

LAS PLAYAS SON DEL PUEBLO: A CULTURAL RIGHTS DEFENSE OF PUERTO RICO'S BEACHES

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I. INTRODUCTION

On July 4, 2022—while many mainlanders gathered with family and friends to watch fireworks—Puerto Rican activists gathered at Los Almendros Beach in Rincón, Puerto Rico, to tear down a concrete wall.¹ That wall, erected in 2019 by high-end real estate developers,² blocked public access to Los Almendros beach and served as a constant reminder of an increasingly privatized Puerto Rico. As the activists chipped away at the concrete structure with hammers, mallets, and pile drivers, they were unified by two rallying cries: *las playas no se venden* and *las playas son del pueblo*.³

All beaches in Puerto Rico are legally public property,⁴ but relaxed permitting processes and insufficient governmental enforcement have led to unlawful coastal constructions and contributed to a dramatic increase in the privatization of protected spaces.⁵ In response, coastal communities in Puerto Rico have organized to oppose

1. Coral Murphy Marcos, “*The Beaches Belong to the People*”: *Inside Puerto Rico’s Anti-gentrification Protests*, THE GUARDIAN (July 23, 2022, 6:00 EDT), <https://www.theguardian.com/us-news/2022/jul/23/puerto-rico-beach-anti-gentrification-protests>; Carlos Edill Berrios Polanco, *Activists Tear Down Illegal Construction on Puerto Rico Beach*, LATINO REBELS (Mar. 6, 2023), <https://www.latinorebels.com/2022/07/05/rinconbeachprotest/>.

2. Berrios Polanco, *supra* note 1; see Olivia Harden, *Puerto Ricans Are Protesting the Attempted Privatization of Their Public Beaches*, MATADOR NETWORK (Feb. 2, 2022), <https://matadornetwork.com/read/puerto-rico-private-public-beaches/> (“In recent years, some Puerto Ricans have become concerned about the gentrification of Puerto Rico and the new property developments on the beach.”); see also Murphy Marcos, *supra* note 1 (discussing how Puerto Rico is incentivizing wealthy investors to build luxury properties in coastal towns).

3. Berrios Polanco, *supra* note 1. See Gretchen Fournier, *Las Playas Son del Pueblo; Los Puertorriqueños Defienden Sus Costas / The Beaches Belong to the People; Puerto Ricans Defend Their Coasts*, SIERRA CLUB (June 29, 2022), <https://www.sierraclub.org/ecocentro/blog/2022/06/las-playas-son-del-pueblo-los-puertorrique-os-defienden-sus-costas-beaches> (discussing the “Las Playas Son Del Pueblo” (The Beaches Belong to the People) movement); see Carlos Edill Berrios Polanco, *Puerto Ricans Hold Beach Protest Against Privatization*, LATINO REBELS (Jan. 31, 2022, 12:20 PM), <https://www.latinorebels.com/2022/01/31/beachprotest/> (including images of protestors signs that read “las playas de mis nietos no se vende” which means “my grandchildren’s beaches are not for sale.”)

4. *State of the Beach/State Reports/PR/Beach Access*, BEACHAPEDIA (Dec. 7, 2021, 11:53), https://beachapedia.org/State_of_the_Beach/State_Reports/PR/Beach_Access.

5. Víctor Rodríguez Velázquez, *Acelerada la aprobación de permisos de construcción en la costa durante el primer año de Pierluisi*, CENTRO DE PERIODISMO INVESTIGATIVO (Jan. 27, 2022), <https://periodismoinvestigativo.com/2022/01/acelerada-construccion-costas-pedro-pierluisi/>; Pearl Marvell, *Who Will Save Puerto Rico’s Beaches From Rising Seas, Storms, and Developers? The People.*, YALE CLIMATE CONNECTIONS (Apr. 25, 2023),

building regulations that prioritize developers over residents.⁶ Activists' goals have centered on combatting the statutory and physical blockades to their beaches;⁷ asserting their right to enjoy the coasts and participate in their cultural and ancestral heritage;⁸ and protecting the beaches' environmental fragility⁹.

Puerto Ricans have attributed the increase of illegal coastal developments to two relatively new pieces of building regulation:¹⁰ Joint Regulation for the Evaluation and Issuance of Permits Related to the Development, Land Use and Business Operations ("Joint Regulation 2020")¹¹ and another regulation of the same name passed in 2023 via emergency regulation ("Emergency Regulation 2023")¹². The Puerto Rico Planning Board's ("the Planning Board") passage of Joint Regulation 2020 marked the continuation of a trend pushed forth by previous administrations since 2009¹³ of simplifying the process for obtaining construction permits. As argued in this Comment, Joint Regulation 2020 and Emergency

<https://yaleclimateconnections.org/2023/04/who-will-save-puerto-ricos-beaches-from-rising-sea-storms-and-developers-the-people/>.

6. Murphy Marcos, *supra* note 1 (discussing protests against coastal development and privatization of public beaches in Puerto Rico).

7. Lola Rosario, *Protecting Puerto Rico's Coastlines & Indigenous Heritage*, NACLA (Jul. 11, 2023), <https://nacla.org/protecting-puerto-ricos-coastlines-indigenous-heritage>; see Berríos Polanco, *supra* note 1 (detailing protestors destroying a structure illegally built on beach).

8. See Rosario, *supra* note 7 (discussing Malavé Marrero's role in advocating for the coast and its cultural and ancestral significance).

9. See Edwin A. Hernández-Delgado et al., *Long-Term Impacts of Non-Sustainable Tourism and Urban Development in Small Tropical Islands Coastal Habitats in a Changing Climate: Lessons Learned from Puerto Rico*, in VISIONS FROM GLOBAL TOURISM INDUSTRY-CREATING AND SUSTAINING COMPETITIVE STRATEGIES 357 (Murat Kasimoglu ed., 2012) (discussing the fragility of coastal land ecosystems).

10. See Rosario, *supra* note 7 (explaining that Pierluisi's administration used Joint Regulation 2020 to reconfigure land use and allow for illegal constructions); see Víctor Rodríguez Velázquez, *Construction Permit Approvals for Coastal Projects Fast-Trackd During Pierluisi's First Year*, CENTRO DE PERIODISMO INVESTIGATIVO (Jan. 27, 2022), <https://periodismoinvestigativo.com/2022/01/construction-permit-approvals-for-coastal-projects-fast-pierluisi/> (stating that Permits Act and joint permit regulations have facilitated the dilapidation of land and poor coastal planning, while explaining that harmful coastal construction has dramatically increased since 2021).

11. Junta de Planificación [Planning Board], Reglamento Conjunto para la Evaluación y Expedición de Permisos Relacionados al Desarrollo [Joint Regulation for the Evaluation and Issuance of Permits Related to Development], Uso de Terrenos y Operación de Negocios [Land Use and Business Operation], No. 9233 (Dec. 2, 2020), <https://jp.pr.gov/wp-content/uploads/2021/07/Reglamento-Conjunto-2020-Vigencia-2-Enero-2021.pdf>. See Letter to Lassús Ruiz, President, Puerto Rico Planning Board, from Robert F. Mujica Jr., Executive Director, Financial Oversight & Management Board for Puerto Rico (Sept. 18, 2023) (available online) (providing English translation of regulation).

12. Junta de Planificación [Planning Board], Reglamento Conjunto para la Evaluación y Expedición de Permisos Relacionados al Desarrollo [Joint Regulation for the Evaluation and Issuance of Development-Related Permits], Uso de Terrenos y Operación de Negocios [Land Use and Business Operation], No. 9473 (Jun. 16, 2023), <https://delgadofernandez.com/wp-content/uploads/Reglamento-Conjunto-de-Permisos-Emergencia.pdf>.

13. See Part II.C for a discussion of the ways the regulations simplify the permitting process and how the Puerto Rico Permit Process Reform Act of 2009 began that process.

Regulation 2023 enable expedited and lax approvals through: (1) the issuance of single permits (*permisos únicos*); (2) the continuation of the use of Authorized Professional (“AP”); and (3) the introduction of Inspector of Single Permits (“IP-U”).¹⁴ Since the adoption of Joint Regulation 2020, approvals for coastal construction permits have increased 29%.¹⁵ Of those approvals, 65% are for constructions in one of the island’s forty-four coastal towns.¹⁶

This Comment is split into four parts. Part II.A gives a brief relevant history of Puerto Rico. It focuses on the island’s debt; the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”); the Financial Oversight & Management Board for Puerto Rico (“La Junta”); and the island’s struggle for autonomy.¹⁷ Part II.B describes the primary legislations—like Puerto Rico’s Dock and Harbor Act of 1968—that establishes the beaches as public domain.¹⁸ Part II.C dives into the core of this paper: Joint Regulation 2020 and Emergency Regulation 2023. It first provides an overview of Puerto Rico’s permitting landscape to demonstrate how speedy permit procedures have been a hallmark of the island’s building regulations since 2009.¹⁹ The section then provides a focused analysis of each regulation and explores how each builds on its forerunners to allow for discretionary approvals of illegal constructions. The Comment concludes by outlining the relationship between these regulations and La Junta’s interest in making Puerto Rico an attractive place for investment and business. Part II.D discusses island-based resistance efforts against harmful coastal developments in the towns of Rincón and Cabo Rojo. Finally, Part III suggests the battle against privatization of public beaches is about more than the Puerto Rican community’s legal right to freely access their coast; the movements also seek to remedy the gradual, yet undeniable, loss of land to foreign investors, the deprivation of residents’ right to cultural development, and each issue’s genesis in U.S. colonial

14. Alicia Lamboy, *Puerto Rico Planning Board Issues New Joint Regulation for Evaluation and Issuance of Permits Related to Development, Land Use and Business Operations*, GOLDMAN ANTONETTI & CORDOVA, LLC, (Dec. 29, 2020), <https://www.gaclaw.com/news-publications/puerto-rico-planning-board-issues-new-joint-regulation-for-evaluation-and-issuance-of-permits-related-to-development-land-use-and-business-operations>.

15. Rodríguez Velázquez, *supra* note 5.

16. *Id.*

17. Memorandum from Mariana Nogales Molinelli, Representative At-large, P.R. House of Representatives, to Hon. Raúl Grijalva, Hon. Alexandria Ocasio Cortés, & Hon. Nydia Velázquez, Representatives, U.S. House of Representatives (June 3, 2022) (noting that wealthy investors have bought a significant amount of property and displaced traditional communities); see E.B. Solomont, *Why Wealthy Homebuyers are Flocking to Puerto Rico*, WSJ (May 18, 2023, 5:30 AM ET), <https://www.wsj.com/articles/puerto-rico-real-estate-market-58ec50da> (explaining how favorable policies are attracting foreign homebuyers); see Pedro Cabán, *Gringo Go Home! Puerto Rico is not for Sale!*, THE AM. PROSPECT (Aug. 21, 2023), <https://prospect.org/power/2023-08-21-gringo-go-home-puerto-rico-not-for-sale/> (explaining how recent policies are aimed at attracting investors and extracting wealth from Puerto Rico).

