

The Story of Rubina: Lessons on Self-governance in Peruvian informal settlements and Considerations
for Community Land Trusts

By

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ABSTRACT

Since the 1990s, the Peruvian government has introduced two policies to address informal settlements' property and housing challenges: the formalization titling policy and the certificate of possession policy. Both have caused adverse side effects such as land speculation and land trafficking, respectively. This thesis studies the failure of these past policies and proposes that a new property regime - Community Land Trusts (CLTs) - might be the optimal way to address these property and housing challenges. First, I study why previous property policies failed to intervene in urban informality. Second, I conduct interviews to gather evidence on the self-governance of an informal settlement in Lima and compare it with the core components of different global CLT theories and models. Finally, I intersect both sections to learn about the potential and challenges of establishing a CLT such informal settlement. The implications of this thesis are a set of recommendations and additional research that the Peruvian government should consider when regulating CLTs in Peru.

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Dedicated to

Rubina, my mother, and my father,

to whom I will be eternally

grateful.

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Introduction

I woke up and there was a man with a rifle. I grabbed Mario and Maria and yelled at him. “I am not here to hurt you madre¹, I’m here for other people,” he told me. Those were hard years; we were just arriving and we had to occupy that land.

Rubina M, personal communication, April 24, 2022

In 1994, R. Rubina, a rural migrant woman from the peasant community of Andas located in the Junin Region, squatted on land in a zone called Manchay, currently part of the Pachacamac district in Metropolitan Lima. Manchay is composed of an innumerable number of informal settlements, which they call Sectors. Rubina and her squatter group established the first plots of their Sector (from now on the Sector) constituting part of what many have referred to as an organized land “invasion”. Since the 1950s, land squatters in Metropolitan Lima have organized themselves to occupy land and establish *pueblos jóvenes* (young towns) or *asentamientos humanos* (human settlements), the Peruvian terms for informal settlements, in the absence of access to other housing in the city.

Rubina, whom I have known since I was 8 years old, has been like a mother to me and is my main motivation for this thesis. I have watched over the years as she waited forever for a land title that will probably never come. Therefore, I dedicated my entire master's degree to finding a possible solution that allows her to access decent and adequate housing. I extensively studied the failures of the land titling policy and the adverse effects of the land possession policy. During this process, I came across the Community Land Trust (CLT), a property typology that is based on the social cohesion of a neighborhood and has the community at its intrinsic core. Since informal settlements are often created through collective urbanization processes, I thought I had found a property regime that might finally work for Rubina. In this regard, this thesis is a desperate search to find a solution so that a person for whom I have a lot of affection can live better.

Roy (2009) argues that such informal settlements are a deregulated socio-spatial logic because:

Deregulation indicates a calculated informality, one that involves purposive action and planning, and one where the seeming withdrawal of regulatory power creates a logic of resource allocation, accumulation, and authority. It is in this sense that informality, while a system of deregulation, can be thought of as a mode of regulation. And this is something quite distinct from the failure of planning or the absence of the state. (p. 83)

Since its establishment, the residents of Rubina’s Sector have undergone community-led collective arrangements to administer their occupation of land. Simultaneously, the Peruvian Government attempted to regulate such arrangements and their underlying logics by introducing individualized property policies.

¹ Translated to mother.

These policies form the heart of Peruvian efforts to face the challenge of informality, which is perceived as an urban problem. The state has constantly centered on trying to formalize squatter settlements forcing the informal socio-spatial logic (Roy, 2015) into a classical liberal framework of property rights where “an owner has an absolute right to exclude and by default possesses all the ‘sticks’ in the bundle of property rights” (Foster, 2019, p. 173). However, the reality is that most of these settlements were created and continue to exist as collective spaces. They are common-pool resources (Ostrom, 2009), conceived from reciprocity and cooperation, with their own governance systems and self-managed by a group of people that experience similar struggles. Government policies in Peru have long explicitly ignored the potential existence of collectivity in urbanization processes, yet these concepts of land care and community reciprocity predate modern Peruvian government and emerge from long histories of indigenous ontologies. In this sense, informal settlements are deregulated collective urbanizations whose bottom-up community-led initiatives have complemented and filled the unattended gaps left by modern government interventions. For this reason, these policies have often failed, as they ignore the history of organized land squatting and self-governance among squatters.

In 1992, President Alberto Fujimori dissolved the Peruvian Congress in a self-coup d'état that resulted in a new Peruvian Constitution the following year. In 1996, the government began a titling policy through a new public agency called the Informal Property Formalization Agency (COFOPRI). COFOPRI was based on economist Hernando De Soto's theories which positioned squatter land as ‘dead capital’ that needed formalization to access formal financial systems, including mortgages and loans (De Soto, 2001). However, by 2003 only 1.5% of newly titled households had mortgaged their houses (Calderón Cockburn, 2019) to access funds, which many scholars and practitioners marked as a failure of the titling policy. In fact, to this day, Rubina has not been able to obtain a land title for her home in her Sector. As a response to criticisms, in 2006, during President Alejandro Toledo's mandate, the Peruvian government shifted its approach and began to recognize possession over land, as opposed to enforcing a titling application, to accelerate the provision of public services to informal settlements. Nevertheless, the recognition of the ‘use rights’ (Krueckeberg, 1995) of these lands resulted in a land market model which became easily distorted by corruption. Existing land mafias found more opportunities to insert their illegal practices into the logic of informal urbanization (Calderón Cockburn, 2019).

