

# ON COMMON GROUND

INTERNATIONAL PERSPECTIVES ON  
THE COMMUNITY LAND TRUST



John Emmeus Davis, Line Algoed,  
María E. Hernández-Torrales

EDITORS

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TERRA NOSTRA PRESS  
Madison, Wisconsin, USA



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Center for Community Land Trust Innovation  
3146 Buena Vista Street  
Madison, Wisconsin, USA 53704

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#### Publisher's Cataloging-in-Publication Data

Names: Davis, John Emmeus, editor. | Algoed, Line, editor. | Hernández-Torrales, María E., editor.

Title: On common ground : international perspectives on the community land trust /  
John Emmeus Davis ; Line Algoed ; María E. Hernández-Torrales, editors.

Description: Includes bibliographical references and index. | Madison, WI: Terra Nostra Press, 2020.

Identifiers: Library of Congress Control Number: 2020902607 | ISBN 978-1-7344030-0-8 (hardcover) |  
ISBN 978-1-7344030-2-2 (paperback) | ISBN 978-1-7344030-1-5 (ebook)

Subjects: LCSH Land trusts. | Land tenure. | Land use. | Land use, Urban. | Nature conservation. |  
Landscape protection. | Sustainable development. | Sustainable development—Developing countries. |  
Economic development—Environmental aspects. | City planning—Environmental aspects. |  
Community development. | Urban ecology (Sociology) | BISAC POLITICAL SCIENCE /  
Public Policy / City Planning & Urban Development | LAW / Housing & Urban Development |  
BUSINESS & ECONOMICS / Development / Sustainable Development |

SOCIAL SCIENCE / Sociology / Urban

Classification: LCC KF736.L3 O6 2020 | DDC 333.2—dc23

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## Seeding the CLT in Latin America and the Caribbean

Origins, Achievements, and the  
Proof-of-Concept Example of the  
Caño Martín Peña Community Land Trust



*María E. Hernández-Torrales, Lyvia Rodríguez Del Valle,  
Line Algoed, and Karla Torres Sueiro*

The Fideicomiso de la Tierra del Caño Martín Peña (Caño CLT) is a community land trust designed and controlled by the residents of seven neighborhoods along the Martín Peña Channel, a highly polluted tidal estuary that runs through the heart of San Juan, the capital of Puerto Rico. The Caño CLT was created with the aim to regularize land tenure and to prevent involuntary displacement and gentrification, precipitated by the government's planned dredging and clean-up of the channel. Creation of the Caño CLT and the channel's ecological restoration are among the main elements of the wider ENLACE Caño Martín Peña Project. This initiative has brought together community residents and partners from the private and public sectors to implement a comprehensive development plan designed to uplift a historically marginalized area, while transforming this urban area into a more habitable, just and participatory space.

Residents of seven Martín Peña neighborhoods<sup>1</sup> adopted the community land trust (CLT), but adapted it to meet local needs. By adding completely new elements to the model and by applying it to address the problem of land insecurity in an informal settlement, the Caño CLT has become an important reference world-wide, specifically in the Global South. Roughly 1,500 very low- to moderate-income households are now members of the Caño CLT, which currently owns and manages more than 110 hectares (272 acres) of land, most of which previously belonged to governmental agencies. The Caño CLT ensures the availability of permanently affordable housing and provides alternative housing options on its land for families who have had to relocate because of the dredging of the channel. It is also an instrument for the generation and redistribution of wealth.

The Fideicomiso de la Tierra del Caño Martín Peña is one of three institutions that



resulted from a broad participatory planning-action-reflection process that took place between 2002 and 2004. During the planning process, twelve community-based organizations from the Martín Peña communities came together as a collective in the Group of the Eight Communities Adjacent to the Caño Martín Peña, Inc. (G-8). In collaboration with external partners from Puerto Rico's private and public universities and other professional and technical allies, they drafted regulatory instruments such as the Comprehensive Development and Land Use Plan for the Special Planning District of the Caño Martín Peña (the District Plan) and Law 489 of September 24, 2004 for the Comprehensive Development of the Special Planning District of the Caño Martín Peña (Law 489-2004). Through this law, not only the Caño CLT was created, but also a government corporation, the ENLACE Project Corporation, charged with responsibility for implementing the District Plan with a prominent role of the residents.

Initially conceived to regularize land tenure, to facilitate the implementation of the District Plan and to guarantee access of these consolidated communities to urban land whose value was increasing, the Caño CLT is continuing its work in the midst of a double crisis. Puerto Rico has been struggling with financial distress and an unpayable public debt since 2006. Then, two devastating hurricanes hit the island in September 2017.<sup>2</sup> Puerto Rico has become one of the only places in the world that is simultaneously going through the contradictory processes of both austerity and recovery, while exhibiting the designs and dangers of what is known as "disaster capitalism" (Bonilla & LeBron, 2019; Algoed & Hernández, 2019).

Puerto Rico is an unincorporated territory of the United States, a result of the Cuban-Spanish-American War when the United States installed colonial governments in the Philippines, Guam and Puerto Rico. Today, Puerto Rico and Guam continue to be under U.S. sovereignty. According to the U.S. Census Bureau, in 2018 Puerto Rico had a population of 3.2 million. Since the start of the financial crisis, however, half-a-million Puerto Ricans have left the island. Another 160,000 emigrated to the United States after Hurricane María.<sup>3</sup> When the Caño CLT was created, the main threats faced by the communities along the channel were involuntary displacement and gentrification, a result of an increase in the value of the area's land. Today, the main threat comes from a decrease in value which, in combination with the government's current austerity and disaster recovery policies, have created conditions favorable to speculation. Under both cycles of increasing and decreasing land value, the Caño CLT has proven to be an effective instrument to protect the community against displacement.

