has adopted its own regulations. The Regulation on Operational Matters, No. 8187, dated April 23, 2012, addresses the

---

<sup>129</sup> See, Article 5.10 of the LOOEG.

<sup>130</sup> Office of Government Ethics Financial Reports, <https://www.eticapr.net/informes-financieros/>.

<sup>131</sup> See, Article 5.8 of the LOOEG.

<sup>132</sup> See Chapter IV of the LOOEG.

<sup>133</sup> See Chapter VIII of the LOOEG.

aspects of recruitment and selection of human resources in the career service, the priority and preferential shift system, the OEG Bidders Registry, formal auctions and the procedure on possible violations of the Code of Ethics for Contractors.

It is also essential to refer to the Anticorruption Code, mentioned above, which established the formal creation of the Group for the Prevention and Eradication of Corruption (PRECO), as discussed in section 4.1.1 Article 5 - Corruption prevention policies and practices.

It should be noted that education and prevention, together with oversight, are fundamental and the basis for eradicating public corruption. When, in spite of these tools, the established rules are not complied with, complaints are filed or criminal charges are filed to penalize those who fail to comply with their obligations as public servants. The data and statistics of the complaints can be found in the OEG's web portal.

Public corruption crimes in Puerto Rico have continued to increase for more than two decades. Press releases highlight the lack of agility, fragmentation of processes and distrust in the prosecution of corruption cases, as well as questions related to deficiencies in the handling of these cases<sup>134</sup>. The result is the distrust of citizens in public administration caused by the perceived administrative impunity in the face of misconduct and serious acts of public servants. The questioning of perceived lack of integrity in the management of prosecutors and judges abounds due to the lack of consequences for corruption crimes and the perceived impunity.

## **BEST PRACTICES**

- ❑ The rule of law in force in Puerto Rico to prevent, combat and penalize corruption is broad and robust in the regulation of public service. The legal system is based on the principles and values of public ethics, the protection of the public interest and the prevention of corruption.
- ❑ Puerto Rico has a solid regime of administrative responsibilities, disqualification from public service, and sanctions for public servants who fail to comply with the principles and values of public service.
- ❑ The Office of Government Ethics promulgated a Code of Ethics and established ethics committees that serve as a guide, provide general guidelines and standardize the implementation of ethical values in public service. Government agencies in Puerto Rico have ethics committees.
- ❑ The asset declaration and financial reports of public servants have a complete format.
- ❑ The agency responsible for implementing the provisions of the code of ethics is accountable for the results of its management, although the information disclosed is limited and insufficient.

---

<sup>134</sup> El Vocero (2023), An affront to public trust, [https://www.elvocero.com/opinion/columnas/una-afrenta-a-la-confianza-p-blica/article\\_bfdabd26-4dd0-11ee-8291-534e50f1fec5.html](https://www.elvocero.com/opinion/columnas/una-afrenta-a-la-confianza-p-blica/article_bfdabd26-4dd0-11ee-8291-534e50f1fec5.html);

El Vocero (2022), En camino "reingeniería" al sistema de justicia, [https://www.elvocero.com/gobierno/legislatura/en-camino-reingenier-a-al-sistema-de-justicia/article\\_8fe0ea50-5ca9-11ed-8d70-4fcddb2200e.html](https://www.elvocero.com/gobierno/legislatura/en-camino-reingenier-a-al-sistema-de-justicia/article_8fe0ea50-5ca9-11ed-8d70-4fcddb2200e.html), accessed September 8, 2023.

## DEFICIENCIES

- ❑ Information on potential conflicts of interest of public servants is not available in open data, which hinders public consultation and citizen oversight and supervision.
- ❑ The main perceived deficiency is the lack of trust of citizens in public administration caused by the perceived administrative impunity in the face of misconduct and serious acts of public servants.
- ❑ The Code of Ethics applies only to public servants and former public servants of the Executive Branch. The OEG does not have jurisdiction over public servants of the Legislative and Judicial Branches. With respect to financial reporting, jurisdiction is complete over public servants in leadership positions in the Executive Branch and limited with respect to public servants in the Legislative and Judicial Branches, as explained above. Thus, the Legislative and Judicial Branches have independence in the creation of their code of ethics.

### **4.1.6 Article 8.4 and 13.2 - Whistleblowing and Whistleblower Protection Mechanisms**

Puerto Rico has a regulatory framework for the protection of workers' rights. Prior to the Anti-Corruption Code, protection measures were limited to cases in which the employee testified about the employer's business, and established only reinstatement and back pay as a remedy. In an effort to expand such protection, the Act Against the Unjust Dismissal or Retaliation of any Employee for Testifying before a Legislative, Administrative or Judicial Forum Act No. 115 of December 20, 1991, as amended, was passed, which was applicable to the public sector, including the entire Government of Puerto Rico, its three branches and instrumentalities or public corporations, and municipal governments.

This law established that no employer could discharge, threaten or discriminate against an employee with respect to the terms, conditions, benefits of employment because the employee offers or attempts to offer any testimony before a legislative, administrative or judicial forum in Puerto Rico. Any person alleging a violation of this law could bring a civil action against the employer and seek compensation for actual damages suffered, mental anguish, reinstatement of employment, lost wages, benefits and attorney's fees. Notwithstanding this protection, the law established the employee's duty to prove the violation through direct or circumstantial evidence. The employer in violation of this law will be liable for the damages suffered, reinstatement in employment, plus a double penalty.

A decade later, the Legislature recognized the continuity of government corruption and one of the biggest problems afflicting society and affecting the image and management of the Government, its officials and public employees. In order to reestablish the trust of the Puerto Rican people in their Government and to guarantee the protection of persons who report acts of public corruption, it approved the "Act for the Protection and Compensation of Persons Reporting Acts of Corruption against Public Funds and Property," Act No. 14 of April 11, 2001, Act No. 14 of April 11, 2001. 14 of April 11, 2001, as amended, and the "Act for the Protection of the Rights of Public Employees and Officials Reporting, Complainants or Witnesses of Alleged Acts Constituting Corruption," Act No. 426 of 2000, as

amended. The purpose of these laws was to prohibit the harassment, discrimination, dismissal, threat or suspension of benefits, rights or protection of any person for providing information, cooperating or serving as a witness in any investigation leading to any complaint, accusation, conviction, civil or administrative action, for conduct related to the illegal use of public property or funds or violations of public service ethics laws and regulations.

However, these laws were not enough to attack corruption. The problem continued to be a serious and sensitive one, undermining the people's confidence in the government. Multiple cases went to court and certainly the most notable ones related to the awarding of contracts<sup>135</sup>. However, corruption is not limited to the process of contracting services or the misuse of public power to gain an illegitimate advantage, usually secretly and privately. Other types of corruption are bribery, influence peddling, extortion, fraud, embezzlement, prevarication, quid pro quo, cronyism, nepotism, impunity and despotism. In view of such scenario, and with the purpose of the Legislative Assembly to affirm that corruption will not be allowed in the Government and that all persons who fail the people will be prosecuted and penalized, the Anti-Corruption Code for the New Puerto Rico was approved in 2018. This Code was proposed to consolidate the anti-corruption provisions of different laws, and also includes a Code of Ethics for Contractors, Suppliers, and Applicants of Economic Incentives of the Government of Puerto Rico, among other provisions, such as the protection of *whistleblowers* and repealed Act No. 14 of 2001 and Act No. 426 of 2000.

The Anti-Corruption Code in Art. 1 declared as public policy the strengthening of whistleblower protections and ensures that offenders are held accountable for their actions. This Code is discussed in sections 4.1.6 Article 8.4 and 13.2 - Whistleblower Reporting and Protection Mechanisms and 4.1.1 Article 5 - Corruption Prevention Policies and Practices. However, we highlight in this section that Art. 3.2. establishes the obligation for any person to report those actions that constitute acts of corruption, or constitute crimes of fraud, bribery, embezzlement or misappropriation of funds, and of which he/she has personal knowledge, that concern a contract, business, or transaction between the government and a contractor, supplier of goods and services or participants of economic incentives. In addition, Article 4.2 establishes the protection of *whistleblowers*, since no person may harass, discriminate, dismiss, threaten or suspend any benefit, right or protection to another person for providing information, cooperating or serving as a witness in any investigation leading to any complaint or accusation of conduct related to the illegal use of public property or funds.

---

<sup>135</sup> Periódico Sin Comillas, Justice begins investigation into allegations of corruption in the Anaudi Hernández case, <https://sincomillas.com/justicia-inicia-investigacion-sobre-alegaciones-de-corrupcion-en-el-caso-anaudi-hernandez/?print=pdf> ; El Vocero (2021), THE 10 OF THE DECADE. Notorious corruption cases During the decade, several cases of corruption were seen, [https://www.elvocero.com/ley-y-orden/casos-de-corrupci-n-notorios/article\\_2b9b2a98-4bca-11eb-9458-d38feba61a2b.html](https://www.elvocero.com/ley-y-orden/casos-de-corrupci-n-notorios/article_2b9b2a98-4bca-11eb-9458-d38feba61a2b.html) ; El Vocero (2019), Así ocurrieron los esquemas de corrupción en Educación y ASES, <https://www.elnuevodia.com/noticias/locales/notas/asi-ocurrieron-los-esquemas-de-corrupcion-en-educacion-y-ases/>, accessed September 14, 2023.



On the other hand, and more recently, the PRECO group carried out a public service campaign to orient citizens on the process of reporting acts of corruption<sup>136</sup>. The Office of the Comptroller of Puerto Rico has an informative pamphlet with a compendium of the laws that protect the rights of persons who report acts of corruption<sup>137</sup>. However, no record was identified of the processing of persons who have requested whistleblower protection under the regulatory provisions in force.

The consolidation of laws represented a step forward, but not enough to prevent, combat and penalize corruption. The lack of articulation of protocols and redundant processes for receiving and processing complaints, together with the absence of a record of the processing of persons who have requested whistleblower protection under current regulations, is clear evidence of the need to review and update the legislation.

## **BEST PRACTICES**

- Puerto Rico has whistleblower protection legislation that meets international standards.
- Government agencies have digital tools for anonymous reporting that allow documents to be attached as proof of corruption cases.
- The creation of the PRECO group is an opportunity to establish new reporting channels.

## **DEFICIENCIES**

- Citizens do not trust the established reporting mechanisms for fear of reprisals.
- Lack of public confidence in the mechanisms for guaranteeing the security of whistleblower data and their anonymity.
- Lack of articulation of protocols and redundant processes for receiving and processing complaints.
- Absence of a record of the processing of the persons who have requested whistleblower protection under the regulations in force.

### **4.1.7 Article 9.1 - Public Procurement**

The General Services Administration (GSA) was created by Reorganization Plan No. 2 of 1971 for the purpose of implementing public policy regarding the procurement of goods and non-professional services of the Government of Puerto Rico. However, since its conception, the GSA had specific functions to provide services to a limited number of government agencies, such as the executive departments of the Treasury, Public Works, the Office of the Governor and the Bureau of the Budget, and the electronic information processing centers of the departments and agencies, in order to integrate the provision of services in this field into a system.

---

<sup>136</sup> How to report acts of corruption, <https://precopr.com/2023/03/como-denunciar-actos-de-corrupcion/>.

<sup>137</sup> Laws Protecting the Rights of Persons Who Report Acts of Corruption, [www.ocpr.gov.pr/wp-content/uploads/2016/06/LeyesProtegenPersonas.pdf](http://www.ocpr.gov.pr/wp-content/uploads/2016/06/LeyesProtegenPersonas.pdf).

Over the years, it became evident that the ineffectiveness of the ASG was evident. Thus, through a new government reform, Act No. 73 of 2019, as amended, known as the General Services Administration Act for the Centralization of Procurement of the Government of Puerto Rico, was approved. This Act recognized the initial problems of the GSA, based also on the fact that other laws had exempted different government agencies and public corporations from the obligation to submit to the processes established by the GSA. This generated a lack of uniformity in the processes of acquisition, evaluation and review of purchases made by government agencies. As an example of the inefficiency in government procurement processes, according to ASG data<sup>138</sup>, in Fiscal Year 2017, the same supplier provided the same good and service to 52 government entities separately. On the other hand, the 11 government entities with the highest expenditures on procurement of goods and services shared 68 suppliers among themselves. However, less than 1% of the total seven billion (7,000) million in contracts awarded by government entities were carried out through ASG processes. Thus, the decentralization in the management of the contractual relationship resulting from the Government's bidding and procurement processes was evidenced.

Based on a political-partisan proposal, which adopted a government program through the Plan for Puerto Rico<sup>139</sup>, it was proposed to restructure obsolete and inefficient government structures in order to achieve transparency and efficiency in management by simplifying them and, in turn, preventing, attacking and correcting corruption, with the purpose of eradicating it and restoring the confidence of the people of Puerto Rico. Three years after the implementation of the government program, citizens perceive that the lack of accountability and adequate supervision, as well as the lack of technology, transparency and uniformity in the procurement and contracting processes of the Government of Puerto Rico, continue to provide fertile ground for corruption and misappropriation of funds to spread without major consequences<sup>140</sup>.

This Act, in Section 2, provides the GSA with the necessary tools to streamline and establish new methods that will govern the procurement of goods and non-professional services by the Government of Puerto Rico. In addition, it simplifies the regulatory structure and encourages the participation of new bidders, which will be especially beneficial to allow small and medium-sized businesses to compete for one of the main customers of Puerto Rico's economy: the Government and its instrumentalities. Unlike the original law, the new Act states that its provisions shall

---

<sup>138</sup> Statement of Reasons for the General Services Administration for the Centralization of Procurement of the Government of Puerto Rico Act of 2019" [Act 73-2019, as amended].

<sup>139</sup> Plan for Puerto Rico, Government Program, <https://bvirtualogp.pr.gov/ogp/Bvirtual/reogGubernamental/PDF/Programas/PPPR.pdf>, accessed September 14, 2023.

<sup>140</sup> Corruption Challenges to Governance and the Economy: On the Results of the Analysis of Audit Reports of the Office of the Comptroller of Puerto Rico, <https://gobernanzapr.org/wp-content/uploads/2022/11/Resultados-Informes-Auditoria.pdf>, accessed September 14, 2023.

Fiscal Oversight Board, Essay: Improving the Procurement and Service Contracting Process in PR, [https://drive.google.com/file/d/1q\\_xbJn\\_jLc9oDh4lJAnC\\_xrAsXSrTKQQ/view](https://drive.google.com/file/d/1q_xbJn_jLc9oDh4lJAnC_xrAsXSrTKQQ/view); accessed September 14, 2023.

Sin Comillas (2022), Poor public contracting processes open the door to corruption, <https://sincomillas.com/los-deficientes-procesos-de-contratacion-publica-abren-la-puerta-a-la-corrupcion/>, accessed September 14, 2023.

govern the procurement and auction processes for goods, works and non-professional services in all Government Entities and Exempt Entities. However, the Judicial Branch, the Legislative Assembly, the University of Puerto Rico and the municipalities may, on a voluntary basis, adopt the procurement and auction processes for goods, works and services established herein, through the General Services Administration. In addition, it recognizes other external entities and indicates that, once the corresponding Fiscal Plan expires, such external entities shall be obligated to make their purchases through the Administration.

The organizational structure of the ASG shall be mainly composed of an Administrator, who in turn shall be the Chief Procurement Officer of the Government of Puerto Rico; a Deputy Administrator, who shall direct the Administrative Affairs of the Administration; and a Bidding Officer, who shall direct the processes for the purchase of goods, works and non-professional services. For the term of office of the Administrator, the law establishes that he/she shall hold office for a term of ten (10) years and shall report directly to the Governor. In addition, it establishes as a requirement for the position, the possession of a Master's degree as a minimum; recognized professional capacity, moral probity, knowledge and experience in the field of public administration and/or in private enterprise. The Deputy Administrator and the Bidding Officer shall be appointed by the Administrator and Chief Procurement Officer of the Government of Puerto Rico, in consultation with the Governor.

Among the powers and duties of the GSA, Article 10 requires establishing a process in which goods, works and non-professional services shall be performed, purchased, delivered and distributed; awarding related contracts and choosing the type of contract to be awarded. In addition, all documents related to the processes of publication, holding and awarding of auctions of all public works and acquisition of goods and services through auctions must be published on the electronic page of the ASG, in the Sole Auction Registry of the Government of Puerto Rico (RUS, for its acronym in Spanish). The RUS includes the notices of auctions, their description, the participating bidders, the dates of award or cancellation, the successful bidders, the price awarded, and any other information deemed necessary by the ASG. Likewise, Article 15 of the law prohibits any government entity from internally developing programs similar to those offered by the ASG in cases requiring the auxiliary services provided by the agency.

Thus, in order to achieve savings in the procurement process, government procurement is centralized through the ASG. The ASG is the only entity authorized to carry out and negotiate the acquisition of goods, works and non-professional services for the Government Entities, in accordance with the methods of bidding and exceptional purchases. All governmental entities, regardless of the source of funds for the procurement (local or federal), shall procure all goods, works and non-professional services through the ASG. For this purpose, the law requires government entities to prepare an Annual Procurement Plan, which must include the specific goods, works and non-professional services they intend to procure, estimated value, account number and the approximate date of the purchase or service. Failure to comply with the presentation of this Plan may result in an administrative fine of up to five thousand dollars (\$5,000.00) by the ASG.

As a measure to encourage the disclosure of information, Article 29 provides for the publication of the Annual Procurement Plan of the Central Government on the Administration's website. However, the law provides that prior to the Central Plan, all procurement plans of government and exempt entities shall be confidential, except when the information contained therein is necessary for official purposes. Any officer or employee who unofficially and in contravention of this provision discloses such reports, their content, or any information related to the expressed needs, may be removed from office or employment, upon compliance with the applicable precepts of Act 8-2017, as amended, known as the "Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico."

Government procurement and contracting has been one of the most common activities for irregular use of resources and corruption through interventions in government processes or operations, bribery, bribe offering, undue influence and falsification of documents<sup>141</sup>. To avoid this, the law establishes bidding methods for the purchase and acquisition of goods, works and services, which vary from informal purchase, Informal Auction, Formal Auction, Request for Proposals and/or Request for Sealed Proposals and/or Request for Proposal (RFP) and Request for Qualifications and/or Request for Qualifications (RFQ). Depending on the value of the procurement these methods would apply, including Auction Board and Review Board approvals and involvement.

Likewise, Section 35 establishes the Sole Registry of Professional Service Providers and the Sole Registry of Bidders for the Government of Puerto Rico to be used by all governmental and exempt entities as a prior step to the procurement of goods, works, and non-professional services. Any natural or juridical person interested in participating in any government procurement process, or providing professional services, through any bidding method shall be required to register. Likewise, the GSA shall ensure that all bidders and/or suppliers interested in contracting with the Government of Puerto Rico, whether natural or juridical persons: 1) are of proven moral and economic solvency; 2) have not been convicted or have pleaded guilty in a state or federal forum, or in any other jurisdiction of the United States of America, of those crimes constituting fraud, embezzlement or illegal appropriation of public funds.

Among the most important activities to prevent and manage cases of corruption in the public procurement process is the participation of the Auction Board. Art. 48 of the ASG indicates that the Auction Board shall be composed of: one (1) Chairman and four (4) associate members. These associate members shall be recommended

---

<sup>141</sup> Center for Public and Corporate Governance (2021), Transparency in the COVID-19 Vaccination and Treatment Process in Puerto Rico, <https://gobernanzapr.org/wp-content/uploads/2021/05/Transparencia-en-el-proceso-de-vacunacion-y-tratamientos-COVID-19.pdf> ; Periódico Metro (2020), Task Force members under scrutiny for intervention in COVID-19 related purchases, <https://www.metro.pr/pr/noticias/2020/04/08/escrutinio-miembros-del-task-force-intervencion-compras-relacionadas-al-covid-19.html> ; Noticel (2020), Distributor linked to governor's campaign manager questions Health, <https://www.noticel.com/negocio-de-la-salud/ahora/top-stories/gobierno/20200415/distribuidor-vinculado-con-director-de-campana-de-wanda-vazquez-cuestiona-a-salud-y-revela-mercado-m/>, accessed September 14, 2023.

by: the General Services Administration; the Office of the Comptroller; the Office of the Inspector General of Puerto Rico; the Puerto Rico Association of Certified Public Accountants; and the Puerto Rico Financial Advisory and Fiscal Agency Authority (AAFAF). The Governor shall appoint all the members of the Board and shall select the person who shall preside over the Board. The advice and consent of the Senate of Puerto Rico shall be necessary for the confirmation of the members. At least two (2) of the members shall be attorneys licensed to practice law in Puerto Rico. The remaining members must have at least a Master's degree and at least five (5) years of professional experience. The members of the Auction Board shall be subject to compliance with the provisions of the Organic Act of the Government Ethics Office of Puerto Rico. No member of the Auction Board may adjudicate matters in which he/she has any direct or indirect personal interest or is related to any of the requesting parties within the fourth degree of consanguinity or second degree of affinity. In the event of any conflict of interest, the affected member of the Auction Board shall be disqualified from the entire auction process. In addition, any penalty, fine or sanction established by law shall be applicable.

As an additional measure, the law empowers the Administrator of the ASG to issue administrative fines to any person, natural or juridical, who: violates the provisions or regulations adopted, or fails to comply with any resolution, order or decision issued by the agency. The administrative fines vary from one thousand (1,000) dollars to twenty thousand (20,000) dollars for each infraction, depending on the situation. Likewise, any natural or juridical person fined may be excluded for a period of one (1) year.

