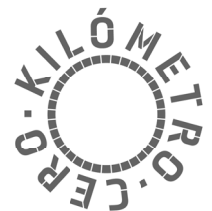


**THE FAILURE
IS NOT ON
THE SURFACE**

**PUBLIC SAFETY LESSONS
IN PANDEMIC TIMES**
A KILÓMETRO CERO REPORT



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THE FAILURE IS NOT ON THE SURFACE

PUBLIC SAFETY LESSONS IN PANDEMIC TIMES

Summary

The Failure Is Not on the Surface is a report prepared by Kilómetro Cero as a contribution to the essential documentation and reflection processes three years after the declaration of COVID-19 as a pandemic, on March 11, 2020. Amid the current widespread debate on whether the COVID-19 pandemic has come to an end, we must recognize the consensus among the scientific community that similar pandemics will erupt more frequently in the future. Kilómetro Cero stresses the need to insert the issues of public safety and state violence in public discussions concerning lessons learned from the management of the COVID-19 pandemic. *The Failure Is Not on the Surface* uses multiple sources of information –such as government documents, press clippings, social media information, and interviews with individuals intervened by the Police– to analyze both the formulation and the implementation of policies to manage the pandemic in Puerto Rico, especially as they relate to public safety and state violence. The specific failures we found in COVID-19 crisis' management policies constitute a starting point to elaborate lessons we ought to learn as a country. The specific lessons we identified are the following:

1. **Anticipating crises, recognizing them as they emerge, and acting upon them is indispensable.**
2. **Limiting the duration of crisis responses and justifying any change implemented during the crisis is necessary.**
3. **Adopting a gender perspective framework is necessary to confront crises.**
4. **In times of crisis, avoiding the amplification of police interventions is essential.**
5. **Protecting the right to protest becomes even more important in times of crisis.**
6. **In times of crisis, establishing and strengthening effective accountability mechanisms is crucial.**

If a policy failure goes unrecognized, or if minor implementation deficiencies or isolated individual actions are admitted, we evade, intentionally or otherwise, the identification of structural causes producing such failure. The fundamental causes of policy failures are not on the surface; they are not to be found in easily observable factors. This report demonstrates that policies based on punitive governance and police impunity will necessarily fail in protecting public safety in times of crisis.

THE FAILURE IS NOT ON THE SURFACE

PUBLIC SAFETY LESSONS IN PANDEMIC TIMES

The most important lessons from this pandemic are less about the coronavirus itself but what it has revealed about the political systems that have responded to it.

Editorial, British Medical Journal
Bollyky & Kickbusch, 2020

I. Introduction

Researchers on the social history of pandemics usually agree on the phenomena they analyze. Fear, denial, and the hunt for someone to blame come first. Then, reality is accepted, and work is done towards confronting it. Finally, some resolution is achieved, new knowledge is produced, and an oblivion of sorts takes over (Duffin, 2022, p. 202). Three years after the pandemic was declared, there are many reasons for wanting to forget what happened, especially when considering that the number of deaths from COVID-19 in Puerto Rico comes close to 6,000, the total number of accumulated cases from the disease is over 1,000,000 (*Departamento de Salud*, 2023), and there is a generalized fatigue from the bombardment of information and disinformation.

In the first few months of 2023, opinions are divided concerning the pandemic's future. The World's Health Organization (WHO, 2023) believes it will be able to call off its international public health emergency declaration, while groups of academics insist that the pandemic's end is still far away (*The Lancet*, 2023). Officials from Puerto Rico's Health Department have declared that the pandemic is not over (Parés Arroyo, 2023), and the overwhelming majority

of Puerto Rico's population (77%) believes that the COVID-19 pandemic health crisis is still with us (Latente la emergencia, 2023). Regardless of whether one believes that the COVID-19 pandemic crisis is over or not, it is relevant to look back at the past, examine it, and come to conclusions that allow us to prepare for the future.

Over the course of the pandemic's third year, multiple sectors alerted us of the risks of forgetting our lived experience and offered lessons about COVID-19 that we should learn. Perhaps the most important lesson is accepting the high probability that we will confront more pandemics (Marani et al., 2021; Tollefson, 2020). The most thorough lessons were offered by *The Lancet Commission on Lessons for the Future from the COVID-19 Pandemic* (Sachs et al., 2022). This commission was tasked with investigating and making recommendations towards the following objectives: (1) containing the pandemic, (2) confronting the humanitarian crisis, (3) responding to the economic and financial crisis, and (4) reconstructing an inclusive, just, and sustainable world. Although the commission made a strong critique of political leadership (see the box), it did not recognize that COVID-19 containment policies affected public safety issues and, on occasion, were used as justification to engage in state violence.

To identify lessons concerning the pandemic crisis response, we should consider that the year 2019 was characterized by a “tsunami of protests that swept across six continents and engulfed both liberal democracies and ruthless autocracies” (Wright, 2019), shaking up the social order (Garguilo, 2019; The World, 2019). The threat of a pandemic was the perfect excuse to implement extreme social control measures, and to placate any protest attempt. The adoption of epidemic control measures –whether these were scientifically founded or not– was enmeshed with the interest in suppressing potential political crises. Hong Kong experimented an “authoritarian pandemic” (Thompson & IP, 2020), in Brazil a noted authoritarian neoliberalism took hold (Ortega & Orsini, 2020), while in the USA a crisis of police violence compounded the pandemic crisis (Starr, 2020). (See Appendix 1 for other countries adopting similar measures.) In this context, the United Nations' secretary-general, Antonio Guterres (2021), expressed a serious concern:

The virus is also infecting political and civil rights and further shrinking civic space. Using the pandemic as a pretext, authorities in some countries have deployed hea-

What Does The Lancet Commission Say About Political Leadership During the Pandemic Crisis?

One of the most striking occurrences of the pandemic has been the irresponsibility of several influential political leaders. National and local politicians act on various motives, including political timelines and electoral cycles, fears of public backlash, narrow economic interests, and lack of knowledge and expertise. [...] National responses were often improvisational, occasionally bordering on the absurd. Several national leaders made highly irresponsible statements in the first few months of the outbreak, neglecting scientific evidence and needlessly risking lives with a view to keeping the economy open.

Sachs et al., 2022, page 24

vy-handed security responses and emergency measures to crush dissent, criminalize basic freedoms, silence independent reporting, and curtail the activities of non-governmental organizations.

Kilómetro Cero presents this report with the objective of inserting the themes of public safety and state violence in the public discussion concerning lessons learned from the COVID-19 pandemic management. Puerto Rico constitutes an excellent case study for this purpose, since it participated in the global tsunami of protests with its *Verano de 2019*, which caused a substantial, unprecedented political crisis (Atilas Osoria, 2020). Six months later, the pandemic offered a convenient justification to implement severe social control measures.

Over the course of the COVID-19 pandemic, Kilómetro Cero documented police interventions destined to enforce quarantine, confinement, mask mandates, physical distancing, restrictions to commercial activities, and curfews. The severity of these police interventions inevitably raises suspicions concerning the extent to which COVID-19 management measures produced new reasons to continue criminalizing basic civil liberties and stifling social protest. These policies not only eroded basic democratic principles but were also harmful to the public's health, which they purportedly sought to protect. Kilómetro Cero does not produce this analysis in order to make a long list of specific suggestions on how to improve the present public safety model. Our objective is to document and analyze the formulation and implementation of policies to identify failures and generate lessons. Our analysis on pandemic crisis management in Puerto Rico serves as a warning on the extent to which the management of other crises, whether they are political, socio environmental, or energy-related, can likewise have serious repercussions for the exercise of fundamental human rights, public safety, and the prevention of state violence.

Confinement and Curfew

The government's executive orders were confusing in their use of the terms "confinement" and "curfew." In this report we use these terms as follows.

Confinement refers to a population's obligatory isolation in their respective places of residence due to health reasons. This term is synonymous with *stay-at-home order*, although the word *lockdown* is also used.

Curfew is the prohibition of people's movement or presence in a territory's streets and public spaces.

II. Context: Two Decades of Crisis Upon Crisis

The younger generations have only known a Puerto Rico immersed in crisis upon crisis. The Center for a New Economy (*Centro para una Nueva Economía*) argues that Puerto Rico experiences several simultaneous and overlapping crises (Marxuach, 2021, p.2), while the *Council for Foreign Relations* (Cheatam & Roy, 2022) has declared that Puerto Rico faces a multi-level economic and social crisis. Whether it is considered the result of public debt (Cheatam & Roy, 2022), or of structural limitations arising from the country's colonial situation (Rodríguez, 2016; González, 2022), the idea that Puerto Rico is trapped in a permanent state of crisis (Oquendo, 2017) or in a perpetual crisis (Cheatam & Roy, 2022) seems generalized.

But what do we mean when we use the term "crisis"? Crisis refers to an event or decisive moment when the established order is destabilized or altogether broken down (Observatorio de Crisis, 2021), with the potential of leading to fundamental changes. Therefore, the idea of a "permanent crisis" is contradictory; crises are moments of relatively short duration, although their consequences might be long-lasting. Thus, "permanent crisis" seems to be used euphemistically to avoid the severity of the term "failure." Rather than a country in permanent crisis, Puerto Rico is a country experimenting multiple failures. The following

Emergency • Crisis • Disaster

Emergency: A situation requiring immediate action to prevent harm. Emergencies do not necessarily imply a crisis.

Crisis: A momentary situation of uncertainty that threatens stability or has a potential to disrupt common or customary forms of behavior. Crises do not necessarily lead to disasters.

Disaster: A sudden event that dislocates a community's routine and entails human loss or material destruction.



section specifies what constitutes a failure in public policy matters, and how it can be used as a source of important lessons.

In moments of uncertainty, social consensus tends to fracture diverse forms of thinking about society at large and its political forces are taken up, and the foundations of our ideas on how the world works and what is our place in it are shaken (Harvey, 2014, p. x). Consequently, already-existing marginal ideas reemerge with unusual vigor. The successful energy insurgence project propelled by *Casa Pueblo* (Massol Deyá, 2018; Massol Deyá, 2020; Massol Deyá, 2022), which is based on solar energy, took on renewed relevance after the energy crisis provoked by hurricanes Irma and Maria. In turn, said crisis had its roots in the Puerto Rico Electric Power Authority's (*Autoridad de Energía Eléctrica*) institutional failure, as it was led to obsolescence and collapse by decades of interventions on the part of political parties seeking to comply with bondholders' demands rather than work towards essential and urgent energy source diversification.

In Puerto Rico, government authorities rarely intervene with the mechanisms creating the crisis. Rather, they settle for an attempt to placate its more evident consequences. It is as though they seek to treat the symptoms while ignoring the disease. When a crisis is not effectively resolved –either because it is denied, displaced elsewhere, or its solution is postponed–, it continues to haunt us collectively. Facing it again, then, becomes inevitable.

III. Failure as a Source of Lessons

To achieve this report's goal of addressing public safety and state violence as part of the public discussion on lessons learned from the COVID-19 pandemic, we start from the basic premise in policy analysis that failures can be examined to extract important lessons (Dunlop, 2017). In Puerto Rico, government institutions typically disguise, conceal, or deny their errors, and, as a result, miss learning opportunities and perpetuate their worst consequences.