This property policy paradigm persisted until 2021 when, during the term of President Francisco Sagasti, Law 31313² - the Sustainable Urban Development Law - was approved, which included in article 87 the formation of CLTs as a possible property regime:

² <https://busquedas.elperuano.pe/normaslegales/ley-de-desarrollo-urbano-sostenible-ley-n-31313-1976352-2/>

Article 87. Community Land Trust. To promote the creation, development, and administration of housing projects, local governments may constitute or promote the constitution of Community Land Trusts, which administer the land where the project is carried out, which includes total or partial Housing of Social Interest, granting ownership of the homes that are part of the project through the constitution of real surface rights. (Normas Legales, 2021, para. 87)

A CLT is a type of modern commons, where an entity holds land in trust for a group of residents, who in turn individually own the dwellings that they inhabit but share ownership over the land. It is a property arrangement that builds on the existing social fabric of a community (DeFilippis et al., 2018; Midheme & Moulaert, 2013). Given that informal settlements have existed as deregulated collective urbanizations on the ground for so long, in this thesis I explore whether the CLT might be the optimal way to address their property arrangements.

Interestingly, in November 2022, precisely while I was engaged in the research of this thesis, draft regulation³ of article 87 was published⁴. This draft focuses on the main points to consider when setting up a CLT but ignores the long history of self-governance of informal settlements, even while mentioning that CLTs could be a gateway to deal with informal land speculation caused by previous property policies. The risk of relying solely on Cabinet desk research, I argue here, translates into the continuation of the same formal/informal dichotomy that has long existed in Peru, where squatter settlements are ‘formalized’ out of ‘extralegality’ (De Soto, 2001). For this reason, this thesis argues that better regulation of CLTs in Peru must reflect the self-governance arrangements that informal settlements have had during the last decades. Failing to do so may result in yet another unsuccessful policy vis a vis informal settlements. The thesis leverages the case of the Sector – and in particular, Rubina and her family’s settlement experience – to provide evidence and analysis for a better understanding of how informal settlement members gather together, how land management processes work in practice, and ultimately how this deeper understanding of how informal settlements operate can inform and provide insights for the challenge of regulating CTLs in Peru.

³https://cdn.www.gob.pe/uploads/document/file/3885200/Proy%20Reglamento%20VIS%20LEY%20DUS_REV%2025.11.2022%20%5BR%5D-1.pdf.pdf?v=1669737727

⁴ In Peru, laws and regulations come in different steps. The law establishes a national rule and the regulation, which comes months or years later, provides the guidelines to carry out that rule.

Figure 1

Rubina



Source: Own

Chapter 1: Research Question and Methods

This thesis began with the proposition that informal settlements exist as deregulated collective urbanizations and that their self-governance systems have operated as a *de facto* property regime amidst the void left by previous property policies. I argue that previous policies in Peru have failed not simply because of bureaucracy or corruption, but because they did not acknowledge the collective nature of land ownership inherent in informal settlements. In this sense, I approached this research with the hypothesis that prior property policies have ignored informal collectivity and, in doing so, have failed to adequately benefit their target populations. Therefore, this thesis research question is: **How might informal self-governance logics inform the design of a CLT regulation that adequately addresses the necessities of informal dwellers within the context of Peru?** As this question cannot be answered in every possible informal settlement in Metropolitan Lima, the main qualitative method that this thesis applies is a case study of the informal settlement of the Sector to explore how and whether this proposal can indeed work for residents like Rubina. I chose Rubina's Sector for personal reasons, namely a deep and trusting relationship with her family as one of its residents. This afforded me access to one household's lived experiences and efforts at securing tenure of their home that would have otherwise been difficult to secure in the time period of research for this thesis. Through repeated, semi-structured interviews with Rubina and her family, I weave an ethnography of their efforts at securing tenure into a critical analysis of CLT literature and the policy environment regulating informal housing in Peru. As Flyvbjerg (2001) argues, it is the strength of such qualitative analysis in depth within a singular case study that provides the possibility of identifying previously ignored factors explaining why a phenomenon persists. In support, of this semi-ethnographical account, I explored archives of Rubina's family's efforts to secure tenure, as well as gathering policy documentation on informality in Peru.

Chapter 2 presents the literature review on land, property regimes, and CLTs, focusing on the following three thematic 'buckets': 1) Informality within (il)legality: a historical recounting of land policy *zeitgeists* since the 1990s that led to the approval of property policies intended to address the challenge of burgeoning informal settlements in Peru, and which have constantly redefined the boundary between legality and illegality; 2) Why a CLT for informal settlements?: an argumentation of why a CLT might be the optimal property regime for the informal socio-spatial logic of communities like that in the Sector; and 3) The core components of CLTs: a study of the different perspectives on CLTs from the point of view of different authors to create a consolidated list of core components key to the establishment and continuity of CLTs in practice. I coded keywords found in CLT literature to identify the main characteristics scholars writing about CLT in practice assign to successful cases. This involved reviewing over 10 sources from journals, books, and reports. In between these 'buckets', this thesis identifies its contribution to planning

practice: to connect the conversation of informal planning and CLTs to show that the lessons from the informal self-governance logic should be included in the Peruvian CLT draft regulation.

