

GOLD VI

***Case-Based Contribution
to Chapter 4: Commoning***
*GOLD VI Report on Pathways
to urban and territorial equality*

Formalising land tenure without

displacement: the Community Land

Trust in informal urban contexts

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Formalising land tenure without displacement: the Community Land Trust in informal urban contexts

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CHAPTER

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SUMMARY

In urban and peri-urban areas where land pressure is high, the regularization of existing settlements through individual land titling has proven to induce market-driven displacement of owner-occupiers and tenants. The over 50-years-old Community Land Trust (CLT) model is based on the management of land as a common good, protected from speculation to ensure long term affordable housing, green and commercial areas for the residents and grassroots organizations of a neighbourhood or community. However, the adaptation by local authorities, civil society and communities of the CLT approach to an informal settlement, the Caño Martín Peña (CMP) area of San Juan, Puerto Rico, opens a new perspective on how to successfully achieve both, land regularization and protection against displacement of the residents. A community empowerment process was initiated in 2002 by the government of Puerto Rico, to implement a dredging project of the Caño Martín Peña channel, and the upgrading of the surrounding self-built neighbourhoods (home to 25,000 people). In this process the issue of the neutralization of land speculation was central. Eventually, CMP's residents consciously chose to conceive a CLT to steward the land on their behalf and to receive Surface Rights Deeds as an alternative to individual land titles or cooperative property. This way, they will be protected from silent eviction processes like gentrification once the regularization and upgrading process finishes. Through informal settlement dwellers and social movement peer exchanges realized after the CMP-CLT won the 2016 World Habitat Award, the Puerto Rican experience has inspired grassroots organizations from Rio de Janeiro to Dhaka to develop land regularization through collective ownership or stewardship.

1. The limits of securing land tenure through individual titling in urban and peri-urban contexts

“Security of tenure is undoubtedly a cornerstone of the right to adequate housing, and its absence one of the most acute vulnerabilities likely to lead to a range of human rights violations. Insecure tenure annuls all other aspects of the right to adequate housing”.¹

In 2018, 1,033 billion people lived in ‘informal settlements’, especially in the Global South.² Informality, however, is not synonymous with precariousness:³ many self-built and incrementally built neighbourhoods are connected to urban services, providing quality built and public spaces.⁴ Nevertheless, the lack of tenure security increases the residents’ vulnerability towards forced eviction, displacement induced by speculation and increasing land prices, and can limit or compromise their access to basic rights (social security, formal and decent work, education, health, culture, gender equality, etc.), which are in correlation with ‘adequate housing’, as defined by the United Nations.⁵

Formalising land tenure in informal settlements usually involves the allocation of individual property titles to the “owner-occupiers”. These land titles are attributed either *in situ* (in the case of slum upgrading, regularisation of squatted buildings, etc.) or in new locations (relocation to greenfield housing projects or social housing).⁶ **However, numerous research and field studies show that individual land titling programmes in urban and peri-urban areas do not necessarily lead to poverty reduction**



or investment by residents in housing improvement.⁷ On the contrary, they can facilitate the sudden integration into the urban market of well-located land that exposes ‘regularised’ residents and tenants to market-driven displacement.⁸

This is particularly true for informal settlements that are ‘well-located’. In these areas, it is likely that residents are rapidly displaced by gentrification⁹ or touristification (purchase or construction of dwellings as second homes, renting to tourists on online platforms, change of use from residential to commercial, etc.) processes. The latter is for example the case in some *favelas* located in the affluent areas of Rio de Janeiro.¹⁰ Displacement from formal or informal settlements can also occur in post-disaster contexts or in the wake of economic crisis, when land values suddenly decrease, offering an opportunity for investors to buy land and real estate at affordable prices.¹¹ **A major economic and programmatic effort by local and regional governments (LRGs) is**

Consolidated housings and shops in the Buenavista Santurce neighbourhood close to the Caño Martín Peña canal in May 2019
Source: Pierre Arnold

1. Rolnick & De Schutter, 2014, 15

2. UN Stats, 2019

3. Dovey, *et al.*, 2020

4. Clerc, *et al.*, 2017

5. OCHCHR & UN-Habitat, 2009, 4

6. Midheme & Moulaert, 2013

7. Payne, *et al.*, 2009

8. Deboulet, 2011 and Payne, *et al.*, 2009

9. Choplin, *et al.*, 2014 and Birch, *et al.*, 2016

10. Meléndez Fuentes, 2020 and Fidalgo Ribeiro, *et al.*, 2020

11. Hernández-Torrales, *et al.*, 2020

needed to ensure permanent *in situ* tenure security for vulnerable populations in well located informal settlement, but these market-driven displacement to new irregular situations also displace the original challenge in space and time, sooner or later requiring again an important public investment in regularization and upgrading programmes.