18. P.R. LEYES AN. tit. 23, §§2101-2801 (2024).

19. See Planning Board, *Puerto Rico Permit Process Reform Act*, Act No. 161 (December 1, 2009) (stating purpose of reform act is to create a new streamlined permit system to boost economy).

power over Puerto Rico.²⁰

II. LAS PLAYAS SON DEL PUEBLO

A. *A Relevant History of Puerto Rico*

Puerto Rico is a United States (“U.S.”) commonwealth and was acquired from the Spanish in 1898.²¹ Even though all Puerto Ricans are U.S. citizens, island residents lack full congressional representation and the right to vote in presidential elections.²² Despite this inability to participate in the democratic process, Puerto Rico remains subject to the full legislative powers of the U.S. that can override locally passed laws.²³ In 2015, Puerto Rico officially announced that it had incurred a total debt of more than \$123 billion and was unable to repay it.²⁴ Unable to seek relief under Chapter 9 of the U.S. Bankruptcy Code or enact legislation to provide for the nonconsensual restructuring of municipal indebtedness,²⁵ Puerto Rico was forced to rely on Congress for access to legislative relief. In 2016, Congress provided access in the form of PROMESA and the creation of La Junta—a congressionally appointed fiscal control board designed to restructure Puerto Rico’s financial debt.²⁶ Puerto Rico declared bankruptcy and soon after suffered further economic devastation from Hurricane Maria and Irma.²⁷ Then came the Puerto Rico Tax Incentive Codes (“Act 60”) a piece of local legislation that provided tax incentives to mainland citizens who became “bona fide” island residents.²⁸ Chapter Two of Act 60 provides “new residents” who live on the island for at least half of the year with

20. See generally Nogales Molinelli, *supra* note 17 (noting that wealthy investors have bought property and displaced traditional communities); see E.B. Solomont, *Why Wealthy Homebuyers are Flocking to Puerto Rico*, WSJ (May 18, 2023, 5:30 AM ET), <https://www.wsj.com/articles/puerto-rico-real-estate-market-58ec50da> (explaining how favorable policies are attracting foreign homebuyers); see Pedro Cabán, *Gringo Go Home! Puerto Rico is not for Sale!*, THE AM. PROSPECT (Aug. 21, 2023), <https://prospect.org/power/2023-08-21-gringo-go-home-puerto-rico-not-for-sale/> (explaining how recent policies are aimed at attracting investors and extracting wealth from Puerto Rico).

21. HISTORY.com Editors, *Puerto Rico*, HISTORY (May 28, 2025), <https://www.history.com/topics/us-states/puerto-rico-history>.

22. Diana Roy & Amelia Cheatham, *Puerto Rico: A U.S. Territory in Crisis*, COUNCIL ON FOREIGN REL., <https://www.cfr.org/backgrounder/puerto-rico-us-territory-crisis> (last updated Jan. 8, 2025, 11:00 AM) (“A single member of the U.S. House of Representatives, known as the resident commissioner, represents the island’s interests but has no voting power”).

23. See Joel Colón-Rios & Yaniv Roznai, *A Constitutional Theory of Territoriality: The Case of Puerto Rico*, 70 CLEV. ST. L. REV. 279, 290 (2022) (explaining how Puerto Rico’s law is subordinated by federal law).

24. See Roy & Cheatham, *supra* note 22.

25. Rudolph J. Di Massa Jr. & Jarret Hitchings, *A Tale of Two States: Puerto Rico and Chapter 9*, DUANE MORRIS, (Jun. 30, 2016).

26. See Roy & Cheatham, *supra* note 22 (stating that Congress passed PROMESA to restructure island’s debt).

27. *Id.*

28. *Tax Incentives for Owning Real Estate and Residing in Puerto Rico*, DORADO BEACH, <https://www.doradobeach.com/real-estate-puerto-rico/act-60-tax-incentives> (last visited Dec. 29, 2024).

a total exemption from local taxes on certain passive incomes, while Chapter Five reserves special incentives for the tourism industry to facilitate and promote world-class tourism initiatives.²⁹ Much like the island's fast-tracked permitting process, this Act aimed to make Puerto Rico more attractive to wealthy and foreign investors.³⁰

Because of Puerto Rico's newly granted commonwealth status and adoption of their own constitution, in 1953 the United Nations ("U.N.") removed Puerto Rico from its list of non-self-governing territories.³¹ This precluded Puerto Rico from receiving protections outlined in the U.N.'s Declaration on the Granting of Independence to Colonial Countries and Peoples.³² However, on June 22, 2023, the U.N. Special Committee on Decolonization ("Special Committee") approved a draft resolution affirming the U.S.'s responsibility to recognize Puerto Ricans' right to self-determination and independence.³³ The resolution supported the implementation of a process that would empower Puerto Ricans to "take decisions in a sovereign manner" to address issues of marginalization, social need, and public health spurred by economic crises.³⁴ A 2021 Special Committee decision further criticized the U.S.'s treatment of the island.³⁵ The decision highlighted steep austerity measures enacted by the U.S.; discussed how these measures stunt the island's economic and social development; and shed light on how the U.S.'s use of La Junta "points to an intensification of colonial control over Puerto Rico."³⁶

B. The Beaches are Public Domain

The 1886 Law of Ports and the Dock and Harbor Act of 1968 provide that all beaches in Puerto Rico are public property.³⁷ Under both laws, whatever coastal land

29. *Id.*

30. *Id.* (commenting that Puerto Rico's tax incentives "have made it more attractive for U.S. citizens" and created a "sense of urgency for investors.").

31. *List of Former Trust and Non-Self-Governing Territories*, UNITED NATIONS <https://www.un.org/dppa/decolonization/en/history/former-trust-and-nsgts> (last visited Nov. 1, 2024) (stating that the General Assembly, *inter alia*, established that provisions of Chapter XI of Charter could no longer apply to commonwealth of Puerto Rico).

32. *Id.*

33. Press Release, Special Committee on Decolonization Approves Resolution Reaffirming Puerto Rico's Inalienable Right to Self-determination, Independence, U.N. Press Release GA/COL/3372 (Jun. 22, 2023).

34. *Id.*

35. See Bassam Sabbagh (Rapporteur of the Special Committee), *Special Committee Decision of 18 June 2021 Concerning Puerto Rico*, ¶ 88, U.N. Doc. A/AC.109/2022/L.13 (June 18, 2021) (restating that austerity measures imposed by La Junta bring significant social and institutional costs).

36. *Id.* at ¶ 45.

37. Pearl Marvell, *Who Will Save Puerto Rico's Beaches From Rising Seas, Storms, and Developers? The People.*, YALE CLIMATE CONNECTIONS (Apr. 25, 2023), <https://yaleclimateconnections.org/2023/04/who-will-save-puerto-ricos-beaches-from-rising-seas-storms-and-developers-the-people/>. See Danica Coto, *Puerto Rico Coast Still Ruled by 1886 Law*, PHYS ORG (Jul. 7, 2011), <https://phys.org/news/2011-07-puerto-rico-coast-law.html> (noting that a Spanish law from 1886 still governs coastal development in Puerto Rico); see P.R. LEYES AN. tit. 23, §§2101–2801 (2024) (codifying the Dock and Harbor Act of 1968).

the water touches (otherwise known as the maritime-terrestrial zone or *la zona marítimo terrestre*) is public property.³⁸ The Dock and Harbor Act of 1968 also legally encumbers two additional zones atop the maritime-terrestrial zone which, together, comprise all lands reserved for public use on Puerto Rico's coasts.³⁹

The maritime-terrestrial zone is the first layer of protected public coastal land. It is poetically defined as the space on the coast upon which the sea washes, in its ebbs and flows, starting from where the tide is low to where it is at its highest.⁴⁰ The definition also designates as public domain land regained from the beach and riverbanks which are navigable or become sensitive to tides.⁴¹ Regulation 4860 and the Joint Regulations outline how the zone should be delineated and confers responsibility for enacting these beach-to-beach demarcations on Puerto Rico's Department of Natural and Environmental Resources ("DRNA").⁴² Demarcations are made by surveying each beach, measuring tidal variations, and publishing the zone lines; however, the regulations do not specify a timeline or designated frequency with which the measurements should be made.⁴³

Atop the maritime-terrestrial zone, there are two additional easements which must remain publicly accessible at all times.⁴⁴ The first easement imposes a legal

38. See *Sistema de Referencia Oficial Para el Deslinde de Bienes de Dominio Público en la Zona Marítimo Terrestre* [Official Reference System for the Demarcation of Public Domain Assets in the Maritime-Terrestrial Zone], DEPARTAMENTO DE RECURSOS NATURALES Y AMBIENTALES [DEPT. OF NAT. AND ENV'T RES.], <https://www.drna.pr.gov/avisos/sistema-de-referencia-oficial-para-el-deslinde-de-bienes-de-dominio-publico-maritimo-terrestre/> (last visited Nov. 1, 2024) (stating that "Ley de Muelles y Puertos de 1968" established maritime terrestrial zone); *¿Qué es la Zona Marítimo Terrestre?* [What is the Maritime Terrestrial Zone?], AYUDA LEGAL PUERTO RICO [LEGAL HELP P.R.], <https://ayudalegalpr.org/resource/zona-maritimo-terrestre>.

39. See AYUDA LEGAL PUERTO RICO, *supra* note 38 (stating that Dock and Harbor Act established two easements).

40. See DEPARTAMENTO DE RECURSOS NATURALES Y AMBIENTALES, *supra* note 38 (lifting definition of maritime-terrestrial zone from Dock and Harbour Act: "la zona marítimo terrestre significa el espacio de las costas de Puerto Rico que baña el mar en su flujo y reflujo, en donde son sensibles las mareas, y las mayores olas en los temporales en donde las mareas no son sensibles, e incluye los terrenos ganados al mar y las márgenes de los ríos hasta el sitio en que sean navegables o se hagan sensibles las mareas; y el término.").

41. DEPARTAMENTO DE RECURSOS NATURALES Y AMBIENTALES, *supra* note 38.

42. See *id.* (stating that Regulation 4860 outlines profession of surveying and activity of demarcation); see *Fontanet Sánchez v. Oficina de Gerencia de Permisos*, 2021-399890-CCO-011171, 2023 WL 8641906, *9 (T.C.A. Nov. 27, 2023) (highlighting Section 6.4.2.8. of Joint Regulation 2020 stating maritime terrestrial zone is determined by the DRNA).

43. See La Brega, "Olas y Arenas" — *The Beaches Belong to the People*, WNYC STUDIOS (Mar. 23, 2023), <https://www.wnycstudios.org/podcasts/la-brega/articles/olas-y-arenas-beaches-belong-people?tab=transcript> (downloaded using Spotify) (stating that government had not measured and redrawn maps for beach in over 20 years. See also Luis Joel Méndez González, *Historical Inaction Along the Coasts Calls Climate Change Plan Into Question*, CENTRO DE PERIODISMO INVESTIGATIVO [CTR. INVESTIGATIVE JOURNALISM], (Dec. 12, 2023), <https://periodismoinvestigativo.com/2023/12/inaction-coasts-climate-change-plan/> (explaining that DRNA did not order removal of any structures which, according to last demarcation, was on maritime-terrestrial zone).

44. *Autoridad Para El Financiamiento De La Infraestructura De P.R. v. S & D Inv. Group, Inc.*, KLCE20100655, 2019 WL 5197497 at *4–5 (T.C.A. Sept. 9, 2019); *Fontanet Sánchez*, 2023 WL 8641906 *8.

encumbrance on all privately owned land directly adjacent to the maritime-terrestrial zone.⁴⁵ According to Regulation 4860 and Joint Regulation 2020, the easement should be 20-meters-wide, counting inland, starting from the furthest inland demarcation of the maritime-terrestrial zone.⁴⁶ Atop this easement lays another 30-meter-wide easement upon which no immovable structure can be built.⁴⁷ Altogether, there are 50 meters on every beach in Puerto Rico starting from the end of the maritime-terrestrial zone where the construction of buildings or other unremovable structures is prohibited.⁴⁸

Despite explicit law, improper coastal development persists and the DRNA's indifference is one reason for this.⁴⁹ The agency routinely ignores residents' calls for public hearings on new delineations requested by developers⁵⁰ and public demands to enforce the boundaries of the maritime-terrestrial zone⁵¹. Resounding calls for the DRNA to update antiquated boundary demarcations have also been largely ignored.⁵² New demarcations are important to uphold the intent of the Dock and Harbor Act and to ensure that the recorded maritime-terrestrial zones reflect new spaces created by the coast's heightened erosion and water line migration.