In analyzing the premises on which they were based and observing their consequences, this report shows the **formulation failures** of policies for the control of COVID-19 in Puerto Rico. We identified three specific formulation failures:

- lockdown without exit strategy;
- curfew imposition; and
- neglect of gender perspective framework.

The executive orders imposed by Puerto Rico's executive branch (*La Fortaleza*, the governor's mansion) to confront the COVID-19 pandemic instructed both the Puerto Rico State Police and the Municipal Police from the country's 78 municipalities to take all necessary measures to enforce the orders' dispositions. The **implementation failures** of policies for the control of COVID-19 are proven through the description and analysis of police interventions taking place between March 15, 2020 (curfew start date) and May 24, 2021 (curfew end date). During this period, Kilómetro Cero documented violent, discriminatory, abusive, or excessive interventions on the part of law-and-order agencies alleging enforcement of government dispositions for COVID-19 control and prevention (Kilómetro Cero, 2020a; Kilómetro Cero, 2020b). This report identifies three specific implementation failures:

- inability to offer guidance and de escalate;
- disposition to criminalize; and
- perpetuation of police impunity.

This report's documentation on COVID-19 policies' formulation and implementation failures relies on multiple sources of information:

- A. The open access database ***Evidence the Violence (Evidencia la violencia)***, produced by Kilómetro Cero.
- B. The open access database ***Fatal Victims of the Police since 2014 (Víctimas fatales de la Policía a partir del 2014)***, produced by Kilómetro Cero.
- C. The open access storybase ***Tell Me (Cuéntame)***, produced by Kilómetro Cero.
- D. Executive orders' official documents related to the COVID-19 pandemic, as promulgated by the executive branch.

See Appendix 2 for a more detailed description of these sources of information.

[...] A policy fails, even if it is successful in some minimal respects, if it does not fundamentally achieve the goals that proponents set out to achieve, and opposition is great and/or support is virtually non-existent.

McConnell, 2015

The active curfew period (March 2020 – May 2021) was also that of the greatest uncertainty during the three pandemic years. Towards the end of this period, the administration of the vaccine's second dose against COVID-19 began. This novel virus took the world by surprise, both because of the strangeness and the speed of the events taking place. In December 2019, the first virus outbreak was identified in a province in China. Already in January 2020, cases were being diagnosed in North America and Europe (Duffin, 2022). In March, several European cities, facing the collapse of their health systems, decreed mandatory confinements. And in April, the world came to a halt; over half of the world's population resided across the 90 countries that had imposed some kind of confinement (Sanford, 2020). With no scientific certainty concerning the virus, barely and in the dark experimenting with and testing the effectiveness of medical treatments, and without any existing vaccines, anxiety, fear, and anguish were reasonable responses. In such a context of deep uncertainty, when the world was forced to turn to the historic measures of quarantine, isolation, and confinement (Pereira et al., 2022), the crafting of policies in response to the start of the pandemic in Puerto Rico took place.

Lessons To Be Learned

Lesson #1: Anticipating crises, recognizing them as they emerge, and acting upon them is indispensable.

Lesson #2: Limiting the duration of crisis responses and justifying any change implemented during the crisis is necessary.

Lesson #3: All crises must be confronted with a gender perspective framework.

Lesson #4: In times of crisis, avoiding the amplification of police interventions is essential.

Lesson #5: Protecting the right to protest becomes even more important in times of crisis.

Lesson #6: In times of crisis, establishing and strengthening effective accountability mechanisms is crucial.

IV. Lessons To Be Learned

Lesson #1:

Anticipating Crises, Recognizing Them As They Emerge, and Acting Upon Them Is Indispensable.

In Puerto Rico, it has been commonplace for government authorities to deny the existence of crises despite multiple demands to attend to them. Denial is not a mere observation error, but rather, a deliberate act in compliance with a specific pressure to avoid noticing something requiring attention (Zerubavel, 2010). Denial in a crisis typically increases the

[...] Lockdowns are not public health policy. If anything, they represent a failure of public health policy.

Kit Yates, 2022
Centre for Mathematical Biology, University of Bath

latter's worst consequences and, when the crisis is finally recognized as such, the time lost denying it makes confronting it much more challenging.

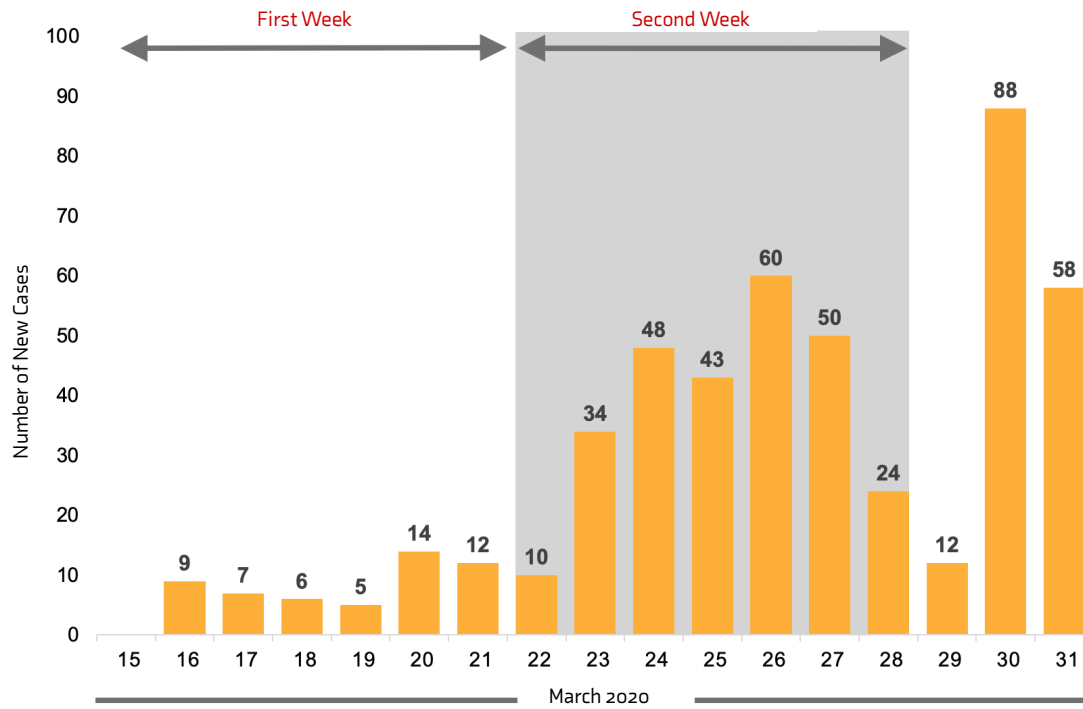
Puerto Rico's Health Department never prepared for the pandemic: in January 2020, its Secretary, Rafael Rodríguez Mercado, assured the country that the coronavirus would not reach Puerto Rico because there were no direct flights from China to Puerto Rico (Pérez Méndez, 2020). The first five suspicious COVID-19 cases, which were identified the week of March 8-14 (Health Department, 2023), brought to light the Health Secretary's ignorant declarations. His position thus became untenable. His immediate resignation was announced on March 13 (Gobernadora acepta renuncia, 2020). Two days later, confinement and curfew were declared.

Decreeing confinement is an indication of the failure of public health measures, since the situation was allowed to get so far out of control, that there are no longer any alternatives to protect the population (Yates, 2022). The drastic decision to order confinement after the identification of only five suspicious cases proves the previous affirmation, as the government's unjustifiable unpreparedness did not allow for other alternatives to protect the population. While countries as diverse as Costa Rica, Germany and Singapore strengthened their contact tracing epidemiological systems at the end of January 2020 (*The Independent Panel*, 2021), the Puerto Rican government authorities refused to recognize the crisis' imminence. New Zealand, with its exemplary management of the pandemic and a population of five million people, only ordered confinement after 102 cases had been identified (Roy, 2020). In Puerto Rico, by the middle of the second week of confinement, there were more than 100 new weekly cases being registered (see Graph 1). Using New Zealand's case as precedent, the confinement decree with only five identified cases was justifiable. However, for reasons that will be explained below, from the moment it was declared, confinement was destined for failure.

Imposing confinement without a simultaneous interest in implementing multiple public health measures to contain contagion was a grave formulation error. Confinement was ordered without an exit strategy, a term used in epidemiology in reference to the set of measures that ought to be in place as daily activities are resumed. While the population is confined to their homes, multiple strategies must be developed to avoid a new increase in

Graph 1

Increase in New COVID-19 Cases During the First Two Weeks of Confinement
March 15-31, 2020



Source: Puerto Rico's Health Department (2023). COVID-19 Numbers in Puerto Rico

contagion. For instance, during that time, a contact tracing epidemiological system should have been established. Likewise, a plan for reopening in specific stages should have been designed with clearly established metrics or criteria for resuming governmental, commercial, educational, and recreational activities. The statistics of new daily COVID-19 cases serve as evidence of the error in ordering confinement without an exit strategy.

17% of Puerto Rico's population approves the government's management of the pandemic.

Latente la emergencia, 2023

The Police CANNOT Be in Charge of Supervised Quarantines

The use of police and/or military to enforce mandatory quarantines has been a key feature in the three countries [Venezuela, El Salvador and Paraguay] examined in this report. For many people in quarantine, the enforcement of measures by police and military has led to the perception that such quarantines amount to punishment and criminalization. (Amnesty International, 2020, page 17)

We base the following analysis on a comparison between the 93-day confinement period (March 15 – June 16, 2020) and the 93 days following its end (June 17 – September 18, 2020), in terms of the mobile average of new daily cases (see Graph 2 and box for an explanation of mobile average). In the second week of confinement, a peak of contagions was registered with an average of 52 new daily cases (March 29). In the seventh week of confinement (May 7), the average dropped to 13 new daily cases. The next day, pandemic triumphalism was evident in the health secretary's statements:

Despite all the crises we've had, we are illuminated. Whoever believes this is false, does not live in Puerto Rico. Puerto Rico is illuminated. We have a lot of crises and we come out of them, and the blow is hard, but we rise again (Cybernews, 2020). (See Point A, Graph 2).

As countries across the Americas and elsewhere face the prospect of further and maybe repeated public health measures that impinge on human rights, authorities must ensure that state-supervised quarantines are not imposed arbitrarily and that they guarantee people's rights to food, water and sanitation, evidence-based prevention, and access to information and healthcare. Above all, instead of resorting to punitive approaches, authorities should make sure that their policies to respond to the challenges posed by the COVID-19 pandemic empower and support communities to protect themselves to be able to comply with the restrictions and that generate trust between the general population, especially groups who are marginalized, and public health authorities. They should also focus on ensuring that the most vulnerable –especially people on the move and low-income communities– have enough economic support to voluntarily comply with the restrictions. (Amnesty International, 2020, page 38)

Puerto Rico's Public Health Trust showed an equal excess in positive belief when declaring that "in the near future, if we maintain physical distance in Puerto Rico, we will be at the same place New Zealand is" (Torres Gotay, 2020). (See Point B, Graph 2).