This chapter discusses how the Caño CLT is facilitating the regularization of land tenure in seven informal settlements, while preventing gentrification and furthering implementation of the District Plan. Inhabitants of this area transformed an infrastructure project that was initially led by the government into a participatory project of comprehensive development, one that is working to overcome historical causes of poverty,

while also restructuring the government's relationship with the marginalized communities within this special planning district. Together with their external partners, the Caño residents have created a viable CLT that aims to protect their right to land, their right to adequate housing, their right to live in the city with dignity, their right to health, and their right to participate in the decisions that affect their future, including those related to the use and development of their land. The components of this project combine to counteract the way in which a lack of community participation in large-scale infrastructure projects normally leads to forced displacement and structural urban inequality.

The ability of G-8, ENLACE, and the Fideicomiso de la Tierra to unite people toward a common cause in a deeply divisive context has been recognized internationally. Since winning the United Nations World Habitat Award in 2016, the Caño CLT has become an example and an inspiration for activists around the world who are working on land tenure issues and looking for an alternative form of land regularization. One of only two community land trusts in the world that have been organized in an informal settlement,<sup>4</sup> the Caño CLT has become a touchstone for communities in the Global South in particular, who are looking to establish CLTs of their own to overcome the threat of displacement from lands strategically located in desirable areas.

The chapter is organized into four sections. First, we present a historical overview and political context to help the reader to understand that, although Puerto Rico is part of the United States, the multiple obstacles faced by the Martín Peña communities are both enormous and exceptional. Then, we describe how the Caño CLT was created and why the communities opted for a CLT to address their needs. After explaining how the CLT functions, we reflect on the importance of the Fideicomiso as a reference for other communities that are struggling with similar threats of displacement from their land and why they might look to the Caño CLT for inspiration.

## **I. LAND, DISPLACEMENT AND INFORMAL SETTLEMENTS IN PUERTO RICO**

The relationship with the land has always been a subject of struggle in Puerto Rico. As in the rest of Latin America, the history of Puerto Rico is defined by colonialism and the repeated displacement of vulnerable populations. A colony of the United States since 1898, the Caribbean island lacks economic sovereignty. Decades of dependence and tax exemptions aimed at attracting and extracting wealth have put major stresses on the island's economy. With a current unaudited public debt of over \$74 billion, the Commonwealth of Puerto Rico was forced to apply austerity measures, imposed by the Fiscal Oversight Board created under PROMESA (Puerto Rico Oversight, Management and Economic Stability Act). This law, adopted by the U.S. Congress in 2016 during the Obama presidency, created the Fiscal Oversight Board to guarantee payments to bondholders, most

Little by little, control of the island's land has moved to those who do not use it for the benefit of the country.

of them speculators. Public employees and retirees have been seeing their salaries and pensions jeopardized, approximately 280 schools have been closed, and the budget of the public university has been drastically reduced. Insecurity due to the cuts, the high unemployment rate,

and the high cost of living have made life on the island challenging for a large part of its population.

This economic crisis is the result of the expiration of federal tax exemptions for United States companies, which had previously turned the island into one of the more attractive places to locate for North American companies. The growth of the economy depended on these tax exemptions. When these tax exemptions expired in 2006, most of the companies abandoned Puerto Rico, leaving thousands of highly skilled Puerto Ricans unemployed. There has been virtually no economic growth since then.

Land is one of the only assets that the government can still monetize. Tax incentives that took place after 2012 have attracted investors to the island to buy land to develop luxury complexes. Little by little, control of the island's land has moved to those who do not use it for the benefit of the country, during a period when it has become increasingly difficult for Puerto Ricans to find employment, to buy land, or to pay off their mortgage loans. Disaster recovery and other policies adopted after Hurricanes Irma and María have exacerbated the situation. Puerto Rico is almost fully under the Opportunity Zones program, which provides generous U.S. federal tax exemptions to investors and is particularly attractive for the real estate sector. Meanwhile, the Action Plan<sup>5</sup> prepared by Puerto Rico and approved by the U.S. Department of Housing and Urban Development has a series of policies that promote the displacement of communities in high-risk areas, even when mitigation is feasible. Concurrently, the government permits privately funded reconstruction and developments in similar high-risk areas.

Investing in luxury properties in depressed sectors — which, in the case of Puerto Rico, includes most of the island — can result in increases in the land values, contributing to the displacement of low-income and moderate-income residents. The displacement of poor communities can, in turn, lead to further increases in land values (Navas, 2004: 4).

According to the government Office for Socio-Economic and Community Development, there are 742 communities across Puerto Rico that have been categorized as informal settlements. The rapid industrialization of the island in the 1930s and 1940s, which made Puerto Rico an example of “advanced capitalism,” pushed impoverished peasants into the coastal cities in search of employment and health and education services for their children. As affordable housing was not available, they occupied land that was unsuitable for housing, such as mangroves, wetlands, steep mountain slopes, and areas very close to the sea. Many of these families settled in the wetlands along the Martín Peña Channel, at the outskirts of San Juan, building makeshift homes on stilts with cardboard, coconut trees, wood, and tin. They used wooden planks to create connections among the homes



Fig. 11.1. Aerial view of neighborhoods surrounding the Martín Peña Channel (top), and a house alongside the Martín Peña Channel. LINE ALGOED / J.E. DAVIS

and to have access to the dry land and roads. With time, the families and the Municipality of San Juan filled the wetlands with debris.