Under certain conditions, Community Land Trusts (CLTs) appear to be a viable alternative for formalising housing and land tenure without inducing market-driven displacement.¹²



Visit of the Caño Martín Peña with community leaders and grassroots organizations from 17 countries in a workshop hosted by the CLT and ENLACE in May 2019
Source: Pierre Arnold

2. The Caño Martín Peña Community Land Trust: an inspiration for securing land in existing neighbourhoods

The “*Fideicomiso de la Tierra del Caño Martín Peña*” (CMP-CLT) in San Juan, Puerto Rico, is a unique CLT in that it received public land under existing constructions, in self-built neighbourhoods to conserve its property on behalf of their residents. Eight neighbourhoods were informally settled and consolidated since the 1930’s along the Martín Peña watercourse, progressively refilling it to build more houses, leaving only a narrow channel known as the *caño*. When the *caño* was to be dredged and widened to make it navigable and reduce the floods that periodically affect surrounding communities, officials of the Roads and Transport Authority engaged in a process of community mobilisation, empowerment and co-construction (2002–2004) with local residents. The process was elaborated in line with the Participation and Empowerment of Poor Inhabitants Act of 2001, involving residents, public officials, lawyers, researchers, students and community-based organisations. **To avoid that the neighbourhood upgrading**

and land regularisation process would induce the displacement of its residents as it had previously occurred in other neighbourhoods, the Caño Martín Peña community chose to create a CLT which exists in the legal framework of the United States of America.

With the help from lawyers and scholars, the residents analysed the pros and cons of existing cases of CLT as well as land cooperatives which were implemented in some of the CMP communities by the government in the 1960s and early 1970s, and to the individual titles option. They went for the option which would ensure “*avoiding displacement and gentrification as an unintended consequence of restoring the Caño; getting access to credit; and ensuring their heirs could inherit the right to occupy and use the land, supported by a valid title*”.¹³ In the analysed, only the CLT would “community-led development on community-owned land for the provision of affordable housing for low-income families”.¹⁴

12. Algoed, et al., 2018 and Basile & Ehlenz, 2020

13. Fidalgo Ribeiro, et al., op. cit. p.222-223

14. ibid, p.223

The CLT solution that was tailor-made for the CMP is based on the following principles (as detailed in the book “On Common Ground”):¹⁵

Sui generis legal framework

The multi-actor collaboration around a common cause and the empowerment of the inhabitants enabled the adoption of the Puerto Rico Law 489-2004,¹⁶ which established a public corporation (ENLACE) for the implementation of the comprehensive development plan including upgrading and the dredging of the channel. The law also creates the CMP-CLT, and defines “*the basic processes through which land would be identified and entitled to become part of the Caño CLT and established the framework for the Caño CLT to assign members to its Board of Trustees*”.¹⁷ **The vocation of the CLT is to regularise the land situation of approximately 1,500 families to ensure tenure security and pay property taxes; to guarantee that families, especially the most vulnerable, will not be displaced; to ensure permanently affordable housing in the area.** Another function is to facilitate the relocation of families living in the dredging area to permanent and adequate housing.

Shared Governance between State and Municipality - Community - Residents

Approximately 25,000 people live in the eight neighbourhoods adjacent to the ‘Caño’. During the participatory process, the ‘G-8’, a group of representatives of community organisations was established. It currently gathers 120 community leaders (40% of whom are young leaders between 14 and 25 years old). The G-8 is represented in the governance of both ENLACE and the CMP-CLT.

According to the CLT’s General Rules and Regulations developed by ENLACE with the G-8 and approved in 2008, the CMP-CLT’s Board of Directors has 11 “trustees”:

- 1 appointed by the Governor of Puerto Rico (non-voting)
- 1 appointed by the mayor of San Juan (non-voting)
- 1 person from the board of directors of ENLACE
- 4 residents of the CLT stewarded land
- 2 community members who live or have a business within the CMP special planning district, selected by the G-8
- 2 persons selected by the Board of Directors for their knowledge of the CMP-CLT

Non-speculative land management

The CMP-CLT currently manages more than 120 hectares of land (home to approximately 1,500 households) that was either directly transferred by the Government of Puerto Rico to ENLACE and then transferred to the CLT or purchased by the CLT (in the case of private land that will be used for relocation of housing). The trust cannot sell this land: it must keep it on behalf of the families residing on it, to whom it grants Surface Right Deeds (SRD), registered in the Puerto Rico Real Estate Registry. This status allows residents to live in and transform the buildings on their land as they wish. Residents can also mortgage and inherit their SRD.