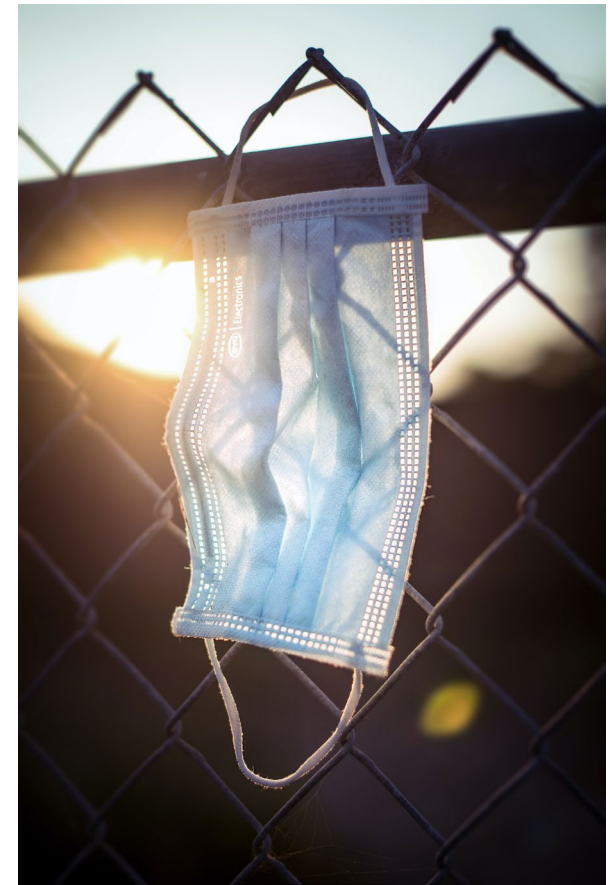
The declarations concerning a drop in the daily new case average with respect to the March 29 number were supported by data. Indeed, starting on March 29, the daily average of contagions was reduced, and it remained stably low, below 23. In the following weeks after confinement, the same data proved the folly in the health secretary's and the Public Health

Trusts' premature declarations. The health secretary would go on to offer unsubstantiated information on the pandemic on more than one occasion (Serrano Román, 2020).

When the end of confinement was ordered (June 16, 2020), there was an average of 16 new daily cases (see Graph 2). Four weeks later (on July 13, 2020), the average rose to 297 new daily cases. Later, there were two additional increases of up to an average of 334 (August 9, 2020) and 421 (September 13, 2020) new daily cases. Over the course of most of the 93 days following the end of confinement, the daily average of new cases never dropped below 181, which was eleven times the daily average of new cases when confinement ended.

Puerto Rico's exit from the crisis and its "illumination," in the words of the then secretary of health, were a temporary illusion. Any confinement always produces a momentary and unsustainable decrease in contagion. Consequently, planning an exit strategy to avoid considerable upturns in new contagions was necessary. Among the exit strategies that could have been contemplated were the following: effectively controlling the arrival of travelers who could infect the country's residents; facilitating massive access to COVID-19 virus tests; establishing systems of epidemiological surveillance and contact tracing; supervising quarantines; ensuring control measures for physical distance; promoting the use of masks; and singularly protecting those who work in the health sector (Petersen et al., 2020). Without an exit strategy, confinement has the effect of postponing the crisis without resolving or diminishing it.

Since its very inception, Puerto Rico's confinement policy was destined to fail, not because it was ineffective in slowing down COVID-19's exponential rise as it was documented in other countries (Yates, 2021), but rather because it ignored that controlling an epidemic necessarily requires activating multiple strategies and applying them in concert. Explaining the reasons for Puerto Rico's erroneous policy, especially considering other countries' successful experiences, which were amply documented in the international press, is challenging. Weeks before confinement orders were executed in various cities in the north of Italy, multiple countries had already established strict border controls (Guild 2020; *The Independent Panel*, 2021). In the islands of New Zealand, for instance, before declaring confinement, a solid epidemiological surveillance system was in place, controls were implemented in the ports of entrance, and a supervised quarantine was imposed (Baker et al., 2020).



Countries with Confinement Exit Strategies Based on Epidemiological Metrics

New Zealand • South Korea • Austria
Malta • India • Italy • Germany • Belgium
France • Switzerland • United States of America

Misra et al., 2022

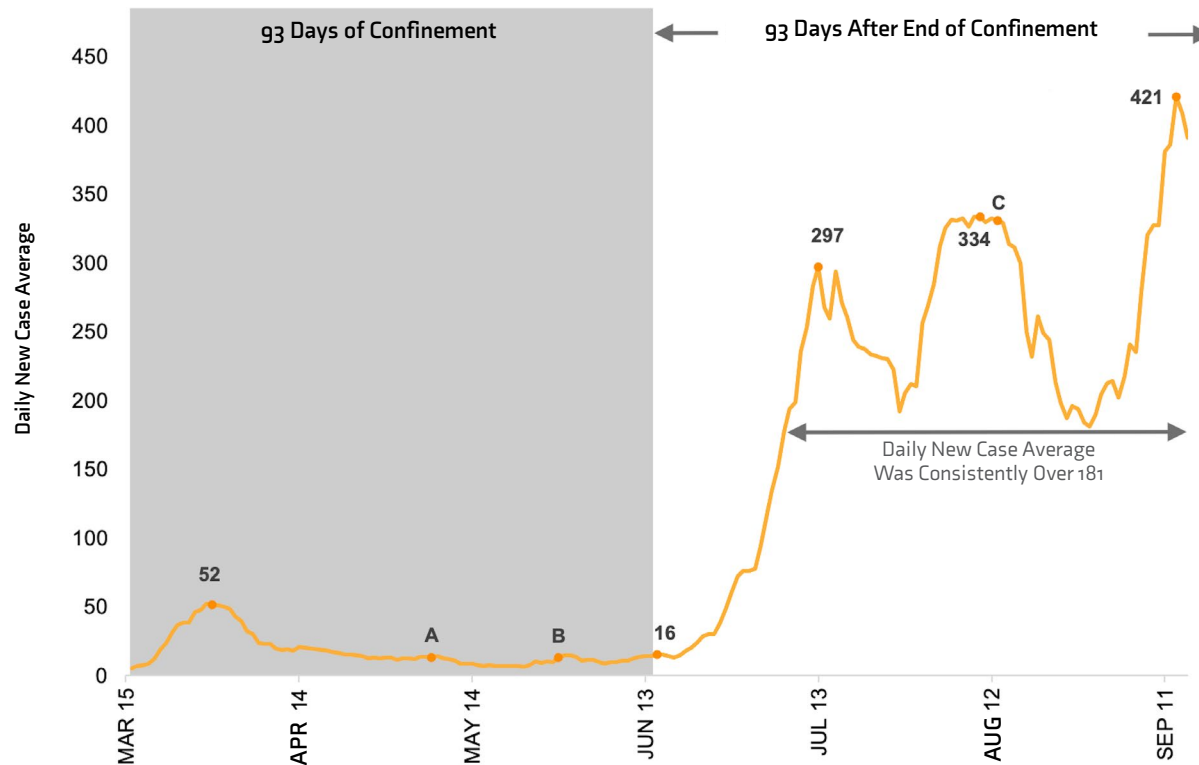
7-Day Mobile Average

Daily statistics of COVID-19 related deaths exhibit a peculiar weekly pattern, which was observed virtually throughout the world. Typically, very few deaths are reported on Sundays and Mondays, while on Tuesdays and Wednesdays more deaths are reported. This is not because fewer deaths take place over the weekends, but rather, because there are fewer people working on registering and counting them. Delays from the weekend are recovered on Mondays and Tuesdays, which causes the registration of more deaths on Tuesdays and Wednesdays. The 7-day mobile average is used to avoid this kind of artificial variation over the weekdays. Each day, the average of deaths occurring during the seven days preceding it is calculated. For example, on Monday, March 8, the average of deaths that took place every day from Monday, March 1 until Sunday, March 7 is calculated. This average is considered mobile, since the value for Tuesday, March 9 “is moved by a day” when calculating the average of daily deaths from Tuesday, March 2 until Monday, March 8. Mobile averages reported by Puerto Rico’s Health Department are calculated in a rather different way. For March 8, for instance, the average was obtained with data from March 5 thru 11. The use of mobile averages is recommended in epidemiology to circumvent the possibility of daily variations preventing us from identifying likely patterns (Last, 2001).

When New Zealand ended its first confinement, it did not experience community transmission of the virus, nor drastic increases in new cases (Manning, 2021). The scientific community did its part in ensuring open access to relevant publications on pandemic management. For example, midway through Puerto Rico’s confinement (day 45 of 93), an open access article was published on the Internet discussing the need for exit strategies (Petersen et al., 2020). Journalistic and scientific media amply published on the results of pandemic experiences. Claiming that there was continuous lack of information for the formulation of failed policies amounts to admitting that members of the Puerto Rican government do not read the world’s newspapers nor consult scientific publications.

Graph 2

The Failure of Three Months of Confinement With No Exit Strategy
Daily Average of New COVID-19 Cases
March 15 – September 18, 2020
(7-day Mobile Average)



- A - “Secretario de salud asegura que el pico de contagios de coronavirus ya pasó” (Cyber News, 2020). (“Health secretary maintains that coronavirus’ contagion peak has already passed”).
- B - Public Health Trust: “[La situación de Nueva Zelanda] puede ser una realidad para nosotros en el futuro no muy lejano” (Torres Gotay, May 30, 2020). (“[New Zealand’s situation] can be a reality for us in the near future”).
- C - Health Secretary: “El contagio puertorriqueño, en este momento, es comunitario, no viene del aeropuerto” (Cordero Mercado, 2020). (“Puerto Rican contagion, at this point, is communitarian; it does not come from the airport”).

Source: Departamento de Salud de Puerto Rico (2023). Covid-19 en cifras en Puerto Rico.

Unfortunately, in Puerto Rico, three months of confinement were wasted on improvising cosmetic measures for the control of COVID-19. This lack of planning prevented the effective formulation of an exit strategy such as that devised in other countries, where each reopening stage was only performed if a consistent improvement in the COVID-19 contagion, hospitalization, and death statistics was observed (Petersen et al., 2020). In Puerto Rico, we had to wait five confined months –until August and September 2020– for the Municipal Research and Contact Tracing System to offer its first reports (SMICRC, 2020).

Case #1:

Arrested for Not Complying with Quarantine

March 14, 2021

Andrea was arrested inside her home as part of a police operation conducted at night. The operation was performed in front of the cameras of two TV stations and executed by no less than a dozen police officers, alongside personnel from the Health Department. The intervention was conducted because the woman, of Puerto Rican origin and a resident of the USA, returned to Puerto Rico and, allegedly, did not comply with quarantine. The woman was handcuffed, taken out of her home, and driven to a Police station.