Today, almost 25,000 people still live in eight neighborhoods along the channel. As the city grew, their location became prime real estate next to the financial district and along the channel that, once dredged, will serve as an inland waterway connecting the main airport with tourist-oriented hubs. The once-navigable channel is clogged and heavily polluted, as most neighborhoods lack an adequate sewage system and functioning storm-water management systems.

Between the 1960s and 1980s, as development policies were aimed at eliminating “slums,” several communities along the western half of the Caño were relocated to



Fig. 11.2. One of the Caño's major streets, looking toward San Juan's financial district (top) and a side street in a Caño neighborhood. DOEL VÁZQUEZ / J.E. DAVIS

public housing or evicted. There were various proposals to recover the Caño area either for conservation purposes, for highways or for high-end developments including hotels and marinas. Most of these plans called for the displacement of remaining Martín Peña communities. Relocation costs were not even considered, and neither was community participation (Algoed, Hernández and Rodríguez, 2018). With the establishment of the financial district and the advancement of individual land-titling programs, gentrification became a new threat. Speculators started buying those individually owned plots of land, particularly those closest to the main transportation corridors, knowing that the possible ecosystem restoration of the channel would drastically increase the value of the area's land. These threats, coupled with the announcement in 2002 that the government was

going to pursue the dredging of the channel, would become the issues around which the residents of the Martín Peña communities organized to find a solution for their common problems.

## II. CREATION OF THE CAÑO MARTÍN PEÑA CLT

Public participation in the planning process for government-sponsored projects that affect residential areas has rarely happened in Puerto Rico. That remained the pattern even after the Puerto Rico Planning Board was mandated by law to open the planning processes to comments and participation by the public. This started to change under the administration of Governor Sila M. Calderón. In March 2001, the Governor signed the first statute of her new administration, proclaiming as a public policy the empowerment of residents of low-income communities (Law 1, March 1, 2001). This public policy encouraged citizen participation, defined as a comprehensive process enabling citizens to recognize and to exercise full control of their lives, starting from their own efforts and power. According to the Law, such an initiative would be aimed at helping the residents of low-income communities to acquire the skills and levels of organization that might allow them to become authors of their own process of economic and social development. The government would act as a trainer, promoter, facilitator, and collaborator, eliminating barriers and creating the necessary conditions and mechanisms to enable communities to secure their personal and community development. Governmental agencies and instrumentalities were required to carry out well-planned actions to stimulate the participation of low-income communities in the decision-making processes related to the issues affecting their development. These communities would assume new roles as owners and producers, implementing a participatory approach to planning and improving their neighborhoods, which was radically different from the past practice of being passive beneficiaries of a paternalistic state. This public policy enabled the participatory approach that was used in the ENLACE Project.

### **From an Infrastructure Project to a Sustainable Development Project**

Instead of hiring engineers, the Authority hired an urban planner to lead the effort and established a Community Participation Office in a trailer located at the heart of the Caño communities, and staffed with community social workers and organizers. The Authority also pursued the establishment, by the Puerto Rico Planning Board, of the Caño Martín Peña Special Planning District, comprised by seven of the eight communities<sup>6</sup> remaining along the tidal channel. Residents participated in high numbers during the first round of community assemblies as they learned about the plans to dredge the channel, and strongly voiced their concern around displacement. They questioned where the families living close to the channel would be taken, as the space was needed for the dredging. Moreover, and conscious of the strategic location of their neighborhoods, they questioned who would benefit from the project, and clearly expressed their intent to oppose any attempt to gentrify. The meeting



Fig. 11.3. Election of new community council for Comunidad Las Monjas, one of the Caño's G-8 communities. LINE ALGOED

sparked one of the most successful participatory community development processes in Puerto Rico's history.

From 2002 to 2004, more than 700 participatory planning, action, and reflection activities were held in the Martín Peña communities. Concurrently, residents were envisioning the future and designing strategies, implementing projects and programs for short-term wins addressing their pressing issues, while organizing and critically thinking and learning about the process that was being implemented. The residents received the information they needed to participate intelligently in drafting the development plan, and technical consultants engaged in a dialogue that valued the knowledge of the residents rather than downplaying it. Had residents been left out of this process, the plan would have been inadequate and incomplete. The end result was the *Comprehensive Development and Land Use Plan for the Caño Martín Peña Special Planning District* (Development Plan), which was officially adopted by the Puerto Rico Planning Board and approved by the Governor of Puerto Rico in 2007. The inclusive process that produced this Plan took what had started out as a typical top-down engineering project and turned it the participatory, equitable and sustainable community development initiative called the ENLACE Caño Martín Peña Project.

Today, there are approximately 120 community leaders active within the G-8, mostly women and youth; indeed, 40% are young leaders between the ages of 11–25 years old. Another 100 residents form a network with a person per-street who is tasked with keeping their neighbors informed of the activities that are taking place, as thirty different socio-economic, housing, and urban development initiatives are underway with residents playing an active role in each.

## Development Without Displacement

The Development Plan assumed that the Martín Peña communities would gain control over the publicly owned land within the Caño Martín Peña Special Planning District. This would accomplish three important goals. First, land would become available for the housing and infrastructure projects necessary to improve the quality of life of the residents and to address constant flooding with polluted water. Taking the cost of land out of the equation, moreover, would lower the implementation costs and increase the project's feasibility in the context of Puerto Rico's dire financial and economic situation. Second, having control of the land would allow residents who were living in

Residents were aware that once the channel was dredged, the cost of land would soar.

areas where land was needed to build infrastructure projects and to dredge the channel to be relocated within one of the Caño's neighborhoods, avoiding their involuntary displacement. Third, gentrification would be prevented. Community residents were aware that once the infrastructure project took place and the channel was dredged, the cost of land and housing within the Martín Peña area would soar and existing residents would surely and steadily be pushed aside. With this in mind, having control of the land would prevent the displacement of residents who lacked land titles by regularizing their relationship with the land and allowing them to have security of tenure.