Likewise, any person who violates said Law shall incur a lesser offense and, if convicted, shall be sentenced to a fine of not less than one thousand (1,000) dollars nor more than five thousand (5,000) dollars. Said penalty shall apply to any supplier who in cases of emergency purchase fails to deliver a good and/or service within the agreed upon time, without adequate justification, or delivers a good different from what was agreed upon.

Progress in the revision of legislation and the regulatory framework of the procurement and contracting system has been a step in the right direction, but it is not enough to prevent and combat corruption. In this sense, press releases compiled by the Comptroller's Office confirm the need to strengthen the practices and behaviors that underlie government administration and management processes<sup>142</sup>. Government corruption has continued and there is a repetition of public contracting practices that fail to comply with procedures and regulations in force, waste of funds and high costs in the provision of outsourced services<sup>143</sup>. The Comptroller's Office has been auditing government agencies and non-profit

---

<sup>142</sup> Office of the Comptroller of Puerto Rico, Information and Press, <https://www.ocpr.gov.pr/informacion-y-prensa/articulos/>, accessed September 14, 2023.

<sup>143</sup> El Nuevo Día (2022), To eradicate rampant municipal corruption, <https://www.ocpr.gov.pr/articulos/a-erradicar-la-desenfrenada-corrupcion-municipal/>; Noticel (2022), Asphalt scheme leaves another federal culprit, <https://www.noticel.com/tribunales/ahora/top-stories/20220706/el-esquema-del-asfalto-deja-a-otro-culpable-federal/>; Primera Hora (2022), Former Guayama Public Works Director pleads guilty to corruption, <https://www.primerahora.com/noticias/policia-tribunales/notas/exdirector-de-obras-publicas-de-guayama-se-declara-culpable-de-corrupcion/>, accessed September 14, 2023.

organizations that receive public funds. These audits reveal that agencies, municipalities, and nonprofit organizations consistently fail to comply with procurement, auction, and contracting procedures and practices.

## **BEST PRACTICES**

- The foundations on which government contracting systems are based in Puerto Rico are of constitutional rank.
- Puerto Rico has public procurement legislation that partially complies with international standards.
- The country's public procurement system provides for several contracting modalities: auctions, invitations and direct award for acquisitions and services.
- Centralization of the procurement process can result in higher volume purchases, so that the costs of goods purchased should often be lower, thus achieving greater budgetary savings.
- Centralization can also be an opportunity for better control of expenditures and effective use of central government resources.
- The requirement to publish auctions and related documents, including their holding and awarding, on the agency's website.
- Requirement of academically competent personnel, with experience in public administration or private enterprise, and moral probity for the performance of the main functions in the ASG and Auction Board.
- Power of the agency to impose administrative fines, and refer in situations that constitute criminal offenses with its impact of exclusion from the Single Registry of Bidders (RUL).

## **DEFICIENCIES**

- The mechanisms in place to follow up on procurement processes and public or direct award auctions are deficient in areas related to procurement, purchase order processing, bidding exceptions and disbursements.
- The lack of transparency in the direct awarding of contracts and public works opens spaces for corruption.
- Direct contracting obviates the regulations that establish the procedures for an objective selection.
- Appointments subject to the Governor, with the consent of the House of Representatives and the Senate of Puerto Rico.
- The absence of disclosure requirements for other methods of acquiring goods and/or services.
- In spite of establishing the bidding methods, there are still exceptions that may allow for situations that permit direct contracting.

### **4.1.8 Article 9.2 - Management of public finances**

Pursuant to the Constitution of the Commonwealth of Puerto Rico, Article IV, Section 4, the Governor shall submit to the Legislature at the beginning of each regular session, on or before April 15 of each year, a General Budget, for its agencies and public corporations, out of the General Fund, special funds, contributions from the United States Government, bond issues and loans, own resources of public corporations and any other sources of income, with its objectives and the programs

it proposes for the following fiscal year, based on the orientation and longer-term goals.

In June 2016, the U.S. Congress passed the PROMESA law to restructure Puerto Rico's debt. At that time Puerto Rico's economy had failed to grow for approximately a decade; the central government had defaulted on chronic budget deficits for years; the island's total bonded debt exceeded its gross national product by \$72 billion; the government pension system was insolvent; adding an additional \$55 billion to Puerto Rico's long-term obligations and; and the governor had declared the island's debt to be unpayable in 2025<sup>144</sup>. In addition to establishing restructuring processes for public debt, the Puerto Rico Oversight, Management, and Economic Stability Act, or Promesa, also created in its Title II a budget approval process that passes control to the Financial Oversight and Management Board.

The imposition of the Fiscal Oversight Board by virtue of the PROMESA Act<sup>145</sup> makes evident the lack of powers of the Commonwealth as a territory of the United States. PROMESA meant a setback in the governance of the country in terms of the political-legal autonomy achieved until then and creates a level of authority and bureaucracy for the actions of the Puerto Rico government. This law establishes specific provisions on the formulation and approval of the budget of Puerto Rico. The initial part of the process is between the Fiscal Board and the Governor, where the Governor submits the proposed budget to the Fiscal Board. According to Section 201(c), the process of establishing a budget for the government must take place after the Board submits a fiscal plan, and Section 202(b) indicates that the Board must provide the collection projections for the coming fiscal year. Thus, the Fiscal Board will provide the Governor and the Legislature with deadlines for submitting budget proposals and for the Board to certify the budget for the coming fiscal year. The "Oversight Board shall determine in its sole discretion whether each proposed budget complies with the applicable Fiscal Plan," reads section 202(c)(1) of Promesa.

If the Fiscal Board does not find that the Governor's proposal is consistent with the fiscal plan, the Board will send a "violation" letter indicating the required changes. If the changes are not made, the Fiscal Board will submit a revised budget to the Legislature and the Governor.

Once in the Legislature, as established in section 202 (d), the process begins again, but this time the discussions are between the Legislative Branch and the fiscal agency. The Legislature sends proposals to the board; if the fiscal board agrees, it certifies the budget, otherwise it sends a letter of violation indicating the required changes. The Promesa law establishes that, if by the day before the fiscal year

---

<sup>144</sup> Center for Public and Corporate Governance (2014), Governance and Fiscal Responsibility: A Platform for Public Affairs Management in Puerto Rico, <https://gobernanzapr.org/wp-content/uploads/2019/10/Gobernanza-y-Responsabilidad-Fiscal.pdf> ; CNE (2021), PROMESA: A Failed Colonial Experiment? <https://grupocne.org/2021/06/29/promesa-un-experimento-colonial-fallido/>, accessed September 14, 2023.

<sup>145</sup> PROMESA Act, <https://www.govtrack.us/congress/bills/114/s2328/summary#:~:text=The%20Puerto%20Rico%20Oversight%2C%20Management%2C%20and%20Economic%20Stability,order%20to%20combat%20the%20Puerto%20Rican%20government-debt%20crisis.>

begins, July 1, the Government has not submitted a budget proposal satisfactory to the Board, the Board will submit its own budget as the one approved and certified. Thus, "such Budget: shall be deemed approved by the Governor and the Legislature; subject to a certification of compliance issued by the Oversight Board to the Governor; and in full force and effect as of the first day of the applicable fiscal year," states 202(e)(3).

It is the policy of the Government of the Commonwealth of Puerto Rico to implement rigorous fiscal control and efficiency measures through the adequate control of budget items related to appointments, personnel transactions, hiring and general control of government spending<sup>146</sup> .

As part of the Fiscal Oversight Board's responsibilities as of 2016 under Title II of the PROMESA Act, the legislature is responsible for submitting fiscal plans and budgets to the Board. The Board's questioning and rejection of several certified budgets over the past 6 years continues to call into question the viability of the four balanced budgets required for the Fiscal Oversight Board to consider that the Government of Puerto Rico may resume control of the approval of its governmental budgets<sup>147</sup> .

### **Office of Management and Budget (OMB)**

The Organic Act of the Office of Management and Budget, Act No. 147 of June 18, 1980, as amended, provides that this entity attached to the Office of the Governor is an advisory and auxiliary agency to assist the Governor in discharging his management and administrative duties and responsibilities. Said Office shall be under the direction of a Director appointed by the Governor. According to Section 2, this office shall advise the Chief Executive Officer, the Legislature and government agencies on budgetary, programmatic, fiscal and administrative management matters. In turn, it shall ensure that the budget is executed and administered in accordance with the soundest and most adequate standards of fiscal and managerial administration, and in harmony with the provisions of the Economic and Fiscal Growth Plan approved pursuant to the Puerto Rico Fiscal Responsibility and Economic Revitalization Act.

However, although the Governor must present a General Budget on or before April 15 of each year, the Government Programs Accountability and Execution Act<sup>148</sup> establishes that agencies must present a Strategic Plan every four years in the month of May, which must be quantitative, with goals to be reached and the strategy

---

<sup>146</sup> "Organic Act of the Office of Management and Budget" Act No. 147 of June 18, 1980, as amended.

<sup>147</sup> The advent of PROMESA in Puerto Rico: Fiscal Control Board as a mechanism to accentuate the colonial and territorial relationship <https://www.derecho.inter.edu/wp-content/uploads/2022/03/LA-LLEGADA-DE-PROMESA-A-PUERTO-RICO-JUNTA-DE-CONTROL-FISCAL-COMO-MECANISMO-PARA-ACENTUAR-LA-RELACION-COLONIAL-Y-TERRITORIAL.pdf>;

The Center for Popular Democracy, PROMESA Failed: How a Colonial Junta Enriches Wall Street and Hurts Puerto Rico,

<https://www.populardemocracy.org/PROMESAFracaso#:~:text=On%20the%202021%20anniversary%20of%20the%20fifth%20anniversary%20of%20the%20Wall%20Street%20a%20coast%20of%20the%20puertorrique%C3%B1os.>

<sup>148</sup> Act 236-2010, as amended.



to achieve them. And, annually, agencies must prepare an Annual Execution Plan of the activities included in the budget, no later than May 1.

The OMB is the entity that shall evaluate the programs and activities of public agencies in terms of economy, efficiency and effectiveness and shall submit its recommendations to the Governor. In addition, together with the Secretary of the Treasury, it shall submit a detailed report on revenue and expenditure projections for the following fiscal year and corresponding to the proposed General Budget to the Legislature. Likewise, the OMB shall request from the agencies the budget requests with the work plans and justifications and all information of a programmatic, fiscal and managerial nature. It may also conduct hearings, document examinations, investigations and inspections it deems necessary to conduct financial, programmatic, managerial and operational evaluations and analyses of the agencies. It is the duty of the OMB to require periodic reports reflecting disbursements, obligations, available balances and expenditure projections. The result will be presented to the Governor and the head of the entity with findings and recommendations to maximize the efficiency of government resources.

The Organic Law of the OMB does not mention the disclosure of these reports to the public. However, the Law of Accountability and Execution of Government Programs does establish in Article 7 that all strategic plans and annual execution plans of each government agency must be available on the OMB's and each agency's web page so that any citizen may analyze and review them. The OMB publishes on its web page the budgets by agency, however, the results are not monitored or published<sup>149</sup>.

In addition, the Law establishes that each agency must prepare and submit to OMB a report on the results of the implementation of the Strategic Plan, which must be published on OMB's website<sup>150</sup>. Likewise, it shall submit a report on the results of the Annual Execution Plan. However, it was not possible to verify the monitoring and evaluation process of the implementation of goals and activities. Nor are the results of the evaluation of the implementation of these strategic plans published on the web portal.

On the other hand, Article 8 establishes a temporary prohibition, since during the period between July 1 of the year with general elections and the date of the inauguration of the elected officials, it shall be illegal to incur in expenditures or obligations that exceed fifty (50) percent of the budget. Violation of this provision shall constitute a misdemeanor and shall carry a penalty not to exceed six months imprisonment or a fine of (\$500) five hundred dollars or both penalties at the discretion of the Court. However, this limitation shall not apply to the Judicial Branch, the Legislative Branch, appropriations for the matching of federal funds, permanent improvement programs, payment of the public debt, the University of Puerto Rico, and appropriations for specific legal purposes that do not constitute current operating expenses.

---

<sup>149</sup> Office of Management and Budget. Budget by agency, <https://presupuesto.pr.gov/PresupuestoAprobado2020-2021/PresupuestosAgencias/Oficina%20de%20Gerencia%20y%20Presupuesto.htm>.

<sup>150</sup> Management and Budget Office. Strategic Plans, <https://ogp.pr.gov/SobreOGP/AreaTrabajo/GerenciaPublica/Pages/PlanesEstrategicos.aspx#>.

## Treasury Department

The Constitution of Puerto Rico provides in Article IV, Section 6, that the Department of the Treasury is one of the established executive departments, but its creation dates back to the Jones Organic Act of 1917. Act No. 6 of July 24, 1952 decreed that upon the entry into force of the Constitution, the same powers, functions and duties of the former Department would be transferred to the Department of the Treasury.

Since its inception, the Department of the Treasury has been responsible for administering public policy related to tax and financial matters and the administration of public resources. The Puerto Rico Internal Revenue Code of 2011, as amended (Code) as of December 27, 2021, by Act No. 73, contains the tax laws administered by the Treasury Department in the areas of income tax, excise taxes, sales and use taxes, and the taxpayer's bill of rights, among others. In addition, in conjunction with the Department of Economic Development, it may determine which activities or businesses are eligible to receive economic decrees for establishing businesses in the country<sup>151</sup>.

One of the main challenges faced by the Treasury Department is the filing of false information and appropriations by merchants of sales and service taxes - which are collected but not remitted to the Treasury Department. The Department maintains the Tax Crimes Area, which implements criminal prosecution policies and is responsible for investigating all alleged criminal violations of the tax laws. By law, the Department is empowered to refer cases to the Department of Justice to investigate and criminally prosecute different modalities of government corruption that also involve natural or juridical persons in tax crimes.

### BEST PRACTICES

- The Annual Budget requirement arises from the P.R. Constitution and its disclosure is annual and includes the budgets of each public entity.
- The Annual Budget is related to the goals and objectives of each entity, which, in turn, is part of a 4-year Strategic Plan.
- There are standardized norms for the preparation of budgets in the country.
- Legislation that requires annual accountability of information and execution of government programs of public agencies and their disclosure through electronic pages.

### DEFICIENCIES

- The imposition of a Fiscal Oversight Board under PROMESA in 2016 accentuated Puerto Rico's colonial and territorial relationship and constituted an affront and a violation of the democratic rights of the citizens of Puerto Rico<sup>152</sup>.

---

<sup>151</sup> "Economic Incentives for the Development of Puerto Rico Act" [Act 73-2008, as amended], Section 2.

<sup>152</sup> In Rev Magazine (2022), The promise that perpetuates a colonial relationship, <https://derecho.uprrp.edu/inrev/2022/05/05/la-promesa-que-perpetua-una-relacion-colonial/>, accessed September 14, 2023.

- ❑ Limited resources to ensure compliance with laws.
- ❑ Lack of uniformity in the preparation of strategic plans, annual plans, reports and minimum requirements for measurable indicators.
- ❑ There is no direct relationship between citizens in the preparation, execution and monitoring of public budgets.

#### **4.1.9 Article 10 and 13.1 - Access to information and participation of society**

##### **Access to information**

The citizens of Puerto Rico possess a fundamental right of access to public information, which is closely linked to the rights to freedom of speech or expression, press and association enshrined in Article II Section 4 of the Puerto Rico Constitution. However, upon analyzing the rule of law in relation to transparency in Puerto Rico, we find that accountability and fiscal responsibility continue to be deficient, weak and insufficient.

Although the Supreme Court of Puerto Rico recognized in 1982 such access as a fundamental right, in *Soto v. Secretary of Justice*, 112 DPR 477, it was not until 2019 that Puerto Rico adopted two laws to guarantee the right of citizens to access information held by the government (right to information, or RTI), namely: the Transparency and Expedited Procedure for Access to Public Information Act (Transparency Act) and the Open Data Act (*Ley de Datos Abiertos*). In addition, federal agencies are covered under the U.S. Freedom of Information Act (FOIA). While this is a positive step, the rules on transparency in these two laws are below international standards in the area.

The laws have strengths and weaknesses. On the one hand, they create a clear right of access, are broad in scope and impose adequate procedures for submitting and processing requests for information. On the other hand, they establish a large number of exceptions and exclusions, make no provision for an independent oversight body (such as an information commission) and there are few promotional measures to support effective implementation. In addition, there is duplication and redundancy, inconsistency between the two, lack of coherence and lack of enforceability and sanctions. Consequently, these two laws do not establish and protect the effective right of access to information for the citizens of Puerto Rico<sup>153</sup> nor do they comply with international standards due to their ambiguity and contradictions in their implementation, especially in the municipalities.

According to the Governance Center, the legal and regulatory vacuum on transparency and accountability hinders good public governance, including in the municipal sector. From the 2016 study conducted by the Governance Center on *The Practices of Transparency, Accountability and Fiscal Responsibility in Municipal Management in Puerto Rico*<sup>154</sup> it emerges that the repealed Autonomous Municipalities of Puerto Rico Act of 1991 did not regulate the mandatory nature of

---

<sup>153</sup> Center for Investigative Journalism (2022), Journalists go to court to gain access to data on renegotiation of contract between AES and AE, <https://periodismoinvestigativo.com/2022/01/periodistas-van-al-tribunal-para-lograr-acceso-a-datos-sobre-la-renegociacion-del-contrato-entre-aes-y-la-ae/>, accessed September 14, 2023.

<sup>154</sup> Center for Public and Corporate Governance (2016), *Las prácticas de transparencia, rendición de cuentas y responsabilidad fiscal en la gestión municipal en Puerto Rico*, <https://governanzapr.org/wp-content/uploads/2019/10/Practicas-Transparencia-Municipal.pdf>, accessed September 14, 2023.

transparency, accountability and fiscal responsibility in municipal management in Puerto Rico. This law lacks a coherent legal framework that obliges municipalities to disclose to citizens, businessmen and investors all relevant public data and information prior to decision-making and to actively involve social actors in said process. This includes the processes of strategic planning, budgeting, creation of spaces for citizen involvement, disclosure of results and general access to public data and information<sup>155</sup>. This law was replaced by the Puerto Rico Municipal Code, Act 107-2020, as amended. However, despite its recent creation, it was vague in terms of requirements to municipalities related to transparency, accountability and fiscal responsibility in municipal management. Thus, this law grants municipalities the power to develop their own regulations on transparency, accountability and fiscal responsibility through a municipal ordinance.

Similarly, the study on the State of the Legal Status of Transparency and Accountability in the Government of Puerto Rico revealed that Puerto Rico lacks an integrated and coherent legal framework for transparency and accountability that obliges government officials to disclose all public and relevant information on government management, plans and results<sup>156</sup>. The research recommends the adoption of an integrated law on transparency, access to information and accountability as a tool to enhance the economic and social development of the country aimed at implementing best practices in public management; the mandatory nature of transparency and accountability by operation of law (active or ex officio transparency) as well as the regulation of processes so that citizens may request non-routine public information of interest, which will undoubtedly result in the improvement of real, effective or operational transparency.

As a result of the findings and recommendations of the research, the Governance Center drafted a preliminary bill<sup>157</sup> to establish the public policy of the government of Puerto Rico on transparency, access to public information and accountability for the results of public management, as well as the regulation of its implementation. This sought to ensure that the exercise of transparency and accountability would be measurable, that citizens would participate in decision-making and in the oversight of government management, and that non-compliance would have consequences for those responsible. It also recommended promoting budget transparency as a basis for establishing government priorities and the prudent allocation of public resources. It also recommended the creation of a digitized central database with security standards, uniform collection of information and indicators and metrics so that any citizen can track compliance. This proposed piece of legislation listed the basic principles for access to public information, which are:

- (1) The information must be complete.
- (2) Disclosure of information must be timely.

---

<sup>155</sup> Governance Center (2019), *Study on The Practices of Transparency, Accountability and Fiscal Responsibility in Municipal Management in Puerto Rico* <https://gobernanzapr.org/wp-content/uploads/2019/10/Practicas-Transparencia-Municipal.pdf>, accessed September 14, 2023.

<sup>156</sup> Center for Public and Corporate Governance (2013), *State of the Legal Status of Transparency and Accountability in the Government of Puerto Rico*, <https://gobernanzapr.org/wp-content/uploads/2019/04/Investigacion-Completa-sec-no-imp.pdf>, accessed September 14, 2023.

<sup>157</sup> See, *Preliminary Draft for a Law on Transparency, Access to Information and Accountability in Public Management* (the first version of 2013 and latest of 2017), available at <https://www.puertoricotransparente.org/wp-content/uploads/2017/06/Anteproyecto-de-Ley.pdf>.

- (3) The information should not be subject to broad confidentiality rules or other limitations.
- (4) The availability of information should be as wide as possible.
- (5) Access to information should be indiscriminate. That is, the availability of information should be open to any user without registration.
- (6) The format of the data should be non-proprietary, i.e., no one should have exclusive control over it.

In 2015, the Governance Center submitted by petition to the legislature P of C 2469<sup>158</sup>. After public hearings, the Governance Committee did not continue the legislative process. In 2017, a draft model legislation was again submitted to the incoming governor and the new legislature which was not considered.