This irrational, joint operation between the State Police and the Health Department violates the basic principle of a quarantine to ensure compliance with quarantine. If the purpose of quarantine is to isolate a person who was in contact with potentia-

lly infected individuals, performing an arrest with multiple police officers obviously contradicts the premise of preventive isolation. What is more, this action flies in the face of the Protocol on Safety Guidelines for Members of the Puerto Rico Police during the COVID-19 Emergency (NPPR, 2020, section XIV, #4), which instructed *not* to arrest people for less serious crimes, such as failing to quarantine properly.

We must stress that the Health Department's consent and collaboration with such a discriminatory and counterproductive policy of surveillance and punishment, evokes the most shameful and draconian historical proposals for criminalizing people with HIV+ (Cann et al., 2019). If health professionals know something for certain, it is that punitive measures have never proven effective to achieve public health objectives (Sun et al., 2022).

Over the course of months of confinement, there was no political will to considerably reduce traveling to Puerto Rico. Contrary to decisions taken in other countries, in Puerto Rico, a quarantine for travelers was never ordered, and much less did the government implement a supervised quarantine. The quarantine order only applied to those having a reasonable suspicion of having been exposed to COVID-19, and even this was ordered without any mechanism guaranteeing compliance. While Puerto Rico's population remained in confinement, most aerial traffic arriving to the archipelago originated in the states of New York, New Jersey, and Florida, precisely the epicenters of the pandemic in the USA (Colón Almenas & Rodríguez Velázquez, 2020). In an open letter to the governor Wanda Vázquez, Juan R. Torruella (2020), the then judge of the United States Court of Appeals for the First Circuit in Boston, described as ineffective any measure taken "without attacking the root of the problem, which is the travelers' importation of the virus to Puerto Rico". Although there was a possibility that the Federal Aviation Administration or the USA court system would eventually revoke any decision taken in Puerto Rico for the effective control of its ports of entrance, judge Torruella himself urged Puerto Rico's government to take forceful decisions for the protection of public health, which had been on occasion supported by USA courts (Hall et al., 2020).



During the second peak of contagion after the end of confinement was declared in August 2020 (see Point C, Graph 2), we should note Lorenzo González Feliciano's insistence –Puerto Rico's health secretary at that point– that the rise in COVID-19 cases had nothing to do with the arrival of travelers through the Luis Muñoz Marín airport. He stressed this dubious –to say the least– claim even though he could not provide updated information on the monitoring of all those arriving through said port of entrance. The secretary dismissed the structural causes of the increase in cases and, instead, considered only individual factors:

The Puerto Rican contagion, at this point, is communitarian. It does not come from the airport, we want to establish this, too. Let us not use the airport as an excuse. No, it is us, Puerto Ricans, who are being undisciplined. (Cordero Mercado, 2020).

As was already explained, a policy fails –even when it can produce some favorable, temporary effect– if it is not fundamentally aligned with the objective that it sought to achieve (McConnell, 2015). Maintaining a low number of daily infections during three months of confinement only to then have them drastically rise because there was no exit strategy, proves a grave policy formulation failure. Given this situation, confinement was only an abusive form of postponing the crisis, rather than solving it. When confinement was over, using the phrase “community transmission” of the virus was a euphemism to evade recognizing the State's failure in controlling contagion.

Lesson #2:

Limiting The Duration of Crisis Responses and Justifying Any Change Implemented During the Crisis Is Necessary.

Although crises are events with a determined duration, they are often used to try to normalize for an indefinite amount of time what would usually be an exception. It is precisely the

commotion, the shock, in the face of crisis, what facilitates the quick adoption of emergency measures capitalizing on uncertainty and disasters (Klein, 2018). Extending states of emergency or states of exception with no justification or government transparency is extremely dangerous.

Activating curfew as an epidemiological strategy was another measure destined to fail from the very onset of its formulation. Curfews prohibit the presence and circulation of people, with or without cars, on a territory's highways, roads, and public spaces. Typically, curfews are imposed in case of war, civil conflicts, or when there are grave, violent disturbances taking place. In Puerto Rico, the curfew was in place for 14 months, from March 15, 2020, until May 23, 2021 (OE-2021-036), which makes it one of the lengthiest in the world. The human rights organization Human Rights Watch (2021, p. 28) argues that the imposition of a curfew should demand the following:

1. an appropriate scientific justification;
2. an implementation that is proportional to the current health threat; and,
3. that it shall not be discriminatory towards vulnerable groups or sectors.

In Puerto Rico, none of these conditions were met.

To live under curfew –now because of the COVID-19 pandemic– was not a new experience for Puerto Ricans. In the immediate aftermath of hurricane Maria, in September 2017, when the entire country was without communication systems, electricity, or any other essential service, a severe curfew was imposed from 6pm thru 6am the following day, which was extended for 28 days with only minor changes. Questioning a curfew after a hurricane is like doing so during a pandemic, since it is a profoundly antidemocratic measure, its enforcement by the Police is usually highly discriminatory, and its economic consequences fall disproportionately on the country's most impoverished sectors (Kilómetro Cero, 2018).

Justifying the need or desirability of resorting to curfew as a COVID-19 infection control measure is difficult, especially when evaluating it in the context of the set of measures adopted to control the epidemic. The March 14, 2020 executive order (OE-2020-023) establishing a 24-hour curfew also included:

1. A 14-day quarantine order for anyone with a reasonable suspicion of having been exposed to the COVID-19 virus;
2. A 14-day isolation order for anyone who was infected or had a reasonable suspicion of having been infected with COVID-19;
3. A closing order for all government operations, except those offering essential services; and,
4. A closing order for all commercial activity, with only specific exceptions (food, medicines, and gas production and distribution).

Amid a closure of all governmental and commercial activity in the country, and with quarantine, isolation, and confinement orders in place, a curfew was unnecessary.

Case #2:

Arrested for a “Garage Sale” Sign

April 3, 2020



After the January 2020 seismic sequence destroyed Juan’s (fictitious name) home, he decided to move from Puerto Rico. Juan returned regularly to his old home to attend to it, rescue his things, and pack up his things for the move. Before the pandemic, he put on a Garage Sale sign there. One day, a state police car pulled over, and a female officer told Juan that he was violating the executive order with the sign. She told Juan that another agent would come to offer guidance on the execu-

tive order. Later, other State Police officers arrived, and one of them told Juan: “you are breaking the law because you have a garage sale here and you have no patents or permits to have a business in your home”. After exchanging a few words with Juan, the agent told one of his fellow officers: “I am following orders. The order is to arrest everyone”. The agent then entered Juan’s home without any authorization or arrest warrant, handcuffed Juan, and told him that he was resisting arrest. The officers did not use masks or gloves until they got inside the police car. After several hours of being detained in a police station, they gave Juan a subpoena.

Case #3:

Arrested for Bringing Food to his Brother, Who Is A Mental Health Patient

March 17, 2020

Miguel (fictitious name), a social worker and resident of Bayamón, was the main caregiver of his brother in Caguas, who requires psychiatric treatment. In March, he visited his brother and brought him food and various other products. As he was driving back to Bayamón, he was detained by police officers at 9:30pm. After Miguel explained his brother’s situation, the

officer told him: “you cannot be on the streets. You must stay with him or take him home with you”. Miguel was arrested, handcuffed, and taken inside the patrol car. The officer driving the car was not using a mask, and Miguel feared being infected. Once in the station, one of the arresting officers told Miguel: “Have you seen the pressure I’m under?” Miguel concluded that officers are forced to make arrests so they can provide statistics demonstrating to the government that they are doing something. Miguel was accused of breaking the curfew order. Feeling extremely nervous, Miguel almost had an accident when driving back home that night. “The shock itself clouds your judgment”, he explained. It was the first time in his life that he had been handcuffed. He was unable to sleep that night.

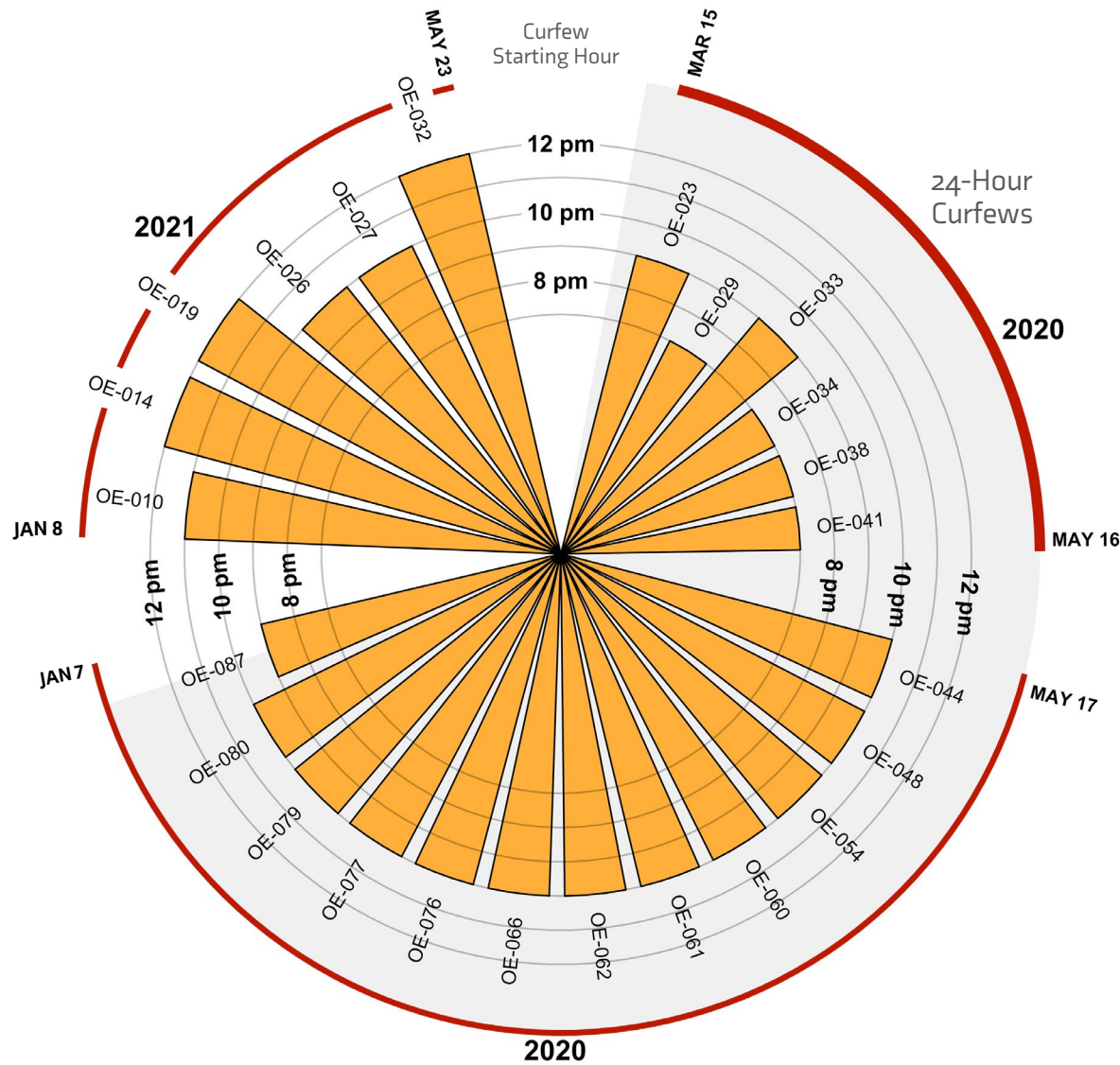
The officer’s words to Juan (Case #2) – “the order is to arrest everyone” – are consistent with the conclusion Miguel reached (Case #3) when the arresting officer told him, “Have you seen the pressure I’m under?”. The executive orders for COVID-19 prevention gave the State and Municipal Police new reasons to put in practice their obsession with punishment and punishing.