Land ownership was a central piece for the community to reach its goal, so choosing the right mechanism to regularize tenure was critical. Several strategies were used to provoke discussions around land tenure. To help with the analysis of tenure options, a Housing Committee was created, composed of representatives from the seven Caño neighborhoods in the Special Planning District.

A workshop was held where participants were asked to identify why families wanted to have individual titles to the land — the form of tenure with which people were most familiar. The common answers included: the desire of the residents to bequeath the right to occupy a parcel of land to their legal heirs; access to public services (i.e., safe connections to the power grid required a permit); and access to mortgage credit. All participants agreed that avoiding the displacement of the community was a priority. After learning from experts about the pros and cons of individual land titles, land coops, and community land trusts, participants were able to examine how each ownership instrument might allow them to reach their objectives. The workshop opened the participants' eyes to the possibility of considering a broader range of options, beyond the one with which they were most familiar. The discussion continued in community assemblies, including one in which a Spanish-speaking member of the Dudley Street Neighborhood Initiative in Boston shared their experiences.

Deliberations of the Housing Committee were rooted in six critical rights that were deemed to be indispensable for any instrument they might choose for controlling land, including:



- the right to stay put;
- the right to land tenure;
- the right to adequate housing;
- the right to property for individual residents;
- the right to benefit from improvements to the area; and
- the right to participate in the decision-making process and implementation of the District Plan.

Residents made a conscientious and audacious decision. They concluded that some form of collective land ownership was the only way to prevent gentrification and, despite the absence of any other CLT in Puerto Rico at the time, they concluded that a CLT would be the best option for enabling the Martín Peña communities to have control of

They would no longer have to fear speculators, nor gentrification and involuntary displacement.

the land. A community land trust would make possible the dredging of the Martín Peña Channel, the construction of needed infrastructure, and the rehabilitation of their neighborhoods, just as residents had

envisioned in the Development Plan. The land was to be collectively owned in perpetuity, while each family who formerly lacked a land title would obtain a legal document — a surface rights deed — that would secure their right to use the land beneath their home, a right they would be able to bequeath to their legal heirs. This deed would enable them to stay put and to have a livelihood in the city, while securing their right to influence what might happen in their own neighborhood. They would no longer have to fear speculators, nor gentrification and involuntary displacement. With this decision behind them, they proceeded to secure the land and to initiate a new two-year participatory process to design how the first community land trust in Puerto Rico would manage its assets.

### III. STRUCTURE AND FUNCTION OF THE CAÑO CLT

The Fideicomiso de la Tierra del Caño Martín Peña is a community land trust, constituted as a private, nonprofit organization created in perpetuity with an independent juridical identity. The Caño CLT is authorized to acquire land within and outside the Special Planning District, to develop and to sell housing (and other buildings), and to re-acquire these structural improvements, exercising a right of first refusal whenever owners desire to sell. The Caño CLT is entitled to create strategies and to design resale formulas which ensure the affordability of housing in perpetuity.

The CLT is a membership organization with an eleven-member Board of Trustees that is composed of community, private and government representatives, as follows: four

Trustees are Caño CLT members, whose homes are located on the lands owned by the Caño CLT; two Trustees are residents of the Martín Peña communities, designated to serve on the CLT's Board by the G-8; two Trustees are non-residents of the District, selected by the Board's members, based on skills and knowledge they can contribute to the CLT. The three remaining spaces are occupied by representatives of governmental entities, one from the Corporación del Proyecto ENLACE Board of Directors, one from the San Juan Municipality designated by the city's mayor, and one selected by the Governor of Puerto Rico.<sup>7</sup>

### Caño CLT General Regulations

The legal grounds for the *Reglamento General para el Funcionamiento del Fideicomiso de la Tierra del Caño Martín Peña*, Rule 7587 (hereafter Caño CLT General Regulations), are the Puerto Rico Law No. 489, September 24, 2004, known as "*Ley para el Desarrollo Integral del Distrito de Planificación Especial del Caño Martín Peña*" (Law 489-2004), and the Puerto Rico Administrative Procedures Law. Through a democratic and participative process, a community committee was organized during 2006–2008. This committee gathered representatives from all seven communities who participated in several activities and workshops in order to establish the basis for the Caño CLT's General Regulations in accordance to the needs and concerns of Martín Peña communities' residents. The Caño CLT General Regulations were adopted on October 8, 2008, setting the regulations for the governance and operation of the Caño CLT and the rules and procedures for guaranteeing the administration of the land in favor of the communities' residents.

Law 489-2004 entrusted the Proyecto ENLACE Corporation with the constitution and promulgation of the Caño CLT's regulations. Law 489-2004 also defined 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 (23 L.P.R.A. section 5048).

The Caño CLT's General Regulations consist of fourteen articles which regulate the administrative aspects and the operational processes of the Caño CLT.<sup>8</sup> They define the organization's mission, vision, goals and objectives; the land trust's assets; the criteria to qualify as a member of the CLT; the rights of membership; the collaborative arrangements with ENLACE Corporation and the G-8; and other obligations and powers of the Caño CLT. Also, the Caño CLT's General Regulations carefully ensure community participation in all governing bodies within the project and decision-making processes. In order to ensure such participation, a Registry of Members is used to notify and summon Caño CLT members for activities such as assemblies, elections, and other deliberations, all convened after timely notification. The General Regulations also set standards and procedures for convening assemblies, establishing a quorum, and making announcements.