The SRD has a value corresponding to 25% of the cost of the market value of the plot inhabited by the family. If a family wishes to move out, the CLT has a right of first refusal on the purchase of the SRD and the building. The purchase by a private individual must be made under the same conditions: the

¹⁵ Hernández-Torrales, et al., op. cit.

¹⁶ Like the U.S Virgin Islands, American Samoa, Guam and the Northern Mariana Islands, Puerto Rico is an “unincorporated territory” of the United States of America, which means that it is neither a state of the USA nor a sovereign nation. The U.S Constitution and rights only applies partially to Puerto Rico which many inhabitants consider to be a colony of the U.S.

¹⁷ *ibid*, p.199

purchaser must make it his or her principal residence and can only resell the SRD and constructions in the terms set by the CLT. **This mechanism prevents the sale to speculators or investors whose intentions would not benefit the community.**

Land for commoning and CLT income

The land stewarded by the CLT also holds community facilities, churches, green and recreational areas, shared gardens and local shops. **It secures these essential commons for social cohesion and the quality of life for the residents who can also propose uses of land that can benefit the community.** The decision-making around the land management is agreed between the board of trustees and the activities or project managers who can either be residents or not. For example, the CLT owns a dozen commercial areas, which are rented out to more than 80 shop-holders and grass-root organizations. During the first months of the COVID-19 pandemic, the CLT agreed to reduce or condemn the rents for shop holders with economic difficulties.¹⁸

The incomes from the rents are used by the CLT for its social activities with the communities, but also for the construction of new housing units developed within the relocation process. The rehoused families can choose to stay in the neighbourhood, on CLT land or elsewhere. Moreover, households living outside the Caño Martín Peña special planning district, may also choose to sell their land to the CLT and obtain an SRD to protect their home from the speculative dynamics prevailing in San Juan's central districts.



Advantages for the municipality

Thanks to the G8, ENLACE and the CLT-CMP, communities have the means to manage and steward their land and assets, giving them ownership and agency over neighbourhood upgrading and land regularisation, as well as relocation processes that directly affect them. Local communities and public authorities work hand in hand towards improving the conditions in the Caño Martín Peña settlements. Furthermore, the community is invested in several initiatives (community councils, literacy programmes for adults and migrants, community university, youth leadership, non-violence and non-discrimination activities, shared gardens, sports clubs, micro-enterprises, etc.) and has shown great solidarity and resilience after Hurricane María and since the beginning of the COVID-19 pandemic.¹⁹

Visit of the Caño Martín Peña with community leaders and grassroots organizations from 17 countries in a workshop hosted by the CLT and ENLACE in May 2019
Source: Pierre Arnold

18. urbaMonde, 2020

19. urbaMonde, *ibid*

Conclusion: Perspectives of adapting CLTs in other informal settlements

The CLT-CMP offers a new perspective and inspiration for communities and LRG on the control of urban and peri-urban land to guarantee its social function as a 'common ground', not a commodity. Compared with non-profit private organizations like land cooperatives, housing associations or foundations, the CLT scheme proposes to perpetually manage (occupied or vacant) land through a structure that guarantees collective decision-making between LRGs, residents and community-based organizations and therefore goes beyond individual or political interests from any of these actors. It materializes the possibility for the urban poor to negotiate and agree with the authorities on the rules to manage a common resource - the urban land and infrastructure- which is key to the upgrading of living conditions and the materialization of a bundle of human rights in the city, and the right to the city itself.²⁰

Grassroots organisations, researchers and legal workers from different countries, some of whom visited the 'Caño' after when it received the World Habitat Award in 2016, are currently carrying out social work with communities in informal neighbourhoods to explore existing legal tools or design new ones in their countries to ensure permanent land-tenure security through collective ownership. New CLT-inspired initiatives may appear in Puerto Rico, but also in other places in the global south where the land speculation could possibly displace populations if the regularization was made through individual titles and where an ad hoc collective governance scheme has to be conceived to represent the interests of LRG, residents and community-based organizations.

This is currently the case in well located *favelas* of Rio de Janeiro thanks to the efforts of Catalytic Communities²¹ and in Dhaka, Bangladesh, where the Council of Minorities NGO is trying to achieve tenure security through collective land ownership in *Bihari Camps* built on public land.²² Both organisations are seeking technical and legal support from LRG and funders to experiment innovative land tenure and management solutions for communities facing tenure insecurity in speculative land market settings.

20. Le Rouzic, 2019

21. Fidalgo Ribeiro, *et al.*, *op.cit.*, Williamson 2019

22. Sholder & Hasan, 2020

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In particular, the present paper has contributed to Chapter 4 on “Commoning”, which focuses on the trends and pathways in relation to the governance, planning and provision of access to housing, land and basic services. The chapter explores how local and regional governments can promote approaches focused on collective action that contribute to urban equality.

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