C. *Joint Regulation 2020 and Emergency Regulation 2023*

On December 2, 2020, the Planning Board—Puerto Rico's central land-use authority—passed Joint Regulation 2020.⁵³ At the time of its passing, Joint

45. *Fontanet Sánchez*, 2023 WL 8641906 *8; *S & D Inv. Group, Inc.*, 2019 WL 5197497 at *4–5.

46. Departamento de Recursos Naturales [Dept. Nat. Res.], Reglamento para el Aprovechamiento, Vigilancia, Conservación y Administración de las Aguas Territoriales, los Terrenos Sumergidos bajo éstas y la Zona Marítimo Terrestre [Regulations for the Use, Monitoring, Conservation and Administration of Territorial Waters, Submerged Lands under them and the Maritime Terrestrial Zone], No. 4860 (Dec. 30, 1992) Sect. 2.94, <https://www.drna.pr.gov/documentos/reglamento-4860>.

47. *Fontanet Sánchez*, 2023 WL 8641906 at *8.

48. See AYUDA LEGAL PUERTO RICO, *supra* note 38 (displaying a map outlining 50 meters of public space atop maritime terrestrial zone).

49. See Luis Joel Mendez Gonzalez, *A Propósito De La Información, Hablemos Del DRNA*, CENTRO DE PERIODISMO INVESTIGATIVO (Mar. 15, 2024), <https://periodismoinvestigativo.com/2024/03/semana-acceso-informacion-drna> (stating that DRNA's governmental indifference has aided loss of the beaches).

50. See *id.* (reporting that a community leader sent multiple emails and phone calls before reaching DRNA regarding a public visit before a re-demarcation); see also *Deslindes ZMT Abropados* [Closed ZMT Boundaries], DEPARTAMENTO DE RECURSOS NATURALES Y AMBIENTALES [DEPT. OF NAT. AND ENV'T RES.], <https://www.drna.pr.gov/cat/deslindes-zmt/deslindes-zmt-aprobados> (last visited Nov. 1, 2024) (showing that demarcations are requested by developers for new projects, with a lot being residential and touristic developments).

51. See Berrios Polanco, *supra* note 1 (reporting that demolition of illegally constructed wall did not occur because “government agencies charged with enforcing environmental protection laws have been asleep at the wheel.”); See La Brega, *supra* note 43 (explaining that zone only accurately measured if government consistently redraws its map lines, which it has not done in 20 years).

52. See Coto, *supra* note 37 (outlining well-funded efforts to re-delineate island's coastal zone using updated technology); see La Brega, *supra* note 43 (explaining that zone only accurately measured if government consistently redraws its map lines, which it has not done in 20 years).

53. Lamboy, *supra* note 14.

Regulation 2020 was the latest iteration of a more than decade-long attempt to establish the island as a global “progressive jurisdiction for making capital investments” by implementing a new fast-tracked permit system.⁵⁴ This goal, arguably, made its first legislative appearance in 2009 with the creation of the new, web-based Integrated Permits System (“SIP”).⁵⁵ An intentional effort to speed up and ease the permitting process is also seen in Puerto Rico’s Simplify and Transform Permit Process Act of 2017. This Act highlighted La Junta’s desire for the Puerto Rican government to prioritize “commitment to implement significant changes directed to restoring economic growth through structural and fundamental reforms that create a more competitive economy and . . . [improve] the permitting process in order to promote investment.”⁵⁶

Joint Regulation 2020 and Emergency Regulation 2023—like their 2000, 2010, 2015, and 2019 predecessors—organize the parameters of the permitting process.⁵⁷ Residents have accused Emergency Regulation 2023 (which contained 7,736 amendments⁵⁸) of amending land use laws to better accommodate wealthy developers⁵⁹ by, for example, expanding the Puerto Rican government’s power to control decisions that should be made at the municipal level⁶⁰. The regulations further deteriorate protective land use laws by: (1) eliminating neighborhood notice, impact studies, and context assessment requirements for new constructions within low-density neighborhoods; (2) automatically changing the zoning classifications of all island municipalities without following due process; (3) automatically extending the validity period of location consultations (even if they are expired or completed more than twenty years ago); and (4) omitting mandates for direct notification to

54. Planning Board, *Puerto Rico Permit Process Reform Act*, No. 161 (Apr. 4, 2017), https://presupuesto.pr.gov/BUDGET20112012/Aprobado2012Ingles/suppdocs/baselegal_ingles/273/273a.pdf.

55. *Sistema Integrado de Permisos: OGPE Y El Nuevo Proceso De Obtencion De Recomendaciones* [Integrated Permit System: OGPE and the New Process for Obtaining Recommendations], OFICINA DE GERENCIA DE PERMISOS ET AL. [PERMIT MANAGEMENT OFFICE ET AL.], <https://prltap.org/eng/wp-content/uploads/2013/03/EDC-FUR-OGPe-Eng.-Irrizarry.pdf> (last visited Jan. 5, 2025). See Planning Board, Statement of Motives, Puerto Rico Simplify and Transform Permit Process Act, No. 19 (Apr. 4, 2017). (stating that new system will make island an “attractive for investment” and aid “Island’s economic recovery.”).

56. Act No. 19-2017 (H. B.310), 1st Regular Session (2021), <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/2-ingles/0019-2017.pdf>.

57. *Martinez Fernandez v. QMC Telecom, LLC*, 212 D.P.R. 285, 289 (P.R. June 16, 2023).

58. See Ktorres, *What is the Joint Regulation 2022?*, CITIZENS OF THE KARST, (Dec. 22, 2022) <https://cdk-pr.org/en/2022/12/22/what-is-the-joint-regulation-2022>.

59. See *id.* (stating that Puerto Rico’s progress is often at expense of its people and that proposed Emergency Regulation 2023 will benefit entities seeking to profit off low costs, low controls, and a paradise); see Sandra D. Rodriguez Cotto, *Nuevo Reglamento de la Junta de Planificacion Abriria la Puerta a Construccion Desmedida* [New Planning Board Regulations Would Open the Door to Uncontrolled Construction], EY! BORICUA (Apr. 5, 2022), <https://eyboricua.com/nuevo-reglamento-de-la-junta-de-planificacion-abriria-la-puerta-a-construccion-desmedida> (outlining benefits proposed Emergency Regulation conferred onto short-term rental developments, elimination of key roles like engineers and architects, etc.).

60. See Rodriguez Cotto, *supra* note 59 (stating that biggest difference between Joint Regulation 2020 and emergency regulation is that latter expands power of state to control what municipalities and communities decide at local level).

affected parties of transactions and zoning amendments and other regional projects.⁶¹ Of particular interest here, however, are the regulations' strategic implementation of single permits, IP-Us, and APs.

To complete a real estate project in Puerto Rico, a developer must obtain a construction permit.⁶² For a non-residential project, the developer must also obtain a single permit.⁶³ The 2017 amendment of the Puerto Rico Permit Process Reform Act of 2009 ("2009 Reform Act")⁶⁴ introduced these single permits.⁶⁵ The 2009 Reform Act governs the legal and administrative framework for evaluating, approving, or denying permit applications and created the Puerto Rico Permits Management Office ("OGPe") along with its attached Adjudication Board.⁶⁶ According to the 2009 Reform Act, a single permit consolidates various necessary documentations—use permits, categorical exclusion certifications, fire prevention certifications, environmental health certifications, sanitary licenses, and other type of applicable licenses—into one.⁶⁷ Ultimately, the Planning Board inspects all authorized permits and checks the validity and presence of each granted certification within the single permit.⁶⁸ Both regulations reaffirm the issuance of single permits⁶⁹ with Joint Regulation 2020 carving out space for single permits to be issued even if the inspections required to obtain the necessary certifications and licenses under the permit have not yet been performed.⁷⁰

Discretionary approvals are further supported through the creation of IP-Us⁷¹

61. *Id.*

62. See *Construction Permit Criteria*, THE MALL OF SAN JUAN, (Dec. 20, 2019) https://static1.squarespace.com/static/63599dfec3040e40046830f3/t/63aca987eb693b6b231bc3b3/1672259977008/msj-construction-permit-and-use-permit-criteria-01_16_2020.pdf (confirming that to complete construction in Puerto Rico one needs a construction permit and, once construction is completed, each developer is required to obtain a single permit prior to the start of a business).

63. *Id.*

64. *Single Permits – All Licenses in One Document*, KEVANE GRANT THORTON (Feb. 28, 2020), <https://www.grantthornton.pr/globalassets/1.-member-firms/puerto-rico/publications/professional-articles/2020/articles/pdf/02.28.20-tax-alert-single-permits---all-licenses-in-one-document-i.pdf>.

65. *Torres v. Castro*, KLRA202300304, 2024 WL 4369778, at 4 (T.C.A. Aug. 26, 2024).

66. *Id.*

67. *Id.*

68. See Danica Coto, *Illegal Building Making Puerto Rico More Vulnerable to Climate Change, Critics Warn*, LA TIMES (May 6, 2022, 2:38 PM PT.) <https://www.latimes.com/world-nation/story/2022-05-06/illegal-building-making-puerto-rico-more-vulnerable-to-climate-change-critics-warn> (stating that Puerto Rico's Planning Board is responsible for inspecting all authorized permits).

69. Junta de Planificación [Planning Board], Reglamento Conjunto para la Evaluación y Expedición de Permisos Relacionados al Desarrollo, Uso de Terrenos y Operación de Negocios [Joint Regulation for the Evaluation and Issuance of Permits Related to Development, Land Use and Business Operation], No. 9473 (Jun. 16, 2023), sect. 3.7.1.1.; see Lamboy, *supra* note 14 (outlining that process for granting single permits was amended in Joint Regulation 2020 in ways that makes evaluation easier).

70. See Lamboy, *supra* note 14.

71. Junta de Planificación [Planning Board], Reglamento Conjunto para la Evaluación y Expedición de Permisos Relacionados al Desarrollo, Uso de Terrenos y Operación de Negocios [Joint Regulation for the Evaluation and Issuance of Permits Related to Development, Land Use

and the regulation's re-affirmation of the list of entities entitled to become APs.⁷² The 2009 Reform Act created the role of AP, a qualified private entity authorized by the OGPe to act as surveyor, architect, geologist, engineer, or licensed planner on a certain project for the purpose of evaluating and issuing ministerial permits.⁷³ Section 2.3.2.1 of Emergency Regulation 2023 continues this allowance by stating that construction permits, single permits, and categorical exclusions may be denied or granted by APs.⁷⁴ In fact, per Emergency Regulation 2023, anyone professionally licensed in any area related to construction who is not employed with the OGPe may be appointed as an AP.⁷⁵ Emergency Regulation 2023 also affirms the creation of IP-Us.⁷⁶ Per Section 2.3.3.1 of the Emergency Regulation, IP-Us may be any person authorized by the OGPe to carry out inspections related to the granting of single permits.⁷⁷ IP-Us are permitted to: (1) inspect all types of buildings and structures for compliance; (2) issue final use reports that indicate whether the uses of the inspected property are in accordance with the single permit; (3) verify regulatory compliance; and/or (4) prepare any other similar function necessary for the completion of the final report.⁷⁸

The harm these updates cause is not hypothetical. In the illustrious case of Condominio Sol y Playa, further discussed in Part II.D, the relevant permit was erroneously obtained through an AP.⁷⁹ In the equally famous case of Jobos Bay National Estuarine Research Reserve (not discussed in this Comment),⁸⁰ investigations into illegal structures erected on the coasts of Salinas and Guayama uncovered counterfeit permits; the OGPe's absence during the issuance of permits

and Business Operation], No. 9473 (Jun. 16, 2023), sect. 2.3.3.1., <https://delgadofernandez.com/wp-content/uploads/Reglamento-Conjunto-de-Permisos-Emergencia.pdf>.