Chapter 3 develops the case study by reconstructing the story of the Sector through semi-structured interviews with key informants, namely Rubina, and her son Mario. Rubina was, as aforementioned, one of the original squatters of the Sector, and Mario is a former president of the *Junta Directiva* (Neighborhood Council) of the Sector. Rubina narrated her migration story offering evidence about the self-governance arrangements that residents in the Sector initiated during its initial settlement years, and the social structure behind the act of squatting. She explained their insurgent practices of urbanization and the struggles to obtain public services. On the other hand, Mario, a second-generation resident, described the current legal problems that the Sector is facing in its residents' efforts to obtain land titles from the Peruvian government. In this chapter, current-day difficulties of gathering neighbors under the same collective interest and the original collective nature of the Sector are discussed. Finally, the chapter also follows Mario's legal battle to understand the challenges that the current legal environment presents to residents of the Sector.

Chapter 4 connects the literature review and the case study, analyzing which core components of CLTs are shared by the Sector's self-governance system. It provides an assessment of the Sector's strengths and weaknesses vis a vis other CLTs to analyze how suited the settlement is to implementing and living under a CLT arrangement.

Finally, Chapter 5 concludes the research discussion around the suitability of CLTs for communities like that in the Sector. A series of challenges and lessons are discussed and highlighted for current Peruvian policymakers interested in the success of legal land reforms in the country. The chapter also points to additional research needed to continue delving into how successful CLTs can be established in a Peruvian informal context.

Positionality

During my interview with Mario, he told me that his mother was *absent* during his childhood, and he had to teach himself most of what he knows. The reason for her mother's absence is that in June 2000, when I was 8 years old, Rubina arrived to work at my house. My privileges as a White Limeño have extended to the point in which I borrowed someone else's mother for more than 20 years – a painful realization. I feel that Whiteness should be carried as a permanent discomfort, as some kind of 'original sin' in the sense of the privileges and power that holding the colonial heritage carries. It needs "to be disquieted at a deep and profound level" (Ugarte, 2014, p. 408). I come from a White Limeño family, but I am also the product of a rural migrant and Indigenous woman. Through her stories, I was exposed to the struggles of many to fill the unattended gaps left by the government. In this regard, advocating for informal

epistemologies through my graduate degree thesis is part of my process of decolonization and uncovering my positionality in Peru. Most importantly, this thesis is a tribute to a humble and brave woman from whom I have learned innumerable lessons.

Furthermore, this thesis contributes to the academic and public fields of planning. First, during my graduate degree, we have talked about the flaws of the titling model as it only recognizes exchange rights leaving use rights aside. However, Peru does acknowledge the use rights over land. Nonetheless, its model has resulted in the proliferation of land mafias. This is evidence that there is still an important academic field to explore concerning property rights. CLTs might be a paradigm shift in property rights to better respond to the informal socio-spatial logic, something neither titling nor possession policies have achieved. Second, the legacy of the titling policy is still active. In February 2022, former president Pedro Castillo announced the “Massive Titling Plan” to formalize 100,000 plots by the end of year⁵. This is the perfect moment to open the land debate and begin to push for the recognition of informality as an epistemology and a socio-spatial logic.

⁵ <https://twitter.com/presidenciaperu/status/1497224205733085193>

Chapter 2: Literature Review

2.1. Informality within (il)legality: A brief history of Peruvian property policies

The night of Sunday, April 5, 1992, Peruvians turned on their televisions to tune in to President Alberto Fujimori's announcement. That night, Peru's last 12 years of democracy were shattered by a self-coup d'état known as the *Fujimorazo* when he declared the Congress's dissolution and the Judiciary's reform, taking all state powers under his control as a result (Castro, 2021). Fujimori (1992), who had the support of the Armed Forces, justified the constitutional rupture by arguing that:

In addition to the ineffectiveness of the Parliament and the corruption of the Judiciary, there is the evident obstructionist attitude and covert conspiracy against the government's efforts by some party leaders (...) with the sole interest of blocking the economic measures that lead to the reorganization of the bankruptcy situation that precisely they left behind. (p. 1)⁶

Through Decree 25418⁷, the Emergency and National Reconstruction Government was officially established and elections to summon a 'Democratic Constituent Congress' were held. As a result, in 1993, the new Peruvian Constitution was approved by referendum originating what Castillo-García (2021) entitles the 'Authoritarian Modernization', a period in which the economy was 'liberalized', while there was a break in the democratic order.