The government of Puerto Rico, according to the Governance Center, must take seriously its obligation to implement the international and constitutional right to information, and amend laws to that end. We note that within the Inter-American human rights system, an Inter-American Model Law on Access to Public Information has been developed. This Model Law is robust, having scored 142 out of a possible 150 points in the RTI Rating. As such, it provides an excellent benchmark for the government and other concerned parties in Puerto Rico to improve current laws<sup>159</sup>. The RTI Rating is a tool for evaluating indicators of compliance with legal frameworks, as well as legislative best practices in democratic societies around the world developed by the Centre for Law and Democracy (CLD) and Access Info Europe. However, as a U.S. territory, Puerto Rico is not included in the main RTI Rating, as it focuses on countries.

The CLD, in an analysis of the legislation passed in 2019 in Puerto Rico, revealed in *Puerto Rico: Analysis of the Access to Information and Open Data Law*<sup>160</sup>, that the country's legal framework partially complies with international standards of transparency and right to public information. In order to obtain an independent assessment and international rating of the recently enacted transparency and open data laws, the Puerto Rico Transparency Network sought the expertise of the CLD. The overall rating of the Puerto Rican legal framework, based on the RTI Rating and broken down by category, is as follows:

**Table No. 4 Results of Puerto Rico's scores in the RTI Rating**

Section	Highest Score	Score Obtained	Percentage
1. Right of access	6	5	83

<sup>158</sup> See, Draft Law on Transparency, Access to Public Information and Accountability of Public Administration (Revised version of P of C 2469), available at <https://gobernanzapr.org/wp-content/uploads/2019/04/P-de-la-C-2469.pdf>.

<sup>159</sup> Observatorio Puerto Rico Transparente (2017), *El régimen sancionador para una ley de transparencia de Puerto Rico*, <http://www.puertoricotransparente.org/el-regimen-sancionador-para-una-ley-de-transparencia-de-puerto-rico/>, accessed September 1, 2023.

<sup>160</sup> Centre for Law and Democracy (2020), *Puerto Rico: Analysis of the Access to Information and Open Data Laws*, <https://drive.google.com/file/d/15fns11UcyuZWEQe2oKTdUTeeCzrUaKjz/view>, accessed September 14, 2023.

2. Scope	30	26	87
3. Application procedures	30	19	63
4. Exceptions and denials	30	7	23
5. Appeals	30	9	30
6. Sanctions and protections	8	2	25
7. Promotional measures	16	5	31
<b>Total score</b>	<b>150</b>	<b>73</b>	<b>45</b>

This score would place Puerto Rico's legal framework for the right to information in 87th place among the 128 countries evaluated so far in the RTI Rating, that is, in the least favorable third of those countries. This is clearly a weak position that should be substantially improved.

In sum, the transparency laws approved in 2019, still in the implementation stage, do not establish clear parameters for a real follow-up in the implementation of internationally recognized transparency indicators. That is to say, the approved regulations cover rights and obligations, but not a form for the evaluation and follow-up of the delegated responsibilities. Moreover, the inconsistencies between the approved statutes create ambiguity and make their implementation more difficult in practice. The laws do not provide the necessary levers to ensure compliance, nor do they establish consequences or sanctions for non-compliance.

In 2022 the House Government Committee initiated an evaluation process of Acts 122 and 141 of 2019, press releases on the evaluation process of these laws outline the poor results of the implementation of these laws<sup>161</sup>.

### **Participation of society**

The recognition of citizen participation has its force in the Constitution of the Commonwealth of Puerto Rico. According to our Constitution, a democratic system is understood as one in which the will of the people is the source of public power, where the political order is subordinated to the rights of man and where the free participation of citizens in collective decisions is assured. Citizen participation is a fundamental and necessary component of any democratic state, which is why it is indispensable for a good country, and its good government, to have a dual interaction: citizen/government and government/citizen. In this sense, in our country there are still many instances in which to improve and ensure a real and effective participation of civil society.

In Puerto Rico there is no government office aimed at promoting citizen participation, much less educating on how citizens can participate, be heard and contribute to the decision-making processes of projects that impact the country. Although there are laws that promote citizen participation, in practice they are mere legal compliances and not very effective. For example, Act No. 38 of June 30, 2017, as amended, and known as the "Uniform Administrative Procedure Act of the Government of Puerto Rico" establishes in Section 2.2 that government agencies shall provide opportunity for the citizenry to submit written comments during a term of no less than thirty (30)

---

<sup>161</sup> Sin Comillas (2022), Government struggles with compliance with transparency and open data laws. <https://sincomillas.com/el-gobierno-tiene-problemas-con-el-cumplimiento-de-las-leyes-de-transparencia-y-datos-abiertos/>, accessed September 14, 2023.

days, counted from the date of publication of public notices on regulatory matters. Another mechanism recognized by this law is the holding of public hearings to promote citizen participation (Section 2.3). On the other hand, the Legislature has an Office of Citizen Participation that promotes and facilitates the integration of citizens in the legislative processes, mainly through training talks and the channeling of citizen opinions and ideas so that they may become bills or resolutions filed by petition.

Although Act No. 141 of 2019, "Transparency and Expedited Procedure for Access to Public Information Act" recognizes the accessibility of public data to the citizenry through simple, agile and inexpensive procedural mechanisms, citizen participation goes far beyond the request for information to government agencies. There are additional instances where citizen participation is necessary, and effective, in order for the people to be part of collective decisions, for example, in the participation in committee sessions when bills are being discussed. In the same way, give priority to legislation proposed by the people.

It is also necessary to strengthen the transparency of government information and data so that the media and the general public can exercise their right to know. The press releases of the past few years highlight the lack of publication of data by the three branches of government - legislative, executive and judicial - which impedes citizen involvement and participation in solving the problems that affect them. Censorship of investigative journalists and the media continues to be an obstacle for citizens to exercise an active role in governmental decision making, oversee government results and alert on bad government practices that open space for corruption<sup>162</sup>.

## **BEST PRACTICES**

- Constitutional recognition of access to information and citizen participation.
- Puerto Rico has a regulatory framework for transparency and access to public information, although in real terms there are still areas that need to be addressed for the legislation to be effective in practice.

## **DEFICIENCIES**

- A lack of articulation and coherence was identified between the two statutes approved in 2019, Act 141 "Transparency and Expedited Procedure for Access to Public Information Act" and Act 122 "Puerto Rico Government Open Data Act". Both laws are ambiguous and contradictory in terms of their application, especially to municipalities, and do not comply with international standards.
- Deficiencies in the implementation of transparency and open data legislation and the lack of political will to ensure access to information and the involvement

---

<sup>162</sup> Center for Investigative Journalism (2023), Las malas prácticas que afectan el trabajo periodístico, <https://periodismoinvestigativo.com/2023/07/malas-practicas-que-afectan-periodismo-puerto-rico/> ; Press Without Censorship (2023), A reflection on censorship on Journalists' Day and Press Week, <https://prensasincensura.com/2023/07/31/una-reflexion-sobre-la-censura-en-el-dia-del-periodista-y-la-semana-de-la-prensa/> ; IFEX (2020), IFEX-ALC rejects the criminalization of free speech in Puerto Rico and demands the elimination of laws regulating "fake news", <https://ifex.org/es/ifex-alc-rechaza-la-penalizacion-de-la-libertad-de-expresion-de-puerto-rico-y-demanda-la-eliminacion-de-las-leyes-que-regulan-las-noticias-falsas/>, accessed September 14, 2023.

of society in government decision-making has not allowed Puerto Rico to move forward in improving public governance and results.

- ❑ Absence of legislation requiring citizen participation in draft legislation and agency strategic plans.
- ❑ Vague requirement of the State in some instances, such as in the Governmental Administrative Procedures Law, to require citizen participation through public hearings and to submit comments.
- ❑ Censorship of investigative journalists and the media continues to be an obstacle for citizens to exercise an active role in governmental decision-making, oversee government results and alert on bad government practices that open space for corruption.

#### **4.1.10 Article 11 - Judiciary and Public Prosecutor's Office**

##### **Department of Justice**

The Department of Justice had its origin in Article 45 of the Autonomous Constitution of Puerto Rico of November 25, 1897<sup>163</sup>, in which four Secretaries were created, among others, the Secretary of Grace and Justice and the Secretary of the Interior. During the military regime of the United States of America, a reorganization of the government system was carried out and through General Order No. 12 of February 6, 1899, the Department of Justice was created and named as it has been known up to the present<sup>164</sup>. Pursuant to this organization, the functions of the Department were those related to the administration of justice, the appointment of judges and notaries, penal institutions and appeals. The head of the Department of Justice would function independently of the other three constituted department heads and would report directly to the Governor General.

Later, and by means of the reform instituted by virtue of General Order No. 98 of July 15, 1899, the Department was granted the same powers that were exercised by the Departments of Justice and the Offices of the Attorney General in the United States, determining that it would not exercise any authority over the courts, leaving the judiciary independent. In line with this reform, the title of Secretary was changed to Attorney General and this official was entrusted with the direction of the Department of Justice, basically conferring on him similar functions to those he had at that date.

The Organic Charter of 1900, known as the Foraker Act, made no mention of the Department, but created the position of Attorney General with the same powers and functions that correspond to a United States Attorney. Barely two years after this reform, when the Political Code of Puerto Rico was adopted, the position of "Attorney General" was created and the functions previously exercised by the Attorney General were delegated to him or her. Under this same ordinance, the Attorney General consolidated in the position of Attorney General the function of legal representative of the people of Puerto Rico in actions brought before the courts, together with the

---

<sup>163</sup> Constitution of the Commonwealth of Puerto Rico, <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Derechos%20Civiles/CONST/CONST.pdf>.

<sup>164</sup> Study of the Report of the Department of Justice, 40 Revista del Colegio de Abogados de Puerto Rico, (1979), p. 337-415.

History of the Department of Justice, de Diego, Revista del Colegio de Abogados de Puerto Rico, Vol. 32, (1971), p. 261.



function of overseeing the internal administrative affairs of the courts. This duality of functions was maintained when the Organic Act of the Judiciary of 1950 was approved because, even though it created a single judicial district, it maintained the interference of the Attorney General in the administrative affairs of the courts.

Prior to the approval of the Constitution of the Commonwealth of Puerto Rico, the Department of Justice was created by Act No. 6 of July 24, 1952. The following day, on July 25, 1952, the Constitution of the Commonwealth of Puerto Rico was approved and, in Section 6, it establishes the constitutional rank of various executive departments of government, including the Department of Justice. Pursuant to the Constitution, the Department of Justice is under the direction of the Secretary of Justice.

As it appears from the historical trajectory of the Department of Justice, with the exception of the Political Code of 1902, which established the functions that corresponded to the Secretary of Justice, the Legislative Assembly had not passed an enabling law integrating the functions of the Secretary and the other officers and employees of the Department. Thus, between 1952 and 2005, the Legislative Assembly of Puerto Rico adopted a number of amendments to Act No. 6, supra, until the current Act 205 - 2004 was approved. During that period, the Legislature passed special laws and instituted programs and agencies attached to the Department of Justice to address various aspects and needs that arose as a result of the greater degree of complexity and intensity in the areas of litigation, investigation and prosecution, and in society in general.

However, the social reality of Puerto Rico reflected an increase in criminal activity, which required the establishment of a vigorous public policy to detect, combat and prevent crime and to channel governmental efforts toward achieving these ends. The approval of Act No. 205 of August 9, 2004 proposed that the Department of Justice, together with the other components of the criminal justice system, play a fundamental role in the design of strategies for the implementation of a coordinated governmental action that responds to the needs of the prevailing situation.

According to Section 3 of Act No. 205 of August 9, 2004, the Secretary of Justice, appointed by the Governor pursuant to Article IV, Section 5 of the Constitution of the Commonwealth of Puerto Rico, is the Head of the Department of Justice and as such, the principal law enforcement officer of the Government in charge of promoting compliance with and enforcement of the law.

The Department of Justice is responsible for ensuring faithful compliance with the Constitution and the laws of the Commonwealth of Puerto Rico and aspiring to the highest principles of equality and human dignity; maintaining and strengthening the integrity of government institutions and their officials through legal advice and representation; defending the people of Puerto Rico in civil and criminal cases; and providing certainty in the legal transaction of real property. He/she shall exercise these functions with effectiveness, integrity, a sense of justice and the firmest commitment to public service.

In operational terms, the Department of Justice has the prosecutors' offices to process complaints related to the violation of the Penal Code and the articles concerning

corruption. The Office of the Chief Prosecutor of the Department is responsible for investigating and prosecuting cases of a criminal nature in the jurisdiction of Puerto Rico and matters of a civil or administrative nature necessary to impose liability on the subject of the investigation or criminal proceeding. It shall also urge the appropriate actions for the restitution of funds and property obtained as a result of the commission of crimes of government corruption, organized crime and controlled substances or any other criminal act.

In addition, the Department has a Public Integrity Division, Economic Crimes Division and Comptroller's Office at the central level that can assist in the filing of cases or reinforce the work of the district attorney's offices. The Public Integrity Division is in charge of the investigation and criminal prosecution of all criminal conduct committed by a public official in the exercise of his or her office, including illegal appropriation, embezzlement of public funds, crimes against civil rights, violations of the Electoral Law, the Government Ethics Law and the Controlled Substances Law, among others. It also conducts preliminary investigations of public officials whose actions fall within the framework of the Special Independent Prosecutor Act, and makes recommendations to the Secretary of Justice regarding referrals to that agency. Meanwhile, the Economic Crimes Division investigates and criminally prosecutes persons accused of fraud against federal or state programs, among others. On the other hand, the Comptroller's Office has the authority to file before the courts of justice any civil or criminal action arising as a result of any intervention of the Comptroller in connection with the revenues, accounts and disbursements of the State and its agencies.

After the approval of Act 205 -2004, the Legislature has adopted a number of amendments, and one related to the issue of corruption is Reorganization Plan No. 5 of December 27, 2011, which created the Bureau of Special Investigations (NIE). Among the duties of the NIE, according to Art. 65, was the fight against corruption. However, through Act 20-2017, as amended, Puerto Rico Department of Public Safety Act, the NIE becomes part of the Puerto Rico Department of Public Safety. The NIE will have concurrent jurisdiction over various matters, including: acts of government corruption; threats, assaults, kidnappings or deaths of a public official or employee, former employee or former public official, when the crime is reasonably related to his or her functions, duties and obligations as such; bribery of public employees or officials; any crime against public property; investigating natural and/or juridical persons contracting with the Government of Puerto Rico or doing business with it; and even, when misuse or abuse of authority is imputed to a former member of the Police Bureau or the Municipal Police, among others.

### **Office of the Special Independent Prosecutor Panel**

The Office of the Special Independent Prosecutor's Panel (OPFEI) was created by Act No. 2 of February 23, 1988, as amended. This law was passed for the purpose of preventing, eradicating and penalizing any criminal or improper behavior by any government official. In view of such declaration, the Legislature identifies it as an essential component of a comprehensive and innovative scheme, and approved for the purpose of restoring the trust of the people in the government and its public servants. The Act declares as public policy and mission to be and provide a neutral and independent forum to elucidate illegal acts (real or alleged) attributed to certain

government officials. This Office has also been highly followed by the country's society since it has handled cases of great public interest, which include accusations against the Governor, mayors, legislators, directors of public corporations, secretaries of departments and heads of agencies, judges, and prosecutors, among others.

To achieve the objectives of the Act, the OPFEI shall be an entity administratively, functionally and fiscally autonomous from the Executive Branch. This Office is composed of a Panel with three (3) proprietary members and two (2) alternate members, whose members shall be selected from among former judges of the courts, according to the procedure set forth in the Act. In addition, it creates the position of Special Independent Prosecutor (SIP), which is under the supervision of a Panel appointed by the Governor, and which must guarantee the absolute objectivity of the investigations against high-ranking government officials. The Act also provides for the power of the OPFEI to conduct a preliminary investigation in the case of other officials, employees or individuals not identified in the list, and includes provisions to address allegations of wrongdoing against the Secretary of Justice.

In general, it is through the Department of Justice where the cases of certain government officials are initiated, for which said agency conducts a preliminary investigation. It is the Secretary of Justice, with the information available and the result of the preliminary investigation, who determines whether there is sufficient cause to believe that any felony and misdemeanor included in the same transaction or event and crimes against civil rights, public function or the treasury have been committed. The Secretary shall submit a detailed report of such investigation to the OPFEI including recommendations as to whether or not to appoint an SIP. Even if the Secretary's recommendation is not to appoint a SIP, the obligation remains to refer his report and the complete file to the Panel, which may, at its discretion, appoint a Special Prosecutor and order the investigation of the case.

Once the Panel Office determines the designation of an SIP, the law establishes exclusive jurisdiction of independent prosecutors to investigate and prosecute criminal actions inherent to the assignment. Among the provisions that come into play after the designation are the independence of the position; the partial and total reports that special prosecutors must submit to the Panel on their assignments; and the need for confidentiality to protect the investigation.

It should be noted that this law has been amended 10 times since its approval in 1998. It is not until 2012, through the Reorganization Plan, Law 1 of January 3, 2012, where the whole process regarding disciplinary proceedings, suspension or dismissal of any mayor or mayoress is included and established.

### **Supreme Court of Puerto Rico**

Article V of the Constitution of the Commonwealth of Puerto Rico establishes the Judicial Branch. The Supreme Court of Puerto Rico (TSPR) is the only one that exists by constitutional mandate. Its main function is to interpret the Constitution and the laws of the Commonwealth of Puerto Rico (Commonwealth). It also has the function of analyzing the constitutional validity of the laws passed by the Legislative Assembly, as well as the official actions of the other branches of government. The Constitution provides that the Supreme Court shall be composed of a Chief Justice and four

Associate Justices. However, it provides that the number of its justices may be varied by law, at the request of the Supreme Court itself. Currently, by virtue of the Judiciary Act of 2003, as amended, the Supreme Court is composed of one Presiding Justice and eight (8) Associate Justices.

Article V, Section 4 of the Constitution provides that the Supreme Court shall operate under rules of its own making, either in plenary session or divided into chambers composed of not less than three (3) Justices. It also has the power to adopt for the courts, rules of evidence and rules of civil and criminal procedure that do not impair, expand or modify the substantive rights of the parties, which must be submitted to the Legislature for its consideration.

Section 8, Art. V, provides that the appointments of judges shall be made by the Governor with the advice and consent of the Senate. The judges of the PRST shall not take office until their appointments are confirmed by the Senate and shall hold office as long as they observe good conduct. All matters relating to the appointment of other officers and employees of the courts, the Constitution provides that they shall be determined by law.

However, Section 12 of Art. V., which flatly prohibits judges from contributing money, directly or indirectly, to political organizations or parties, or from holding positions in their direction or participating in political campaigns of any kind. As we can see, and thus configured, the principle of judicial independence has its origin in the Constitution of the Commonwealth of Puerto Rico.

The Canons of Judicial Ethics, promulgated by the TSPR, have also incorporated provisions intended to ensure judicial independence. Canon 8 establishes how judges should perform their duties, requiring them to be industrious, prudent, serene and impartial. In addition, they must perform their judicial functions independently, based on a careful and conscientious understanding of the law, free from any outside influence, instigation, pressure, threats or interference, whether direct or indirect, from any source or for any reason. The second paragraph of this canon establishes that the conduct of judges must exclude the possible appearance that they are likely to act under the influence of individuals, groups, political parties or religious institutions, public clamor, considerations of popularity or notoriety, or improper motives.

While canon 28 prohibits the participation of judges in the political process and includes a list of political activities that are prohibited. Among the prohibited activities are the following: participating in political campaigns, meetings, gatherings, assemblies, conventions, primaries or other acts of a political-partisan nature; holding positions in political parties; contributing money, directly or indirectly, to candidates or political parties; endorsing candidates for elective positions; making statements on matters of a political-partisan nature; maintaining close relationships that identify them with a political movement; among others.

As stated above, ethical canons and procedural rules have imposed a legal obligation on judges to excuse themselves from hearing cases in which their impartiality may be doubted. Thus, judges have an obligation to investigate and ascertain whether they or members of their family have a financial interest in a case before them. They must also excuse themselves if they have been involved in the case, either because they

have private knowledge of the facts, have acted in the case as private counsel, or in any capacity on behalf of the government, or have employment or other ties to a material witness in the case. Likewise, the Judiciary and the Legislature of Puerto Rico have imposed rules that regulate and require the financial disclosure of all work, income, activity, gifts and honoraria that judges may receive outside of their position as such. However, regarding this undue intervention, several cases of alleged gifts to judges that affect the appearance of judicial independence have been published in the press. Recent questions about judicial independence and the ethical self-regulation of judges represent a challenge to governance. The press reports on the evaluation hearing of judges' appointments<sup>165</sup> .

Over time we have seen in some aspects some judicial independence, but there is still opportunity to improve and achieve full judicial independence and autonomy. Although judicial independence is a constitutional guarantee to citizens, this is not necessarily the case in reality. Thus, in theory, the doctrine of separation of powers and judicial independence has been recognized in our legal system, but there are instances where its separation has not been clearly perceived. The judicial branch or the legal system has not been exempt from the impact of the Executive or the Legislature and their attempt to substitute their power. We have seen this in proposed amendments to the Constitution to change the composition and number of judges and more recently, the retirement system for judges, among others<sup>166</sup> .