72. Junta de Planificación [Planning Board], Reglamento Conjunto para la Evaluación y Expedición de Permisos Relacionados al Desarrollo, Uso de Terrenos y Operación de Negocios [Joint Regulation for the Evaluation and Issuance of Permits Related to Development, Land Use and Business Operation], No. 9473 (Jun. 16, 2023), sect. 2.3.1.1.

73. See *Municipio Autónomo de Guaynabo v. Los Hermanos LLC*, KLRA202400302, 2024 WL 4799093 at *7 (T.C.A. Oct. 31, 2024) (defining ministerial permits as permits that do not require use of subjective or discretionary criteria but are limited to objective compliance or authorization determinations).

74. Junta de Planificación [Planning Board], Reglamento Conjunto para la Evaluación y Expedición de Permisos Relacionados al Desarrollo, Uso de Terrenos y Operación de Negocios [Joint Regulation for the Evaluation and Issuance of Permits Related to Development, Land Use and Business Operation], No. 9473 (Jun. 16, 2023) sect. 2.3.2.1.

75. Junta de Planificación [Planning Board], Reglamento Conjunto para la Evaluación y Expedición de Permisos Relacionados al Desarrollo, Uso de Terrenos y Operación de Negocios [Joint Regulation for the Evaluation and Issuance of Permits Related to Development, Land Use and Business Operation], No. 9473 (Jun. 16, 2023), sect. 2.3.1.1.

76. *Id.*

77. *Id.*

78. Junta de Planificación [Planning Board], Reglamento Conjunto para la Evaluación y Expedición de Permisos Relacionados al Desarrollo, Uso de Terrenos y Operación de Negocios [Joint Regulation for the Evaluation and Issuance of Permits Related to Development, Land Use and Business Operation], No. 9473 (Jun. 16, 2023), sect. 2.3.3.2.

79. Nogales Molinelli, *supra* note 17.

80. *Id.* at 3.

at the center of the dispute; and initiated a focused search into an AP related to the counterfeit permits.⁸¹ The Joint Regulations also de-regulate and centralize the permitting process while compromising accuracy for speed and creating an atmosphere that allows discretionary approvals and illegal coastal constructions.⁸² For example, the regulations give the OGPe complete authority to choose who carries out critical tasks—such as inspections—even if those entities are not properly qualified.⁸³ These tasks are essential to making sure a project complies with the law. By concentrating this power and final approval authority within the same department, the permitting process centralizes oversight and diminishes governmental checks.⁸⁴ Similarly, the regulations’ single permit system collapses several critical certifications, like environmental health certifications, into a single permit reviewed by one agency. This organization not only serves as another example of centralization but also shows a diminishment in external oversight. This laxity displayed in single permits also hints at “trust-based certifications,” or in other words, a system that allows proponents of projects to self-supply certifications in the name of ease.⁸⁵

In short, activists and scholars have looked to the recent joint regulations as the source of the proliferation of illegal constructions.⁸⁶ Whether caused by legislative vagueness or the reasons extrapolated above, it is undeniable that building regulations in Puerto Rico facilitate discretionary and illegal approvals.⁸⁷ Since 2020, construction permits for proposed coastal hotel, residential, and business development projects have increased.⁸⁸ Of the 20,048 permits approved from 2015 to 2021, 65% were for buildings in one of the forty-four coastal towns.⁸⁹ Such

81. *Id.* at 4.

82. *See id.* at 3 (stating that deregulation, especially pertaining to permit regulations, promoted by *La Junta*, is outlined in oversight board’s Ease of Doing Business Reform memo); *see* Ktorres, *supra* note 57 (stating that proposed Emergency Regulation would allow coastal constructions that were currently illegal).

83. Laura M. Quintero, *Gerente de permisos que intervino en caso de construcción en Rincón renuncia a OGPe* [Permits manager involved in Rincón construction case resigns from OGPe], *EL NUEVO DÍA* [NEW DAY] (July 16, 2021), <https://www.elnuevodia.com/noticias/gobierno/notas/gerente-de-permisos-que-intervino-en-caso-de-construccion-en-rincon-renuncia-a-ogpe>.

84. Nogales Molinelli, *supra* note 17 (stating that proponents of projects can submit and self-verify required documents without sufficient government oversight).

85. Nogales Molinelli, *supra* note 17 (“Right now, the permit process is driven by proponents of projects that supply and self-certify information to the permits web platform, including Environmental Assessments, without appropriate government oversight.”)

86. Rosario, *supra* note 7. *See* Nogales Molinelli, *supra* note 17 (explaining how an Authorized Professional, empowered by a joint regulation, helped procure an illegal permit); *see* Rodríguez Cotto, *supra* note 59 (stating that proposed emergency regulation would legalize constructions under investigations in Salinas).

87. Rodríguez Cotto, *supra* note 59. *See* Coto, *supra* note 36 (revealing that testimony in Sol y Playa case included an employee of OGPe’s environmental division who confessed that he intervened to speed up the now canceled permit).

88. *See* Rodríguez Velázquez, *supra* note 10 (highlighting that in 2020 there was a 29% increase in construction permits in coastal towns compared to 2020).

89. *Id.*

increased development, absent mitigating legislative efforts, has hindered Puerto Ricans' free access to the beach and spurred displacement of native residents;⁹⁰ aggravated the island's housing crisis;⁹¹ exacerbated coastal erosion and flooding;⁹² destroyed dunes and mangroves;⁹³ threatened endangered wildlife;⁹⁴ and exposed Puerto Ricans to the risk of losing their cultural autonomy.⁹⁵

1. La Junta's Involvement in Establishing the Joint Regulations

For years, virtually everything in Puerto Rico, from the nature preserves to the power utility, had been for sale as the deeply indebted US-owned archipelago struggles to pay back billions of dollars to Wall Street. The beaches—public access to which is guaranteed under Puerto Rican law—had long been the exception. But as the local government seeks to remake the island into a hub for mainlanders seeking to avoid taxes, it is finding new and creative ways to claim the waterfront.⁹⁶

While a detailed analysis of the Joint Regulations is useful for targeting legislative change, the broader context and rationale for their passage is critical. One of the main motivations for enacting and amending the 2009 Reform Act, and overhauling the permitting process, was to establish Puerto Rico as a “progressive jurisdiction for making capital investments” to improve the island's economy and generate more fiscal revenues for local government.⁹⁷ The amended Act explicitly cites concerns about Puerto Rico's global reputation of having difficult bureaucracy and burdensome business processes as reasons for the need of a new streamlined permit procedure.⁹⁸ This rhetoric is also echoed in communications between La Junta and the Planning Board. In a September 2023 letter to the Planning Board

90. Carlos G. Garcia-Quijano & Hilda Llorens, *Coastal Gentrification in Puerto Rico is Displacing People and Damaging Mangroves and Wetlands*, THE CONVERSATION (June 16, 2022, 8:24 AM EDT), <https://theconversation.com/coastal-gentrification-in-puerto-rico-is-displacing-people-and-damaging-mangroves-and-wetlands-184214>.

91. See Coral Murphy Marcos & Patricia Mazzei, *The Rush for a Slice of Paradise in Puerto Rico*, NYT (Jan. 31, 2022), <https://www.nytimes.com/2022/01/31/us/puerto-rico-gentrification.html> (stating that policies meant to reinvigorate real estate market has caused renters to be forced out by soaring housing prices along coast); see *Puerto Rico*, BUILDERS PATCH HOUSING COUNT, <https://www.builderspatch.com/housingcount/us-states/puerto-rico> (last visited Jan. 7, 2025) (stating that Puerto Rico is facing an affordable housing crisis).

92. See Rodríguez Velázquez, *supra* note 10 (stating that geomorphologists have warned that new coastal construction should be stopped to avoid a greater impact of coastal erosion on communities near sea).

93. Rosario, *supra* note 7.

94. See *infra* Part II.D for a discussion of how coastal development destroyed the homes of endangered turtles.

95. See *infra* Part III for a discussion of how La Junta's actions conflict with the island's self-directed cultural development.

96. Alexander C. Kaufman, et al., *The Battle Over The Last Piece Of Puerto Rico That Wasn't For Sale*, HUFFPOST (Oct. 14, 2021, 2:17 PM) https://www.huffpost.com/entry/puerto-rico-beaches-privatization_n_6160a321e4b0cc44c50c93e3.

97. Planning Board, *Puerto Rico Permit Process Reform Act*, No. 161 (Apr. 4, 2017), https://presupuesto.pr.gov/BUDGET20112012/Aprobado2012Ingles/suppdocs/baselegal_ingles/273/273a.pdf.

98. *Id.*

President Lassus Ruiz, La Junta (specifically, Robert F. Mujica Jr.) complimented the Puerto Rican government on Joint Regulation 2020's "significant steps [towards] improv[ing] Puerto Rico's ability to efficiently award permits, licenses and certificates required for the construction of new projects."⁹⁹ Mujica Jr. further stated, in regard to Emergency Regulation 2023: "We trust that the new joint regulation that the Planning Board is currently developing will go farther than the Joint Regulation of 2020 in streamlining Puerto Rico's permitting process and we look forward to reviewing this new joint regulation once it is submitted to the Oversight Board."¹⁰⁰

The U.S.'s economic interest in making Puerto Rico amenable to foreign investment lingers in the shadows of these regulations and acts. La Junta's mission to ease the process of doing international business in Puerto Rico is well-documented¹⁰¹ as is their Ease of Doing Business project's dedication to "streamlin[ing] approvals . . . mak[ing] permits more easily accessible" and "strengthen[ing] offshore investment attraction efforts."¹⁰² The 2023 Commonwealth Fiscal Plan, published pursuant to PROMESA Section 201, specifically highlights La Junta's concern with the median number of days the OGPe needs to adjudicate single permits and consolidated construction permits, along with the number of procedures required to apply for and obtain the consolidated construction permit.¹⁰³ These factors are tracked and serve as indicators that gauge the quick implementation of La Junta's reform initiatives.¹⁰⁴

The Puerto Rican government enacted island-wide permitting updates to increase investment and generate an additional avenue of revenue.¹⁰⁵ The money

99. Letter from Robert F. Mujica Jr., Executive Director, Financial Oversight & Management Board for Puerto Rico, to Julio Lassús Ruiz, President, Puerto Rico Planning Board (Sept. 18, 2023), https://drive.google.com/file/d/1ia74S5Tn8cp8r0Cy7G-6RHBd_qSrIJEK/view.

100. *Id.* ("However, to the extent that further streamlining of the Puerto Rico permitting process is required than what's achieved in the new joint regulation that the Planning Board is developing, the Oversight Board may consider another limited approval of that joint regulation.")

101. See German Ojeda, *Ease of Doing Business in Puerto Rico: A Continuing Challenge*, FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO (Mar. 1, 2022), <https://oversightboard.pr.gov/op-ed-ease-of-doing-business-in-puerto-rico-a-continuing-challenge> (stating that board will "continue emphasizing the urgency of strengthening the island's competitiveness on the global market" and "attracting new private capital.").

102. *2023 Transformation Plan for Puerto Rico: Restoring Growth and Prosperity*, FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO (Apr. 3, 2023), <https://bvirtualogp.pr.gov/ogp/Bvirtual/reogGubernamental/PDF/PROMESA/PFPR23-english.pdf>.