Six years before, in 1986, a Peruvian economist called Hernando De Soto had become famous worldwide with the publication of his best-selling book 'The Other Path'. De Soto introduced the idea that the urban poor were victims of State regulations, and, for this reason, they chose to break the law. His solution, removing State regulations, was well received by current American President Ronald Reagan, the World Bank, and the IMF, as it harmonized with structural adjustment policies emanating from these institutions at that time (Gilbert, 2002). As De Soto's theories became more influential, he began to meet other Peruvian significant figures. Earlier, in 1979, he founded the Institute for Liberty and Democracy (ILD) alongside Mario Vargas Llosa, an important novelist, who would lose the 1990 presidential elections against Fujimori and later become his main antagonist after the self-coup. Vargas Llosa saw De Soto's ideas as the panacea to overcoming poverty in the developing world, but the economist had other intentions. Years after, Vargas Llosa (2016) would narrate that De Soto leveraged his support to escalate into the Peruvian political sphere: "those of us who promoted him -and, in a certain way, invented him- must say it bluntly: we did not serve the cause of freedom, nor that of Peru, but rather the appetites of a creole Rastignac" (p. 177). When Alberto Fujimori won the 1990 elections, Hernando De Soto endorsed his victory and became his advisor. Panizza (2000) argues that De Soto's "apologia of free-market economics

⁶ <https://www.congreso.gob.pe/Docs/participacion/museo/congreso/files/mensajes/1981-2000/files/mensaje-1992-1-af.pdf>

⁷ <https://archivos.juridicas.unam.mx/www/bjv/libros/5/2205/48.pdf>

as a crusade in favor of ‘the little man in the slums’ and against the country’s political and economic oligarchy set up the ideological ground for Fujimori’s neoliberal reforms” (p. 189). As a result, the 1993 Constitution included many of his ideas.

In the planning field, the Ministry of Housing was closed and public housing subsidies were replaced with De Soto’s main contribution: the introduction of land titles in informal settlements, in theory enabling households to access credits from private lenders by leveraging newly formal properties as loan collateral (Gilbert, 2002). Slum dwellers were seen as ‘heroic entrepreneurs’ that compose a ‘people’s economy’ “rich in assets, albeit in the defective form of dead capital” (Roy, 2011, p. 227). He coined the term ‘legal apartheid’ (De Soto, 2001) to describe how an excessively regulated economy can halt economic growth (Loayza, 2007) by arguing that an “asset whose economic and social aspects are not fixed in a formal property system is extremely hard to move in the market” (De Soto, 2001, p. 47). De Soto argues for a notion in which informality is an illegal phenomenon that needs to be legalized to enable squatters to access the benefits of the ‘formal’ economy. Thus, property rights, in the form of land titles, were a vital requirement for squatters to free themselves from the “grubby basement of the precapitalist world” (De Soto, 2001, p. 56) through the mortgage of their assets, “the single most important source of funds for new businesses” (De Soto, 2001, p. 6).

In 1996, Legislative Decree 803 was passed, and the ‘Law for the Promotion of Access to Formal Property’ created COFOPRI (Calderón Cockburn, 2019). Land tenure regularization policies were oriented towards the promotion of household property titles so that the urban poor could take advantage of their properties (De Soto, 1990). For informal settlements, this meant that their housing would enter a market logic where titled households could access private credit to fund their home’s construction. The World Bank, which already was a keen supporter of De Soto’s theories, immediately backed up this policy by signing a deal with the Peruvian Government to reach annual titling goals (Torres & Ruiz-Tagle, 2019). “Policymakers thought that, effectively, the free market at its leisure was going to solve housing problems” (Calderón Cockburn, 2019, p. 49). The policy was expected to bring trillions of dollars accumulated as ‘dead capital’ to a new ‘Social Market Economy’ (De Soto, 2001). “The (urban) poor, like all individuals in general, were assumed to be rational and seek profit” (Calderón Cockburn, 2019, p. 53). In addition, to complement this policy, Law 26912⁸ created the *Fondo MIVIVIENDA* (My Home Fund) to give credits and loans to titled households. COFOPRI was supposed to give legal title to the informally occupied land and then the Fund would finance the construction of the homes.

⁸[https://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/0C9E6F13A376431A05257B880053BA59/\\$FILE/26912.pdf](https://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/0C9E6F13A376431A05257B880053BA59/$FILE/26912.pdf)

However, this initiative never reached De Soto's expected outcome. By 2003, after more than 1.3 million titles were given, only 1.5% of titled households had mortgaged their house (Calderón Cockburn, 2019). Moreover, Field (2004) shows that 34% of titled households remained out of the formal credit market. "Rather, employment status seems to be more important for obtaining credit than an ownership title" (Fernandes, 2011, p. 29). In contrast, land speculation skyrocketed at a micro-scale as 20% to 30% of plots in informal settlements created since 1990 are still vacant (Calderón Cockburn, 2019). As the sale or rental prices of titled housing rose, the urban poor had to continue squatting, resorting to renting rooms, or reversing to illegal land markets, which began to bloom. In reality, the 'formalization' of informal settlements was an isolated policy that resulted in the burgeoning of new informality caused by the elimination of housing subsidies and public programs, while owners were 'liberalized' from regulatory constraints and the market operated *laissez-faire* without any land planning instrument (Calderón Cockburn, 2019). Ultimately, the policy also promoted major individualism, a reduction of communities, and an undermining of their social organization (Ramírez Corzo & Riofrío, 2006).

Calderón Cockburn (2019) posits three main reasons for this failure: 1) Lack of diagnosis about the actual reasons behind the burgeoning of informality. It was not due to 'legal apartheid', but because subsidies and housing public programs were eliminated and land owners were 'liberalized' from regulatory constraints; 2) Because markets operated at *laissez-faire*, without any regulatory instruments of land planning, particularly given that as the Ministry of Housing was closed eliminated during the 1990s; and 3) Because land titles were handed out as a way form of 'urban populism' (Roy, 2009), where politicians exchanged tenure for political support.