Situations that also frequently undermine judicial independence are the appointment, renomination, confirmation and replacement of judges and prosecutors. Despite the process being regulated, what seems to have great weight is the partisan political criteria and the relationships (directly and indirectly) of individuals due to their political affinity. In addition, the control of the budget of the Judicial Branch by the Executive and the Legislature also affects judicial independence. In the past we have seen situations where the Executive has proposed judicial reforms that have been alleged to be violations of the principles of judicial independence and separation of powers<sup>167</sup> .

Likewise, citizens are increasingly questioning the performance of the administration of justice, through its prosecutors and judges, who in most cases are said to be appointed on the basis of clientelism and political investment rather than on the merit of the candidates. There is a perceived lack of adequate training and poor performance of the persons appointed to such positions<sup>168</sup> .

---

<sup>165</sup> Metro (January 2022), Jorge Díaz Reverón defends his judicial record and temperament in appearance before the Senate, <https://www.metro.pr/pr/noticias/2022/01/26/jorge-diaz-reveron-defiende-trayectoria-temperamento-judicial-comparecencia-ante-senado.html>, accessed September 14, 2023.

<sup>166</sup> See Constitution of the Commonwealth of Puerto Rico, Art. V, Section 3. 2.

<sup>167</sup> Primera Hora (2022), Governor nominates Wanda Vázquez's husband for third time to the Court of Appeals, <https://www.primerahora.com/noticias/gobierno-politica/notas/gobernador-nomina-por-tercera-ocasion-a-esposo-de-wanda-vazquez-para-el-tribunal-apelativo/>, access on September 14, 2023.

<sup>168</sup> Hiram Carlo Rivera López; Jessica Santos Valenzuela (2021), The Appointment of Judges in Puerto Rico: politics or merit? Análisis comparado del Sistema de Nombramiento de Jueces en los Sistemas Estatales Norteamericanos y Puerto Rico, [https://aldia.microjuris.com/wp-content/uploads/2021/04/44\\_1RDPUC11.pdf](https://aldia.microjuris.com/wp-content/uploads/2021/04/44_1RDPUC11.pdf), accessed September 14, 2023.

Regarding the Public Prosecutor's Office, the reform of the Department of Justice,<sup>169</sup> , establishes that the Governor shall appoint, with the advice and consent of the Senate, the Prosecutors, in their different classes, and the Attorneys for Family and Juvenile Matters. Thus, the requirements for appointment, term of office, assignment of tasks, functions and duties, prohibitions, supervision and evaluation are established (Sections 66 to 72).

The Office of the Chief Prosecutor investigates and prosecutes cases of a criminal nature in the jurisdiction of Puerto Rico. It also handles matters of a civil or administrative nature necessary to impose liability and initiates actions for the restitution of funds and property obtained from the commission of crimes of government corruption, organized crime and controlled substances. With respect to prosecutors, they have the duty to prosecute criminal, civil and special cases within the framework of their respective duties, including complying with applicable ethical, public policy and administrative rules, refraining from engaging in private activities that may affect the performance of their duties and the image of their ministry. In addition, they must perform with integrity and ability and make an informed judgment while maintaining their commitment to truth and justice.

The implementation of this legal regulation has not been sufficient to guarantee the efficiency of the judiciary. The media continues to report on questions and concerns about the handling of cases by prosecutors and judges, including obstruction of justice, concealment of evidence, bribery, fraud and embezzlement of funds<sup>170</sup> . As well as in the appointment of prosecutors, judges and prosecutors.

On the state of the Puerto Rican judicial system and the imperative need to adopt a new governance paradigm for the judiciary in Puerto Rico as a fundamental right, the diagnosis conducted for this report reveals the imperative need to adopt reforms aimed at restoring the independence, autonomy and impartiality of the judicial system to guarantee the rights and freedoms of the people as established by the Constitution and the laws of the Commonwealth of Puerto Rico<sup>171</sup> .

## BEST PRACTICES

- Constitutional recognition of judicial independence.
- History of implementation of ethics and integrity codes and prohibitions to participate in partisan activities.
- Legal requirement for judges and prosecutors to file financial statements.
- Legal provisions on academic preparation, professional experiences and continuous improvement for judges and prosecutors.

---

<sup>169</sup> Organic Act of the Department of Justice" [Act 205-2004, as amended, Ch. IV, Art. 65.

<sup>170</sup> Center for Investigative Journalism (2020), Request for Resignation of Justice Secretary was for recommending a SIP for Gov. Wanda Vazquez in the Warehouse Case, <https://periodismoinvestigativo.com/2020/07/solicitud-de-renuncia-a-secretaria-de-justicia-fue-por-recomendar-un-fei-para-la-gobernadora-wanda-vazquez-en-el-caso-de-los-almacenes/>, accessed September 14, 2023.

<sup>171</sup> López Arzola, Alba (2016), A new paradigm for judicial management in Puerto Rico: governance, transparency and accountability, <https://gobernanzapr.org/wp-content/uploads/2019/04/Un-nuevo-paradigma.pdf>;

López Arzola, Alba (2021), Judges and access to justice in Puerto Rico: appointment, training and good practices. A historical-critical study and proposals for the future. University of Valencia. <https://webges.uv.es/public/uvEntreuWeb/tesis/tesis-1846668-VRN1115JEQOGGGFQ.pdf>, accessed September 9, 2023.

- Specialized administrative units under the judiciary that handle cases involving allegations of ethics violations and corruption.

## **DEFICIENCIES**

- Confidence in the judicial system is questioned.
- The appointments of judges and prosecutors are subject to the approval of the Executive and Legislative Branches and consider criteria other than merit and professional and personal probity.
- Absence of a professional judicial career or school that selects for professional and academic merit.
- There are no specialized chambers to hear corruption cases.
- It is necessary to strengthen the system of appointments of judges, prosecutors and attorneys general to guarantee judicial independence.
- The mechanisms for evaluating the performance of judges, prosecutors and attorneys must be strengthened.

### **4.1.11 Article 12 - Transparency of the Private Sector**

Regarding the regulation of the private sector, the government's intervention in the transparency requirement for the private sector is vague and unlimited. The General Corporation Law", Law 164-2009, as amended, is one of the main instruments that the Government has to promote economic development. This law has its origins in and is modeled after the corporate law of the State of Delaware and is intended to streamline corporate governance and provide corporations with flexibility in their operations and the activities in which they may engage. The Act is divided into chapters, with the first twelve chapters containing provisions on the form of organization and incorporation, commencement of legal personality, powers of incorporators or managing members, and provisions on initial bylaws and amendments thereto. In addition, it describes the general and specific powers of corporations, regulates matters related to the Board of Directors; powers; meetings, requirements; terms and quorum; committees; selection of officers, terms, vacancies, responsibilities, and insurance, sale of assets, dissolution, reestablishment of the corporation, among others.

Beginning with Chapter XIII, the law establishes different types of corporations, and identifies Foreign Corporations, Intimate Corporations, Special Worker-Owned Corporations, Professional Corporations, Limited Liability Companies, and Social Benefit Corporations. Chapter XV deals with the duty of all corporations (whether organized under the laws of the Commonwealth) and those authorized to do business in Puerto Rico (foreign corporations) to file an annual certified report, under penalty of perjury. This report must contain a statement of condition prepared in accordance with generally accepted accounting standards that demonstrates the economic condition of the corporation. Depending on the corporation, some are required to submit financial statements audited by a certified public accountant. However, in the case of non-profit corporations without capital stock, or for-profit corporations whose turnover does not exceed three million dollars (\$3,000,000), a Statement of Financial Position will be required. This exception does not require that such statement be prepared by a certified public accountant. The report shall include a list of the names and mailing addresses of two officers of the corporation, and any other information that may be required by the Secretary of State.

In addition, every corporation organized under the laws of Puerto Rico must have available such books of account, documents and records (including inventory records) as are sufficient to establish the amount of gross income and deductions, credits and other details relating to its operations, its investments within and outside the country, the property owned by the corporation, and the amount of capital employed in carrying on business within and outside Puerto Rico.

The law establishes fines and penalties in case of non-compliance with such report, although it allows for the request of extensions. The Secretary of State will use as a basis for granting certificates of corporate compliance ("good standing") for domestic or foreign corporations, whether for profit or not-for-profit, the annual reports for the five years prior to the date of the application.

In 2015, the Corporations Law was amended to include a new chapter dealing with Social Benefit Corporations (SBC). This new form of corporation has the purpose of promoting general public benefit under social, solidarity and community principles. Similar to the other forms of corporations, it also regulates the structure, mergers or consolidations, dissolution, reporting, duties and responsibilities of directors, bylaws and other related provisions. However, Article 23.13 establishes for the first time in the law the concept of transparency. It is implemented through the requirement to file annual reports with the Department of State. In addition to the annual report, it must also submit a statement regarding the annual promotion and operation of the corporation for the general public benefit set forth in the certificate of incorporation.

Other laws that affect the private sector are Act 1-2011, as amended, known as the "Internal Revenue Code of Puerto Rico of 2011" under the primary responsibility of the Department of the Treasury and the Penal Code of Puerto Rico. The Department of the Treasury administers public policy related to tax and financial matters and the administration of public resources. The Auxiliary Secretariat of the Internal Revenue Area is the operational unit of the Treasury Department responsible for administering the Internal Revenue Code, as well as the various tax, industrial and tourism incentive laws and other related laws. It also coordinates with state, federal and international agencies for the exchange of information against organized crime related to tax law violations.

The Treasury Department, in agreement with the Department of Justice, investigates and files charges for violations of the Internal Revenue Code against individuals and private organizations for filing fraudulent tax returns. The withholding of money withheld from employees' salaries, the failure to remit Sales and Use Tax (SUT) collections, and the concealment of income in tax returns are some of the examples of tax evasion cases in Puerto Rico by the private sector. Section 1061.15 of the Internal Revenue Code establishes the requirement for all businesses to submit audited financial statements with their income tax returns. In addition, the reports of private sector corporations are filed with the Department of State<sup>172</sup>.

Title IV of the Penal Code of Puerto Rico, Act 146-2012, as amended, identifies crimes against governmental functions. Although many of the crimes identified are for the

---

<sup>172</sup> Department of State, Registrar of Corporations, <https://www.estado.pr.gov/corporaciones>.



actions of a public official or employee, former public official or employee, the Penal Code also recognizes acts of corruption originating in the private sector. For example, unlawful exploitation of public works or services for the benefit of a third party (art. 252), Negotiation incompatible with the exercise of public office (art. 253) for the benefit of a third party, Undue interference in government operations (art. 254), Bribery (art. 259), Offer of bribe (art. 260), and Undue influence (art. 261). Some of these offenses carry terms of imprisonment and restitution.

On the other hand, the Anti-Corruption Code establishes legal provisions that affect the private sector through the *Code of Ethics for Contractors, Suppliers, and Applicants of Economic Incentives of the Government of Puerto Rico*<sup>173</sup>. In essence, this Code of Ethics regulates the behavior of the private sector whenever it deals with activities, business, services or relations with the public sector. Under this Code, the private entity is required to include in all invoices for the collection of goods or services submitted to executive agencies a certification stating:

"Under penalty of absolute nullity, I certify that no public servant of the governmental entity is a party to or has any interest in the profits or benefits derived from the contract that is the subject of this invoice and that if he/she is a party to or has any interest in the profits or benefits derived from the contract, a prior waiver has been granted. The sole consideration for providing the goods or services under the contract has been the payment agreed upon with the authorized representative of the governmental entity. The amount of this invoice is fair and correct. The work has been performed, the products have been delivered and the services have been rendered, and no payment has been received for them."

## **BEST PRACTICES**

- Annual requirement of financial reports certified by a certified public accountant to corporations.
- Incorporation in the Code of Ethics in the Anticorruption Code for the private sector.

## **DEFICIENCIES**

- Lack of preventive intervention and oversight by the government to ensure that the private sector complies with the purposes for which it takes advantage of the various tax credits.
- Lack of supervision, oversight and constant monitoring to ensure compliance with the use of public funds and tax decrees.

---

<sup>173</sup> Act No. 84 of June 18, 2002, known as the *Code of Ethics for Contractors, Suppliers, and Applicants for Economic Incentives of the Government of Puerto Rico*, <https://www.p3.pr.gov/wp-content/uploads/2020/02/ethics-contractors.pdf#:~:text=La%20misma%20establece%20un%20C%C3%B3digo%20de%20C3%89tica%20que,de%20Puerto%20Rico%20y%20solicitantes%20de%20incentivos%20econ%C3%B3micos>.

#### **4.1.12 Article 14 - Measures to prevent money laundering**

Puerto Rico has a highly regulated and diversified financial ecosystem of financial institutions in the banking, insurance, brokerage and credit unions sectors.

The banking industry in Puerto Rico is one of the most highly regulated business activities, as it is subject to the same legal requirements as in the United States. In Puerto Rico, banks and international financial entities are subject to federal laws and regulations such as the Bank Secrecy Act<sup>174</sup>, the USA Patriot Act<sup>175</sup> and the Know Your Customer rule, an international standard for detailed customer information. Office of Foreign Assets Control (OFAC) regulations also apply. Banking institutions are required to maintain their deposits insured by the Federal Deposit Insurance Corporation (FDIC), which incorporates them into the U.S. dual banking system. In addition, they are required to disclose to the federal Treasury Department's Financial Crimes Enforcement Network any suspicious activity. Banks are required to identify where the person's money comes from and whether he or she is on any list of persons with whom they may not do business. In addition, they have to create a database with all the person's information and financial volume.

However, this does not exempt it from being subject to fraud and money laundering schemes. In view of this situation, the Legislative Assembly approved Act No. 33 of July 13, 1978, as amended, known as the Anti-Organized Crime and Money Laundering Act of the Commonwealth of Puerto Rico. This Act defines money laundering or laundering of a monetary instrument as a financial transaction that involves illegal property or whose transaction is intended, in whole or in part, to obtain benefit from such transaction or to cease reporting income derived from or product of such financial transaction - or to use or invest, directly or indirectly, all or part of such income, or the product thereof in the acquisition of any interest in, or in the establishment and operation of any other enterprise or business. Article 3 of this Law establishes a list of prohibited activities that includes the illegality of a person to receive income derived directly or indirectly from any pattern of organized crime activity or from the collection of an illegal debt, its participation, among other related uses. Article 5 establishes the penalties and Confiscation of Property, and indicates that any person who violates any of the provisions of Article 3 shall incur in a felony and if convicted, shall be punished with imprisonment for a fixed term of 15 years. If there are aggravating circumstances, the fixed penalty established may be increased up to a maximum of 25 years; if there are extenuating circumstances, it may be reduced to a minimum of 10 years.

This Act allows the Secretary of Justice to institute a proceeding of a civil nature to cancel the certificate of incorporation of any corporation organized under the laws of Puerto Rico or to cancel or revoke any license, permit, or authorization granted to any foreign corporation doing business or charitable work in Puerto Rico, in cases where any officer of the corporation or person with authority therein, with the knowledge of the president and a majority of the members of the Board of Directors, or under circumstances in which they should have such knowledge, engages in or relates directly or indirectly to organized crime.

---

<sup>174</sup> Bank Secrecy Act, <https://www.fincen.gov/resources/statutes-and-regulations/bank-secrecy-act>.

<sup>175</sup> USA Patriot Act 2001, <https://www.govinfo.gov/content/pkg/PLAW-107publ56/pdf/PLAW-107publ56.pdf>.

Likewise, if the Secretary of Justice has reason to believe that any person or entity may contribute to an investigation on organized crime or money laundering, he may request in writing, upon prior notice, to produce or allow the examination of documents or objects for their examination and investigation. It may also require information on the owner or holder of shares or any other pecuniary interest. If any person fails to comply with the requirement to produce documents or objects or prevents the copying or reproduction of evidence because he refuses to deliver the material, the Secretary of Justice shall request from the Court an order for the person to comply with the provisions of said law. In addition, the law empowers the application to the Court for authorization for the recording of any oral communication, other than by telephone, when there are reasonable grounds to believe that a person is engaged in or involved in a pattern of organized criminal activity.

On the other hand, and despite the aforementioned special law, money laundering was first criminalized in the Puerto Rico Penal Code in 2004. In 2012, with the adoption of a new Penal Code, under the second section of crimes against security in commercial transactions, in Article 221, money laundering continues as a crime in our jurisdiction.

As a matter of fact, in Puerto Rico, in 2012, a new law was passed to promote the Island's becoming an international financial center. Based on Act No. 52 of August 11, 1989<sup>176</sup>, as amended, and known as the "International Banking Center Regulatory Act," it was envisioned as an appropriate instrument to convert Puerto Rico into a major international banking center. Similarly, Act 73-2008<sup>177</sup>, known as the "Economic Incentives for the Development of Puerto Rico Act", and similar previous laws established that several types of financial services for foreign markets would be considered eligible services to obtain a decree. As of June 30, 2011, there were 31 international banking entities operating in Puerto Rico with total assets of approximately \$43.6 billion and only five (5) entities with tax exemption decrees to offer financial services for foreign markets. As of 2020, there were 27 international banking entities operating in Puerto Rico with total assets of approximately \$59.3 million<sup>178</sup>.

However, these laws were not sufficient to promote Puerto Rico as an international financial center. To that end, a new law was passed that would allow international financial entities to carry out the business and activities authorized thereunder in a more competitive and efficient manner. This law is the "International Financial Center Regulatory Act," Act 273-2012<sup>179</sup>, as amended. As of 2020, there were 53

---

<sup>176</sup> Act No. 52 of August 11, 1989, as amended, known as the "International Banking Center Regulatory Act,

<https://www.pivcode.pr/Documentos/Ley-52-1989-Ley-Reguladora-Del-Centro-Bancario-Int/8brs-n5ju>.

<sup>177</sup> Act No. 73 of May 28, 2008, as amended, known as the "Economic Incentives for the Development of Puerto Rico Act,

<https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Desarrollo%20Econ%C3%B3mico/73-2008/73-2008.pdf>.

<sup>178</sup> OCFI Puerto Rico Financial Activity Report (December 2020),

<https://ocfi.pr.gov/DatosEstadisticos/Documents/Puerto%20Rico%20Financiera%20Activity%20Report%202020.pdf>.

<sup>179</sup> Act No. 273 of September 25, 2012, as amended known as the International Finance Center Regulatory Act",

international financial entities operating in Puerto Rico with total assets of approximately \$1.3 million.

In the explanatory memorandum of this law, it is recognized that the export of services is an economic activity that has been identified as one of the key pieces for the economic development of Puerto Rico, and financial services are no exception. Among the benefits were the expansion of the service sector, the direct and indirect creation of jobs, and the growth of economic activity. Under the supervision of the Commissioner of Financial Institutions, some entities could also obtain a decree from the Department of Economic Development and Commerce with tax benefits for the duration of the decree to achieve income tax rates from 4% to 2% in some cases. Since then, small banks arrived in Puerto Rico, which, upon establishing themselves in the country, can open accounts directly with the Federal Reserve, and in turn, have direct access to the U.S. market and facilitate transactions in U.S. dollars.

The financial sector has not been exempt from questions related to the poor management and questioning of crimes related to fraud, bribery and money laundering in international banking. Routine examinations conducted by the Office of Financial Institutions over the past few years have revealed violations of existing laws culminating in the revocation of licenses and the liquidation process of several of these entities<sup>180</sup>. In recent years, the country has seen the intervention of the FBI in some of these international banks located in Puerto Rico for finding probable cause of fraud and money laundering crimes.<sup>181</sup>

Recently, the Governor of Puerto Rico introduced several bills to amend Act 52-1989, and Act 273-2012, to make both centers more solid, efficient, resilient and better prepared to face market changes. The bills recognize the need to require greater compliance with anti-money laundering laws and empower the Office of the Commissioner of Financial Institutions (OCIF) to deny a permit or license when the result of the relevant investigation allows it to conclude that the financial responsibility, experience, character, and general fitness of the proponent do not give it confidence or allow it to determine that the proponent will operate the international financial institution in an honest, fair, and efficient manner to achieve the purposes of the law<sup>182</sup>.

---

<https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Transacciones/273-2012/273-2012.pdf>.

<sup>180</sup> SWI (2022), Bancrédito, tainted by corruption case, ceases operations in Puerto Rico,

[https://www.swissinfo.ch/spa/p-rico-banca\\_bancr%C3%A9dito--salpicado-por-caso-de-corrupci%C3%B3n--cesa-operaciones-en-puerto-rico/47815674](https://www.swissinfo.ch/spa/p-rico-banca_bancr%C3%A9dito--salpicado-por-caso-de-corrupci%C3%B3n--cesa-operaciones-en-puerto-rico/47815674).