On the third curfew day, Miguel was arrested for bringing food to his brother, even though Section 6 of Executive Order 2020-023 allowed public circulation for people helping or caring for vulnerable individuals who required medical treatments. Its obsession with penalization led the police to ignore the specific exceptions established in the curfew order.

Juan was arrested for violating the COVID-19 prevention dispositions, although he was alone inside his own home. If the police wanted to prevent the garage sale, explaining this to Juan and asking him to remove the sign would have been more than enough. In its desire to punish and exhibit power, police officers were contradictory, since they exposed police personnel to the possibility of infection as they were supposedly complying with an order seeking to prevent infections.

Graph 3

Variations in Curfew Schedule Allowed Hours for Leaving Homes, According to Executive Orders March 15, 2020 – May 23, 2021



Note: Starting with Executive Order OE-044, Curfew Ended at 5:00 am.

Source: Appendix 3 contains details on every executive order.



Foto: Ricardo Alcaraz

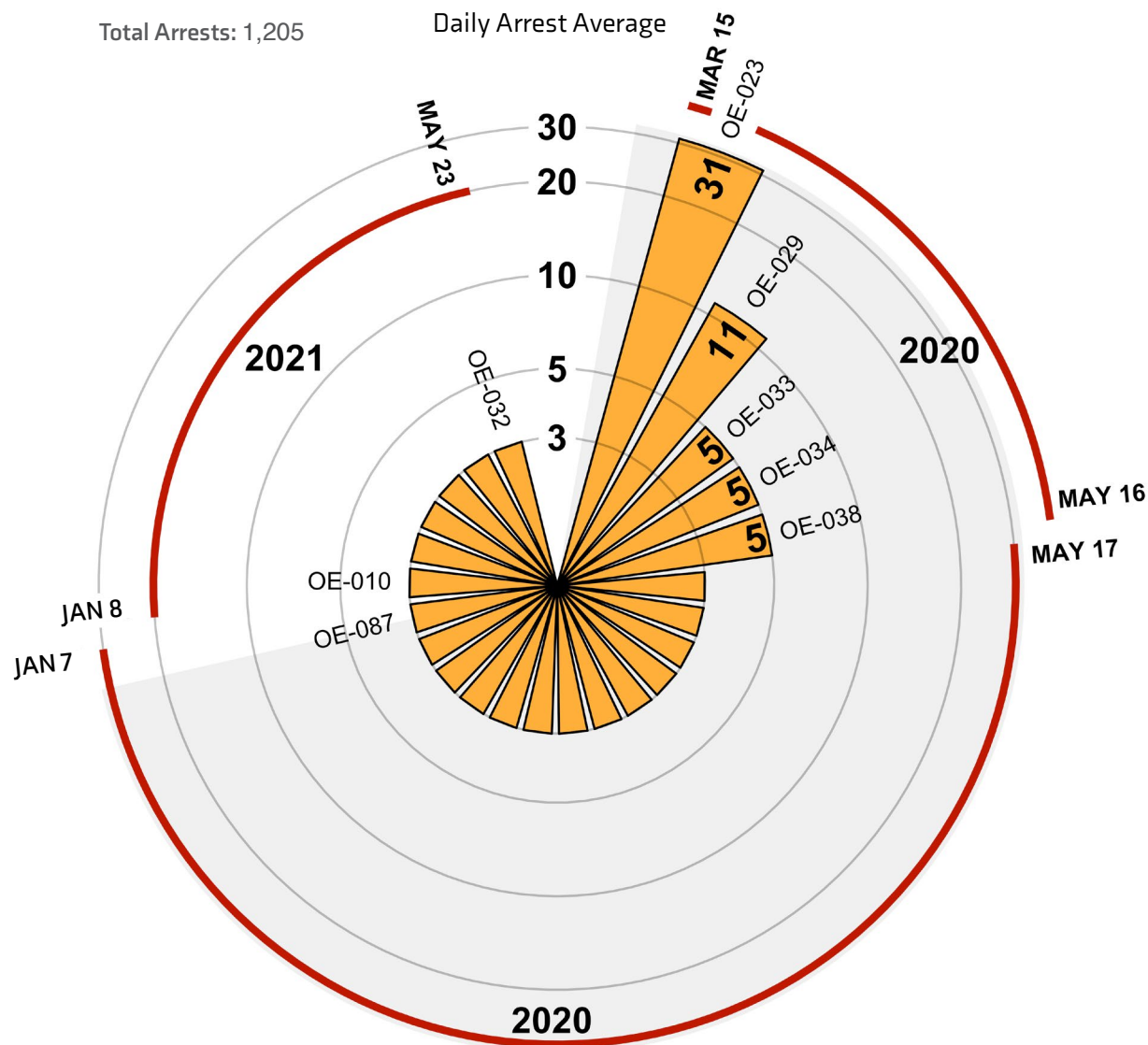
Improvisation was a constant factor during the 14-month period when the curfew order was in place. Initially, it was a 24-hour curfew, with multiple exceptions in the morning and afternoon hours that allowed circulating through the city for very specific ends. Then, a schedule was established that restricted curfew to night and early morning hours (see Graph 3). If there was no scientific justification for the imposing curfew, there was even less for the scheduling changes in the curfew's starting hours. Several times, the executive orders expressed some vaguely scientific or epidemiological ideas to explain the measures adopted, while others, the documents simply declared that the measures were decided upon "pondering the recommendations of both the medical and economic task forces" (OE-2020-034). Clearly, neither the curfew imposition nor the decision concerning its scheduling, responded to scientific criteria.

The experience in other countries is relevant in this discussion. In Germany, for instance, a transparent epidemiological criterium was adopted to determine whether curfew was imposed or lifted in any given region of the country, depending on whether the threshold of 100 cases for every 100,000 inhabitants was overtaken in the 7-day average (DW, s.f.). The population knew in advance what the scientific criterion was, and the daily publication of statistics alerted beforehand on the possibility of reaching the established threshold and, therefore, making curfew mandatory.

In the Puerto Rican island municipalities of Vieques and Culebra, this regional and transparent criterion was adopted. For example, during the multiple weeks when there were no COVID-19 cases in Culebra, or when only one or two weekly cases were identified, with a dutiful contact isolation, the municipality was able to function without imposing significant changes to its daily life. Clearly, since its very design, curfew was an abusive measure that in no way contributed to diminishing COVID-19 contagions.

Graph 4

Daily Arrest Average for Curfew Violations,
According to Executive Orders
March 15, 2020 – May 23, 2021 (Logarithmic Scale)



Note: Every executive order with a daily arrest average of less than 3, is represented with the number 3 in the graph.

Source: Appendix 4 contains details on the number of arrests under each executive order, as well as a copy of the Puerto Rico Police's official document on the daily number of arrests and curfew violation reports.

During the curfew's active period
(March 2020 – May 2021)

1,205 Individuals Arrested

3,889 Subpoenas for Curfew Violations

Source: Appendix 4

According to data reported by the Puerto Rico Police (PRP), and verified by us through media research, the number of individuals arrested in Puerto Rico for violations of the COVID-19 prevention dispositions was 1,205 over the course of the 14-month curfew period (see Graph 3 and Appendix 4). While the first executive order was in force (OE-2020-023), 489 individuals were arrested. On average, 31 individuals were arrested every day (see Appendix 5). While the second executive order was active (OE-2020-029), 148 individuals were arrested every day, producing a daily average of 11 arrests. From then on, during the remainder of the curfew period, the average number of daily arrests did not exceed 5.

The drastic decrease in arrests starting on April 13, 2020 coincided with the adoption of the Protocol on Safety Guidelines for Members of the Puerto Rico Police for COVID-19 Emergency Management (*Protocolo sobre las guías de seguridad para los miembros del Negociado de la Policía de Puerto Rico en el manejo de la emergencia del COVID-19*) (NPPR, 2020), which was developed upon a Federal Court order. The latter resulted from the lawsuit brought by the US Department of Justice against the Government of Puerto Rico and the Puerto Rico Police. The Protocol was presented to the Court on April 8, 2020, just days before the third COVID-19-related executive order was activated, which, in a measure of good judgment, limited the practice of arrests as a form of COVID-19 “prevention”. The Protocol established that, in cases of less serious crimes, such as violating the curfew order, individuals should be subpoenaed rather than arrested (NPPR, 2020, section XIV, #4).