Porter et al (2011) argue that titling "ignores the real property use rights being exercised" (p. 188). In addition, Harvey (2003) perceives that its ultimate aim was not the improvement of human welfare, but the commodification of land and bodies to prioritize capital. In this sense, Krueckeberg (1995) distinguishes between 'use rights', such as use and possession, and 'exchange rights', such as exchange and profit taking. De Soto's theories and COFOPRI's formalization policies prioritized the latter, leaving aside many dynamics and relations that existed at a local communal scale. In 2002, with the return of democracy, President Alejandro Toledo reintroduced the Ministry of Housing along with several housing subsidies and self-help policies for the urban poor located in marginalized areas. The Ministerial Resolution 054-2002-VIVIENDA created the *Programa Techo Propio* (Own Roof Program) to provide public subsidies for new housing or improvements. For Calderón Cockburn (2019), this was a public acknowledgement of the failure of the titling policy, since the government abandoned the idea that titled households would rely on loans from private banks to build their homes.

One of the main problems that the titling policy left in its wake was a complete distortion in the urban development process. In 1961, Law 13517⁹, commonly known as the *Ley de Barriadas* (Slum Law), defined the process of what is now called *Saneamiento Físico Legal* (Legal Physical Land Planning). The Peruvian government acknowledged the existence of informal settlements and ordered local municipalities to supply them with proper housing, infrastructure services, and amenities. The land title was the last step in this process of formalization (Kagawa & Turkstra, 2002; Ramírez Corzo & Riofrío, 2006). In contrast, the introduction of COFOPRI in 1996 “reduced land planning to its legal dimension” (Cabrera Espinoza, 2021, para. 20), as it only applied to informal properties that were getting formalized. As such, households now had to wait for their legal title to land before they could apply for access to water, sewage, and electricity—a reversal of the sequence that had previously enabled services before titling.

This situation led to the discontent of informal dwellers and utilities. “Tens of thousands of informal settlers blocked roads, held marches and clashes. Service provider companies also saw their interests affected by not being able to move forward with network extension policies” (Calderón Cockburn, 2019, p. 57). Toledo, one of Fujimori’s main political opponents, responded to the popular pressure and introduced the concept of Municipal Possession Certificates to accelerate the provision of public services:

The certificates were established by the *Development and Complementary for the Formalization of Informal Property, Access to Land, and the Provision of Basic Services Law*, number 28687¹⁰, in February 2006. Subsequently, the regulations [...], in March 2006, would establish that the evidence of possession would refer to [...] the loan contracts entered into between the owner and public or private institutions, payment receipts for water, electricity, or other services, affidavits of payment of the Property Value Tax, home certificates issued by the Peace Judge or the police. (Calderón Cockburn, 2019, p. 56)

However, again similarly to the titling policy, the possession certificates increased informality growth. The legal capacity to make decisions on land tenure was handed over to local municipalities and, with a vacuum in central land planning, a black-market logic was unleashed based on the corrupt interests of the actors participating in the local market transactions. More specifically, this municipal possession certificate model gave some degree of power to many different actors such as developers, housing associations, local sheriffs, Peace Judges, and mayors. With the proliferation of interested local parties came the proliferation of land trafficking: land mafias take control of land through criminal means and began to sell it to desperate squatters (Calderón Cockburn, 2019). Informal settlements, which were initially produced by collective action and organized land invasions in the face of an affordable housing shortage, started to be established through a pervasive market logic that fed the strengthening of land mafias: nowadays, “informal settlements do not only reproduce due to housing needs but as a source of economic

⁹ <https://docs.google.com/viewerng/viewer?url=http://docs.peru.justia.com/federales/leyes/13517-feb-14-1961.pdf>

¹⁰ <https://faolex.fao.org/docs/pdf/per109721.pdf>

resources, validated by the informal economy of the illegal land market” (Torres & Ruiz-Tagle, 2019, p. 25). Land trafficking has turned into the main motor of urbanization and is currently directing urban expansion in Metropolitan Lima (A. Facho, personal communication, May 19, 2022). Vera (2018) visibly recalls this phenomenon:

It all starts with criminal gangs that identify large pieces of land owned by the state. Then they seek to reach the municipal authorities that administer them. They invade the areas and build some noble material estates there. With the contacts made in the municipalities, the invaders obtain certificates that accredit them as former possessors.

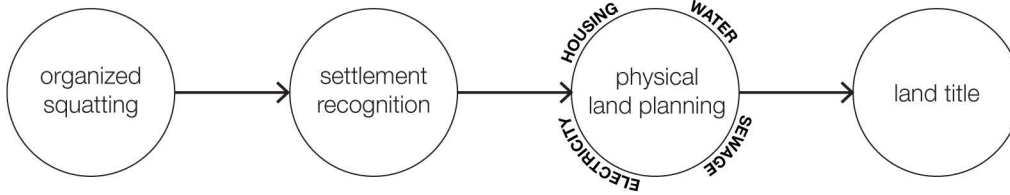
The mafias use signs from housing associations and even register with Public Registries. In this way, they appear before citizens in need of a place to live and manage to hook them with the low prices with which they appraise the land. (para. 8-9)

Figure 2 graphically explains how the straightforward process introduced in 1961 was distorted as the land titling and land possession policies were introduced, and how the urbanization process shifted from organized land invasion to land trafficking.