The Proyecto ENLACE Corporation, which was also created by Law 489-2004, is a governmental corporation created with a sunset provision. It is charged with the

responsibility to advance the implementation of the Development Plan. The ENLACE Corporation and the Caño CLT converge in a multidisciplinary and multifaceted project called Proyecto ENLACE. These entities play complementary roles in achieving the goals of Proyecto ENLACE. The relations and interactions between them are established in the General Regulations, including how they work together to identify plots of land in the District, to plan new developments, and to allocate economic and human resources to achieve common goals essential to advance Proyecto ENLACE. Standards and procedures to address and review short- and long-term strategic plans and priorities for housing allocation are also delimited.

### **Aims and Objectives of the Caño CLT**

The Fideicomiso de la Tierra del Caño Martín Peña was created to safeguard the land tenure and residential permanence of residents living in the seven neighborhoods along the Martín Peña Channel, while allowing and promoting development within the District. Among others, the aims and objectives of the Caño CLT were specified in Law 489-2004 as follows:

- Contribute toward the solution of lack of ownership rights of many Special Planning District's residents through collective title landholding;
- Address with equity the physical or economic displacement of low-income residents arising from gentrification, avoiding displacement and eradication of the communities;
- Guarantee affordable housing within the Special Planning District;
- Acquire and administer lands on behalf of and in the best interest of the community, increasing local control over the land, and avoiding absentee owner decision-making; and
- Enable the reconstruction and valuation of urban spaces.

Law 489-2004, and other regulations adopted in accordance to this Law, vested the Caño CLT with the authority and powers to accomplish these objectives.

### **Transferring Public Land to the Caño CLT**

Following its participatory planning-action-reflection process, the community decided to adopt the community land trust ownership structure for addressing the lack of legal title among hundreds of families living on both sides of the Martín Peña Channel, families whose homes were located on public lands. This publicly owned land was to be transferred to the Caño CLT, all of which would be permanently owned and managed by the Caño CLT. Rights to individual parcels within the Caño CLT's landholdings would be conveyed to the families who were already living there through a durable surface rights deed for each parcel. These transfers and tenures united elements of Puerto Rico Civil Law and United States Common Law. This arrangement also incorporated the definition of the community land trust model

found in amendments to the National Affordable Housing Act, passed by the U.S. Congress in 1992.

Elements taken from a civil trust model were the basis for transferring the public land to an entity controlled by the residents of the communities along the Martín Peña Channel through the Caño CLT. This transfer was constituted by the following components:

- The *settlor* who transfers the land, which in this particular case was the government of Puerto Rico;
- The *trustee* who receives ownership of the land with responsibility for possessing and administering it for the benefit of the communities, which in this particular case was the Caño CLT; and
- The *beneficiaries* who benefit from the administration of the land, which in this particular case were the residents who owned a structure on a portion of the land that was transferred to the Caño CLT.

Law 489-2004, Article 22, establishes that the corpus of the Caño Martín Peña CLT is comprised of all the lands transferred to the ENLACE Corporation for the purpose of creating the Caño CLT, as well as those acquired in the future in accordance with Law 489-2004. In addition, the Caño CLT was required to be governed according to the CLT General Regulations referenced above. Creation of such regulations were entrusted to the ENLACE Corporation.

The Caño CLT has an express limitation under Law 489-2004, forbidding the CLT from selling the public lands that were transferred to it. The Caño CLT is required by law to retain permanent ownership of the land. The Caño CLT is able to sell or to transfer rights over the edifices that are built on the land, however, and is also authorized to grant surface rights deeds and long-term leases, subject to hereditary rights. Homeowners who live on the once-public lands that were conveyed to the Caño CLT individually own their buildings, but they do not own the underlying land. The land is owned and managed by the Caño CLT for the common benefit of the Martín Peña communities, present and future.

### Surface Rights Deeds

The transfer of public lands to the Caño CLT was mandated by Law 489-2004.<sup>9</sup> A majority of the government agencies that owned and controlled these lands at the time could not provide official documentation identifying the land registrar information, however; nor was there an official record of boundaries and value, making it difficult to proceed with transferring these public lands. This situation slowed down the work plan of the ENLACE Corporation.<sup>10</sup> To get a jump-start, volunteers for the Caño CLT made good efforts and identified registry information for some of the biggest parcels of land. Accordingly, a deed was authorized, specifying registry data for such properties.

The process of identifying and acquiring land is continuous, as the Caño CLT is constantly undergoing title investigations to identify parcels of land that may be transferred into its ownership. Currently, the Caño CLT owns and administers just over 110 hectares (272 acres) of land. Most of it (200 acres) was part of the original transfer of publicly owned land under Law 489-2004; another part of the CLT's landholdings (72 acres) was added gradually over the years as ENLACE acquired privately owned houses (with title to the land) to relocate homeowners directly impacted by the canal's dredging and then conveyed those parcels to the CLT.<sup>11</sup> All of this land, which is scattered throughout the seven neighborhoods of the Caño Martín Peña Special Planning District, is administered in the best interests of the Caño's residents, consistent with Law 489-2004, the District Plan, and the General Regulations.