<sup>181</sup> El Vocero (2023), Financial Institutions welcomes sanctions against Bancrédito,

[https://www.elvocero.com/economia/instituciones-financieras-da-la-bienvenida-a-sanciones-contra-bancr-dito/article\\_1d2a061e-542d-11ee-ae40-976b31775639.html](https://www.elvocero.com/economia/instituciones-financieras-da-la-bienvenida-a-sanciones-contra-bancr-dito/article_1d2a061e-542d-11ee-ae40-976b31775639.html);

El Vocero (2023), They will continue to tackle the practice of money laundering,

[https://www.elvocero.com/economia/sequir-n-atajando-la-pr-ctica-del-lavado-de-dinero/article\\_c44ef826-6ded-11ee-85f4-0f983476742c.html](https://www.elvocero.com/economia/sequir-n-atajando-la-pr-ctica-del-lavado-de-dinero/article_c44ef826-6ded-11ee-85f4-0f983476742c.html);

WIPR (2023), Governor seeks to strengthen oversight of banks and international financial institutions,

[https://wipr.pr/gobernador-busca-robustecer-fiscalizacion-de-bancos-y-entidades-financieras-](https://wipr.pr/gobernador-busca-robustecer-fiscalizacion-de-bancos-y-entidades-financieras-internacionales/#:~:text=The%20governor%20of%20Puerto%20Rico%2C%20Pedro%20R.%20Pierluisi%2C,better%20prepared%20to%20face%20the%20changes%20in%20the%20market)

[internacionales/#:~:text=The%20governor%20of%20Puerto%20Rico%2C%20Pedro%20R.%20Pierluisi%2C,better%20prepared%20to%20face%20the%20changes%20in%20the%20market](https://wipr.pr/gobernador-busca-robustecer-fiscalizacion-de-bancos-y-entidades-financieras-internacionales/#:~:text=The%20governor%20of%20Puerto%20Rico%2C%20Pedro%20R.%20Pierluisi%2C,better%20prepared%20to%20face%20the%20changes%20in%20the%20market).

<sup>182</sup> Metro Newspaper (2023), Governor announces bills to modernize and strengthen the International Banking Center and the International Finance Center,

On the other hand, the government, in its regulatory, supervisory and oversight role, has structured under the Treasury Department the Office of the Commissioner of Financial Institutions (OCIF), the Office of the Commissioner of Insurance and the Office of the Inspector of Cooperatives<sup>183</sup>. Each of these offices was created under a different organic law, so they maintain their autonomy, but are attached to the Treasury Department as an autonomous operational component.

The Office of the Commissioner of Financial Institutions (OCIF) was created under Act No. 4 of October 11, 1985<sup>184</sup>, as amended, and is the entity responsible for formulating public policy for the financial industry. According to the Law, "The financial industry is a highly specialized and technologically advanced industry, demanding special attention and immediacy". The OCIF was created to regulate, supervise and oversee the operation of financial institutions. It administers over 20 laws, in addition to other laws that delegate some powers to it, and promulgates about 48 regulations, as amended. Among its functions, it issues licenses to licensees of the financial system, oversees the performance and compliance of financial institutions with federal and state laws and regulations in its jurisdiction<sup>185</sup>. Credit Unions were under the OCIF, but in 2001, the Corporation for Credit Union Supervision and Insurance (COSSEC) was created and its functions and responsibilities were separated. However, to this day, the Commissioner of Financial Institutions remains an important member of COSSEC's Board of Directors.

Act No. 66 of June 16, 1921, created an Insurance Bureau within the Department of the Treasury. Subsequently, with the approval of the Insurance Code of Puerto Rico, Act No. 77 of June 19, 1957<sup>186</sup>, the office of Insurance Commissioner of the Government of Puerto Rico (OCS) was created. On August 8, 2002, Act No. 133 amended the Insurance Code to provide that the Insurance Commissioner would be appointed by the Governor and that his or her position would not be attached to the Department of the Treasury. This Act assigned duties to the Commissioner and repealed the powers of the Secretary of the Treasury over said official. With the approval of the aforementioned Act, the OCS was granted a position within the public administration, correlative to the growing importance of the insurance sector in the economy in general.

In 2004, Act No. 399, as amended, known as the "Puerto Rico International Insurance Insurers and Reinsurers Act" was approved<sup>187</sup> to develop the International Banking Center through which insurers and reinsurers export and import insurance. These

---

<https://www.metro.pr/noticias/2023/04/18/gobernador-anuncia-proyectos-de-ley-para-modernizar-y-fortalecer-el-centro-bancario-internacional-y-el-centro-financiero-internacional/>, accessed September 14, 2023.

<sup>183</sup> Department of the Treasury, Reorganization Plan No. 3 of June 22, 1994, as amended, Articles 4 through 9.

<sup>184</sup> Act No. 4 of October 11, 1985, known as the "Office of the Commissioner of Financial Institutions Act" as amended, <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/4-10-1985.pdf>.

<sup>185</sup> Historical Overview Office of the Commissioner of Financial Institutions, <https://ocif.pr.gov/SobreNosotros/Pages/Rese%C3%B1a-Hist%C3%B3rica.aspx>.

<sup>186</sup> Act No. 77 of June 19, 1957, as amended, known as the "Insurance Code of Puerto Rico", <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/C%C3%B3digos/77-1957/77-1957.pdf>.

<sup>187</sup> Act No. 399 of 2004, as amended, known as the "Puerto Rico International Insurance Insurers and Reinsurers Act", <https://www.lexjuris.com/lexlex/leyes2004/lexl2004399.htm>.

entities provide insurance and consulting services exclusively in international markets and to captive entities, while entities engaged in the reinsurance market will provide insurance and services inside and outside Puerto Rico.

The Office of the Commissioner of Insurance (OCS) performs the following functions: licensing and supervision of domestic and foreign insurers doing insurance business, as well as non-profit hospital-medical service associations and health service organizations; examines, licenses and supervises the various components of the insurance industry; examines the operations of domestic insurers, with special emphasis on their financial soundness. In addition, it examines licensed insurance personnel to verify their compliance with the Insurance Code and its Regulations; regulates commercial practices in the insurance business to avoid unfair competition or unfair or deceptive practices; attends to and resolves requests for investigations against insurers or other insurance industry personnel; advises the public and different government agencies on various aspects of insurance; compiles the information necessary for the preparation of statistics and reports on the activity of the insurance industry in Puerto Rico, among others.

COSSEC is a Public Corporation of the Government of Puerto Rico, created by virtue of Act No. 114-2001 to regulate and supervise Puerto Rico's credit unions, and is attached to the Puerto Rico Cooperative Development Commission by Act No. 247 of 2008. In addition, it administers the Shares and Deposits Insurance Fund, insuring the shares and deposits of the more than 1.3 million members and depositors of credit unions operating under Act No. 255-2002. It has the primary responsibility to oversee and supervise credit unions operating or doing business in Puerto Rico. Similar to banking institutions, all credit unions insured under COSSEC are required to submit annual financial statements reflecting their financial condition, and may be required to submit other financial reports<sup>188</sup> or otherwise to ascertain their overall condition and to determine the risk of financial loss. It may also require them to publish their annual financial statements in such form as is deemed in the best interest of the public. In addition, if insured cooperatives fail to submit certified statements, COSSEC may revoke their authorization to do business and order their liquidation. The Law establishes that the records of the cooperatives must remain available for 5 years and that verification of the correctness of the balance sheets, audited statements, deposits and shares, loans, insurance premiums, among other data, must be facilitated. COSSEC may conduct regular and extraordinary examinations or audits of insured cooperatives to determine their condition or when financial indicators suggest that they are at risk. At the same time, a complaint and denunciation procedure is available to the public to notify or report an action, omission or fact that may constitute an irregularity and thus initiate an investigation.

Last but not least, money laundering is not limited to activities under the aforementioned financial centers and institutions. Money laundering is commonplace in the society in which we live. For this reason, Act 136-2010, as amended, known as the Law to Regulate Money Services Businesses<sup>189</sup> was passed, which includes

---

<sup>188</sup> Public Corporation for the Supervision and Insurance of Credit Unions Act, Act No. 114 of 2001, as amended, Article 13.

<sup>189</sup> This Act has part of its origin in Act No. 60 of June 18, 1963, as amended, known as the "Uniform Securities Act", which was adopted from the "Uniform Securities Act" of 1956. Puerto Rico was one of the jurisdictions of the United States of America that adopted this legislation in its entirety. Essentially,

provisions aimed at regulating more strictly and uniformly everything related to money laundering and to bring the State Law in line with the provisions that all money service businesses must comply with according to the applicable federal laws. This law recognized the need to establish stricter parameters to stop the evil that afflicted society. The banking industry had increased its security and oversight standards with respect to money laundering, which caused criminals to use another type of financial institution to easily transfer their money, exchange it, or convert large amounts of cash to checks or other means of payment.

In summary, Puerto Rico's financial system is comprised of the banking, insurance, brokerage and credit union industries. The scaffolding of regulatory agencies consists of the Office of the Commissioner of Financial Institutions, the Office of the Commissioner of Insurance, and the Credit Union Supervisory Corporation. These entities are autonomous and their operating and administrative budgets are considered adequate to perform the functions entrusted to them by their organic laws. These agencies have highly qualified personnel with professional expertise and experience. The analysis of the electronic portals of these agencies reveals a lack of information related to the results of the processes and supervision carried out by these agencies. For example, we did not find information related to examinations conducted, complaints processed and their final resolution, statistics on declared cross-border cash transfers, on undeclared cross-border cash transfers detected, sanctions imposed and others. In 2019 the European Commission identified 23 countries that present a higher risk of illicit funds movement, this includes 12 countries identified by the Financial Action Task Force (FATF) and 11 additional jurisdictions, including Panama and Puerto Rico. Therefore, it is considered highly necessary to have updated information and open data to monitor and exercise greater control over financial operations involving customers and financial institutions<sup>190</sup>.

## BEST PRACTICES

- Puerto Rico's legal framework complies with international standards to combat money laundering.
- Puerto Rico's financial system is a highly regulated one with robust regulations covering all aspects of anti-money laundering.
- Periodic publication of financial and operational information of financial institutions through the electronic portal.
- Industry highly regulated by the federal and state governments.
- Integration of government agencies in the supervision and control process.
- Requirement to submit financial reports and/or bank statements certified by a certified public accountant to financial institutions and cooperatives.

---

the federal law served as a model or starting point for state-level regulations aimed at standardizing the purchase and sale of securities. The objective of the Uniform Securities Act was to create an environment in which it is possible to identify and deal with fraudulent activities across state lines. In Puerto Rico, this law has been amended on several occasions to bring it in line with the new systems that have emerged worldwide. The first part of this Act is aimed at identifying fraudulent and other prohibited practices related to the handling of investments, whether of goods or securities.

<sup>190</sup> ACFCS (2019), Panama, Puerto Rico blacklisted as European Union's highest risk money laundering countries, <https://www.delitosfinancieros.org/panama-puerto-rico-incluidos-en-lista-negra-de-paises-de-mayor-riesgo-de-lavado-de-dinero-de-la-union-europea/#:~:text=This%20week%2C%20the%20Comisi%20C3%B3n%20European%20Commission%20identified%20C3%B3a%2023.the%20which%20are%20in%20Panam%20C3%A1%20and%20Puerto%20Rico.>

- ❑ Availability to citizens of the process of filing complaints or denunciations of possible acts that constitute violations.

## DEFICIENCIES

- ❑ There is no public registry in open data format to promote transparency of supervision and compliance processes (statistics related to examinations conducted, fines, complaints and cases processed in court for violation of the laws regulating the financial system).
- ❑ Lack of technology to carry out the processes and data collection necessary to strengthen the control and compliance.
- ❑ The lack of effective measures to identify, prevent, sanction and combat money laundering activities of high-level public officials and organized crime.
- ❑ Impunity and lack of sanctions for money laundering activities.

## 4.2. Chapter V - Assets Recovery

### 4.2.1 Article 52 and 58 - Anti-money laundering

Money *laundering* or *money* laundering is the process by which the origin of general funds is disguised through the exercise of certain illegal or criminal activities - drug or narcotics trafficking, arms smuggling, corruption, embezzlement, tax fraud, white-collar crime or prostitution, public embezzlement, extortion, kidnapping, illegal labor, piracy and terrorism<sup>191</sup>. The objective of the operation is to make funds or assets obtained through illicit activities appear to be the proceeds of legitimate activities and circulate smoothly in the financial system.

Puerto Rico, as a territory of the United States of America, has extensive legislation regulating financial activities, such as banking and securities-related operations, by the federal government through the Federal Reserve System (FRS), the Federal Deposit Insurance Corporation (FDIC), the Securities and Exchange Commission (SEC), and other government agencies. In addition, many of the laundering schemes involve banking institutions, whose accounts are insured by the FDIC. The Federal Deposit Insurance Corporation (FDIC) is an independent agency created by Congress to maintain stability and public confidence in the nation's financial system. The FDIC insures deposits, examines and supervises financial institutions to ensure their safety, soundness and consumer protection, facilitates the resolution of large and complex financial institutions, and manages bankruptcies. The FDIC was created in 1933 in response to the many bank failures that occurred in the 1920s and 1930s.

In addition, the federal Patriot Act of 2001 requires many financial institutions in the United States, including Puerto Rico, to verify and record information that identifies each person who applies to open an account or add a signer to an existing account. Information such as each individual's name and address, date of birth, and other information that identifies each individual in accordance with the law must be provided. You must also provide driver's license or other identification documents, social security number or employer identification number in the case of businesses.

---

<sup>191</sup> 208, Dr. Ruth E. Ortega-Vélez. Penal Code of Puerto Rico (2012), Annotated.



The Bank Secrecy Act of 1970, as amended, (BSA), was passed to protect the financial industry from the threats posed by money laundering. This Act requires financial institutions to report currency (cash or coin) transactions of more than ten thousand dollars (\$10,000) by or on behalf of a person, as well as multiple currency transactions totaling more than ten thousand dollars (\$10,000) in a single day. These transactions are reported on Currency Transaction Reports (each a "CTR").

The Financial Crimes Enforcement Network (FinCEN)<sup>192</sup> is a federal agency that analyzes information collected through the BSA. Through this information, FinCEN is able to track criminals, their assets and activities and find other information needed to detect money laundering. FinCEN investigates and analyzes this information using various forms of intelligence and, along with information from other databases, provides information to other agencies. Title 12, Section 21 of the Code of Federal Regulations (in compliance with the BSA) provides that banks are required to have security procedures in place, including when they suspect transactions where a federal law has been violated. Section 21.11 states that banks must report when they detect or suspect a transaction that may constitute money laundering or a violation of the Bank Secrecy Act (BSA). Suspicious Activity Reports (SARs) are sent to FinCEN when the bank suspects an officer has been involved in criminal transactions; or has used the bank to conduct criminal transactions; or suspects a person or business, or series of persons, of engaging in criminal activity; transactions that violate the BSA and amount to \$5,000 or more or any other transaction (withdrawals, deposits, loans, transfers, between accounts, among others) whose funds are illegal; when hiding funds that were obtained illegally, to evade any law, regulation or report, of a federal law, and even when the transaction does not appear to have a legal purpose and it is not common for the customer to make such a transaction. These reports are confidential, and there are only certain exceptions, when necessary to comply with a provision of the Bank Secrecy Act, or the Office of the Comptroller of the Currency requests them for non-public uses.

Money laundering is a serious matter whose effects transcend illicit and illegal activity, since the profit obtained through the use of these illegal activities is mainly used for investment in activities under the protection of the law, to the detriment of the economic and social development of our democratic process. Although financial activities are highly regulated by the U.S. government, there is local legislation in Puerto Rico that regulates money laundering.

Article 221 of the Penal Code recognizes money laundering and establishes the penalty of imprisonment for a fixed term of eight (8) years for any person convicted of the same. It also provides that the court shall order the confiscation of the property, rights or goods that are the object of this crime, the amount of which shall be paid into the Crime Victims Compensation Fund.

The Anti-Organized Crime and Money Laundering Act, Act No. 33 of July 13, 1978<sup>193</sup>, as amended, was passed in response to the growing organized crime activity that

---

<sup>192</sup> Financial Crimes Enforcement Network, <https://www.fincen.gov/>.

<sup>193</sup> Act No. 33 of July 13, 1978, as amended, known as the Commonwealth of Puerto Rico Anti-Organized Crime and Money Laundering Act," <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Justicia/33-1978.pdf#:~:text=%E2%80%9CLaw%20Against%20Organized%20Crime%20and%20Money>

Puerto Rico has experienced. In its Explanatory Memorandum, the law shows the interest of the Legislature in criminalizing such conduct and in granting new remedies and mechanisms for its investigation through the Puerto Rico Police, the Secretary of Justice and the Bureau of Internal Revenue of the Department of the Treasury.

The prohibitions established by this Law, art. 3, is the receipt of income derived directly or indirectly from any pattern of organized criminal activity or from the collection of an illegal debt, including the use or investment, directly or indirectly, of all or part of such income, or the proceeds thereof, in the acquisition of any interest in, or in the establishment or operations of any enterprise or business, whether by a person employed by or associated with any enterprise or business, among others.

It is important to note that, from the text of the law, it is perceived that its focus is to address organized crime activities, defined as any act or threat related to murder, kidnapping, illegal gambling, prostitution laws, arson, illegal appropriation, robbery, obscenity, bribery, extortion or the sale, possession and transportation of controlled substances, or weapons, subject to criminal prosecution under the laws of Puerto Rico or the laws of the United States of America. However, and despite the highly publicized bribery cases in the press, this Act has generated little jurisprudence in Puerto Rico<sup>194</sup>. So far, it has only been considered by the Supreme Court on two occasions<sup>195</sup> related to drug trafficking.

This Act is similar to the federal *Racketeer Influenced and Corrupt Organization Act* (RICO)<sup>196</sup>. RICO is a law designed to combat organized crime in the United States. It was passed in 1970 as part of the Organized Crime Control Act. RICO prohibits acquiring, exploiting, or receiving income from an enterprise through a pattern of racketeering activity. It allows for the prosecution and imposition of civil penalties for racketeering activities conducted as part of an ongoing criminal enterprise. Through this federal law, multiple cases have been prosecuted in Puerto Rico.

There are other laws in Puerto Rico that seek to address this problem that afflicts society, especially for businesses susceptible to carry out activities involving money laundering. Since 1993, Puerto Rico has been governed by the Puerto Rico Banking Act, as amended<sup>197</sup>, which is also applicable to corporations engaged in banking business. This law establishes the requirements for incorporation, commencement of

---

[Laundering%20of.Contents%7D%20%20%28Contains%20amendments%20incorporated%20by%20the%20following%20laws%3A.](#)

<sup>194</sup> NotiCel (2020), Lawsuit charges "racketeering" scheme in PR bankruptcy,

<https://www.noticel.com/junta-fiscal/ahora/top-stories/20200303/demanda-imputa-esquema-de-crimen-organizado-en-la-queiebra-de-pr/>, accessed September 9, 2023.

<sup>195</sup> 138 D.P.R. 669; *People v. Meliá León*. Meliá León; Enrique Meliá León, former lieutenant-colonel of the Puerto Rico Police, was tried and found guilty of three counts of aggravated bribery and one count of violation of Act 33 of 1978, as amended, known as the Puerto Rico Anti-Organized Crime and Money Laundering Act; 139 D.P.R. 361 (1995) *People v. Santiago Feliciano*, prosecutor charged with the crime of aggravated bribery and violation of Act 33 of 1978, as amended, known as the Puerto Rico Anti-Organized Crime and Anti-Money Laundering Act; 139 D.P.R. 361 (1995) *People V. Santiago Feliciano*, prosecutor charged with the crime of aggravated bribery and violation of Act 33 of 1978, as amended, known as the Anti-Organized Crime and Money Laundering Act of the Commonwealth of Puerto Rico.

<sup>196</sup> Racketeer Influenced and Corrupt Organization Act,"

<https://www.ca3.uscourts.gov/sites/ca3/files/Chap%206%20RICO%20May%202013Rev.pdf>.

<sup>197</sup> Act No. 55 of May 12, 1933, as amended.

operations, restrictions, minimum amount of capital to be established in Puerto Rico, requirements regarding the board of directors, name of the institution, payment of capital, shareholders, among others. It also provides for the procedure to be followed when a representative of the bank performs undue actions, either by breach of trust, or intentionally misappropriates or misapplies money, funds, or credits of the bank, or securities existing in the same, or makes false entries in any book, report or statement of the bank or foreign bank, with intent, in any such case, to injure or defraud, and any person who willfully aids or permits any officer, agent or employee to commit any violation of this section, shall be deemed guilty of a felony, and shall be imprisoned for a term not exceeding ten years.

In 2010, the Law for Regulating Money Services Businesses<sup>198</sup> was passed, aimed at stricter and more uniform regulation of money laundering. This law establishes requirements for the licensing of services, and also imposes responsibilities and prohibitions. The Office of the Commissioner of Financial Institutions (OCIF) is the government agency responsible for the implementation of this law. The requirements include providing full name, physical address/portal, business name, criminal record certificate, copy of financial statements of the petitioner, amount and description of liquid assets under oath of the principal financial officer, description of the origin of the money and of any line of credit to be used by the petitioner to provide any money service business in Puerto Rico, certified under oath; among others.

From the analysis conducted it emerges that the legal scaffolding and supervisory and oversight processes of the financial system need to be strengthened in areas such as: money laundering risk assessments to determine anti-money laundering risks or vulnerabilities; how those risks/vulnerabilities are addressed; open disclosure of regulated entities' compliance with national anti-money laundering provisions; what sanctions are imposed for non-compliance; disclosure of public officials' compliance data on their assets; independent verification of information; and disclosure of sanctions for non-compliance.

## **BEST PRACTICES**

- There is state and federal legislation and regulations with provisions to address the prevention and criminalization of money laundering.
- The information requirements for financial entities authorized to operate in Puerto Rico are required to keep data and documents of financial transactions including relevant reports on unusual transactions.
- The schemes for preventing and combating crimes involving financial operations with resources of illicit origin are monitored through state and federal financial system regulators and periodic reports are made.