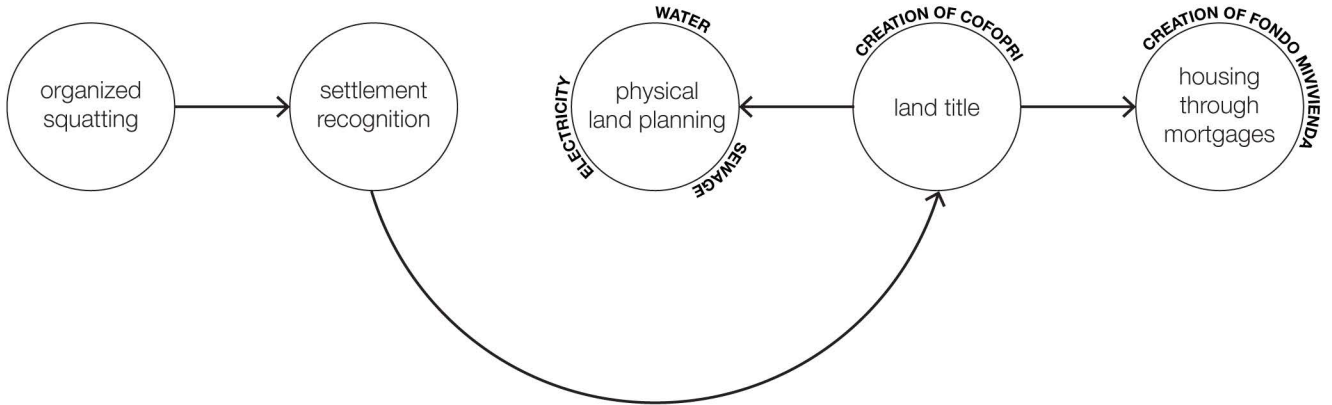
Figure 2

The effect of Peruvian property policies in the informal urbanization process

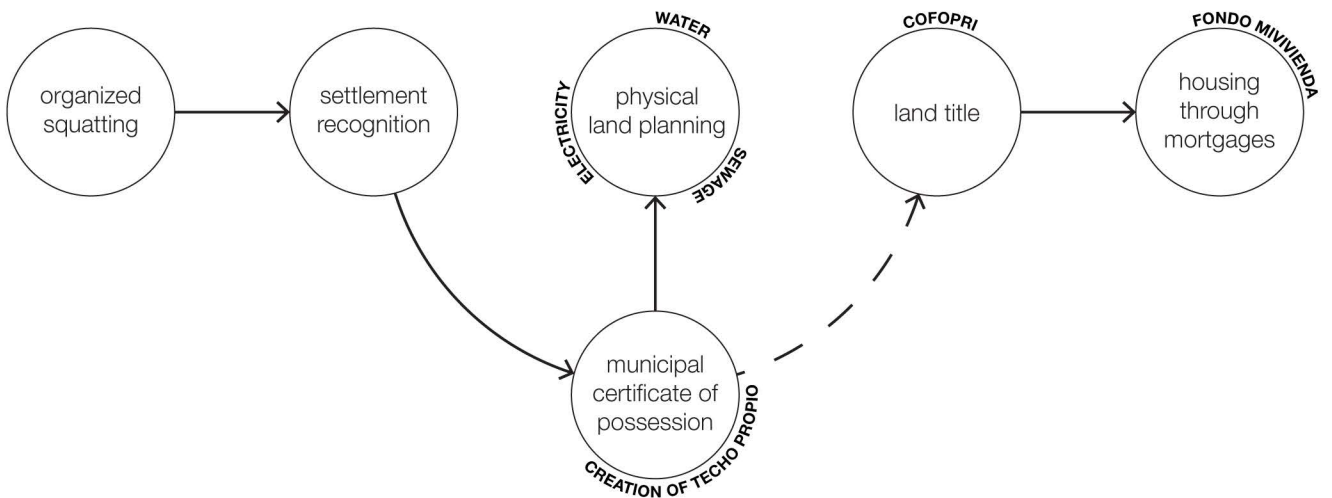
1961 - Slum Law



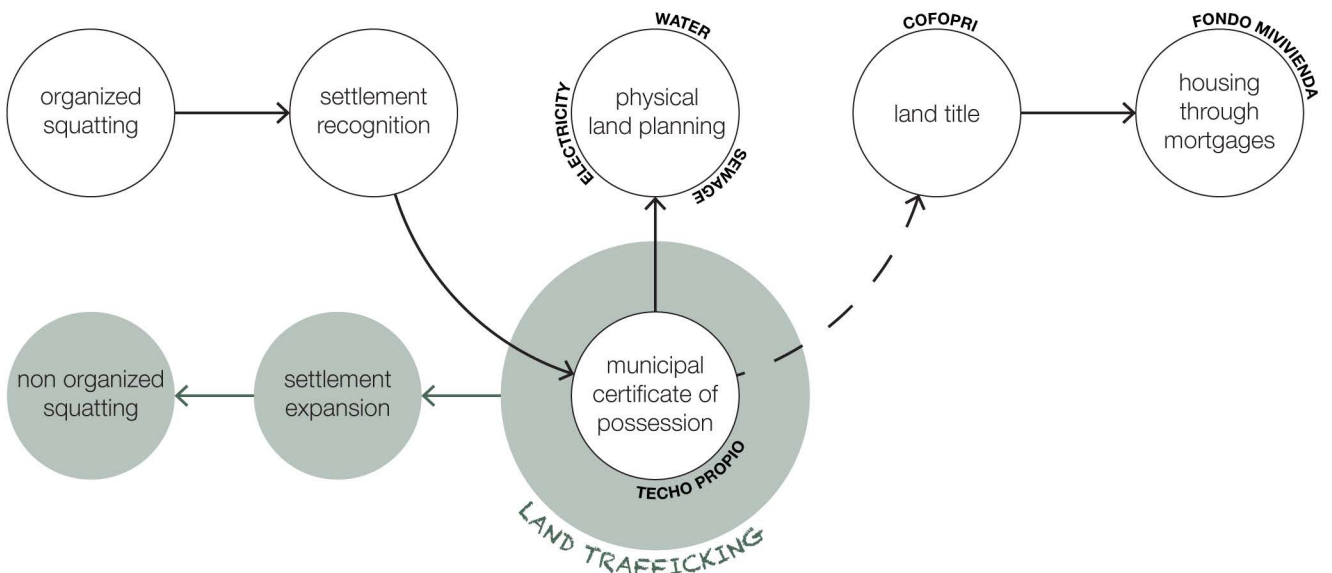
1996 - Formalization titling policy



2006 - Municipal certificates of possession policy



From organized land invasions to *land mafias*



Nevertheless, the popularity of these policies has been undeniable. Through the years, politicians have applied them as a gateway for vote-buying (Torres & Ruiz-Tagle, 2019), and the Peruvian state has colluded with land mafias on many occasions. Since its introduction, the term for the formalization of informal possessions has been extended 3 times: in 2004 it was extended until December 31, 2001¹¹; in 2006 until December 31, 2004¹²; and now last in 2020 until December 31, 2015¹³. As a result, by 2017, approximately 2.4 million land titles had been given by COFOPRI (Calderón Cockburn, 2019). Thus, “informality is not ‘outside’ (of) *formal* [italics added] systems, but is instead produced by formal structures and always intimately related to them” (Porter et al., 2011, p. 116).

In this sense, informality is not only a breach of law but also involves state action and tradeoffs between the public sector and citizens to define what legality is. This legal boundary requires an arbitrator that defines what legality is and this is where state action plays a crucial role in the burgeoning of informality. “The law is a thin line that turns the defining (paradigms) of informality into a shifting one” (Calderón Cockburn, 2019, p. 48). Thus, informal settlements lie within the blurry boundaries of legality and illegality. For example, Rubina’s Sector is a legal settlement in the sense that most of their neighbors have a municipal certificate of possession, but it is also an illegal settlement as residents self-construct their homes without municipal authorization (Calderón Cockburn, 2019). Furthermore, as