103. Financial Oversight & Management Board for Puerto Rico, *supra* note 102 at 61.

104. *Id.*

105. See Planning Board, Statement of Motives, Puerto Rico Simplify and Transform Permit Process Act, No. 19 (Apr. 4, 2017) <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/2-ingles/19-2017.pdf> ("The Government Development Bank has defaulted its obligations to bondholders since May 1, 2016, and is no longer fulfilling its duty to provide liquidity. Puerto Rico's obligations portfolio amounts to \$66 billion and includes 18 different issuers whose financial situation is precarious. Debt service amounts to an average of \$3.5 billion and uses over one-fourth of the sources of income. Retirement systems are practically insolvent with a \$50 billion debt . . . [as such, we need to work hard to address this issue and] concentrate on balancing income and spending, reducing the level of government intervention in Puerto Rico's economy, and creating a competitive business environment governed by good faith, so that investors as well as local and

generated from these amendments are then, in part, sent to the U.S. to allay debt and boost U.S. economic interests in the island.¹⁰⁶ It is evident that La Junta has been planning for “specific revenue enhancements” to “return Puerto Rico to fiscal stability and economic growth” since, at least, 2017.¹⁰⁷ Considering La Junta’s history of imposing austerity measures to reduce the island’s budget deficit, La Junta’s involvement in the permitting system can be characterized as another such measure.¹⁰⁸

D. Documenting Resistance

Community resistance to these illegal development efforts has been swift. In 2019, the OGP granted permits to the owners of Condominio Sol y Playa in Rincón to rebuild a pool and jacuzzi on the maritime-terrestrial zone of Los Almendros beach.¹⁰⁹ Despite local opposition, including a complaint to the DRNA regarding its refusal to “exercise its authority” and stop the agency from granting construction permits,¹¹⁰ developers continued construction.¹¹¹ In May 2021, activist and former gubernatorial candidate, Eliezer Molina, began monitoring the site from outside a chain-link fence.¹¹² In June, Molina announced via social media that construction was occurring atop an endangered species of turtles’ nesting grounds.¹¹³ Mass protests ensued¹¹⁴ and continued for months, culminating in the demolition of a concrete wall that was separating the beach from the construction zone.¹¹⁵ In February 2022, an Aguadilla district court officially deemed the condo’s

foreign business people may lead the way towards economic recovery.”).

106. *Fiscal Plan for Puerto Rico*, P.R. FISCAL AGENCY AND FIN. ADVISORY AUTH. (Mar. 13, 2017), https://drive.google.com/file/d/1qud_EWxvKHALy8J4A9reP3riQwBFucVk/view (“The Fiscal Plan commits to fiscal responsibility and implements specific revenue enhancements and targeted expenditure reductions to return Puerto Rico to fiscal stability and economic growth.”).

107. *Id.* at 5.

108. Sabbagh, *supra* note 35, at ¶ 82.

109. Patricia Mazzei, *A Turtle, a Pool and the Fight to Save Puerto Rico’s Beaches*, THE NEW YORK TIMES (Nov. 6, 2021), <https://www.nytimes.com/2021/11/06/us/puerto-rico-beaches-threats.html>.

110. Mazzei, *supra* note 109; see Murphy Marcos, *supra* note 1 (even lower court ordered part of construction demolished).

111. Daniel Rivera Vargas, *Multiples Desafios Juridicos en el Caso del Condominio Sol y Playa* [Multiple Legal Challenges in the Sol y Playa Condominium Case], MICRO JURIS (Aug. 22, 2023), <https://aldia.microjuris.com/2023/08/22/multiples-desafios-juridicos-en-el-caso-del-condominio-sol-y-playa>.

112. Mazzei, *supra* note 109; See Lester Jimenez, *Condominio Sol y Playa en Rincón: Donde Todo Comenzó, Pero Nada Ha Terminado* [Sol y Playa Condominium in Rincón: Where It All Began, But Nothing Has Ended], NOTICEL (Aug. 21, 2022), <https://www.noticel.com/la-calle/top-stories/20220421/condominio-sol-y-playa-en-rincon-donde-todo-comenzo-pero-nada-ha-terminado> (reporting Molina stopped at site with his cellphone to denounce construction via social media).

113. Berrios Polanco, *supra* note 1.

114. Mazzei, *supra* note 109.

115. Juanita Ramos Ardilla, *Tension Rises in Rincón Due to Police Force and Construction on Beach*, LATINO REBELS (Jul. 27, 2021), <https://www.latinorebels.com/2021/07/27/tensionrisesinrincon>; Berrios Polanco, *supra* note 1.

construction permit invalid because it was built on public land; the court ordered the directors of Sol y Playa to tear down the pool and jacuzzi.¹¹⁶ For nearly eighteen months, they never did.¹¹⁷ As of December 2023, demolition of the wall and the restoration of the turtles' habitat at Los Almendros beach was expected to be completed in early 2024.¹¹⁸

The protests affected several changes. First, the movement shed a light on the DRNA's role in allowing illegal coastal constructions and put the agency's ineptitude within the public consciousness.¹¹⁹ The movement also pressured the DRNA to re-demarcate the beach which, unsurprisingly, revealed that the contested construction was being built almost entirely on the maritime-terrestrial zone.¹²⁰ The protests also led to approximately two years of litigation against the directors of the condominium.¹²¹ Trial testimony uncovered the relevant construction permits were "fast-tracked without the proper environmental impact studies" by an employee of the OGPe's environmental division—yet another example of how the regulations allow for the exercise of discretion.¹²² The trial also revealed that the OGPe approved permits without DRNA approval even though the application did not include required documents.¹²³

Although the controversy with Sol y Playa in Rincón received the most media attention, it is not the only coastal town suffering the consequences of fast-tracked permitting.¹²⁴ In early 2024, foreign real estate development firms Reuben Brothers and Three Rules Capital announced a \$2 billion plan (financed by J.P. Morgan Chase

116. Rivera Vargas, *supra* note 111.

117. *Id.* (stating court issued arrest warrant for president of the condominium board after nearly 18 months of noncompliance).

118. Valeria Maria Torres Nieves, Demolition of Sol y Playa Condominium Will be Completed Early Next Year, *El Nuevo Día* (Dec. 15, 2023), <https://www.elnuevodia.com/english/news/story/demolition-of-sol-y-playa-condominium-will-be-completed-early-next-year>.

119. See *Condominio Sol y Playa: Impugnación de Deslinde Aún Espera Decisión* [Sol y Playa Condominium: Boundary Challenge Still Awaiting Decision], PARA LA NATURALEZA [FOR NATURE], <https://www.paralanaturaleza.org/condominio-sol-y-playa-impugnacion-de-deslinde-aun-espera-decision> (last visited Jan. 7, 2025) (reporting that DRNA has been accused of "dragging their feet" and took eight months to resolve issue of delineations).

120. Berrios Polanco, *supra* note 1.

121. *Tribunal Ordena Arresto de Presidenta de la Junta de Titulares del Condominio Sol y Playa* [Court Orders Arrest of President of the Board of Owners of the Sol y Playa Condominium], PRIMERA HORA [FIRST HOUR] (Aug. 14, 2023, 6:09 PM), <https://www.primerahora.com/noticias/policia-tribunales/notas/tribunal-ordena-arresto-de-presidenta-de-la-junta-de-titulares-del-condominio-sol-y-playa>.

122. Coto, *supra* note 67. See *¿Por Qué el Permiso de Construcción del Condominio Sol y Playa Fue Declarado Nulo?* [Why was the construction permit for the Sol y Playa Condominium declared null and void?], MICRO JURIS (Feb. 15, 2022), <https://aldia.microjuris.com/2022/02/15/por-que-el-permiso-de-construccion-del-condominio-sol-y-playa-fue-declarado-nulo/> (revealing that OGPe approved construction permit despite not including some required documentations).

123. Micro Juris, *supra* note 122.

124. See Rodríguez Velázquez, *supra* note 5 (outlining that Dorado, San Juan, Aguadilla, Guaynabo, and Manati have seen an uptick in construction permit approvals).

& Co., New York) to build *Esencia*—a mixed-use hotel and residential community in the coastal town of Cabo Rojo.¹²⁵ The development will span across 2,000 acres and is set to include up to 500 luxury hotel rooms, 900 tourist residences, a private airport, up to 3 miles of “pristine beachfront,” two golf courses, a spa, wellness centers, health clubs, an equestrian center, hiking and biking trails, and a private school.¹²⁶ On December 23, 2025, the OGP_e preliminarily issued an Environmental Compliance Certification for the development¹²⁷ subject to the completion of forty-six conditions many of which may be completed either during or after construction.¹²⁸

There has been strong public backlash to the project.¹²⁹ Much of the criticism is based on the negative environmental effects this construction is likely to have on the area’s already fragile ecosystem.¹³⁰ The project is proposed to be built on wetlands¹³¹ and the Boquerón Insular Forest, which the developers insist are privately owned.¹³² Concerns have also been voiced about the role of Emergency

125. Michelle Kantrow-Vazquez, *Esencia, A \$2B, 2K-acre Planned Community Proposed for Cabo Rojo*, NEWS IS MY BUSINESS (May 24, 2024), <https://newsismybusiness.com/esencia-a-2b-2k-acre-planned-community-proposed-for-cabo-rojo>.

126. Rose Bridger, *Puerto Rico: Resisting Esencia, a Luxury Tourism and Residential Development with a Private Airport* (Nov. 3, 2025), <https://antiaero.org/2025/11/03/puerto-rico-resisting-esencia-a-luxury-tourism-and-residential-development-with-a-private-airport>; *Esencia*, <https://www.esenciapuertorico.com> (last visited Feb. 16, 2026).

127. The Star Staff, *PIP Criticizes Approval of Esencia Project*, THE SAN JUAN DAILY STAR (Dec. 29, 2025), <https://www.sanjuandailystar.com/post/pip-criticizes-approval-of-esencia-project>; Gerencia de Permisos [Permits Management], Determinación de Cumplimiento Ambiental [Determination of Environmental Compliance], Num. Caso 2004-579429-DIA-300042 (Dec. 23, 2025) <https://www.drna.pr.gov/wp-content/uploads/2025/12/2024-579429-DIA-300042-Resolucion.pdf>.

128. Gerencia de Permisos [Permits Management], Determinación de Cumplimiento Ambiental [Determination of Environmental Compliance], Num. Caso 2004-579429-DIA-300042 (Dec. 23, 2025) <https://www.drna.pr.gov/wp-content/uploads/2025/12/2024-579429-DIA-300042-Resolucion.pdf>.

129. See Bianca Graulau (@biancagraulau), INSTAGRAM, <https://www.instagram.com/biancagraulau/reel/C7m85giumiX/?hl=en> (last visited Jan. 6, 2025) (discussing issues with *Esencia* development, including land’s ecological fragility, protected soil, and presence of indigenous artifacts); see Organizaciones Contra *Esencia* [Organizations Against *Esencia*], *Orgs Que se Oponen a “Esencia” Celebran Reunión Organizativa, Actualizan Info y Llamam Acción* [Organizations That Oppose “*Esencia*” Hold Organizational Meeting, Update Information and Call for Action], CHANGE.ORG (Oct. 17, 2024), <https://www.change.org/p/detengan-ahora-el-megaproyecto-de-lujo-esencia-en-cabo-rojo-puerto-rico/u/32971334> (stating that community organizations have made their voices heard over last months about negative implications of mega-project *Esencia*); see Luis Joel Mendez Gonzalez, *Watching in Silence: The Investors Behind the Esencia Project* (Mar. 13, 2025), <https://periodismoinvestigativo.com/2025/03/esencia-project-cabo-rojo-hearings> (detailing protests against *Esencia*).

130. See Cynthia Burgos Lopez, *La Esencia de Cabo Rojo* [The *Escencia* of Cabo Rojo], MAREA ECOLOGISTA [ECOLOGICAL TIDE] (May 28, 2024), <https://mareaecologista.com/2024/05/la-esencia-de-cabo-rojo/> (stating that people oppose construction because of its environmental impact and privatization of the coasts).