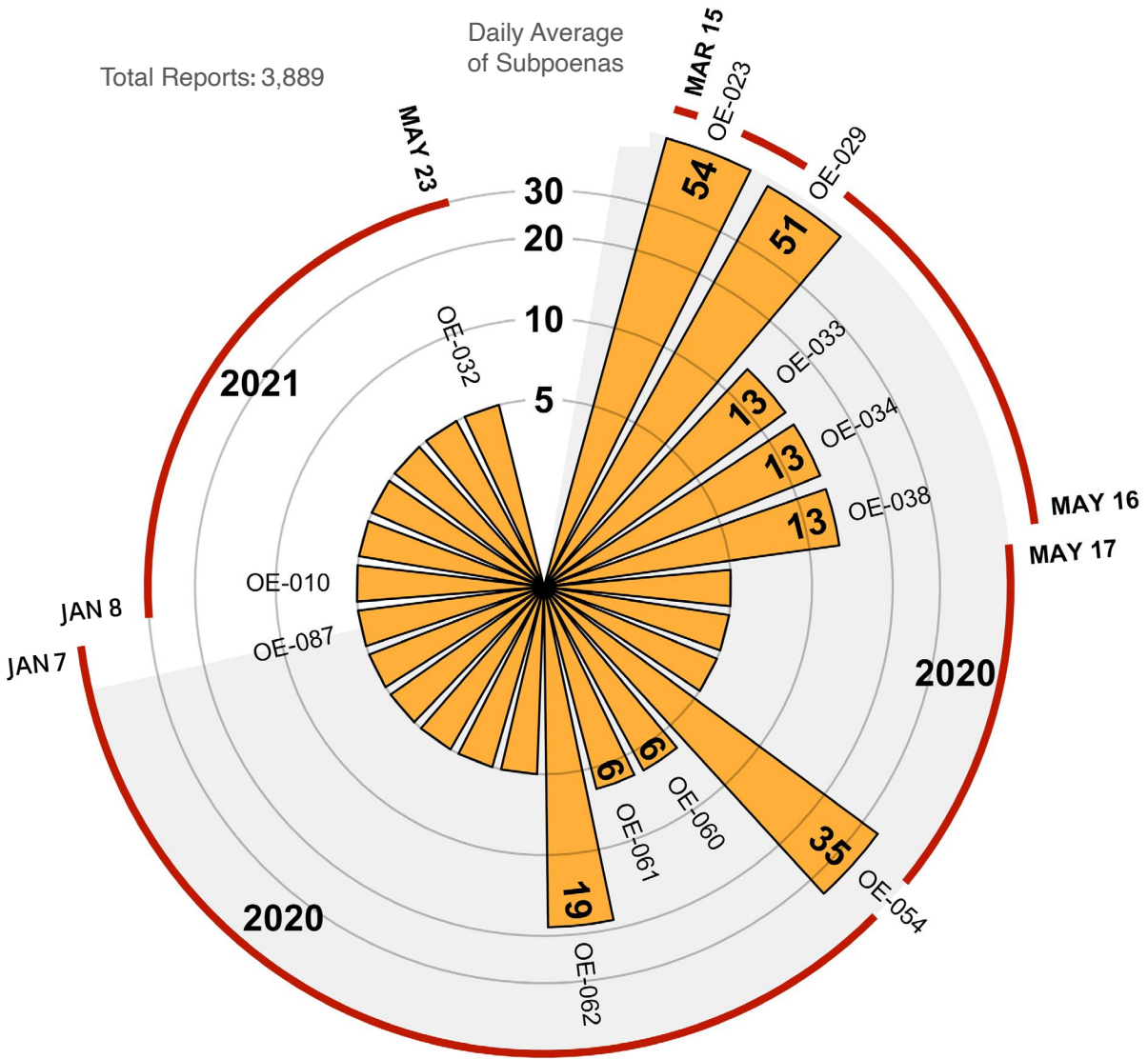
New Version of the Puerto Rico Police COVID-19 Protocol: The Priority Is Arresting Rather Than Protecting

The Federal Court for the District of Puerto Rico ordered the Puerto Rico Police, the USA Department of Justice, and the Federal Monitor of the Puerto Rico Police Reform to collaborate in preparing a COVID-19 protocol for the PRP. On April 8, 2020, the Court was presented with the Protocol on Safety Guidelines for Members of the Puerto Rico Police for COVID-19 Emergency Management (NPPR, 2020a). This protocol established that “in cases of less serious crimes, individuals shall be subpoenaed rather than arrested” (NPPR, 2020, section XIV, #4). However, the Court was advised that the document was subject to change in accordance with information that might emerge on the COVID-19 emergency. Indeed, the document entitled Protocol on Safety Guidelines for Members of the Puerto Rico Police for COVID-19 Emergency Management (NPPR, 2020b) that is available at the PRP’s official digital document repository, and which was signed by Henry Escalera, the PRP’s Director, on April 21, 2020, exhibits substantial differences with respect to the version presented to the Court. Basically, the Federal Court was informed of the new policy not to arrest individuals for less serious crimes, and less than two weeks later, said policy was erased from the Protocol. The causes of this change are unknown; its consequences, in contrast, are clear: exposing citizens and the Police’s own force to COVID-19 infections, just for the sake of making arrests.



Graph 5

Daily Subpoena Average for Curfew Violations,
According to Executive Orders
March 15, 2020 – May 23, 2021 (Logarithmic Scale)



Note: All executive orders with a daily subpoena average of less than 5, are represented with the number 5 in the graph.

Source: Appendix 4 contains details on the number of daily arrests under each executive order, as well as a copy of the Puerto Rico Police’s official document on the number of arrests and curfew violation subpoenas.

The Police's punitive character is also corroborated through the 3,889 subpoenas issued within the 14-month curfew period, a measure forcing individuals to come to the courts in person to settle their cases. (The Police refers to these subpoenas as "filed reports" [*denuncias*] in its statistical reports, see Appendix 4). Under the first few executive orders, a pattern of subpoenas similar to that of arrests is noticeable: a high number of subpoenas was issued, followed by a considerable decrease, which increased again starting at the end of May.

The increase in court subpoenas corresponding to July 17, 2020, was surely the result of a specific change in the corresponding executive order. Starting on that date, social activities in public and private spaces were limited (OE 2020-054). With almost no advance notice, social activities (family parties or birthdays, for instance) were thus prohibited in people's homes during the summer's last two weeks. The following peak in subpoenas was registered under the executive order (OE 2020-062) that, without rhyme or reason, ordered the entire population to remain in confinement during the last two weekends of August. We must insist that no arguments were publicly presented to demonstrate that limiting social activities was epidemiologically justified, or that it was a realistic expectation for the population to comply with said measure.

Governor Vetoes Emergency Oversight and Accountability Bill

Puerto Rico's Legislative Assembly approved the House of Representatives' Bill 515 (2021), authored by José Bernardo Márquez, which established a normative framework for oversight and accountability in times of emergency. The bill included the following dispositions:

1. To prohibit the suspension of laws by executive order while the Legislative Assembly is in session.
2. To require the Governor to present periodic reports to the Legislative Assembly should the state of emergency be extended for over 30 days.
3. To require the Executive Branch's agencies and instrumentalities, as well as every public corporation, to publish on their websites all actions taken under a State of Emergency Declaration.
4. To require the Governor to offer reasons for extending the state of emergency beyond 60 days, all the while referencing any document, study, report, data, or statistics that justify said extension.

The Public Safety Department, within which the PRP operates (Torres Ríos, 2021), opposed the bill. Having been approved by both legislative bodies, the bill was vetoed by Governor Pedro Pierluisi (Cordero Mercado, 2021). Kilómetro Cero's position on this bill's merits appears in an open letter sent to the Governor, and which is entitled "Faced with these emergency situations, adopting legislation facilitating accountability is urgent" (*Ante estas situaciones de emergencia, urge la adopción de legislación que facilite la rendición de cuentas*) (Avilés, 2021). Turned into law, this bill would have shown the country the way to learn lesson #2 in this report.

The curfew was challenged at court by the American Civil Liberties Union (ACLU v. Wanda Vázquez Garced – *Solicitud*, 2020), but the court ruled against ACLU without analyzing the case’s merits, for it argued that the plaintiff had no legal capacity to file the lawsuit (ACLU v. Wanda Vázquez Garced – *Solicitud*, 2020). Later, a business company challenged the curfew’s constitutionality (Auto Cine Santana v. Wanda Vázquez Garced), but the court ruled that the curfew imposition was constitutional.

Table 1

Legal Cases Questioning the Curfew’s Constitutionality		
Case	Lawsuit	Sentence
ACLU v. Wanda Vázquez Garced	To declare OE 2020-029 unconstitutional and to halt its measures	The case is dismissed for lack of active legitimation.
Auto Cine Santana v. Wanda Vázquez Garced	To declare OE 2020-041 unconstitutional, capricious, and arbitrary, and to halt its measures	The case is dismissed. The court argues that the established curfew is constitutional.

Note: The references for these lawsuits and sentences are included in Appendix 6.

Lesson #3:

All Crises Must Be Confronted With a Gender Perspective Framework.

Any policy designed without a gender perspective framework presumes that gender differences are irrelevant to the public problem it seeks to solve. This premise is difficult to sustain in societies that exhibit a clear division of labor by gender, differences by gender in high leadership positions, multiple forms of gender violence, and a scarce and ineffective political representation of and by women. Even more so, societies subjected to austerity policies, such as Puerto Rico, typically restrict government services destined to protect diverse social sectors, thus worsening women's unequal conditions, as it generally falls upon them to take on care labor for minors, those in poor health and the elderly, both at the family and the community levels. Confronting a crisis while ignoring this social context amounts to presuming that all sectors of society suffer the crisis the same, that care labor is equitably distributed between men and women, and that the entire population has the same resources at its disposal to confront the crisis' adverse consequences.

For decades, the idea that both sex (based on biological attributes) and gender (based on social and cultural practices) are essential factors that cannot be omitted in epidemiological research has been upheld (Doyal, 2003; Krieger, 2003). Depending on the health condition being investigated, sex can be more relevant than gender, gender more relevant than sex, or both can be equally determining factors. Epidemiological studies consistently prove that men and women experience similar rates of COVID-19 infections, but that men end up with more severe consequences and with greater mortality. It appears that natural sexual differences make women's immunological systems respond better to the COVID-19 virus (Thomas et al., 2021, page 88).

We must consider, too, the gendered social and cultural practices that traditionally make women resort to primary care services more frequently than men, both for physical and mental health matters (Thompson et al., 2016). Biological sex differences, coupled with differences in gender relations' social and cultural practices, must be equally taken into consideration when explaining the results of individuals infected with COVID-19 (Thomas et al., 2021, page 88).

That said, when examining the formulation of policies for the management of a pandemic crisis, factors associated with gendered social and cultural practices become even more relevant. *The Lancet Commission* report proves this (Sachs et al., 2022); it states that the pandemic crisis is a biological and social event for which adopting a gender perspective is necessary. Without it, the management of this crisis was bound to fail.

One of the immediate effects of the COVID-19 pandemic was the deepening of what a United Nations' division called “a trio of interlocking crises,” which “systematically undermine gender equality: a shadow pandemic of violence against women and girls, a jobs and livelihoods crisis and a care crisis that together have reversed the already fragile progress on women's labour market outcomes” (UN Women & UNDP, 2022, page 11). Explaining the reasons motivating Puerto Rico's government authorities not to integrate a gender perspective framework is challenging, but we must insist that the government's inaction did not result from ignorance, since the call to action on the part of multiple organizations was clear and consistent. Because the present report's objectives are related with public safety, in what follows we focus on issues of gender violence, but we do not miss this opportunity to stress that the issues of women's economic insecurity, and the greater demands on them to perform unpaid care work, were met with such blatant indifference by the State that it bordered on contempt.

#TheOtherPandemic (#LaOtraPandemia) was the campaign launched by Kilómetro Cero when facing the prospect of an intensification of gender violence during the pandemic. *The Persistence of Indolence: femicides in Puerto Rico, 2014-2020* (*La persistencia de la indolencia: feminicidios en Puerto Rico, 2014-2020*) (Avilés, Mari Narváez, and Rodríguez Reyes, 2019), an investigation conducted jointly by the organizations Kilómetro Cero and Matria,

E[...] Women have borne a disproportionate socioeconomic burden, and existing widespread gender inequalities in terms of labour, income, personal safety, education, and food security intensified over the course of the pandemic, with important regional, national, and local variations and disparities.

The Lancet Commission
(Sachs, 2022, page 28)



reflected results that, considered in the context of the COVID-19 pandemic and confinement and curfew circumstances, required governmental action. First, we found that 35% of femicides take place in the murdered woman's own home, or in that of close family members or acquaintances, a phenomenon obviously meaning that women's homes are not safe places when confronting gender violence. Second, when examining the 6-month periods before and after hurricane Maria, we discovered an increase in femicides *after* the hurricane, precisely when a curfew order was in place.