## **DEFICIENCIES**

- There are still deficiencies in money laundering laws and policies that affect the adoption of preventive measures to protect assets.
- Lack of effective measures to identify, prevent, sanction and combat money laundering activities of senior public officials and proceeds of organized crime.

---

<sup>198</sup> Act 136-2010, as amended.

- ❑ Limited disclosure and publication of financial and operational information of financial ecosystem entities.

#### **4.2.2 Article 53 and 56 - Measures for direct recovery of property**

On August 24, 2022, the Legislature approved Act No. 76<sup>199</sup> to make mandatory the imposition of the penalty of restitution in cases of crimes against the treasury. This Act amended the Penal Code of Puerto Rico, and provides for a series of penalties to be imposed in a discretionary manner by the court, among which "Restitution" is included. Prior to this Act, the Penal Code did not provide for the penalty of restitution as an option for all crimes where the conduct is subject to compensation, but expressly or discretionally provided for specific crimes that the Legislature had determined to carry such penalty.

In this 2022 amendment, the Legislature itself recognizes in its explanatory statement that it is imperative that the criminal system of Puerto Rico include restitution as a mandatory penalty in those specific crimes where a specific and quantifiable impairment or loss of public property has been proven or is part of the elements of the crime. This action shows the interest of the Legislature to build a rule of law in which the person with access to public funds is subject to the highest degree of responsibility and cleanliness in their administration. The law includes a wide range of crimes that require the restitution of assets and establishes the sanctions and penalties for each crime: aggravated illegal appropriation, extortion, unlawful taking advantage of public works or services, alteration or mutilation of property, bribery, undue influence, breach of duty, negligence in the performance of duty and embezzlement of public funds.

Thus, in Puerto Rico, by law, there are measures for the direct recovery of public property. Thus, in crimes such as Unlawful Appropriation (art. 182) involving public property or funds, Alteration or mutilation of property (art. 257), Bribery (art. 259); Undue Influence (art. 261), Breach of Duty (art. 262), Negligence in the performance of duty (art. 263), Embezzlement of public funds (art. 264) the court no longer has discretion in establishing the penalty of restitution, but the law requires its imposition.

However, these tax restitution measures will be effective as long as a criminal proceeding is initiated against the person alleged to have committed the act. In administrative proceedings such as initiatives under the Comptroller's Office Act, the Government Ethics Act, or the Anti-Corruption Code for the New Puerto Rico for the same facts, restitution of public property is not required.

Only the Office of the Inspector General recognizes in its organic law its duty, in Article 7, to "Maintain information related to the costs of investigations of non-governmental entities that engage in misconduct and to cooperate with administrative and judicial agencies in the recovery of such costs. Further on, Article 16 states that funds recovered through OIG assessments on covered government agencies, departments or entities shall revert to the General Fund or to the account or fund of their origin at

---

<sup>199</sup> Act No. 76 of the year 2022. To amend Sections 58, 80, 182, 191, 252, 257, 259, 261, 262, 263, and 264, of Act No. 146 of 2012, Penal Code of Puerto Rico, to make mandatory the penalty of restitution, <https://www.lexjuris.com/lexlex/leyes2022/lexl2022076.htm>.

the end of each fiscal year in which they are recovered. The law does not provide mechanisms for cost recovery.

Despite the vast legislation to address government corruption, we see that there is no agency responsible for the recovery and recovery of public funds and resources that have been misappropriated, diverted, received as a result of public corruption, fraud, fraud, or for having provided false information, among other crimes against the State. Likewise, there is no legal action, mechanism or remedy that allows the agencies, through the responsible officials, to recover the assets, funds or public resources or those belonging to municipalities and public corporations that have been disposed of.

Moreover, in the face of the many laws passed in the past 20 years recognizing the country's need to improve economic development, promote private capital investment<sup>200</sup>, achieve economic recovery, foster and achieve institutions that provide quality and excellent services, promote sound public administration, effective oversight of the use of government funds and property, prevent, combat and eradicate corruption, achieve savings and recover lost credibility, the concept of asset recovery remains outside of the legislation. Even though the Fiscal Oversight Board has required that the way in which the Government provides its services be restructured and that the State be innovative in finding methods to overcome the current deficit situation,<sup>201</sup> the recovery of assets acquired through corruption and illicit activities is not perceived as a priority.

The concept of recovery has only been seen as a process used to return to the normal conditions in which the area was before the natural disasters<sup>202</sup>, as a mitigation measure, and in the process of harmonizing the efforts of the Government of Puerto Rico to provide a rapid and effective recovery.

## **BEST PRACTICES**

- Puerto Rico has a recently approved regulatory framework to address the restitution of public assets and property resulting from corruption.

## **DEFICIENCIES**

- It is not possible for citizens to access reliable information on the assets and amounts seized by the State. Information on these issues is scattered, of low quality, and is used in a non-technical manner for political purposes.
- There is no agency responsible for the recovery and recovery of public funds and resources that have been misappropriated, diverted, received as a result of public corruption, deceit, fraud or for having provided false information, among other crimes against the State.
- There is no legal action, mechanism or remedy that allows agencies, through the responsible officials, to recover public property, funds or resources or those belonging to municipalities and public corporations.

---

<sup>200</sup> See Explanation of Motives of the Puerto Rico Incentives Code, Act No. 60 of July 1, 2019, as amended; "Puerto Rico Financial Advisory Authority and Fiscal Agency Act" [Act 2-2017, as amended]; "Puerto Rico Inspector General Act" Act No. 15 of February 28, 2017, as amended.

<sup>201</sup> Statement of Motives of the "Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico" [Act 8-2017, as amended].

<sup>202</sup> "Puerto Rico Department of Public Safety Act" [ Act 20-2017, as amended], Section 5.03.

### 4.2.3 Article 57 - Restitution and Disposal of Assets

In Puerto Rico, there is no specific law requiring measures for the restitution or direct recovery of public property. However, the different laws that address this issue provide a basis for the courts, in determining guilt, to impose either imprisonment, restitution, or both.

The Penal Code of Puerto Rico<sup>203</sup> defines and establishes, in Art. 58, that the restitution penalty for natural persons consists of the obligation imposed by the court to compensate the victim for the damages and losses caused to his or her person or property as a consequence of the crime. The restitution penalty does not include mental suffering and anguish. The court may direct that the restitution penalty be satisfied in money, by the rendering of services, or the delivery of the illegally appropriated property or its equivalent in case it is not available. In all these cases the court shall bear in mind that the convicted person shall satisfy the restitution penalty with his present and future assets. In the case where the restitution penalty is to be satisfied in money, the amount shall be determined by the court taking into consideration: the total damages to be restituted, the pro rata participation of the convict, whether there were several participants in the criminal act, the convict's ability to pay, and any other element that allows an adequate fixation to the circumstances of the case and the condition of the convict. The restitution penalty must be satisfied immediately. However, at the request of the convicted person and at the discretion of the court, taking into account the economic situation of the convicted person, it may be paid in full or in installments within a reasonable term fixed by the court from the date on which the sentence has become final.

Whereas, Art. 80 indicates that the restitution penalty consists of the obligation imposed by the court on the legal person to pay to the injured party damages and losses it has caused to its person and property as a consequence of its criminal act. The restitution penalty shall be fixed taking into account the corporate capital of the legal person, the state of business, the nature and consequences of the offense and any other relevant circumstances. In such cases the convicted legal person shall serve the restitution penalty with its present and future assets.

Title IV of the Criminal Code, Crimes against the Governmental Function, defined the crimes against the governmental exercise for which a court shall impose, when guilty, both imprisonment and restitution. For example, offenses such as unlawful taking advantage of public works or services, bribery, breach of duty, and negligence in the performance of duty, in addition to the penalty of imprisonment for the fixed term established, a Court shall impose a restitution penalty that may vary up to ten thousand dollars (\$10,000) depending on the offense.

However, in other instances when a public official or employee, former public official or former public employee is found guilty by a court in crimes of Illicit Enrichment, Negotiation incompatible with the exercise of public office, Improper Intervention in government operations, or withholding public property shall be punished with imprisonment for the fixed term established, but leaves to the discretion of the Court the imposition of restitution penalty.

---

<sup>203</sup> Act 146-2012, as amended.

However, there are other actions that even if they are acts of a public official or employee, former public official or former public employee and he/she is found guilty, the Criminal Code does not require the Court to consider imposing the penalty of restitution in crimes. For example, a public official or employee, former public official or former public employee who has unjustifiably enriched his patrimony or that of a third party, when such enrichment has occurred after the assumption of the position, employment or assignment and up to five (5) years after the end of his performance, shall be punished with imprisonment for a fixed term of eight (8) years, but is not required to pay restitution.

It is the Department of Justice<sup>204</sup> who will urge the appropriate actions for the restitution of funds and property obtained as a result of the commission of crimes of government corruption, organized crime and controlled substances or any other criminal act.

In another area, the Office of the Commissioner of Financial Institutions, under Sec. 20, has the power to impose administrative fines on any financial institution or person that violates the provisions of the law or its regulations, but in no case shall it exceed five thousand dollars (\$5,000). Any financial institution or person who violates the provisions of the other laws and regulations under the administration and jurisdiction of the Commissioner shall be subject to the penalty provided for such violation in the applicable law or regulation.

The court, at its discretion, may impose the fixed penalty of imprisonment, a fine of not less than five thousand (5,000) dollars, nor more than ten thousand (10,000) dollars for each violation, a restitution penalty, or any combination thereof. Likewise, any person who takes part, instigates or cooperates in the commission of these acts shall be sanctioned, regardless of whether or not he/she obtained personal economic gain.

In cases of the Department of the Treasury, where officers and employees of the Department of the Treasury exercising their functions by authority of the Puerto Rico Internal Revenue Code of 2011<sup>205</sup> commit acts constituting a crime, as typified by the Penal Code of Puerto Rico in force, they shall be subject, in addition, to disciplinary sanctions. It also provides that in any case of conviction for any felony or misdemeanor established by this Internal Revenue Code, in addition to the restitution of the funds owed to the Secretary, including but not limited to taxes, interest, surcharges and penalties owed or withheld and not deposited. Depending on the degree of the offense and the amount, the convicted person shall be punished with a fine, or with imprisonment or both, at the discretion of the Court, plus the costs of the proceeding.

In addition, the Inspector General may also impose administrative sanctions for violations of the rules and laws under its authority. The OIG may also impose other sanctions, such as requiring the restitution of public funds, income earned and accrued interest. It may also require whoever obtains an economic benefit as a result of violations of the Law to pay three times the value of the economic benefit received.

---

<sup>204</sup> Act 205-2004, as amended, Art. 43.

<sup>205</sup> Act 1-2011, as amended.

In addition, failure on the part of any person to comply with the provisions of the Anticorruption Code for the New Puerto Rico<sup>206</sup> wherein he/she seeks to intervene with a public servant or former public servant to obtain an improper benefit, shall be guilty of a felony punishable by imprisonment for a fixed term of three (3) years and a fine of five thousand (5,000) dollars. In addition, the Court may impose the penalties of restitution, community service, suspension or revocation of license, permit or authorization.

## **BEST PRACTICES**

- Efforts to strengthen the legal and regulatory framework in relation to combating money laundering, direct asset recovery and restitution of stolen public assets.
- Recognition in several laws of the necessity and merit of the restitution of public property.

## **DEFICIENCIES**

- Lack of confidence in government procedures.
- Legal barriers and slow, bureaucratic requirements.
- Perceived impunity for money laundering offenses.
- The agencies of the anti-corruption group are under-resourced (limited budgets and insufficient staffing).
- Operational barriers and barriers to communication and dissemination of government efforts.
- Lack of uniformity in regulation across agencies.
- Discretionary application of the Court in imposing restitution in various instances involving corruption

### **4.3 Statistics<sup>207</sup>**

It was not possible to obtain statistics to identify information and data on money laundering and asset restitution cases by concept and by year during the intelligence, investigation and prosecution phases. Given the relevance of the information related to money laundering and asset restitution cases it is recommended that the agencies of the anti-corruption component compile and publish in open format or disclose upon request respecting the information that needs to be protected the following information:

#### **Money laundering**

##### **Information/intelligence phase**

- ✓ Number of suspicious transaction reports (STRs) filed by each category of obligated entities - Banks and Financial Institutions, Non-Financial Businesses and Professions (NFBP).
- ✓ Number of deferral orders adopted in reported transactions.

---

<sup>206</sup> Act 2-2018, as amended.

<sup>207</sup> The following tables follow the format of this Eurostat report:

<http://ec.europa.eu/eurostat/documents/3888793/5856465/KS-TC-13-007-EN.PDF/69cde077-3bd9-4d0d-8c19-a6fe3608c2cd>.



- ✓ Number of money laundering investigations conducted independently by law enforcement (without a prior STR).
- ✓ Number of suspicious cash activities at the border reported to the FIU (including those based on declarations and smuggling).
- ✓ Number of SARs sent to law enforcement and on which further analysis has been performed.
- ✓ Number of staff dedicated full time (or full time equivalent) to money laundering in the FIU.

### **Research phase**

- ✓ Number of cases initiated by law enforcement on the basis of SARs sent by
- ✓ Number of full-time (or full-time equivalent) staff dedicated to money laundering in law enforcement agencies FIU
- ✓ Number of cases brought to trial: originating from SARs, CTRs and independent law enforcement investigations
- ✓ Number of full-time staff (or full-time equivalent) dedicated to money laundering investigation in the judiciary

### **Judicial phase**

- ✓ Number of persons/legal entities convicted of money laundering offenses.
- ✓ Number of convictions for laundering the proceeds of crimes committed abroad.
- ✓ Number of convictions for crimes other than money laundering arising from STRs.
- ✓ Number of convictions by type of money laundering offenses.
- ✓ Number of non-suspended custodial sentences by duration (as main offense, as predicate offense)

## **4.4 Brief analysis and 4.5 Information on the recovery of assets cases**

### **Asset recovery**

It was not possible to obtain information by request or on the web pages of the agencies of the anti-corruption component information or statistical data related to asset recovery cases or in progress. Therefore, it is recommended that this information be compiled and published in the future:

### **Judicial phase**

- ✓ Number of freezing procedures (based on court order)
- ✓ Number of forfeiture proceedings
- ✓ Number of requests received for freezing orders from other countries
- ✓ Value of frozen assets
- ✓ Number of requests received for confiscation orders from another country
- ✓ Value of confiscated assets
- ✓ Amounts recovered from assets
- ✓ Amounts returned

## V. Recent developments

In recent decades it has been possible to demonstrate the negative relationship and cost of corruption on: economic growth and competitiveness; social variables; human rights; poverty; financial matters; and investment. This discourages investment because there is no certainty of the real costs of projects or the time to achieve them. This makes the economy uncompetitive, highly costly and slow to make decisions. As a result, the political, social and economic conditions that would allow for the implementation of public policies that effectively address the main social needs continue to deteriorate.

The results of the research studies conducted by the Governance Center point out that "our society continues to face corruption as a serious impediment to progress in improving public governance, the consolidation of democratic rights and levels of governance that allow for inclusive economic growth and sustainable social development". It is evident that both the negative effects of corruption on sustainable development and economic competitiveness, as well as the methods to combat it, have focused primarily on the normative aspects and compliance with laws and regulations and have not considered the structural causes of corruption and its impact on the economy and society.

The magnitude of the challenge posed demands that the search for ideas to rethink the usual way in which corruption has been fought cannot be undertaken exclusively by the public sector. The construction of the roadmap to follow to prevent, combat and penalize corruption and strengthen probity is not a simple task. It is necessary to embrace new trends and good international practices, learn from past efforts and build bridges with other actors, such as academia and organized civil society, so that they can actively participate in the design and implementation of effective measures to combat the phenomenon.

Moreover, it is necessary to make transparent those public areas where opacity reigns, to give a voice to the victims of this phenomenon and to put an end to the citizen indifference on which the corrupt feed. For this, an agile attitude will allow, first of all, to warn and then respond in a timely manner to the sophisticated forms that this phenomenon takes. All this, without losing sight of the need to establish a long-term vision to attack the deepest roots of the problem.

In short, fighting corruption and empowering the public sector to improve its efficiency, efficacy and effectiveness are two sides of the same coin. We all have to contribute to ensure that those in power stop putting the political-partisan game before good governance and management of public affairs. Likewise, it is necessary to rethink the way and the process of gaining access to political power in the country.

To address the deficiencies and gaps in the legislation to combat government corruption in Puerto Rico, several organizations have proposed amendments to the anti-corruption code to strengthen its supervision and oversight and to extend the Code of Ethics for Contractors to the legislative and judicial branches. The proposed legislation, still under evaluation and discussion in the legislature, also proposes: increasing the information contained in the registry of convicted persons; ensuring the transparency of the processes and results of government management aimed at

combating corruption; and the creation of an anti-corruption observatory to diagnose schemes, patterns and conducts that foster corruption<sup>208</sup>. In this instance, Act No. 102 of 2023<sup>209</sup> was recently approved to establish the conviction of a contractor of the Government of Puerto Rico for any of the offenses set forth in this Act entails the immediate termination of the contract without any discretion by the relevant agency and to establish sanctions and penalties for the offenses incurred.

Likewise, the most recent attempt to review and reform the legal and political anti-corruption scaffolding carried out by the Executive and the Legislature, allowed for the advancement of changes to the legislation related to the electoral law. In this regard, the Office of the Electoral Comptroller (hereinafter "OCE") proposed a series of amendments to Act 222- 2011, as amended, which is its organic law. The proposed amendments are contained in P. de la C. 1676, a copy of which is included herewith. Said bill received a positive report from the Committee for the Study and Evaluation of Puerto Rican Constitutional Law and Proposals for Amendments to the Constitution of the Commonwealth of Puerto Rico and Electoral Matters of the House of Representatives, which issued an amended engrossment. The approval of the bill was pending at the conclusion of the Legislative Session of June 30, 2023<sup>210</sup>.

A fundamental aspect to be addressed has to do with the way in which campaign and political party financing has become "a source of corruption, a factor of inequity and restriction of the right to be elected, and even a limiting factor for the exercise of politics". In addition to having a dispersed regulatory framework in terms of accountability of campaign financing, there are still problems associated with the weakness in the application of these norms, the lack of supervision of private donations, the risk of deviation regarding the origin, amount and destination of campaign resources, the incidence of illegal resources in electoral contests, which opens opportunities for clientelistic activities by illegal interests through the financing of electoral campaigns. According to Alejandro Nieto (1997) "the inoperativeness of preventive and administrative control mechanisms has its origin in the government's will to perpetuate corrupt practices<sup>211</sup>."

Likewise, the Government Ethics Office has been promoting a reform to the Government Ethics Law of 1985, which was last amended in 2012, to broaden its scope and, among other priorities, strengthen the legal regulations to curb nepotism and the interference of partisan politics in government institutions<sup>212</sup>. For its part, a bill was filed in the House of Representatives to create the Anti-Corruption and Public

---

<sup>208</sup> WIAC 740AM (2022), Anti-Corruption Code Amendments Introduced, <https://wiac740.com/index.php/2022/04/12/presentan-enmiendas-al-codigo-anticorrupcion/>.

<sup>209</sup> Act No. 102 of 2023 To amend Sections 3.4 and 3.7 of Act No. 2 of 2018, Anticorruption Code for the New Puerto Rico, <https://www.lexjuris.com/Lexlex/Leyes2023/lexl2023102.htm>.

<sup>210</sup> El Vocero (2023), See little likelihood of amendments to the Electoral Code, [https://www.elvocero.com/gobierno/legislatura/exclusivo-ven-pocas-probabilidades-de-enmiendas-al-codigo-electoral/article\\_654c76d8-5b13-11ee-a05f-4ff7fad7e95a.html](https://www.elvocero.com/gobierno/legislatura/exclusivo-ven-pocas-probabilidades-de-enmiendas-al-codigo-electoral/article_654c76d8-5b13-11ee-a05f-4ff7fad7e95a.html), accessed September 9, 2023.

<sup>211</sup> Alejandro Nieto (1997), La corrupción en la España democrática. Editorial Ariel, Spain.

<sup>212</sup> El Vocero (2022), Ethics Act Amendments Needed to Curb Nepotism and Politics in Agencies, [https://www.elvocero.com/gobierno/agencias/requieren-enmiendas-a-la-ley-de-tica-para-frenar-el-nepotismo-y-la-pol-tica/article\\_b83c7c80-7d84-11ec-8713-cf4e8c67eb35.html](https://www.elvocero.com/gobierno/agencias/requieren-enmiendas-a-la-ley-de-tica-para-frenar-el-nepotismo-y-la-pol-tica/article_b83c7c80-7d84-11ec-8713-cf4e8c67eb35.html);

El Nuevo Día (2023), The proposal to eliminate the Office of Government Ethics, <https://gobernanzapr.org/wp-content/uploads/2023/09/Opinion--La-propuesta-para-eliminar-la-Oficina-de-Etica-Gubernamental-El-Nuevo-Dia.pdf>, accessed September 14, 2023.

Integrity Office and repeal the Independent Prosecutor Panel Law, the Inspector General Law and the Organic Law of the Office of Government Ethics<sup>213</sup> .

---

<sup>213</sup> Microjuris (2023), They seek to create Anti-Corruption and Public Integrity Office, <https://pr.microjuris.com/noticias/noticia/buscan-crear-oficina-anticorrupcion-e-integridad-publica>. P. de la C. 1701, <https://aldia.microjuris.com/wp-content/uploads/2023/04/PC1701-Radicado.pdf>.