131. Graulau, *supra* note 129.

132. See Letter from Lourdes Mena, Field Supervisor, to Leslie M. Rosado Sanchez, Interim

Regulation 2023 and how it is further allowing for the construction of this project on protected rustic lands (*suelo rústico*).¹³³ The developers have tried to quell local communities' anxieties by preemptively assuring residents that their plan includes beach access for guests, residents, and the wider public.¹³⁴

Discussions of resistance efforts are important for several reasons. Primarily, they demonstrate the significance of the beaches and its surrounding lands and the value they hold for residents. They also evidence residents' distaste for the joint regulations and foreign developers' unfettered ability to purchase large swaths of land without sufficient limitations. Most importantly, the resistance efforts show that Puerto Ricans are seeking a change.

III. LA JUNTA, SELF-DETERMINATION, COLONIALISM, AND CULTURAL RIGHTS

La Junta's actions exist in tension with the tenants of international law's right to self-determination. By encouraging the implementation of building policies that facilitate the privatization of culturally important property and impede public access to the beaches, La Junta may be acting in direct conflict with this right. First, La Junta's imposition of another austerity measure signals an intensification of U.S. colonial control over the island, which runs counter to self-determination's anticolonial agenda.¹³⁵ Second, impeding residents' access to culturally significant lands interferes with Puerto Ricans' ability to pursue independent cultural development, which is an established component of the right to self-determination.¹³⁶

While it has been established that the U.S.'s creation of La Junta to enact measures to ensure payment of Puerto Rico's debt evidences colonial control, it has not yet been argued that La Junta is interfering with island residents' freedom to pursue and practice their own culture. Public and private properties have power over culture, and Puerto Rico's coastal lands are no exception.¹³⁷ With over half of Puerto Rico's 3.2 million residents living in coastal towns, beaches are an integral part of Puerto Rican culture.¹³⁸ For example, its natural resources are often foraged by

Director of Physical Planning, The Puerto Rico Planning Board, (Sept. 11, 2024), <https://mareaecologista.com/wp-content/uploads/2024/10/U.S.-Department-of-the-Interior.pdf> (noting that all coastal wetlands and associated salt flats that are part of project, are part of Boquerón Insular Forest and that ownership of land needs to be clarified).

133. See Candida Cotta, *Se Quieren Llevar La Esencia de Terrenos en Cabo Rojo* [*They Want to Take Away the Esencia in Cabo Rojo*], CLARIDAD (Oct. 1, 2024), <https://claridadpuertorico.com/se-quieren-llevar-la-esencia-de-terrenos-en-cabo-rojo/> (stating that, according to a planner, the Planning Board has been interpreting the Joint Regulations loosely to not comply with Puerto Rico's plans indicate and that part of Esencia will be built on rustic lands).

134. Kantrow-Vazquez, *supra* note 125.

135. See Sabbagh, *supra* note 35, at ¶ 44, 45 (outlining how La Junta's austerity measures have strengthened colonial control and clouded Puerto Rico's economic development); see *infra* Part III.A for a discussion of self-determination's anticolonial roots.

136. See *infra* Part III.B for a discussion of the right to culture under self-determination.

137. See *infra* Part III.C for a discussion about how property has the power to shape culture.

138. Rodríguez Velázquez, *supra* note 5.

communities and used to build traditional fishing boats.¹³⁹ The island's beaches are also a meeting ground and centers for community negotiations.¹⁴⁰ Beaches have and continue to be the focus of odes and songs¹⁴¹ and serve as tangible connections to residents' ancestral heritages.¹⁴² All of these manifestations of culture are protectable under self-determination's right to cultural freedom.¹⁴³

A. A Brief Overview of the Right to Self-determination

The right to self-determination is a U.S.-recognized norm in international law that acknowledges the right for a people to freely decide their own destiny, which includes the right to freely determine one's own cultural, social, and economic development.¹⁴⁴ According to the International Court of Justice ("I.C.J."), the right to self-determination is customary international law¹⁴⁵ but is on the precipice of attaining *jus cogens* status.¹⁴⁶ Although most notably conferred in Article 1(2) of the

139. Garcia-Quijano et al., *supra* note 90; Carlos G. Garcia-Quijano & John J. Poggie, *Coastal Resource Foraging, the Culture of Coastal Livelihoods, and Human Well-being in Southeastern Puerto Rico: Consensus, Consonance, and Some Implications for Coastal Policy*, 19 MARTIME STUDIES 53, 55 (2020).

140. See Victor Rodríguez Velázquez, *An Afro-Caribbean Community in Puerto Rico Fights to Preserve its Identity, and its Coastline*, THE GROUNDTRUTH PROJECT (Feb. 6, 2020), <https://thegroundtruthproject.org/an-afro-caribbean-community-in-puerto-rico-fights-to-preserve-its-identity-and-its-coastline/> (explaining that community eats prepared dishes by the sea); Ángela S. Pérez Aguilar, *Centering the Coastline: Planning and the Struggle for Puerto Rico's Coast*, CRITICAL PERSPS. ON INT'L PLAN., <https://sites.utexas.edu/internationalplanning/centering-the-coastline-planning-and-the-struggle-for-puerto-ricos-coast> (last visited Feb. 16, 2026).

141. See Solcyre Burga & Andrew R. Chow, *'I Found the Sound That Represents Me': Bad Bunny On Heartbreak and Returning Home to Puerto Rico With Debi Tirar Más Fotos*, TIME (Jan. 5, 2025, 11:01 EST), <https://time.com/7204771/bad-bunny-debi-tirar-mas-fotos-interview-2025/> (detailing a song in Bad Bunny's new album that speaks on importance of the beach and how "they" keep coming to sell land); see SYLVIA REXACH, *Olas y Arenas*, on Sylvia Rexach Canta a Sylvia Rexach (Grabaciones - Instituto de Cultura Puertorriqueña 1958) (singing about maritime-terrestrial zone and beauty of Puerto Rico's beaches).

142. See Lola Rosario, *PR - How This Environmental Activist is Protecting Puerto Rico's Coastlines and Indigenous Heritage*, COASTAL NEWS TODAY (last visited on Nov. 15, 2025), <https://www.coastalnewstoday.com/post/pr-how-this-environmental-activist-is-protecting-puerto-ricos-coastlines-and-indigenous-heritage> (covering how an activist is fighting against illegally built structures obstructing public access to a coastal archaeological site featuring ancient rock art carvings from Puerto Rico's first inhabitants).

143. See *infra* Part III.B for examples of cultural expression and engagement protected by self-determination.

144. Rauna Kuokkanen, *The Problem of Culturalizing Indigenous Self-Determination: Sámi Cultural Autonomy in Finland*, 14 THE POLAR J. 148, 148 (2024); see PATRICIA CARLEY, U.S. RESPONSES TO SELF-DETERMINATION MOVEMENTS: STRATEGIES FOR NONVIOLENT OUTCOMES AND ALTERNATIVES TO SUCCESSION V (1997), <https://www.usip.org/sites/default/files/pwks16.pdf> (stating that the opaque definition of self-determination prevents the U.S. and other countries from consistently responding to calls for self-determination).

145. Stephen Allen, *The Chagos Advisory Opinion and the Decolonization of Mauritius*, A. SOC. INT. L. (Apr. 15, 2019), <https://www.asil.org/insights/volume/23/issue/2/chagos-advisory-opinion-and-decolonization-mauritius>.

146. ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES, 135 (Cambridge University

1945 U.N. Charter,¹⁴⁷ the right was significantly expanded by the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (“DGICC”) to include the right to “freely determine [one’s] political status and freely pursue their economic, social, and cultural development”¹⁴⁸. The preamble to the DGICC emphasizes the incompatibility of colonialism with most goals of self-determination, *i.e.*, social, economic, and cultural sovereignty.¹⁴⁹ Article 1 of the 1966 International Covenant on Civil and Political Rights (“ICCPR”)¹⁵⁰ and the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the U.N.¹⁵¹ reiterated the right to self-determination and affirmed loose instructions for its exercise.¹⁵²

The right to self-determination has roots in decolonization.¹⁵³ In fact, at its inception, self-determination was “perceived and relied upon as a legal entitlement to decolonization.”¹⁵⁴ This undergirding principle of anticolonialism was also affirmed by the I.C.J. in its 2017 Chagos advisory opinion.¹⁵⁵ There, the I.C.J. addressed two questions—(1) what consequences flowed from the United Kingdom’s (“U.K.”) administration of the Chagos Archipelago; and (2) whether the U.K. ever fully decolonized from Mauritius.¹⁵⁶ The court held, in part, that the U.K. failed to decolonize when it failed to consider Mauritius’ right to self-

Press, 1st ed. 1995). *See id.* (stating that I.C.J. stopped short of holding that self-determination is a preemptory higher norm of international law).

147. Cassese, *supra* note 146, at 65. *See* U.N. Charter art. 1(2) (stating that one purpose of U.N. is to “develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.”).

148. *See* G.A. Res. 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples (Dec. 14, 1960) (stating that immediate steps shall be taken in all territories who have not yet achieved independence to transfer all power to people of those territories in accordance with their freely expressed will and desire).

149. *See id.* (stating that “continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples”).

150. G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (Dec. 16, 1966).

151. G.A. Res. 2625 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (Oct. 24, 1970).

152. *See id.* (“Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle.”); *see* G.A. Res. 2200A (XXI) at art. 1(3) (“The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination.”).

153. AMANDA CATS-BARIL, SELF-DETERMINATION, INTERNATIONAL IDEA INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE 1 (2018), <https://www.idea.int/sites/default/files/publications/self-determination-constitution-brief.pdf>.

154. Cassese, *supra* note 146, at 65.

155. Legal Consequences of the Separation of the Chagos Archipelago From Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95 (Feb. 25).

156. *Id.* at 99–100.

determination.¹⁵⁷ This failure, per the I.C.J., constituted a “wrongful act.”¹⁵⁸ Considerations supporting the I.C.J.’s decision were the U.K.’s dishonest conduct, undemocratic appointment of Mauritius’ representatives, forced removal of the Chagos Archipelago from Mauritius, and unconsented removal of Chagos residents from the island.¹⁵⁹ The opinion solidified that “[s]ince respect for the right to self-determination is an obligation *erga omnes*, all States have a legal interest in protecting that right.”¹⁶⁰ The case also helped clarify the right to self-determination’s broad scope and court discretion when measuring the forms and procedures by which self-determination may be realized.¹⁶¹

Although no legal instrument or case outlines a specific way self-determination must be achieved or expressed,¹⁶² certain themes are inextricably tied to applications of self-determination. These include: (1) principles of anti-colonialism;¹⁶³ (2) democracy and “consent of the governed;”¹⁶⁴ (3) a State’s responsibility to value and consider a people’s expressed will in matters concerning their condition;¹⁶⁵ (4) the right of a people to political and economic sovereignty;¹⁶⁶ and (5) the protection of the identity and culture of a people.¹⁶⁷ Additionally, although “peoples” has never been properly defined in international law, Puerto Ricans may claim a violation of their cultural rights and self-determination through their status as a minority group of the U.S., or its colony.¹⁶⁸

157. *Id.* at 99.

158. *Id.*

159. See Isabelle O’Connor, *The Chagos Advisory Opinion: Evaluation of the Status Development of the Right to Self-Determination in International Law*, U. COLL. DUBLIN L. REV. (Jan. 24, 2024), <https://theucdlawreview.com/2024/01/24/the-chagos-advisory-opinion-evaluation-of-the-status-development-of-the-right-to-self-determination-in-international-law> (explaining how I.C.J. referenced evidence of dishonest conduct, appointment of government officials, and importance of original borders when concluding that decolonization had not been completed).

160. Legal Consequences of the Separation of the Chagos Archipelago From Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95, at 139 (Feb. 25).

161. *Id.* at 134.

162. See *id.* at 134 (stating that ways in which self-determination will be implemented and practiced is not outlined, but up to court’s discretion).