What Does Having a Gender Perspective in Pandemic Times Mean?

In Spain, the campaign Mask 19: The Mask that Can Save Your Life (*Mascarilla 19: la mascarilla que puede salvar tu vida*) was created as a way of guaranteeing support networks and facilitating the intervention of pertinent authorities in situations of gender violence aggravated by the COVID-19 pandemic. Saying "mask 19" (*mascarilla 19*) in a pharmacy immediately activated a response protocol to offer services to women whose physical, psychological, or sexual integrity were at risk.

(Instituto Canario de Igualdad, s.f.)

In Argentina, while facing a scarcity of shelters for gender violence survivors during the first few months of the pandemic, the Minister for Women, Gender, and Diversity designed Plan H with the collaboration of union and university organizations for survivors of gender violence to shelter at union hotels and student dormitories.

(Pecker 2020)

The Study Group on Women, Gender and Law – InterMujeres (*Grupo de Estudio sobre Mujeres, Género y Derecho – InterMujeres*) (Redacción Todas, 2020), explains that in crisis situations,

gender labor divisions are exacerbated (care, domestic tasks, food responsibilities, etc.), women are not included in decision-making processes, their work is eclipsed or valued even less, stress factors increase, which can aggravate domestic violence situations and sexual aggressions, greater levels of insecurity are confronted, and elderly women, girls, those with disabilities, and migrant women face greater vulnerability.

The logical conclusion that all the above leads us to is that in moments of crisis, a greater effort is required to guarantee interventions and services counteracting gender violence for all individuals who might need them. In times of crisis, developing specific public campaigns to explain how victims of gender violence can obtain necessary services becomes especially urgent (Human Rights Watch, 2021, page 33). Under its confinement and curfew orders, the Puerto Rican government had the inescapable responsibility of developing new forms of assistance seeking, protective order requests and issuances, and publicizing them far and wide.

Since both the executive and legislative branches acted with no sense of urgency concerning gender violence during the pandemic (Esteves Dávila and Quiles, 2021), non-governmental organizations took on the responsibility of creating a counseling helpline for gender violence victims. The need for this helpline is proven when we consider that between April 2020 and March 2021, a total of 2,246 calls were made and taken (Esteves Dávila and Quiles, 2021).

Unfortunately, the Police's punitive character compels us to rule out any pretension that it protects communities. When the Police channels resources to arrest 1,205 individuals and to issue 3,889 subpoenas for curfew violations, it must necessarily fail in formulating and implementing strategies to prevent gender violence. Its resource allocation demonstrates that, for Puerto Rico's government, it is more important to punish someone who does not comply with a curfew order than to guarantee a swift and effective response to gender violence complaints. In addition to the Police, several government agencies also have a say in

matters related to the prevention of gender violence, but these failed as well. The experience of this violent crisis proves once more that, rather than by the Police, public safety in our country is promoted by actions from communities and non-governmental organizations.

Lesson #4:

In Times of Crisis, Avoiding the Amplification of Police Interventions Is Essential.

A policy fails in garnering citizen support if its enforcement resorts to violent, abusive, intimidatory, or arbitrary actions. The Police's tendency toward immediate punishment, as well as its lack of interest in considering alternatives that do not escalate to greater levels of police use of force, constitute a risk for the population. This tendency to disproportionate use of force or to threat of use of force proves that the Police's orientation is not toward citizen protection or the prevention of violence. Punishment is never a good path to guarantee public safety.

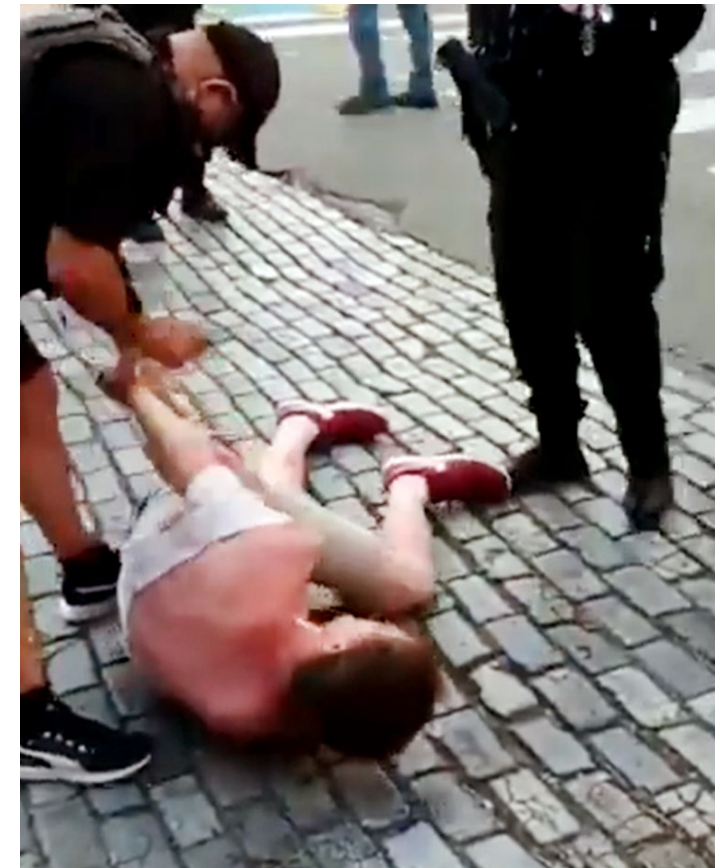
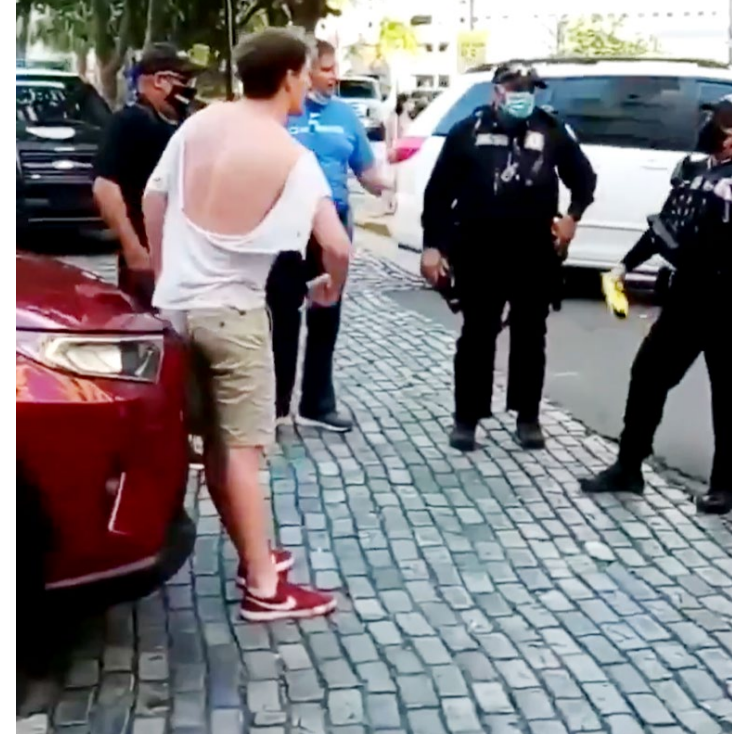
Case #4:

Tased for Not Wearing a Mask

March 27, 2021

Walter, an 18-year-old tourist and USA resident, was in an apparent drunken state and walking without a mask in Old San Juan. Three officers from the Municipal Police approached him and started giving him instructions, but he did not respond. A woman police officer used her taser on the youth, who, upon falling on the floor, was cuffed and arrested. Walter had to be transported in an ambulance to a diagnosis and treatment center to have the darts from the taser removed from his body. Charges were brought upon him for obstruction and violation of the executive order. The judge who oversaw the case imposed a fine of \$100 for not using a mask.

Any evaluation of taser use must recognize the extent of this weapon's danger, as proven by the fact that, since 2014, at least two individuals have died in Puerto Rico because of electrical discharges made by the Police. Suspiciously, they are missing from the official reports on deaths due to police force (Kilómetro Cero, 2022b, page 23). Considering this situation, it is unreasonable and disproportionate to use an instrument of lethal capacity against an individual for not wearing a mask. The **General Order 600-602, Use and Management of the Taser** (*Orden*





General 600-602, Uso y Manejo del Dispositivo de Control Electrónico), prohibits its use “against a person who is exhibiting passive or active resistance”, unless the life of the police officer or of a third party is in “imminent risk of death or grave bodily harm” (NPPR, 2019, page 7). Walter exhibited passive, non-aggressive resistance, and did not present any sign whatsoever of trying to physically harm anyone, not the officers, a third party, or himself. This use of the taser demonstrates the typical pattern of municipal or state agents, who intervene and use police force disproportionately, escalating the level of violence in their interventions even when interacting with unarmed individuals. In its interaction with this citizen, the Police did not initiate a negotiation process, nor did it verify whether the youth understood the orders he was being given. The Municipal Police officers should have engaged in a sustained dialogue, even if solving the situation required more time.

Case #5:

Subpoenaed for Surfing

May 1, 2020

Ernesto (fictitious name) was surfing in Punta Las Marías in San Juan. As he was returning to the shore, he felt accosted by a Police helicopter and boat. Additionally, four official vehicles and six police officers were waiting for him on the shore. An agent ordered him to come out of the water because he was violating the executive

order. The same officer asked Ernesto for his social security number, but the surfer gave him only the last four digits. The agent threatened to arrest him, telling him that “he would be processed like a criminal”. Upon finishing the hour-and-a-half intervention, Ernesto was subpoenaed for violating the executive order.

This case shows that the Police decided to use a disproportionate number of resources –a helicopter, a boat, and several patrol cars and officers– to intervene with a solo surfer. Logically, surfing in the sea does not represent a risk of infection for anyone. Thus, it is evident that, in the executive orders, more weight was given to persecuting and punishing than to promoting open air activities in beaches, forests, or parks on the part of individuals or those in the same family unit.

The analysis of the PRP’s use of force in the report ***No se dispara de la vaqueta (One Must Not Shoot Recklessly)*** (Espacios Abiertos, s.f.) shows that there are structural deficiencies in the apparatuses producing, executing, and supervising the police officers’ work, which means that abusive, disproportionate, or discriminatory interventions are not mere errors in judgment on the part of individual police officers. Rather, they are the result of an organizational structure allowing, tolerating, and incentivizing such practices, since no effective accountability mechanisms are established. One of these structural deficiencies is the fact that the PRP’s rulebooks do not apply to Municipal Police bodies, as the latter are totally excluded from the Agreements on Police Reform (*Acuerdos de la Reforma de la Policía*). In a word, Municipal Police bodies have an additional layer of impunity to that of the State Police.

Case #6:

Police Intervention with Long Guns in a Business

February 28, 2021

Luz (fictitious name) is a restaurant administrator at a town in Puerto Rico's mountainous interior. One Sunday afternoon, eight patrol cars arrived at her business with almost twenty State Police agents, some of them with long guns. For over an hour and a half, the restaurant was paralyzed because of the police intervention. An agent counted the number of diners to verify whether the capacity limit was being met. The Police ordered closing the restaurant and issued three fines of \$500.