Matos Mar (1985) argues, informality depends upon the role of dominant elites. In his perspective, informality burgeons in the lack of a state whose authority is constantly undermined by elites that do not understand the struggles experienced by the urban poor. The control over the public apparatus by the elites “develops powerful efforts to preserve and expand the formal order that it embodies, “incorporating” or “integrating” it into the rest of the country” (Matos Mar, 1985, p. 385). This is not only a sort of epistemicide (de Sousa Santos, 2015), as informality is constantly subject to efforts of conversion into the ‘formal’ epistemology, but also evidence that the legal/illegal dichotomy is too limited to explain the dynamics of informality.

Hence, informality exists in the intrinsic core of modern state action. As Álvarez-Rivadulla (2017) argues:

State agencies may encourage, tolerate, forbear, ignore, harass, or crush squatter settlements. More often, however, their acts fall within a gray zone that includes some tolerance, some repression, some cooptation, and some assistance. [...] Economic conditions interact with political factors to make squatting happen and to shape how it happens. (p. 5-6)

Both titling and possession policies failed in Peru. The former led to land speculation and loss of affordability, while the latter led to the blooming of illegal land practices. However, researchers so far have

¹¹ <https://docs.peru.justia.com/federales/leyes/28391-nov-16-2004.pdf>

¹² <https://www.leyes.congreso.gob.pe/Documentos/Leyes/28687.pdf>

¹³ <https://busquedas.elperuano.pe/normaslegales/ley-que-amplia-los-plazos-de-la-titulacion-de-terrenos-ocupa-ley-n-31056-1895502-2/>

not linked the failure of these policies to the exclusion of the collective nature of ownership and self-governance system existing in informal settlements. For this thesis, the omission of this *de facto* property regime when regulating policies is one of the main causes of its failure.