One of the responsibilities of the Caño CLT is to identify those households who can benefit from a surface rights deed and to grant them such a deed in accordance with Law 489-2004. There are approximately 1,500 households living on the CLT's lands. To date, 110 surface rights deeds have been executed.<sup>12</sup> It is a slow and laborious process, since prior to executing the deed all documentation must be in place and the person or persons who appear on the deed must be the ones who have the legal right to do so.<sup>13</sup>

Through these surface rights deeds, the Caño CLT conveys individual property rights to those residents who own a housing structure on the Caño CLT's land. Homeowners possess the right to occupy and use the surface of the land beneath their homes, but they

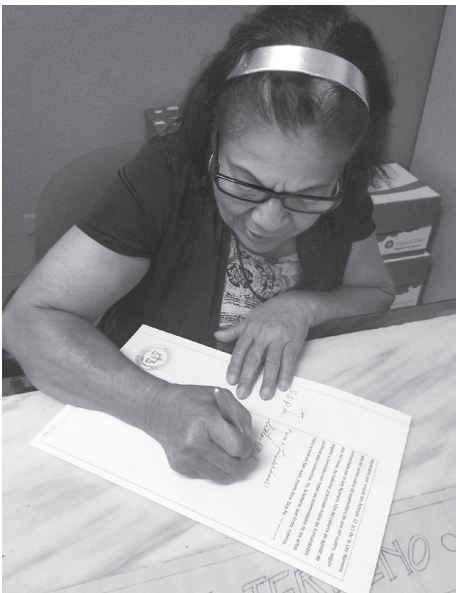


Fig. 11.4. Sixta Gladys Peña-Martínez, Caño CLT member and G-8 community leader, signing the surface rights deed for the land beneath her home, May 20, 2016.  
MARÍA E. HERNÁNDEZ-TORRALES

do not own the land itself. Generally, surface rights are granted in perpetuity or for a specific term. For its validity, surface rights are secured through public deeds that are then registered in the Puerto Rico Property Registry. After being officially registered, this legal instrument allows for two owners to co-exist in possessing separate portions of the same space: the Caño CLT owns the land and the resident owns the structure. The latter enjoys all the benefits of using, improving, and even mortgaging the surface right, as delimited by the Caño CLT in the surface rights deed.<sup>14</sup>

Publicly registered surface rights deeds specify the footprint under a resident's home, delineating the portion of land for which the right is granted. These deeds also identify the rights and obligations of the person to whom the surface right was conferred. Contained in the public deed, there is also a description

of the housing structure. This is a legal requirement that allows the registration of the housing structure as a unit separate from the land. Other contents included in the surface rights deed are designed to protect houses on the CLT's land from non-mortgage or non-governmental debt claims under Puerto Rico's Safe Home Act.

The surface right's value amounts to 25% of the value of the plot of land on which a resident's home is located, becoming straightaway an asset for a family and increasing their wealth.<sup>15</sup> Surface rights can be inherited and mortgaged. Families can sell their surface rights, but not the underlying land. The Caño CLT retains a first right of refusal to purchase both the house and the surface rights whenever a homeowner decides to sell. By these means, the Caño CLT permanently holds title to the land and permanently controls the future disposition of the buildings located thereon, managing these assets for the benefit of the Martín Peña communities and future generations.

To the best of our knowledge, the Caño CLT is the first community land trust that has been used for the relocation of families, allowing for the construction of public infrastructure and following the parameters of the federal Uniform Relocation Act. Using a transfer of rights mechanism, the relocation process cost is reduced. Families can trade the houses in which they have been living — which, in most cases, are deteriorated and likely located on plots of land to which the families do not have a right — in exchange for a new house in better conditions, joining the Caño CLT and enjoying surface rights. The Proyecto ENLACE Corporation is in charge of the process of acquiring and building homes and relocating families.

#### **IV. THE POTENTIAL FOR WIDER USE OF CLTs IN INFORMAL SETTLEMENTS**

As of 2016, it was estimated that approximately 54.5% of the world's population lives in urban settlements; 828 million of these urban dwellers live in densely populated informal settlements, characterized by the lack of land tenure, inadequate and unsafe infrastructure, and insufficient sanitary installations (UN-Habitat, 2013: 112). In Latin America and the Caribbean, approximately 113 million people live in informal settlements (UN-Habitat, 2013: 127).

After almost a century of marginalization, the residents of the neighborhoods along the Martín Peña Channel, who had lived and struggled for decades with the collateral damage of living in an informal settlement, organized to create the Fideicomiso de la Tierra del Caño Martín Peña that is now working to overcome infrastructural, residential, environmental, and socio-economic deprivations and inequalities that accumulated over many decades.

The Caño CLT is an innovative, effective, and empowering organization that may serve as an example for other informal settlements around the world. Its potential for inspiring and informing land rights struggles in other countries was the reason for the

Caño CLT being internationally recognized by World Habitat in 2016. Since receiving a World Habitat Award, members of the Caño CLT have been widely sharing their experiences and instruments with community leaders in informal settlements in Latin America, the Caribbean, and South Asia, encouraging them to adapt the practices pioneered in San Juan to their own needs and contexts, possibly using a CLT to enable residents to gain secure use of land, to stop displacements, and to take control of local development.

Communities that are the most similar to the Martín Peña communities — and that have the greatest potential for adopting and adapting a Fideicomiso de la Tierra — are those that exhibit the following characteristics:

- A significant number of residents live on lands to which they do not have a valid or legal title for lands that may be owned by the government, by private individuals, or by a corporation. Alternatively, these lands may be occupied and used under some form of communal landholding system that has yet to be recognized and registered by the state.
- There are mechanisms available to acquire the land, including donation, adverse possession, purchase, or intervention by the state;
- A significant percentage of the population has a high sense of community cohesion and belonging; and
- The informal settlement is located within an area — or proximate to one — where land values are rising or where lands are coveted by speculative investors, threatening the present population with displacement.