Multiple questions arise from this story of a police intervention seeking to verify whether a particular business was complying with the dispositions established for COVID-19 control. The entire operation seems disproportionate with respect to its objectives. The use of eight police vehicles, the allocation of almost twenty police officers, and the dangerous and unnecessary display of long guns are entirely unjustified for what should have been a routine visit to examine compliance with capacity limit and customers' physical distance in a commercial venue.

Lesson #5:

Protecting the Right to Protest Becomes Even More Important in Times of Crisis.

The act of protesting, individually or collectively, is an essential characteristic of living in a democratic society. Those who protest are not only manifesting their thoughts, feelings, and aspirations on a particular issue, but also demanding government authorities to intervene. The latter have the duty of facilitating protests and guaranteeing the safety of those participating in them (Amnesty International, 2022). When police bodies obstruct or criminalize a protest, they are threatening the most basic principles of a democracy.

The severe confinement and curfew dispositions, as well as the uncertainty about an emergent disease's modes of contagion, did not deter the need to take the streets and collectively protest in multiple European cities (Kriesi & Oana, 2022). In the wake of George Floyd's murder at the hands of a police officer, between 15,000,000 and 26,000,000 people flocked to protests convened by Black Lives Matter in over 2,500 towns and cities across the United States during the first few months of the pandemic (Buchanan, 2020). Clearly, the citizenry's need to raise, with its physical presence in public spaces, its voice of protest collectively and individually for diverse reasons, cannot be placated by decree. Therefore, it was not a realistic expectation that confinement would stop protests from erupting in Puerto Rico. Still, the PRP's obstinacy in criminalizing any protest found in the executive orders a new excuse to exercise and display its power for pursuit and punishment.



Case #7:

Detained for Nine Hours for Protesting the Lack of Food for Impoverished People

April 30, 2020

Giovanni Roberto, leader of *Comedores Sociales*, an organization offering food to impoverished and marginalized communities and individuals, called for a “drive-thru” car protest to demand action from the government to ameliorate the food crisis caused by its COVID-19 control dispositions. The police intervened with Giovanni, who was driving a sound truck. He was threatened with arrest, fines, and a vehicle confiscation should he remain on the spot. Upon exiting the truck, Giovanni explained that both him and the protesters were exercising their constitutional rights, to which the officer responded: “if you want to defend the Constitution, then go to the court”. The colonel José Juan García asked for his arrest, and the lieutenant Leslie Zeno proceeded to arrest Giovanni. Neither of the officers could explain the reason for the arrest. One of the officers involved repeated several times that they “were just following orders”. After six hours of detainment, Giovanni was informed that he was going to be accused of violating the executive order for the control of COVID-19, breaking the traffic law, and resisting arrest. In the hearing, the judge determined that there was no cause for arrest, and Giovanni was let go.

Case #8:

Amid a Protest, He Was Told, “This One Must Be Killed”

July 25, 2020

Ricardo Santos was one of the Socialist Workers Movement’s (*Movimiento Socialista de Trabajadores*) spokespersons. The organization convened a car protest on Saturday, July 25, 2020 to denounce the government’s negligence in allowing the entrance of tourists to Puerto Rico amid a pandemic. The police intervened with the protest near the airport. A high-ranking officer told Ricardo that they would not allow the protest to take place because it was a political manifestation. While the police activated the Tactical Operations Unit (*fuerza de choque*), a group of five officers started pushing a protester violently. Ricardo interposed his body between the protester and the officers. After a few minutes, sergeant Ruiz grabbed Ricardo, shoved him to the pavement, sat on his torso, and pressed against Ricardo’s neck with his arm until Ricardo yelled that he was out of air. Then, he heard the agent say: “this one must be killed”. Upon being cuffed, the police took Ricardo to the Regional Hospital of Carolina, where he was examined. When he was discharged, the police took Ricardo to the station and, finally, gave him a ticket for obstructing traffic.



In both cases (#7 and #8), police agents arrested protesters arbitrarily, without motives that could justify their action. It is common knowledge in Puerto Rico that the usual accusation of “resisting arrest” and “obstructing justice” is the excuse that the PRP uses when it wishes to arrest someone arbitrarily. What is more, these arrests are part of an established pattern of hostility and aggression toward any public manifestation questioning the government, a matter that makes evident the police’s disdain for the fundamental rights of expression and protest.

The imposition of a curfew offered a convenient pretext for penalizing anyone who exercised their constitutional right to protest. The words “this one must be killed”, pronounced by a police officer and directed to a protester, cannot be taken lightly, as though they are a casual expression. Taken together with the physical violence exerted upon a civilian, this verbal expression becomes a real threat. The price for exercising a constitutional right cannot be a death threat. We must add, too, that when such behavior is not punished by the PRP’s hierarchy, nor questioned by other officers, it becomes an acceptable practice among the force.

These two cases are thoroughly illustrative of a situation warranting greater attention. The demands inspiring the protests where the Police intervened violently were public health demands. Amid the confusion and uncertainty provoked by confinement, curfew, and the threat of a new infectious disease, those who claimed for food for impoverished sectors of the population and for controlling the arrival to the country of individuals carrying a potentially lethal virus were met with open police repression. In a word, the police interpreted the defense of public safety as a criminal act.

Lesson #6:

In times of crisis, establishing and strengthening effective accountability mechanisms is crucial.

Case #9:

Young Man Dead During Curfew Hours December 4, 2020

Benjamín Omar Cotto Morales, a 25-year-old athlete, university student, and Carolina resident, died from four gunshots fired by Milton Morales Cintrón, a member of the San Juan Municipal Police, on December 4, 2020. That day, at just over 1 am, Benjamín Omar was standing in front of the business where he had been working the previous days. The officer alleged informing Benjamín Omar that he could not be standing there, as in doing so, he was violating the executive order's curfew dispositions, and that an altercation between them ensued. Morales Cintrón argued that he fired in self-defense because Benjamín Omar had an awl (*punzón*). Benjamín Omar exhibited gunshot wounds in an arm, chest, and head. Meanwhile, the agent had a laceration.



Benjamín Omar Cotto Morales' death is one of 12 caused by weapons brandished by municipal agents in Puerto Rico since 2014, as Kilómetro Cero has documented (Kilómetro Cero, 2023a; Kilómetro Cero 2023b). In this case, the use of his service weapon by the San Juan Municipal Police officer was disproportionate with respect to the real threat. The amount of four shots was also exaggerated, and a shot to the head was entirely unjustified and contrary to every police rulebook. Curfews facilitate police impunity; with the streets and cities cleared of people, potential witnesses that could question the official version are also cleared. More than two years later, the San Juan Municipal Police has offered no public explanations on this death, nor has it divulged information concerning the status of the investigation. There can be no citizen trust on the rigor of any Police investigation when there is no external, independent entity with the authority and necessary resources to evaluate the Police's actions.

The State and Municipal Police are not organized for accountability. In the absence of an accountability culture, the citizenry's presence observing that which transpires and occasionally recording it, has the potential of tempering the Police's worst excesses. In moments of crisis, and especially when there are curfew or confinement measures in place, the scarce citizen presence favors the continuous arbitrary and abusive Police behavior. Consequently, in such times redoubling efforts to facilitate effective accountability processes becomes even more essential. The current processes allowing the PRP and the Public Safety Department to investigate themselves are an exercise in futility. We must insist on the establishment of an independent, civilian supervision body, as well as of prosecution offices specializing in crimes by law-and-order agents.

Conclusions

This study argues that matters of public safety and state violence must be a fundamental element of the set of lessons to be derived from this pandemic. Based on the discipline of public policy analysis (Dunlop, 2017; McConnell, 2015), this report identifies a series of failures in government decisions to confront the pandemic crisis as a necessary previous step to designing specific recommendations for the management of future crises in Puerto Rico (see box Lessons to learn, page 12).

While we conducted this investigation, we were consistently confronted with the same question: how to explain so many failures? We began this report with historian Jaclyn Duffin's claim in the book *COVID-19: A History* (2022, page 202) that after epidemics conclude, there emerges a strong desire to forget what was experienced, a response that makes it harder to extract lessons no country should ignore. Now, as we reach this report's conclusion, we quote the historian Niall Ferguson (2021, page 207), whose book *Disaster: History and Politics of Catastrophes*, uses the term "political incompetence" in reference to leaders who, upon realizing that they have taken erroneous decisions, prefer not to change course or are incapable of doing so. For Ferguson, political incompetence leads such politicians to cling to obsolete traditions while refusing to learn from lived experience; makes them ignore or undermine information questioning their preconceived ideas; leads them to look for people to blame when their strategies fail; and foments that they ignore or distort news proving their failure.

It is precisely in such a political world where the discipline of public policy analysis finds the most convincing motives for repeated or persistent failures. However, the most common practice continues to be attributing the responsibility for errors leading to the failure of any given government course of action to individual actions, technical problems, or mistakes in execution. The fundamental causes of policy failures are not on the surface; they are not discoverable in easily observable factors. Rather, they are to be found in not-so-obvious social and political dynamics.

Undoubtedly, electoral politics influences the persistence of policy failures. The real or perceived implications of admitting a failure when facing an electoral battle, turn fraught its



recognition and analysis. Thus, changing a mistaken course of action becomes less probable (Howlett et al., 2015). For those occupying decision-making positions and who aspire to elective office, identifying other factors to blame is more convenient than recognizing mistakes made.

But, in matters that relate specifically with public safety and state violence, we identified two factors as responsible for persistent failures:

- Punitive governance, based on the idea that detentions, arrests, fines, and subpoenas are not only necessary, but should even be prioritized when attempting to contain an epidemic crisis (and other kinds of crises).
- Police impunity, as ensured and fomented by the lack of transparency and the resistance to adopt effective, civilian oversight mechanisms of the Police institution.

The war on drugs' half a century fiasco should constitute a paradigmatic example of how public safety strategies fail if based on punitive models of persecution and jail time (Global Commission, 2021). The failure in preventing femicides committed by police officers (Kilómetro Cero, 2022a) should be equally illustrative of how dangerous relying on an agency characterized by impunity is, especially when it comes to ensuring that government dispositions for the protection of vulnerable sectors are met.

A *British Medical Journal* – BMJ editorial on how to prepare for future pandemics argues that, in countries where democracy has been eroded, guaranteeing universal healthcare services becomes more difficult. It also affirms that democracies function in times of crisis only if they are promoted and protected during “normal” times (Bollyky & Kickbusch, 2020). The authoritarian turn that Puerto Rico has witnessed in recent years, as evidenced by a Police apparatus functioning as though it had license to kill (Kilómetro Cero, 2022b), as well as by a government by decree of executive orders to confront emergency situations (Atiles Osoria, 2021), has weakened the country’s incipient democracy even more. Without a real democracy, which is characterized by effective participation and democratic control of State institutions, Puerto Rico will not be prepared for the next crisis, and even less so for the next pandemic.



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