163. G.A. Res. 1514 (XV) Declaration on the Granting of Independence to Colonial Countries and Peoples (Dec. 16, 1960); See Cassese, *supra* note 146, at 16 (stating that self-determination was first conceived as an anti-colonial postulate).

164. Cassese, *supra* note 146, at 19.

165. See *id.* at 128 (explaining that one quintessence of self-determination is need to pay regard to the freely expressed will of a peoples).

166. See Nicolaas Schrijver, *Self-determination of Peoples and Sovereignty Over Natural Wealth and Resources*, in REALIZING THE RIGHT TO DEVELOPMENT 95, 97 (2013) (stating that in 1950s there were two parallel struggles of colonized peoples; that for self-determination and that for economic independence).

167. See Ana Filipa Vrdoljak, *Self-determination and Cultural Rights*, in 95 CULTURAL HUMAN RIGHTS 41 (Francesco Francioni & Martin Acheinin ed. 2008) (stating that right to self-determination is considered crucial for the exercise of cultural rights).

168. U.N. GACOL, 2023 Session, GA/COL/3372 (2023) (approving resolution reaffirming Puerto Rico’s inalienable right to self-determination and independence).

B. Self-determination and the Right to Culture

While self-determination's roots in anticolonialism and goals of decolonization remain undisputed,¹⁶⁹ the relationship between self-determination and the right to culture is less clear. Both the 1960 DGICC and the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation, however, attach the freedom to pursue one's own "cultural development" onto the right of self-determination.¹⁷⁰ Generally, the right to cultural development and autonomy protects a people's freedom to maintain their ethnic character, pursue activities on culturally significant lands, and prevent the colonialization and erasure of a culture.¹⁷¹ Although these rights are not consistently pursued via self-determination, that the right is included in the bundle protected by self-determination is evident in self-determination's development and elaboration under international law.¹⁷²

Prior to the establishment of the 1960 DGICC and 1970 Declaration, cultural autonomy was protected through treaty-based guarantees for minorities in Central and Eastern Europe.¹⁷³ These "minority protections" typically guaranteed: (1) freedom to choose one's own nationality; (2) entitlement to the political and civil rights enjoyed by non-minority nationals; and (3) equal rights to establish, control, and manage one's own religious and social institutions.¹⁷⁴ These entitlements were construed as positive obligations.¹⁷⁵ The jurists of the League of Nations confirmed that protection of a people's culture was a tenant of minority protections while assessing the legal status of the Aaland Islands.¹⁷⁶ Addressing the islands' desire to secede from Finland, the Commission of Rapporteurs, charged with assessing the legal status of the Aaland Islands recommended obligating Finland to increase minority protections while the islands remained under its sovereignty.¹⁷⁷ The Commission's report emphasized the unique "ethnic character and the ancient

169. See Anna Stilz, *Decolonization and Self-Determination*, 32 SOC. PHIL. AND POL'Y 1, 2 (2015) ("While the self-determination principle's contours are disputed, international law clearly recognizes decolonization as a central application of it.").

170. G.A. Res. 1514 (XV) Declaration on the Granting of Independence to Colonial Countries and Peoples (Dec. 16, 1960); G.A. Res. 2625 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (Oct. 24, 1970).

171. Vrdoljak, *supra* note 167, at 46; see *Report Presented to the Council of the League of Nations by the Commission of Rapporteurs*, League of Nations Doc. B7 21/68/106 at 4 (1921) (suggesting that ethnic character should be protected under minority protections and self-determination).

172. See Matthew Saul, *The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?*, 11 HUMAN RIGHTS L. REV. 609, 610 (outlining that for colonized people, right to cultural integrity and development has been identified as a substantive entitlement conferred by virtue of right to self-determination).

173. Vrdoljak, *supra* note 167, at 46.

174. *Id.* at 46–47.

175. *Id.* at 48 (stating that cultural rights enshrined in three elements were construed as positive obligations).

176. See *id.* at 46 (stating that protections recommended for Aaland Islanders was based on already existing minority protections).

177. Cassese, *supra* note 146, at 29.

traditions” of the Aaland Islands residents “should be respected as much as possible” and that island residents were “specially authorised to practise freely their religion and to cultivate their language.”¹⁷⁸ The report also identified ancestral heritage as a valuable and significant aspect of a culture.¹⁷⁹ Finally, the Commission held that principles of self-determination and the protection of minorities had a common ground and object to assure “the maintenance and free development of its social, ethnical or religious characteristics.”¹⁸⁰

The Human Rights Committee has also discussed the intersection of self-determination and cultural rights in relation to culturally significant activity.¹⁸¹ In 1992, members of the Māori people accused New Zealand’s crown of violating Article 1 (right to self-determination) and Article 27 (minority rights) of the ICCPR.¹⁸² The case centered on a settlement reached between the crown and the Māori that expropriated the Māori’s fishing resources and stripped the group of legal protection of their fishing rights.¹⁸³ The Māori people argued the agreements, aside from not being honestly explained,¹⁸⁴ were too limiting given fishing was “one of the main elements of their traditional culture” and that the Māori maintained a “strong desire to manifest their culture through fishing to the fullest extent of their traditional territories.”¹⁸⁵ The Committee agreed.¹⁸⁶ The Committee further concluded that Article 27 protects both traditional and modernized means of livelihood practiced by minorities¹⁸⁷ and that assessments of the acceptability of state measures affecting culturally important economic activities depend on whether the minority group members had full opportunity to participate in the decision-making process.¹⁸⁸ Finally, the Committee connected the protection of cultural identity and self-determination by stating that the “provisions of [A]rticle 1 may be relevant in the interpretation of other rights protected by the Covenant, in particular [A]rticle 27.”¹⁸⁹

As such, despite the right to self-determination not explicitly including the

178. *Report Presented to the Council of the League of Nations by the Commission of Rapporteurs*, League of Nations Doc. B7 21/68/106 at 4 (1921).

179. *See id.* at 5 (noting that court appreciates islanders’ desire to preserve their language and culture as heritage from their ancestors).

180. Vrdoljak, *supra* note 167, at 45.

181. *See id.* at 46 (concluding that Aaland Island case established self-determination as “ultimate safeguard protection” of cultural identity and rights).

182. FERGUS MACKAY, A BRIEFING ON INDIGENOUS PEOPLES’ RIGHTS AND THE UNITED NATIONS HUMAN RIGHTS COMMITTEE, 32 (2001).

183. *Id.* at 33; STEFANIA ERRICO, THE RIGHTS OF INDIGENOUS PEOPLES IN THE CONTEXT OF FISHERIES AND AQUACULTURE, 18 (2021).

184. Errico, *supra* note 183, at 19.

185. *Mahuika et al. v. New Zealand of the United Nations*, Communication 547/1993, Human Rights Committee, ¶ 6.2 (Oct. 27, 2000).

186. *See id.* at ¶ 9.9 (stating that Committee emphasizes that New Zealand must respect the cultural and religious significance of Māori fishing practices).

187. *Id.* at ¶ 9.4.

188. Errico, *supra* note 183, at 19.

189. *Mahuika et al. v. New Zealand of the United Nations*, Communication 47/1993, Human Rights Committee, ¶ 9.2 (Oct. 27, 2000).

protection and enforcement of cultural rights, the evolution and application of the right to self-determination has inextricably promoted the right of a people to freely pursue and develop their culture.¹⁹⁰ Through self-determination's connection with minority protections, the protection of cultural development arguably covers, at a minimum, traditional activities (like fishing) and other manifestations of a people's culture on traditional lands. As discussed, the beaches of Puerto Rico, and the activity conducted on them, are an important part of Puerto Rican culture and heritage. Accordingly, by impeding public access to Puerto Rico's culturally significant beaches and facilitating their privatization, La Junta is interfering with Puerto Ricans' self-determination.

C. *Property's Relation to Culture and Colonialism*

Although the legal instruments that define self-determination do not discuss the preservation or acquisition of land and public properties, these elements are intimately connected to a people's freedom to pursue cultural development and decolonization.¹⁹¹ This is because property contributes to the creation and maintenance of culture and capital power.

Private property is a foundational element in shaping cultural identity and communities' cultural future. For example, long-term occupants of private residential properties often become woven into the "local social fabric," or culture, of their neighborhoods.¹⁹² Long-term occupants also help build communities—the creators of cultural heritage and practices.¹⁹³ Certain properties also provide connections to cultural and ancestral pasts,¹⁹⁴ the preservation of which is important for the continued practice of a culture and the preservation of mass cultural identity¹⁹⁵. In short, private and public property have a powerful ability to promote cultural disintegration or growth and change the cultural trajectory of the

190. See Saul, *supra* note 172, at 610 (stating that scope and right of self-determination is settled in relation to colonial context); see Comm. On the Right of Everyone to Take Part in Cultural Life (art. 15, para 1 (a), of the International Covenant on Economic, Social, and Cultural Rights), Committee on Economic, Social and Cultural Rights on its Forty-Third Session, U.N. Doc. E/C.12/GC/21 (2009) ("The right to take part in cultural life is also interdependent on other rights enshrined in the Covenant, including the right of all people to self-determination.").

191. Marcus Goffe, *Book Review: Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land*, 7 SCRIPTed 221, 224 (2010) (outlining Xanthaki's argument that indigenous people hold a special relationship to their land and that sovereignty over one's land is essential for full practice of self-determination).

192. Nadav Shoked, *The Community Aspect of Private Ownership*, 38 FLA. STATE U. L. REV. 759, 761–62 (2011) (asserting that owning land is owning a part of a specific community).

193. See *id.* at 816 (stating that cultural heritage is created by communities and that communities help define culture).

194. See *The Taina Route and Indigenous Culture in Puerto Rico*, DISCOVER PUERTO RICO <https://www.discoverpuertorico.com/article/taina-route-indigenous-culture-puerto-rico> (last visited Jan. 5, 2025) (displaying public sites for tourists to visit); see Bruce Wallace, *Remembering 5Pointz: A Five-Story Building That Told Plenty More*, NPR (Nov. 21, 2013) (describing privately owned building filled with graffiti as a "culturally-significant structure").

195. See Eric Hemenway, *Native Nations Face the Loss of Land and Traditions*, NAT'L PARK SERV. (last updated Sept. 13, 2022), <https://www.nps.gov/articles/negotiating-identity.htm> (explaining how loss of Native American land led to a loss in Native cultural identity).

communities wherever said property is located.¹⁹⁶

The ownership and utility of private property can also affect the survival, success, and development of non-owner cultural groups by influencing the existing power relations among the different groups occupying a space.¹⁹⁷ Property ownership confers certain powers and exclusive rights onto its owner:¹⁹⁸ the right to exclude others; the right to maintain dominion over one's space; and the power over resources within the property, to name a few¹⁹⁹. All of these powers can culminate in an inevitable "power over people," as private authority sometimes equals interpersonal power that can be wielded to control "others' normative situation regarding" the property at hand.²⁰⁰ As such, owners of private property can extend their power to influence the creation or breakdown of communities and culture which, in turn, can act as a tool of oppression.²⁰¹ This ability to mold a culture's future is especially prevalent when the land acquired is culturally significant. In turn, because "access to property and territorial control through the acquisition of real estate is often of critical importance to . . . dimensions of cultural . . . life"²⁰² and political and economic sovereignty, the way private and public property is treated should be considered when assessing if one's right to self-determination has been violated.

The link between property, land, and cultural rights is most evident in relation to indigenous rights.²⁰³ The desire to acquire private property has motivated States to steal traditional lands.²⁰⁴ This is harmful; the culture of indigenous peoples can be made up of the relationships between, among other things, members of its group, plants, animals, and land.²⁰⁵ In fact, it has long been documented that a significant number of the cultural violences perpetrated against indigenous peoples have included seizure of traditional lands.²⁰⁶ As such, the Inter-American Commission on Human Rights has recognized the defense of culturally significant lands as invoking

196. Nomi Maya Stolzenberg, *The Culture of Property*, 129 DAEDALUS 169, 189 (2000).

197. *Id.*

198. Andrew Halpin, *Property as a Commitment to Self-determination*, 13 JURIS.: AN INTERNATIONAL J. OF LEGAL AND POL. THOUGHT, 626, 628 (Dec. 2, 2022).