The following ingredients have been essential to the success of the Fideicomiso de la Tierra del Caño Martín Peña. They should be considered by other communities when contemplating, planning, or attempting to create a CLT of their own.

### **Holistic Approach**

The Caño CLT is part of a broader plan that was designed using a participatory process. This plan presumed that community organizations and inter-sectoral alliances would both be involved in its implementation. The plan itself included a multi-faceted focus on environmental justice, personal health, violence prevention, food sovereignty, young leadership, a solidarity economy, educational transformation, adult literacy, equitable relocation, quality public spaces, a right to the city, and securing land tenure and affordable housing in perpetuity.

### **Community Organization and Democracy**

A CLT should be designed and developed through democratic processes promoting citizen participation, where citizens are the ones who identify their needs and priorities and

who make decisions about the best ways to address these needs. For a CLT to be effective, communities must take part in the planning process and adapt the CLT to their context, needs, and expectations. Organizing and participation must continue even after a CLT has been created. Residents who live on a CLT's land and around that land must have a sense of solidarity and tranquility that comes from being part of an organization that protects their homes and interests. When asked to describe in one word what the Caño CLT means to her, Margarita Cruz, a resident of the Las Monjas community, said "Us. We are the Fideicomiso". A goal of every CLT should be to foster such a sentiment.

### **Capacity Building, Leadership and Skills Development**

Popular education is a significant tool to achieve effective participation of communities. Community leaders should facilitate and promote the participation of residents in the activities of the community and in the design of participative strategies, ensuring that the needs and concerns of residents are heard and considered. Participatory processes are continuous and require capacity building and spaces for constant reflection.

### **Alliances**

Professional support is fundamental. A multidisciplinary team of social workers, planners, urbanists, lawyers, architects, engineers, artists, and many more must work together with communities to advance and to execute a holistic plan. This kind of multidisciplinary team must value community knowledge, must promote critical thought, organization, and the exchange of knowledge between residents and professionals, and must stimulate alternate visions to understand local realities. By observing attentively and listening respectfully, outside professionals can respond to the community's agenda.

### **Multi-sectoral Associations**

Community projects need the support of private and public sectors and academics in order to succeed. These associations expand the exposure of a community's struggles, giving more visibility, while also contributing technical knowledge and resources.

### **Legal Framework**

It is necessary to pay close attention to the legal framework for the ownership and management of land, even if it means a community must create new instruments. Residents of the communities along the Martín Peña Channel examined different forms of land tenure, evaluating individual and collective options for owning the land. They decided on a community land trust, an innovative form of tenure never before used in Puerto Rico. Thereafter, new legislation was promoted in order to establish the Fideicomiso de la Tierra del Caño Martín Peña. The creation of Law 489 in 2004 was the result of an extensive dialogue among many knowledgeable people, but it was also the consequence of an intense political process.




### **Solidarity with Communities in Other Countries Facing Similar Challenges**

With the aim of sharing the strategies and instruments developed by residents of the Caño Martín Peña with other communities around the world, the Caño CLT is working on a new initiative called the “Espacio de Encuentro Internacional del Fideicomiso de la Tierra.” This initiative will facilitate dialogue among community leaders, activists, academics, and politicians from countries and cities in the Caribbean, Latin America, Asia, Africa, North America, and Europe on collective, cooperative, and community-controlled forms of land tenure in informal settlements. It will also serve as an educational center and monitoring network, aimed at producing new knowledge about the creation of community land trusts and the effective participation of community residents in the equitable development and inclusive improvement of informal settlements. Through this initiative, the Caño CLT is now developing the logistics to spread the tools and instruments of the Fideicomiso throughout Puerto Rico and globally.

The Caño CLT convened an international peer exchange on April 29–May 4, 2019 in San Juan. With the title “Community Development and Collective Land Ownership,” the Caño CLT gathered community members and residents from informal settlements around the world who are threatened with displacement or who anticipate such a threat in the near future. Community leaders from Argentina, Barbuda, Brazil, Belize, Bolivia, Chile, Ecuador, Jamaica, Mexico, Bangladesh and South Africa traveled to Puerto Rico. In every case, there was a representative from a community-based organization and/or from other allies who could support the development and organization of a CLT in their communities once they returned to their countries of origin.<sup>16</sup>

Participants shared experiences from their own communities and organizations. Many of their stories mirrored the experience of the Martín Peña communities, as participants reflected on the relevance of the Caño’s struggle and trajectory for their own realities, identifying common factors in the struggles they face and finding similarities in their own journeys. They saw they have many things in common, even when they are from different countries. Strong bonds were established, based on similarity and solidarity. During the peer exchange and in feedback provided at the end, participants expressed how important it was to gather together and to realize that people are struggling with similar issues all around the world. They are not alone. They are stronger together.<sup>17</sup> It became clear that community organizing that provokes critical thinking and participation is central to addressing land tenure issues, particularly under a collective ownership regime.



## CONCLUSION

A majority of CLTs in other countries have been established on lands that were vacant when acquired, allowing the construction of new homes; or CLTs have acquired vacant buildings and rehabilitated them. In both cases, these newly developed homes have been made available to a new group of low-income renters or homeowners. The Fideicomiso de la Tierra del Caño Martín Peña is different. It was created on lands where the homes of hundreds of families were already in existence and already occupied prior to creation of the CLT. “This CLT was born big,” as residents often say.