## **VI. Conclusions and Recommendations**

From the assessment and evaluation of Puerto Rico's compliance with the anti-corruption provisions of the UNCAC, it appears that Puerto Rico has largely implemented the anti-corruption provisions of the UNCAC with respect to the categories of information related to Chapter II (preventive measures), Chapter III (criminalization of corruption) and Chapter V (return of assets).

The results of the compliance analysis reveal that combating corruption and improving governance and public management capacity requires an efficient public administration scaffolding that makes it possible to fight corruption through coherent and organized government management and to promote shared prosperity and inclusive social development. The essential problem lies in the fact that unlike countries with superior performance in public management, such as Denmark, Portugal and New Zealand, Puerto Rico has not addressed the reforms of its governance and government administration system required by the times we live in. In addition, it emerges that political inversionism must be eradicated and the anti-corruption code and laws related to the electoral system and transparency and access to government information must be revised.

Due to the failed public policies adopted by the incumbent governments more than a decade ago in the fight against corruption in Puerto Rico, the problem continues to be a serious and delicate one. This evil undermines the individual's trust in institutions and is susceptible to destroy the collective effort merely because of the conduct of one of a few. The theft of public assets is a very serious problem with a devastating impact on the economy and society. While it was not possible in this report to determine the exact magnitude of the proceeds of corruption circulating in the economy, the estimates demonstrate the seriousness of the problem.

In this context, the research studies conducted by the Governance Center over the past ten years reveal that, at an extremely difficult time for Puerto Rico due to the weaknesses of governance, institutional deterioration and the increase in corruption, it is urgent to strengthen governance, regenerate governance and improve institutional capacity. Likewise, the Center for Governance's research shows that the coronavirus pandemic has brought with it great challenges to governance and public integrity, which demonstrates that in order to mitigate and better face the future, it is imperative to address the lack of transparency that allows corruption to thrive during catastrophic events.

It is necessary to highlight that the crisis caused by hurricanes, earthquakes and the COVID-19 pandemic acted as catalysts for corruption starting in 2017, fostering the conditions for increased opacity in the management of public affairs and the misuse of fiscal resources, direct awards, lack of transparency, and the deterioration and overburdening of institutions. In addition, the levels of poverty, insecurity, violence and impunity continued to increase.

In recent years, the country has made significant efforts to bring about a transformation with the triad for anti-corruption system reforms aimed at preventing, combating and penalizing corruption. The adoption of the Anti-Corruption Code in 2018 represented a step forward to drive important changes with coordination between the government bodies responsible for the anti-corruption system.

However, efforts to fight corruption have not been sufficient. After the approval of the Anti-Corruption Code, the country has been experiencing an increase in cases and

the corruption modalities identified have impacted officials from the highest levels of government, including former governors, legislators, mayors and private sector businessmen. When analyzing these corruption cases, several structural factors have been identified that contribute to this problem:

- (1) the erosion of institutional capacities at the state, municipal, legislative and judicial levels;
- (2) deterioration in the justice systems;
- (3) the lack of transparency and citizen inclusion in the solution of problems that affect them and in the decision-making processes;
- (4) increasing inequality and poverty; and
- (5) the high level of impunity that reflects the obstacles still facing the gap between practical reality and legal reality in the fight against corruption in the country.

The Governance Center proposes that the agenda for improving public governance in Puerto Rico must give priority to the complex connections and interrelationships between the reforms required to combat corruption, the strengthening of transparency, public integrity and accountability, and the urgent need to promote citizen participation. Since these issues are intimately interrelated, they cannot be understood separately and must be addressed with a firm will and a great sense of responsibility in order to successfully implement them in practice.

## 6.1 General

The following is a summary of the conclusions and recommendations for priority actions identified to strengthen the implementation of UNCAC provisions:

1. The analysis shows that weaknesses in the legal framework and the lack of coherence in current public policies open the door to corruption. The priority areas to be addressed are:

**Figure No. 2 Priority areas to be addressed in the anti-corruption legal framework**



2. Puerto Rico has an anti-corruption legal framework that satisfactorily complies with international standards and the provisions of the UNCAC. However, its application in practice must be improved. This requires strengthening political will, promoting greater coherence among the institutions responsible for

implementing anti-corruption policy, and strengthening budgetary, technological and personnel resources with specialized expertise.

3. Although there is a recent regulatory adequacy (Anti-Corruption Code, 2018) and laws related to transparency and access to information (Transparency and Expedited Procedure for Access to Public Information Act, Act 141 and the Puerto Rico Government Open Data Act, Act 122, 2019), with which, to a large extent satisfactorily complies with internationally recognized standards. These provisions are not sufficient if they are not accompanied by political will and capacity-building processes in key individuals, institutions and organizations for their implementation, mainly in the fiscal and judicial spheres.
4. The institutional framework for the implementation of the anti-corruption system must be reviewed and requires greater coherence and the strengthening of the resources of the institutions responsible for preventing, combating and penalizing corruption.
5. The principles of transparency, accountability and citizen inclusion should play a leading role in the implementation of anti-corruption policies. However, in practice, the current regulations have not achieved an adequate articulation or a solid institutional framework to fully comply with the functions delegated by law to government agencies.

## **6.2 By UNCAC article**

### ***Article 5 - Prevention of Corruption Policies and Practices***

6. Strategically address systemic public governance deficiencies as a way to improve the country's governance, while incorporating anti-corruption policies into other key strategies, such as education, health, the energy system, public housing, public works and highways, public safety and open government.
7. Amend the anti-corruption code to promote greater coherence and articulation in its implementation, improve results and their impact on preventing, combating and penalizing corruption, and promote collaboration and alignment with the institutional framework.
8. Closing the gap between public policies and anti-corruption strategies and their application in practice. Areas for improvement were identified regarding transparency and access to information and citizen inclusion in the policy formulation and implementation process.
9. Improve the strategies for education, communication and dissemination of the initiatives adopted to prevent, combat and penalize corruption in a citizen's language, taking into account the particularity represented by the phenomenon of political clientelism, corruption and impunity in Puerto Rico.
10. Promote public integrity behavior to prevent corruption in both the public and private sectors.

11. Develop indicators and metrics to monitor and evaluate compliance with anti-corruption policies and strategies.
12. Ensure that the proposed changes to the Anti-Corruption Code submitted to the Legislature translate into a genuine institutional change in organizational behavior and culture among economic actors and society in general.

### ***Article 6 - Corruption Prevention Bodies***

13. Review the institutional framework of the ecosystem of agencies responsible for implementing the triad of anti-corruption strategies -preventing, combating and penalizing corruption- ensuring better articulation and participation of all agencies involved in an intersectoral and cross-cutting manner.
14. Evaluate the agencies that make up the anti-corruption system in terms of their individual and collective performance, with a focus on results and not only on processes.
15. Review the appointment processes of the secretaries/directors of the agencies in charge of implementing the anti-corruption system so that they are term appointments, free of political-partisan criteria and influence.

### ***Article 7.1 - Employment in the public sector***

16. Eliminate discretionality and strengthen the processes of access to public service and the appointment of high-level officials.
17. Outline strategy and establish procedures to ensure the elimination of political patronage in recruitment and personnel selection practices in the public service. To avoid political patronage, appointments of secretaries and directors of anti-corruption agencies should be term appointments.
18. Identify and train officials whose public office is most vulnerable to corruption, in accordance with Article 7.1.b. of the UNCAC.

### ***Article 7.3 - Political financing***

6. Recurrent irregularities in the identification of the origin of campaign funds and in the limits of collections require the strengthening of mechanisms to verify the veracity and avoid manipulation in the management of income and expenses of political campaigns.
7. Amend the Electoral Code to strengthen the integrity of electoral processes and improve the oversight of political parties.
8. Strengthen the mechanisms and tools for auditing the financial records of political parties in order to determine whether transactions, operations and financial records are reliable, timely and justifiable.
9. Provide better budgetary, technological and human resources to the regulatory power of the electoral system.



10. It is necessary to strengthen the oversight of PACs to avoid undue coordination and interactions between the candidate and his or her electoral committee with the political action committee.

**Articles 7, 8 and 12 - Codes of conduct, conflicts of interest and declarations of assets**

11. Establish indicators and standards and strengthen oversight of compliance with ethical standards for public servants, contractors and service providers.
12. Ensure that ethics committees in public sector institutions and agencies have competent staff and clear mandates, oriented toward prevention rather than compliance mechanisms.
13. To seek homogenization in the implementation of the Code of Ethics and to supervise compliance by institutions at all levels: state, municipal, legislative and judicial.
14. Establish clear policies and action protocols for the management of all forms of corruption, especially situations of conflict of interest, fraud and bribery.
15. Strengthen the document management and accountability capabilities of the regulated entities.

**Articles 8.4 and 13.2 - Whistleblowing and whistleblower protection mechanisms**

16. Strengthen cross-cutting institutional coordination processes to achieve effective implementation of measures to limit discretion and ensure security.
17. Ensure the effective implementation of the public policy and legal framework for the protection of whistleblowers, regarding who are whistleblowers, which are the protection measures that benefit them, as well as incentives for whistleblowing, and the means of effective defense available to them in the event that the protection measures are not complied with and damages are caused.
18. Strengthen complaint mechanisms to ensure follow-up, discretion and effectiveness of whistleblower protection measures, addressing the problem of insecurity and the inefficiency of measures to protect whistleblowers and human rights defenders.
19. Establish public advocacy measures and systems to generate incentives to improve the conditions for reporting irregularities and acts of corruption, including fraud and money laundering.
20. Strengthen mechanisms to guarantee the security of whistleblower data and their anonymity.

### **Article 9.1 - Procurement**

21. Adopt international standards of transparency in contracting policies that favor open contracting and regulate situations that limit transparency and healthy competition in government contracting processes.
22. Eliminate discretionality in contracting processes and regulate the cases in which contracting by direct award is allowed, reducing the possibilities to a minimum, except in justified emergency cases, and establishing stricter control and verification mechanisms.
23. Optimize the use of digital mechanisms and tools for tracking, supervision and monitoring in public procurement processes.

### **Article 9.2 - Management of public finances**

24. Strengthen transparency and accountability practices and processes in budget formulation and fiscal management to foster an environment that promotes fiscal responsibility and discourages corruption.
25. Align actions and strengthen the coordination of the agencies that make up the budget formulation system and the management of public finance functions. A significant disconnect was identified in the linkage between the strategic planning process and budget formulation and its subsequent execution and evaluation of projected results.
26. Guarantee public spaces for discussion for the participation of society in the design of the budget and the definition of priorities for the management of public finances.
27. Strengthen the strategic use of new information technologies to improve contracting, transactions, management, destination and use of public resources.
28. Guarantee the allocation of sufficient budget and resources to the authorities that make up the anti-corruption component so that they can carry out their functions effectively and efficiently.
29. Establish stricter and more efficient mechanisms for monitoring the management, destination and use of public resources.
30. Improve the systems for consulting audit reports and make their results transparent and disclosed.

### **Articles 10 and 13.1 - Access to information and participation of society**

31. Amend Acts 141 (Transparency Act, Expedited Procedure for Access to Public Information) and 122 (Government of Puerto Rico Open Data Act) to strengthen areas of weakness related to the regime of exceptions and inconsistencies

between the approved statutes and the development of indicators to evaluate and follow up on delegated obligations and their implementation.

32. To provide society with transparency and open data mechanisms that make true citizen participation in decision-making and governmental oversight viable in practice.
33. To guarantee citizens access to quality, truthful, agile and timely information.
34. Maximize the value of data as a strategic asset in the fight against corruption by using data from traditional sources with statistics and smart data, as well as risk indicators and monitoring models recognized by international entities.
35. Develop education and awareness programs on anti-corruption throughout society. Build an informed, participatory and active citizenry, and guarantee effective spaces for social participation in the exercise of democratic development and design of public life and the fight against corruption.
36. To guarantee spaces and encourage the involvement of key actors from the governmental and business sectors and society in general to promote and strengthen the actions of the anti-corruption system.

#### ***Article 11 - Judiciary and Prosecutor's Offices***

37. Eliminate discretionality, effectively combat impunity and apply effective sanctions so that the justice system is independent and impunity does not exist in both the criminal and administrative spheres. The investigation, oversight and sanction mechanisms will fulfill their function of dissuading the practice of acts of corruption, as long as the sanctions established by law are applied.
38. Strengthen administrative capacities and provide the Department of Justice with the resources and specialized expertise required to combat the high levels of corruption and impunity in the country. Create specialized chambers to hear corruption cases and promote their full integration.
39. Adopt international standards to institutionalize appointment processes for judges, prosecutors and attorneys general aimed at strengthening judicial independence and combating corruption.
40. Ensure that the courts, the attorney general's office and the public integrity division are independent, autonomous and effective in real terms.

#### ***Article 12 - Transparency of the private sector***

41. Strengthen the private sector's commitment to the implementation of strategies to prevent, combat and penalize corruption.
42. Develop regulations to promote the incorporation of anti-bribery and anti-fraud compliance programs in the business sector.

43. Promote the adoption of anti-corruption codes of conduct in the business sector.

#### ***Article 14 - Measures to Prevent and Combat Money Laundering***

44. Improve the practical application of state and federal anti-money laundering legislation to close the gap between the existing legal framework and its actual implementation.
45. Develop and implement regulations and measures to collect and exchange information on the beneficial ownership of legal persons, and legal arrangements to facilitate the investigation and prosecution of corruption, in accordance with current legislation.
46. Establish a publicly accessible database to facilitate the identification of beneficial owners of companies in real time measures for direct asset recovery, tools for confiscation purposes, and asset restitution and disposal.
47. Address asset recovery as one of the weakest links in the legal framework and anti-corruption strategy. Promote the adequate implementation of the recently approved legislation on asset recovery, and adapt the regulatory framework to the standards of asset recovery, disposal and restitution.
48. Increase control and surveillance actions to return to the people what has been stolen.
49. Keep and publish a complete, clear, updated and real record on the administration, disposal, restitution and disposal of assets and property.

#### **Articles 53, 56 and 57 Measures for direct recovery of property and restitution and disposal of assets**

50. Monitor the implementation in practice of the provisions of the recently approved Asset Restitution Act No. 76 of 2022.
51. Strengthen related regulations to identify beneficial owners and establish a public registry in open data format to promote transparency.
52. It is necessary to allocate sufficient resources to strengthen the actions of control and supervision of the behaviors that promote the various forms of corruption in order to return the stolen money to the people.
53. Establish a clear, complete and updated registry on the disposition, restitution and disposal of assets and property. Disclose and publish the information in this registry in open formats.

## VII. Annex

### 7.1 Table of access to information requests

Name of Agency Head	Position held	Organization or institution	Dates of letters and follow-up
CPA Yesmin Valdivieso Galib	Comptroller	Comptroller's Office	<ul style="list-style-type: none"> <li>Letter October 14, 2021</li> <li>Information received November 2021- February 2022</li> </ul>
Luis Pérez Vargas	Chief Executive Officer	Office of Government Ethics	<ul style="list-style-type: none"> <li>Letter October 26, 2022</li> <li>Information received November 23, 2023</li> </ul>
Mr. Walter Vélez Martínez	Electoral Comptroller	Electoral Comptroller's Office	<ul style="list-style-type: none"> <li>Letter October 26, 2022</li> <li>Information received November 15, 2023</li> </ul>
Domingo Emanuelli Hernandez	Secretary	Department of Justice	<ul style="list-style-type: none"> <li>Letter October 26, 2022</li> <li>Partial information received January 30, 2023</li> </ul>
Nydia M. Cotto Vives, Esq.	President	FEI Panel	<ul style="list-style-type: none"> <li>Letter October 26, 2022</li> <li>Information received November 8, 2023</li> </ul>
Mrs. Ivelisse Torres Rivera	Inspector General	Office of the Inspector General	<ul style="list-style-type: none"> <li>Letter October 26, 2022</li> <li>Information received November 17, 2023</li> </ul>
Francisco Parés Alicea	Director	Treasury Department	<ul style="list-style-type: none"> <li>Letter October 26, 2022</li> <li>Follow-up February 28, 2023</li> <li>Follow-up March 23, 2023</li> <li>No information received</li> </ul>
Col. Antonio López Figueroa	Puerto Rico Police Commissioner	Puerto Rico Police Bureau	<ul style="list-style-type: none"> <li>Letter October 26, 2022</li> <li>Follow-up January 25, 2023</li> <li>No information received</li> </ul>
Karla G. Mercado Rivera, Esq.	Administrator	General services administration	<ul style="list-style-type: none"> <li>Letter October 26, 2022</li> <li>Follow-up January 25, 2023</li> <li>No information received</li> </ul>
Natalia I. Zequeira Díaz, Esq.	Commissioner	Office of the Commissioner of Financial Institutions	<ul style="list-style-type: none"> <li>Letter sent on October 26, 2022</li> <li>Follow-up January 25, 2023</li> <li>Information received February 2, 2023</li> </ul>
Alexander Adams Vega	Commissioner	Office of the Commissioner of Insurance	<ul style="list-style-type: none"> <li>Letter sent on October 26, 2022</li> <li>Follow-up January 25, 2023</li> <li>First response from the Office January 25</li> <li>CGPC's response on January 26, 2023</li> <li>Follow-up March 23, 2023</li> <li>No information received</li> </ul>

## 7.2 Table Partial list of memberships, committee work and collaborations with international organizations

International Organizations
International Organization of Supreme Audit Institutions (INTOSAI) -1953
Latin American and Caribbean Organization of Supreme Audit Institutions (OLACEFS) - 1965
US Government Accountability Office (GAO) - 1985 - Domestic Working Group - 2005
National Association of State Auditors, Comptrollers and Treasurers (NASACT) - 1997
Central American and Caribbean Organization of Supreme Audit Institutions (OCCEFS) - 2016
Conference of State Bank Supervisors (CSBS)
Federal Deposit Insurance Corporations (FDIC)
Federal Bureau of Investigation (FBI)
U.S. Bureau of Customs and Border Protection (CBP)
Basel Committee on Banking Supervision
Financial Crimes Enforcement Network (FinCEN)
Federal Reserve System (FRS)
Federal Reserve Board
Association of Supervisors of Banks of the Americas (ASBA)

## 7.3 Bibliography

### Books, monographs and reports

*Alejandro Nieto (1997), La corrupción en la España democrática. Editorial Ariel, Spain.*

*Arnold J. Heidenheimer & Michael Johnston (2001), Political Corruption: Concepts and Contexts. Routledge Editorial.*

*World Bank (2017), Governance and the law.*

*Center for Public and Corporate Governance (2019), Governance and the media in Puerto Rico. Ediciones Puerto.*

*Center for Public and Corporate Governance (2013), A New Governance for Puerto Rico. Ediciones Puerto.*

*Cox Alomar, Rafael (2023), Hacia un nuevo orden de las cosas. Editorial Nomos S.A. ISBN 9798985323757*

*Daron Acemoglu, James A. Robinson (2012), Why do countries fail? Ediciones Deusto, Grupo Planeta Barcelona-Spain.*

Eurostat (2013), The following tables follow the format of this Eurostat report, <http://ec.europa.eu/eurostat/documents/3888793/5856465/KS-TC-13-007-EN.PDF/69cde077-3bd9-4d0d-8c19-a6fe3608c2cd>.

López Arzola, Alba (2016), A new paradigm for judicial management in Puerto Rico: governance, transparency and accountability, <https://governanzapr.org/wp-content/uploads/2019/04/Un-nuevo-paradigma.pdf>.

López Arzola, Alba (2021), Judges and access to justice in Puerto Rico: appointment, training and good practices. A historical-critical study and proposals for the future. University of Valencia, <https://webges.uv.es/public/uvEntreuWeb/tesis/tesis-1846668-VRN11I5JEQOGGFQ.pdf>.

*Organization of American States (2013), International Standards and Policies against Corruption.*

## Governance Center studies and projects

(2023), Transparencia en el proceso de reconstrucción y transformación del sistema energético de Puerto Rico, <https://gobernanzapr.org/wp-content/uploads/2023/05/Estudio-Transparencia-en-el-proceso-de-reconstruccion.pdf>.

(2022), Self-Assessment of Puerto Rico's Compliance with the Anti-Corruption Provisions of the United Nations Convention Against Corruption (UNCAC), <https://gobernanzapr.org/wp-content/uploads/2022/05/Estudio-Autoevaluacion.pdf>.

(2022), The Challenges of Corruption for Governance and the Economy. <https://gobernanzapr.org/estudios-e-investigaciones/>. On the results of the corruption perception survey, <https://gobernanzapr.org/wp-content/uploads/2022/11/Acerca-de-los-results-of-the-survey.pdf>.

(2020), Study *The Good Public Governance Proposals of the 2020 Gubernatorial Candidates*, <https://gobernanzapr.org/wp-content/uploads/2021/01/Estudio-las-propuestas-sobre-buena-gobernanza-publica-candidatos-2020.pdf>.

(2019), *Level of municipal transparency in Puerto Rico*, <https://gobernanzapr.org/wp-content/uploads/2020/10/Investigacion-Nivel-de-Transparencia-Municipal.pdf>.

(2018), *Governance and media in Puerto Rico*, <https://gobernanzapr.org/wp-content/uploads/2019/06/Governance-and-Media.pdf>.