199. *Id.*; see Morris R. Cohen, *Property and Sovereignty*, 13 CORNELL L. REV. 8, 12 (Dec. 1927) (detailing that essence of private property is right to exclude).

200. Halpin, *supra* note 199, at 627; see Cohen, *supra* note 200, at 13 ("But we must not overlook the actual fact that dominion over things is also imperium over our fellow human beings.").

201. Stolzenberg, *supra* note 196, at 170.

202. See *id.* at 170 (explaining how access to property and territorial control created consequences for cultural relations).

203. Goffe, *supra* note 191.

204. See Daniel Denvir, *Property, Race, Colonialism, and Capitalism: An Interview with Brenna Bhandar*, JACOBIN (Jul. 2, 2023) (noting that occupation of traditional lands was a way in which indigenous people defended their lands from corporations and leasehold interests in that land).

205. ALEXANRA XANTHAKI, INDIGENOUS RIGHTS AND UNITED NATIONS STANDARDS: SELF-DETERMINATION, CULTURE AND LAND 204 (2007).

206. *Id.* at 196.

the right to self-determination.²⁰⁷ Various international human rights instruments have also affirmed specific protections for indigenous lands;²⁰⁸ these protections include the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention 169, both of which recognize the special importance of land for the culture and spirit of indigenous peoples.²⁰⁹

Private property can also aid the process of colonization.²¹⁰ The acquisition of private property—for the purpose of asserting colonial power and usage as a tool of oppression or dominion—is a hallmark of the colonialist agenda.²¹¹ This colonial practice allows for the establishment and spread of economic and political influence;²¹² the assertion of sovereign jurisdiction; and, eventually, total colonial control.²¹³ In the words of Brenna Bhandar, “colonial assertion of control over foreign territory, and the assertion of colonial sovereignty over . . . lands . . . was largely accomplished through the imposition of common law forms of private property ownership.”²¹⁴

In short, obstructing public access to culturally significant lands is at odds with tenants of cultural freedom and development because culture can be comprised of relations between certain lands and its people. In turn, La Junta’s involvement in blocking access to cultural lands may be considered a form of cultural violence at odds with self-determination. Additionally, the transfer of ownership of private properties from native residents to non-native residents displaces the original creators of culture and shifts cultural and capital power to new, foreign owners, which further impedes independent cultural development. Accordingly, the regulations’ stated goal of encouraging foreign investors to own private property throughout the island may also be considered a form of cultural violence in violation of self-determination.

D. Final Application: Puerto Rico’s Beaches, Culture, Colonialism, and its

207. *Right to Self-Determination of Indigenous and Tribal People*, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, <https://www.oas.org/en/iachr/reports/pdfs/self-determination-en.pdf> (last visited Jan. 15, 2025).

208. Kuokkanen, *supra* note 144, at 149; Indigenous and Tribal Peoples Convention, 1989 (No. 169) art. 7(1), June 27, 1989.

209. *Id.*; Indigenous and Tribal Peoples Convention, 1989 (No. 169) art. 7(1), June 27, 1989.

210. *See generally* Denvir, *supra* note 204 (discussing relationship between private property and colonial endeavors).

211. *See id.* (asserting that possession of land is ultimate objective of colonial power and that this is achieved through property).

212. *See* Gary D. Libecap, *The Consequences of Land Ownership*, HOOVER INSTITUTION (Aug. 29, 2018), <https://www.hoover.org/research/consequences-land-ownership> (explaining that property rights mold political influence).

213. *See* Denvir, *supra* note 204 (stating that burgeoning colonial states required individual settlers on land so that state could solidify jurisdictional control over an area); *see* Daniel Loick, *The Colonial Lives of Property, Abolitionist Struggles, and Alternative Imaginaries: Brenne Bhandar in Conversation with Daniel Loick*, TEXTE ZUR KUNST, <https://www.textezurkunst.de/en/117/colonial-lives-property-abolitionist-struggles-and-alternative-imaginaries/> (last visited Jan. 6, 2025) (explaining that assertion of colonial sovereignty over indigenous lands is accomplished via private property).

214. Loick, *supra* note 214.

Relation to Self-determination

La Junta is encouraging Puerto Rico's government to simplify its permitting system as an austerity measure to make the island attractive to wealthy investors and create more avenues of revenue to allay Puerto Rico's debt.²¹⁵ The U.S.'s involvement in the creation of local legislation that blocks Puerto Ricans' access to culturally significant public lands is at odds with self-determination's protection of a people's right to independent cultural development and its anticolonial principles.

The development of the right to self-determination clarifies that the right exists, in part, to protect the survival of the colonized.²¹⁶ Puerto Rico is widely considered a colony of the U.S.,²¹⁷ and the Special Committee on Decolonization confirmed this categorization in a 2021 decision.²¹⁸ Thus, according to the Special Committee and the words of the 1960 DGICC, the people of Puerto Rico may claim the right to self-determination.²¹⁹ The conflict between the right and La Junta's impositions is also well-documented in the Special Committee's 2021 decision,²²⁰ which notes La Junta limits the island's ability to freely design its economic and social future.²²¹ The Special Committee also noted how La Junta's austerity measures have caused great social harms and impeded Puerto Rico's ability to grow, both of which run counter to the right to independent social and economic development.²²² This all supports the notion that this new exercise of colonial control is at odds with the mandates of self-determination.²²³

As is of particular interest in this Comment, La Junta's influence on the island's permitting process is also at odds with a people's right to freely pursue their culture. Self-determination's inclusion of the right to pursue and develop one's culture covers various manifestations of a people's cultural expression.²²⁴ For example, self-determination's connection to the principles of minority rights suggests that self-determination covers contemporary practices of ancestral traditions, and other manifestations of ancestral heritage.²²⁵ These protections seem particularly

215. See *supra* Part III.A for a summary of this view.

216. See Cassese, *supra* note 146, at 18 (stating that Lenin was first to insist on self-determination as a right and that, at its forming stage, Soviet focus on right to self-determination, particularly regarding anti-colonialism, had a large influence over international law).

217. Harold Peon, *It Is 2020, and Puerto Rico Is Still a Colony*, HARVARD POL. R. (Nov. 22, 2020), https://harvardpolitics.com/puerto-rico-colony/#google_vignette; Luna Martinez, *A Colony Is a Colony Is a Colony: Puerto Rico and the Courts*, CENTER FOR THE CONSTITUTIONAL RIGHTS (Oct. 20, 2021), <https://ccrjustice.org/home/blog/2021/10/20/colony-colony-colony-puerto-rico-and-courts>.

218. See Sabbagh, *supra* note 35, at ¶ 42, 45 (referring to Puerto Rico's colonial status and La Junta's colonial control over island).

219. *Id.*; G.A. Res. 1514 (XV) (Dec. 14, 1960).

220. See Sabbagh, *supra* note 35, at ¶ 76 (outlining how La Junta's austerity measures have strengthened colonial control and clouded Puerto Rico's economic development).

221. *Id.* at ¶ 76.

222. *Id.* at ¶ 88.

223. *Id.*

224. See *supra* Part III.B for a discussion of cultural rights within the umbrella of self-determination and the types of cultural expressions the right has covered.

225. See *supra* Part III.B for a discussion of cases where a people's connection to ancestral

applicable to the instant situation, namely Puerto Ricans' deserved access to culturally important beaches, ancient indigenous artifacts located on the coasts,²²⁶ and coastal fishing areas with deep cultural ties to the community.²²⁷

Lastly, the development of self-determination under international law also evidences a special interest in protecting the culture of colonized people where that culture is under threat by imperial powers.²²⁸ La Junta's influence on the permitting process will likely gradually change the island's culture through rupturing communities, displacing natives, and changing the demographic of certain neighborhoods, thereby placing these harms squarely within the category of cultural interests protected by the right to self-determination.²²⁹

Overall, the UN has confirmed the U.S.'s responsibility to promote Puerto Rico's right to self-determination and independence.²³⁰ Despite not having exact units of measurements, self-determination has been shown to protect a people's freedom from colonial control and the cultural practices and properties related to a people's ancestral heritage and traditions. Even more, self-determination has an established history of protecting cultural manifestations of, specifically, colonized peoples. La Junta's infiltration of local Puerto Rican politics and the resulting privatization of culturally significant beaches run directly counter to these mandates.

IV. CONCLUSION

Since at least 2009, La Junta—a U.S.-sponsored fiscal control board—has influenced Puerto Rico's construction permitting system to improve the island's standing on the global business stage and promote foreign investment.²³¹ The changes have bolstered coastal development but have also led to illegal construction on beaches and encouraged an influx of foreign developers to purchase property along the coasts. The island's construction permitting system has been overhauled

heritage was protected via cultural rights.

226. See Rosario, *supra* note 7 (stating that structures are blocking public access to coast where indigenous art is located).

227. See Garcia-Quijano & Poggie, *supra* note 139, at 62 (explaining that local fishers have good ties with their community and that more concern should be placed on sector's "vulnerability to potentially disruptive and de-localizing processes such as excessive industrial and tourism development and gentrification.").

228. See *infra* Part III.B for an analysis of self-determination's connection to colonial people and cultural protection.

229. See Bad Bunny, *BAD BUNNY - DeBí TiRAR Más FOToS (Short Film)*, YOUTUBE (Jan. 3, 2025), <https://www.youtube.com/watch?v=gLSzEYVDads> (expressing view that natives and culture are being displaced by mainland Americans); see Nêmesis Mora, "A Puerto Rico without Puerto Ricans?," ¡PRESENTE! MEDIA [PRESENT! MEDIA] (May 2, 2024), <https://www.presentemedia.org/stories/nbspa-puerto-rico-without-puerto-ricans> (expressing view that Puerto Rico is losing Puerto Ricans because of foreign investors and residents).

230. Press Release, Special Committee on Decolonization Approves Resolution Reaffirming Puerto Rico's Inalienable Right to Self-determination, Independence, U.N. Press Release GA/COL/3372 (Jun. 22, 2023).

231. See generally Planning Board, Statement of Motives, Puerto Rico Permit Process Reform Act, No. 161 (Dec. 1, 2009) (outlining a permit system which has a purpose of bolstering business while also protecting the environment).

through a series of joint regulations and the creation of several governmental agencies in which responsibility for receiving, reviewing, and approving or denying permits is centralized. The latest iterations of these legislative efforts are Joint Regulation 2020 and Emergency Regulation 2023, which further ease the process for obtaining construction permits by: (1) expanding the scope of the single permit; (2) continuing the role of AP; and (3) creating the role of IP-U.

La Junta's involvement in shaping Puerto Rico's construction permitting processes conflicts with Puerto Ricans' right to self-determination, particularly their right to independently govern and practice cultural autonomy. More specifically, La Junta's role in implementing Joint Regulation 2020 and Emergency Regulation 2023 has undermined Puerto Ricans' ability to establish their own permitting processes, freely access their coasts, and safeguard their cultural trajectory. In restructuring Puerto Rico's construction permitting system, La Junta has redrawn the island's balance of power over land, culture, and community while taking a step towards rewriting its future. Puerto Ricans cannot meaningfully claim cultural, economic, or social autonomy while control over their shores—and their future—remains in someone else's hands. Identifying the intricacies of the U.S.'s infiltration in Puerto Rico's local politics, and recognizing the ways in which those actions conflict with international legal protections, is a step towards placing control back with the Puerto Rican people, where it belongs.