The CLT developed by residents living in the seven Martín Peña communities provides a “proof of concept,” demonstrating that CLTs can be an effective tool for regularizing land tenure in informal settlements threatened by displacement. A CLT can also provide for the redistribution of wealth and allow its members to gain control over a settlement’s land, increasing their collective power.

The Caño CLT was developed by communities that experienced displacement firsthand, either by direct state action or by gentrification processes. It was designed to ensure that the much-needed environmental rehabilitation of the Caño did not result in the disappearance of the communities through increases in the value of the area’s land. It was also born out of an aspiration for justice and equity, so that long-neglected communities and their residents would be the ones to benefit from a large-scale project they had long dreamed of, a project with the potential to transform both their neighborhood and the city.



Fig. 11.5. Mural in one of the Caño’s neighborhoods, which reads: “. . . and for the first time we residents are creators of our own future.” LINE ALGOED

As one of the late community leaders of the G-8, Mrs. Juanita Otero Barbosa, has said: “The Fideicomiso is the only salvation we have of continuing to exist and living in this community, so that they do not take us out of here” (Carrasquillo et al., 2009). In the current context, as the value of real estate in Puerto Rico is decreasing and as opportunities are soaring for speculation by outside investors who are buying up prime real estate all across the island, the Caño CLT has become increasingly relevant for the Martín Peña communities. Lands that used to belong to the government now belong collectively to the residents through the Caño CLT. These lands have been permanently removed from the market. There is no longer a risk of the government someday selling the land underneath the Martín Peña communities in order to monetize its value. As residents from the Martín Peña communities can often be heard to say, with pride and tenacity: “This land is ours, and nobody can take it away from us.”

### Notes

1. The Caño communities are: Barrio Obrero, Barrio Obrero Marina, Buena Vista Santurce, Israel-Bitumul, Buena Vista Hato Rey, Las Monjas, and Parada 27.
2. Puerto Rico is an archipelago in the Caribbean Sea. Besides the main island of Puerto Rico, there are two other important islands, Vieques and Culebra, as well as other keys and islets. For the purpose of this essay, we will refer to all of Puerto Rico as an “island.”
3. This emigration estimate comes from the Center for Puerto Rican Studies at Hunter, City University of New York.
4. The other is the Voi-Tanzania CLT in Kenya, the subject of Chapter 14 in the present volume.
5. The Action Plan guides the use of the Community Development Block Grant for Disaster Recovery (CDBG-DR) allocated to Puerto Rico to cover the unmet needs remaining after emergency assistance and to mitigate risks.
6. The Cantera Peninsula community was a pioneer in elaborating its own comprehensive development and land use plan, adopted by the Puerto Rico Planning Board in 1995. Badly hit by hurricane Hugo on September 18, 1989, the first major hurricane that struck Puerto Rico since 1932, and as the reconstruction process was underway, residents realized their neighborhood was to be displaced for high end development projects. After partnering with others and organizing, in 1992 the Puerto Rico Legislature enacted Law 20 to create a government corporation that would work along with the community residents to rehabilitate the impoverished sector. The Cantera Community is not part of the Caño CLT, but the community leaders are part of the G-8.
7. Reglamento General para el Funcionamiento del Fideicomiso de la Tierra 2008, Art. V, sec. 2 (Caño CLT General Regulations).

8. These “general regulations” function much like the articles and bylaws that legally constitute most nonprofit organizations in the United States.
9. There are about 188 hectares (466 acres) of land within the Caño Martín Peña Special Planning District, but only the publicly owned land would be transferred to the Caño CLT, on which about 1,500 households were already living.
10. It is important to note that almost half of the residents at the Martín Peña communities have individual land titles as a result of clientelist practices of politicians, both at the state and municipal level. This means there are many instances where, comparing two neighbors on the same street, one might have had a land title conveyed by the government at a \$1.00 cost to acquire the land underneath his or her home, while the other neighbor would remain without a land title. This practice endured for more than 30 years.
11. Most of the households who needed to be relocated to make space for the dredging have chosen to become members of the CLT have been provided with a new house and a surface rights deed.
12. This means that, as of October 2019, another 1390 households who are members of the CLT and who are living on lands owned by the CLT, were still waiting to receive their surface rights deed.
13. During the five years since 2014, the Caño CLT has received pro bono assistance from civil law notaries for the execution of these surface rights deeds.
14. 30 L.P.R.A. sec 6261-6276.
15. For persons who already owned and occupied houses on publicly owned land at the time it was transferred to the CLT, the CLT’s board of trustees decided to award them a 25% share of the market value of the land underlying their houses. Should they later want to sell, the CLT will pay them that 25% of the land value. In the future, if the CLT develops new houses on land that it owns, a different policy may be put in place for these homes.
16. The peer exchange was divided into two sessions: one for Spanish and Portuguese speakers, gathering together fifteen international participants and participants from two communities in Puerto Rico; the other was for English speakers, gathering together thirty-one community leaders and representatives of community-based organizations.
17. During the peer exchange, an international conference was also held that was open to the general public, entitled “Recovery, Land Tenure, and Displacement: Perspectives from Grassroots and Community development.” The conference discussed recovery initiatives after Hurricane María, land tenure issues in a global and local context, and the effects of gentrification that lead to displacement. Approximately 136 people heard about the Fideicomiso de la Tierra, followed by a dialogue with grassroots leaders from South Africa, Barbuda, and Argentina who talked about informality and threats to their homes and neighborhoods.

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