(2016), Views of gubernatorial candidates on governance, transparency and accountability in public affairs, <https://www.puertoricotransparente.org/wp-content/uploads/2017/06/Estudio-Posturas-Candidatos-Gobernacion.pdf>.

(2016), Las prácticas de transparencia, rendición de cuentas y responsabilidad fiscal en la gestión municipal en Puerto Rico, <https://gobernanzapr.org/wp-content/uploads/2019/10/Practicas-Transparencia-Municipal.pdf>.

(2014), Fiscal Governance and Accountability: A Platform for Public Affairs Management in Puerto Rico, <https://gobernanzapr.org/wp-content/uploads/2019/10/Gobernanza-y-Responsabilidad-Fiscal.pdf>.

(2013), The State of the Legal Status of Transparency and Accountability in the Government of Puerto Rico <https://gobernanzapr.org/wp-content/uploads/2019/04/Investigacion-Completa-sec-no-imp.pdf>.



## Essays and articles in electronic media and press articles

### Essays

José Renato Salazar (2020), El régimen internacional anticorrupción, [https://www.cancilleria.gov.co/sites/default/files/FOTOS2020/2020\\_jr\\_salazar\\_anticorruccion.pdf](https://www.cancilleria.gov.co/sites/default/files/FOTOS2020/2020_jr_salazar_anticorruccion.pdf).

Observatorio Puerto Rico Transparente (2020), Public trust: pillar of governance and the fight against corruption.

Observatorio Puerto Rico Transparente (2019), Fighting corruption requires political will and good governance.

Observatorio Puerto Rico Transparente (2019), El descalabro de la gobernanza: no more opacity or corruption in government.

Observatorio Puerto Rico Transparente (2017), Fiscalización y transparencia para detener el juego de las sillas musicales de la corrupción.

Observatorio Puerto Rico Transparente (2017), Public corruption: axis of distrust in our government.

Observatorio Puerto Rico Transparente (2017), *El régimen sancionador para una ley de transparencia de Puerto Rico*.

PFEI Resolution July 2020, <http://panelfei.com/wp-content/uploads/2021/04/Resolución-del-Panel-Wanda-Vázquez-Garced-et-al.pdf>.

In Rev Magazine (2022), The promise that perpetuates a colonial relationship , <https://derecho.uprrp.edu/inrev/2022/05/05/la-promesa-que-perpetua-una-relacion-colonial/>.

Rivera López, Hiram Carlo; Santos Valenzuela, Jessica (2021), The Appointment of Judges in Puerto Rico: politics or merit? Análisis comparado del Sistema de Nombramiento de Jueces en los Sistemas Estatales Norteamericanos y Puerto Rico, [https://aldia.microjuris.com/wp-content/uploads/2021/04/44\\_1RDPU11.pdf](https://aldia.microjuris.com/wp-content/uploads/2021/04/44_1RDPU11.pdf).

RIVERA VEGA, SARITZA (2016), Political campaign finance in Puerto Rico: limits and possibilities after citizens united. Revista Jurídica Universidad de Puerto Rico, <https://derecho.uprrp.edu/revistajuridica/wp-content/uploads/sites/4/2016/06/85-rev.-jur.-upr-1233-2016.pdf>.

## **Press Articles**

ACFCS (2019), Panama, Puerto Rico blacklisted as European Union's highest risk money laundering countries, <https://www.delitosfinancieros.org/panama-puerto-rico-incluidos-en-lista-negra-de-paises-de-mayor-riesgo-de-lavado-de-dinero-de-la-union-europea/#:~:text=This%20week%2C%20the%20Comisi%20C3%B3n%20European%20Commission%20identified%20C3%B3a%2023,the%20which%20are%20in%20Panam%20C3%A1%20and%20Puerto%20Rico.>

Banco Popular de Puerto Rico (2010, 2012-2014), Revista Progreso Económico, <https://newsroom.popular.com/Spanish/comunicados/comunicados-details/2016/Por-50-aos-Banco-Popular-ha-publicado-la-revista-Progreso-Economico/default.aspx>.

Center for Public and Corporate Governance (2021), Electronic Communiqué: UN approves policy statement to strengthen the fight against corruption, <https://governanzapr.org/wp-content/uploads/2021/06/ONU-aprueba-declaracion-UNGASS-para-fortalecer-la-lucha-1.pdf>.

Center for Investigative Journalism (2023), Las malas prácticas que afectan el trabajo periodístico, <https://periodismoinvestigativo.com/2023/07/malas-practicas-que-afectan-periodismo-puerto-rico/>.

Center for Investigative Journalism (2022), Government struggles with compliance with Transparency and Open Data laws, <https://periodismoinvestigativo.com/2022/03/gobierno-problemas-incumplimiento-leyes-de-transparencia-y-datos-abiertos/>.

Center for Investigative Journalism (2022), Journalists go to court to gain access to data on the renegotiation of the contract between AES and AE, <https://periodismoinvestigativo.com/2022/01/periodistas-van-al-tribunal-para-lograr-acceso-a-datos-sobre-la-renegociacion-del-contrato-entre-aes-y-la-ae/>.

Center for Investigative Journalism (2020), Super Pacs and 2020 network campaigns: the thousand and one ways to circumvent oversight, 2023, <https://periodismoinvestigativo.com/2020/07/super-pacs-y-campanas-en-redes-2020-las-mil-y-una-formas-de-burlar-la-fiscalizacion/>.

Center for Investigative Journalism (2020), State finds that shell corporations that donated to Salvemos a Puerto Rico were illegally registered, accessed September 8, 2023, <https://periodismoinvestigativo.com/2020/08/estado-encuentra-que-las-corporaciones-fantasmas-que-donaron-a-salvemos-a-puerto-rico-se-registraron-ilegalmente/>.

Center for Investigative Journalism (2020), Request for Justice Secretary's resignation was for recommending a SIP for Gov. Wanda Vazquez in the warehousing case, <https://periodismoinvestigativo.com/2020/07/solicitud-de-renuncia-a-secretaria-de-justicia-fue-por-recomendar-un-fei-para-la-gobernadora-wanda-vazquez-en-el-caso-de-los-almacenes/>.

Center for Investigative Journalism (2019), The looting of public funds behind the chat, <https://periodismoinvestigativo.com/2019/07/el-saqueo-a-los-fondos-publicos-detras-del-chat/>.

CNE (2021), PROMESA: A Failed Colonial Experiment? <https://grupocne.org/2021/06/29/promesa-un-experimento-colonial-fallido/>.

Department of Justice (2023), Justice Department will recover money stolen by corrupt, <https://www.justicia.pr.gov/departamento-de-justicia-recobrara-el-dinero-robado-por-corruptos/>.

IFEX 2020 IFEX-ALC rejects the criminalization of free speech in Puerto Rico and demands the elimination of laws regulating "fake news", <https://ifex.org/es/ifex-alc-rechaza-la-penalizacion-de-la-libertad-de-expresion-de-puerto-rico-y-demanda-la-eliminacion-de-las-leyes-que-regulan-las-noticias-falsas/>.

El Nuevo Día (2022), The cases of public corruption that shook the stage in 2022.

El Vocero (2023), Financial Institutions welcomes sanctions against Bancrédito, [https://www.elvocero.com/economia/instituciones-financieras-da-la-bienvenida-a-sanciones-contra-bancr-dito/article\\_1d2a061e-542d-11ee-ae40-976b31775639.html](https://www.elvocero.com/economia/instituciones-financieras-da-la-bienvenida-a-sanciones-contra-bancr-dito/article_1d2a061e-542d-11ee-ae40-976b31775639.html).

El Vocero (2023), They will continue to tackle the practice of money laundering, [https://www.elvocero.com/economia/seguir-n-atajando-la-pr-ctica-del-lavado-de-dinero/article\\_c44ef826-6ded-11ee-85f4-0f983476742c.html](https://www.elvocero.com/economia/seguir-n-atajando-la-pr-ctica-del-lavado-de-dinero/article_c44ef826-6ded-11ee-85f4-0f983476742c.html).

El Vocero (2023), They see little chance of amendments to the Electoral Code, [https://www.elvocero.com/gobierno/legislatura/exclusivo-ven-pocas-probabilidades-de-enmiendas-al-c-digo-electoral/article\\_654c76d8-5b13-11ee-a05f-4ff7fad7e95a.html](https://www.elvocero.com/gobierno/legislatura/exclusivo-ven-pocas-probabilidades-de-enmiendas-al-c-digo-electoral/article_654c76d8-5b13-11ee-a05f-4ff7fad7e95a.html).

The Spokesman (2023), Repairing Deep Fractures to Generate Governance, [https://www.elvocero.com/opinion/columnas/reparar-las-profundas-fracturas-para-generar-gobernabilidad/article\\_1bf074ee-4d03-11ee-b8e2-c3df3a794188.html](https://www.elvocero.com/opinion/columnas/reparar-las-profundas-fracturas-para-generar-gobernabilidad/article_1bf074ee-4d03-11ee-b8e2-c3df3a794188.html).

El Vocero (2023), Multimillion dollar balance of government deterioration, <https://gobernanzapr.org/wp-content/uploads/2023/09/Los-casos-de-corrupcion-publica-El-NUevo-Dia.pdf>.

El Vocero (2022), Corruption Perception Elevated, [https://www.elvocero.com/actualidad/otros/elevada-la-percepci-n-de-la-corrupci-n/article\\_6e895648-3243-11ed-9464-cf859dd07468.html](https://www.elvocero.com/actualidad/otros/elevada-la-percepci-n-de-la-corrupci-n/article_6e895648-3243-11ed-9464-cf859dd07468.html).

El Vocero (2022), The list of mayors accused of corruption this four-year term continues to grow, [https://www.elvocero.com/ley-y-orden/federal/sigue-creciendo-el-listado-de-alcaldes-acusados-por-corrupci-n-este-cuatrenio/article\\_8410c1e0-f17f-11ec-a1be-c301ec35e70e.html](https://www.elvocero.com/ley-y-orden/federal/sigue-creciendo-el-listado-de-alcaldes-acusados-por-corrupci-n-este-cuatrenio/article_8410c1e0-f17f-11ec-a1be-c301ec35e70e.html).

The Spokesman (2022), This is the scheme charged to former governor Wanda Vazquez, [https://www.elvocero.com/ley-y-orden/federal/este-es-el-esquema-imputado-a-la-exgobernadora-wanda-v-zquez/article\\_a238ada6-1464-11ed-9e3a-7fda49a48f50.html](https://www.elvocero.com/ley-y-orden/federal/este-es-el-esquema-imputado-a-la-exgobernadora-wanda-v-zquez/article_a238ada6-1464-11ed-9e3a-7fda49a48f50.html).

El Vocero (2022), Corruption is costly, [https://www.elvocero.com/gobierno/agencias/sale-costosa-la-corrupci-n-en-puerto-rico/article\\_23b3cda4-1850-11ed-96c5-5bdc119f6b6d.html](https://www.elvocero.com/gobierno/agencias/sale-costosa-la-corrupci-n-en-puerto-rico/article_23b3cda4-1850-11ed-96c5-5bdc119f6b6d.html).

El Vocero (2022), Ten years under the shadow of corruption, <https://gobernanzapr.org/wp-content/uploads/2022/09/Diez-anos-bajo-la-sombra-de-la-corrupcion.pdf>.

The Spokesman (2019), *Ungovernability and corruption*, [https://www.elvocero.com/opinion/ingobernabilidad-y-corrupci-n/article\\_1eaf5666-a779-11e9-996c-93df6bbce370.html](https://www.elvocero.com/opinion/ingobernabilidad-y-corrupci-n/article_1eaf5666-a779-11e9-996c-93df6bbce370.html) .

The Spokesman (2019), *The vicious circle of disinformation*, [https://www.elvocero.com/opinion/el-c-rculo-vicioso-de-la-desinformaci-n/article\\_d6132e2a-712a-11e9-9bd1-271e4b6d3a43.html](https://www.elvocero.com/opinion/el-c-rculo-vicioso-de-la-desinformaci-n/article_d6132e2a-712a-11e9-9bd1-271e4b6d3a43.html).

The Spokesman (2019), *Toxic institutions and weakening governance*, [https://www.elvocero.com/opinion/instituciones-t-xicas-y-debilitamiento-de-la-gobernanza/article\\_a662aab2-2b47-11e9-b824-731adfdd7a74.html](https://www.elvocero.com/opinion/instituciones-t-xicas-y-debilitamiento-de-la-gobernanza/article_a662aab2-2b47-11e9-b824-731adfdd7a74.html).

El Vocero (2017), *The musical chairs of corruption*, [https://www.elvocero.com/opinion/las-sillas-musicales-de-la-corrupci-n/article\\_b4b20fd2-61ee-11e7-8ad0-8f1a92fe2726.html](https://www.elvocero.com/opinion/las-sillas-musicales-de-la-corrupci-n/article_b4b20fd2-61ee-11e7-8ad0-8f1a92fe2726.html).

Fiscal Oversight Board. Essay: Improving the Procurement and Service Contracting Process in PR,  
[https://drive.google.com/file/d/1q\\_xbJn\\_jLc9oDh4ljAnC\\_xrAsXSrTKQQ/view](https://drive.google.com/file/d/1q_xbJn_jLc9oDh4ljAnC_xrAsXSrTKQQ/view).

Microjuris (2023), Seeks to create Anti-Corruption and Public Integrity Office  
<https://pr.microjuris.com/noticias/noticia/buscan-crear-oficina-anticorrupcion-e-integridad-publica>.

Microjuris (2023), Debate on Judicial Branch salary increases postponed until next legislative session, <https://aldia.microjuris.com/2023/06/22/debate-sobre-aumentos-salariales-en-la-rama-judicial-se-pospone-hasta-la-proxima-sesion-legislativa/>.

NotiCel (2020), Lawsuit charges "organized crime" scheme in PR bankruptcy,  
<https://www.noticel.com/junta-fiscal/ahora/top-stories/20200303/demanda-imputa-esquema-de-crimen-organizado-en-la-quebra-de-pr/>.

Noticel (2020), Distributor linked to governor's campaign manager questions Health,  
<https://www.noticel.com/negocio-de-la-salud/ahora/top-stories/gobierno/20200415/distribuidor-vinculado-con-director-de-campana-de-wanda-vazquez-cuestiona-a-salud-y-revela-mercado-m/>.

Periódico Metro (2020), Task Force members under scrutiny for intervention in COVID-19 related purchases,  
<https://www.metro.pr/pr/noticias/2020/04/08/escrutinio-miembros-del-task-force-intervencion-compras-relacionadas-al-covid-19.html>.

Press Without Censorship (2023), A reflection on censorship on Journalists' Day and Press Week,  
<https://prensasincensura.com/2023/07/31/una-reflexion-sobre-la-censura-en-el-dia-del-periodista-y-la-semana-de-la-prensa/>.

Primera Hora (2022), Civic organizations file amendments against government corruption, <https://www.primerahora.com/noticias/gobierno-politica/notas/organizaciones-civicas-presentan-enmiendas-contra-la-corrupcion-gubernamental/>.

Primera Hora (2022), Governor nominates Wanda Vázquez's husband to the Tribunal for the third time, <https://www.primerahora.com/noticias/gobierno-politica/notas/gobernador-nomina-por-tercera-ocasion-a-esposo-de-wanda-vazquez-para-el-tribunal-apelativo/>.

Revista del Colegio de Abogados de Puerto Rico (1979), Study of the Report of the Department of Justice.

Sin Comillas (2022), Poor public procurement processes open the door to corruption, <https://sincomillas.com/los-deficientes-procesos-de-contratacion-publica-abren-la-puerta-a-la-corrupcion/>.

Sin Comillas (2022), The government has problems with compliance with transparency and open data laws, <https://sincomillas.com/el-gobierno-tiene-problemas-con-el-cumplimiento-de-las-leyes-de-transparencia-y-datos-abiertos/>.

SWI (2022), Bancrédito, tainted by corruption case, ceases operations in Puerto Rico, [https://www.swissinfo.ch/spa/p-rico-banca\\_bancr%C3%A9dito--salpicado-por-caso-de-corrupci%C3%B3n--cesa-operaciones-en-puerto-rico/47815674](https://www.swissinfo.ch/spa/p-rico-banca_bancr%C3%A9dito--salpicado-por-caso-de-corrupci%C3%B3n--cesa-operaciones-en-puerto-rico/47815674).

WIPR (2023), Governor seeks to strengthen oversight of banks and international financial institutions, <https://wipr.pr/gobernador-busca-robustecer-fiscalizacion-de-bancos-y-entidades-financieras-internacionales/#:~:text=The%20governor%20of%20Puerto%20Rico%2C%20Pedro%20OR.%20Pierluisi%2C,better%20prepared%20to%20face%20the%20changes%20in%20the%20market>.

## **Laws and Regulations**

### **Laws**

Constitution of the Commonwealth of Puerto Rico of 1952, <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Derechos%20Civiles/CONST/CONST.pdf>.

Act No. 9 of July 24, 1952, as amended, and known as the Office of the Comptroller of the Commonwealth of Puerto Rico Act, <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Auditor%C3%ADas/9-1952.pdf>.

Act No. 147 of June 18, 1980, as amended, known as the "Organic Act of the Office of Management and Budget", <https://ogp.pr.gov/SobreOGP/Documents/147-1980.pdf>.

Act No. 12 of July 24, 1985, as amended, known as the Government Ethics Act of the Commonwealth of Puerto Rico", <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/12-1985.pdf>.

Act No. 2 of February 23, 1988, as amended, known as the Office of the Special Independent Prosecutor Panel Act, <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/2-1988.pdf>.

Act No. 114 of August 17, 2001, as amended, known as the Public Corporation for the Supervision and Insurance of Credit Unions Act,  
<https://biblioteca.enj.org/bitstream/handle/123456789/80068/LE15-2019.pdf>.

Act No. 37 of January 8, 2004, An Act to Criminalize as a Serious Crime the Obstruction of an Audit by the Office of the Comptroller of Puerto Rico,  
<https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Auditor%C3%ADas/37-2004.pdf#:~:text=Law%20N%C3%BAm.%2037%20of%208%20January%20of%20the%20Office%20of%20the%20Comptroller%20of%20Puerto%20Rico>.

Act No. 205 of August 9, 2004, as amended, known as the Organic Act of the Department of Justice,  
<https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Justicia/205-2004/205-2004.pdf>.

Act 73 of May 28, 2008, as amended, known as the Economic Incentives for the Development of Puerto Rico Act,"  
<https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Desarrollo%20Econ%C3%B3mico/73-2008/73-2008.pdf>.

Act 236 of December 30, 2010, as amended known as the Government Programs Accountability and Performance Act,  
<https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/236-2010.pdf>.

Act No. 1 of January 1, 2012, as amended, known as the Organic Act of the Government Ethics Office of Puerto Rico,  
<https://www.lexjuris.com/lexlex/Leyes2012/lexl2012001.htm>.

Act 146 of July 30, 2012, as amended, known as the Penal Code of Puerto Rico,  
<https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Justicia/146-2012/146-2012.pdf>.

Act No. 8 of February 4, 2017, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico,  
<https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/8-2017.pdf>.

Act No. 15 of February 28, 2017, as amended, and known as the Puerto Rico Inspector General Act,  
<https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Auditor%C3%ADas/15-2017.pdf>.

Act No. 74 of August 7, 2017, as amended, known as the Public Service Supervisory Personnel Training Act,  
<https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Gererencia/74-2017.pdf>.

Act No. 2 of January 4, 2018, as amended, known as, Anti-Corruption Code for the New Puerto Rico,

<https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Corrupci%C3%B3n/2-2018.pdf#:~:text=Law%20N%C3%BAm.%202%20of%204%20of%20January%20of,N%C3%BAm.%2011%20of%2012%20of%20January%2020of%202023%29.>

Act No. 122 of August 1, 2019, known as the Puerto Rico Government Open Data Act,

<https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/122-2019.pdf>.

Act No. 141 of August 1, 2019, as amended, known as the Transparency and Expedited Procedure for Access to Public Information Act,

<https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/141-2019.pdf>.

Act No. 73 of July 19, 2019, as amended, known as the "General Services Administration for the Centralization of Procurement of the Government of Puerto Rico Act of 2019,

<https://bvirtualogp.pr.gov/ogp/Bvirtual/LeyesOrganicas/pdf/73-2019.pdf>.

Act No. 4 of May 24, 2021, known as the "Fiscal and Budgetary Responsibility Act of the Government of the Commonwealth of Puerto Rico",

<https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/4-2021.pdf>.

### ***Bills and Preliminary Draft Bills***

*Preliminary draft for a Law on transparency, access to information and accountability in public management (the first version of 2013 and latest of 2017),*

<https://www.puertoricotransparente.org/wp-content/uploads/2017/06/Anteproyecto-de-Ley.pdf>.

*P of C 2469 on Transparency, access to information and accountability in public administration,*

<https://gobernanzapr.org/wp-content/uploads/2019/04/P-de-la-C-2469.pdf>.

*P. of the C. 1701 Anticorruption and Public Integrity Office of the Commonwealth of Puerto Rico Act",*

<https://aldia.microjuris.com/wp-content/uploads/2023/04/PC1701-Radicado.pdf>.

### ***Regulations***

Regulation No. 8231 of July 17, 2012. Department of the Treasury, Reorganization Plan No. 3 of June 22, 1994, as amended.