2.2. Why a Community Land Trust for informal settlements?

In addition to my personal interest in seeing Rubina finally secure tenure over her home in the Sector, the intellectual case of CLTs appealed to me when I first learned about them. They appeared to offer an alternative to policies I knew had failed Rubina and her family. Land titles, for example, insert market logic into informal settlements. Individually titled households take on the full land value associated with their location. As a result, they stop being affordable and open a gateway to higher costs of living, real estate speculation, and gentrification. This is a blow to communities that have been structurally excluded from cities (Algoed et al., 2021; Basile & Ehlenz, 2020; Williamson, 2018). In addition, they undermine the social cohesion of informal settlements. Rubina's testimony shows how the social cohesion of her neighborhood has been decaying while efforts to obtain housing titles increase. Fernández (2020) argues that:

Before the moment of the granting of property titles, the collective organization tends to have great strength as a space for the cohesion of the members of a neighborhood in the areas of consolidation of the cities. [...] However, when property titling occurs individually by the State, these valuable collective spaces are often diluted. [...] Since titling is not usually done for all properties [...], the neighborhood association ends up broken in two. Titled owners begin to treat their property from the individual logic of formal regulations and, in the exercise of their right, they even choose to go live elsewhere, since the property title gives them the security of not having to maintain possession to keep their property. (p. 465)

Historically, CLTs were created to deal with both of these issues. In 1969, the first CLT in history, New Communities, Inc. was established as “a nonprofit organization to hold land in perpetual trust for the permanent use of rural communities” (Davis, 2010, p. 16); specifically to give Black farmers access and control of basic resources (DeFilippis et al., 2018). CLTs are based on the Georgist approach (Davis, 2010) “that land is a public asset and not a private good” (Choi et al., 2018, p. 3). Based on this, a communal entity acquires and holds land in trust for a group of residents. Property is split into two constituent parts: the land and the improvements. The entity leases land to individual residents who buy structures on the CLT. Thus, households individually own their dwellings and collectively co-own the land. Since land is often the primary cost in urban housing, it is taken out of the market and separated from its productive use. As a result, CLTs maintain affordability and provide long-term security as the impact of land-value appreciation is eliminated and locked into the community (Basile & Ehlenz, 2020; Choi et al., 2018; Midheme & Moulaert, 2013; Zonta, 2016).

Furthermore, “both the intentions and structure of New Communities were explicitly collective and communal” (Swann et al., 1972). CLTs are a form of property that places the community in its intrinsic core. The community control component of CLTs (DeFilippis et al., 2018) is based on solidarity, on “those symbiotic relations of trust, reciprocity, and mutual obligations among neighbours that are so essential for community life” (Midheme & Moulaert, 2013, p. 80). There is evidence that the process of establishing a CLT is accompanied by a growth in communal unity that results in improved power when negotiating with public authorities. As Fidalgo et al (2020) argue:

The strategy to regularize land tenure must not be framed solely on “legalizing” how each individual relates to the parcel of land they occupy. Rather, it should be chosen by the residents themselves as part of a participatory process that helps them to move towards their vision for the future of their community. Land titling should not be an end in itself, but rather an instrument to achieve both collective and individual objectives. Such a process implies that there are options beyond individual titles and that such options should be evaluated by the residents in accordance with their own priorities. A participatory approach of planning – action– reflection becomes the key to addressing land tenure. (p. 213)

In this sense, the land is a shared asset similar to what Ostrom (2009) defines as a ‘Common-Pool Resource’: a resource that “can be owned and managed as government property, private property, community property, or owned by no one” (p. 419). Her research finds out that self-organized systems create their own rules and sanctions to manage these common-pool resources. This is an act called ‘commoning’, a social practice where people design their own rules, according to their particular context, to manage a shared resource (De Schutter & Rajagopal, 2019; S. R. Foster, 2019). It “refers to the social practice of reproducing the commons” (Aernouts & Ryckewaert, 2018, p. 3). The CLT is a type of modern commons and the process of ‘commoning’ “yields community benefits beyond the sphere of housing” (Aernouts & Ryckewaert, 2018, p.16).

Furthermore, Davis & Fernández (2020) argue that CLTs advance the right to the city discourse as they enable the appropriation and co-design of urban space. Behind commoning lies “cry and demand” (Lefebvre, 1968, p. 158) actions to “(reorient) the city away from its role as an engine of capital accumulation and toward its role as a constitutive element in the web of cooperative social relations among urban inhabitants” (Purcell, 2014, p. 149). On this matter, CLTs are:

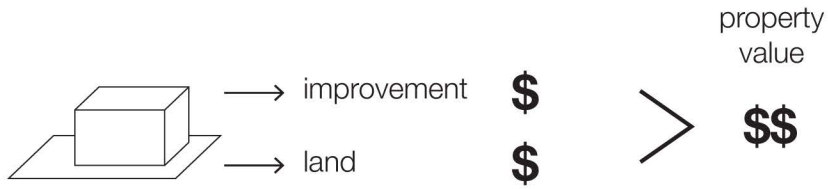
Sectors of the economy and of daily life that are not operated on the profit system, that are within it but not of it, that are not motivated by profit but rely on solidarity, humanity, the flexing of muscles and the development of creative impulses, for their own sake. (Marcuse, 2009, p. 195)

Figure 3 graphically explains how the introduction of land titles creates negative externalities for a neighborhood and how CLTs operate to avoid those negative externalities.

Figure 3

Why Community Land Trusts for informal settlements?

1. Property value is composed of land and improvement.



2. Land appreciates over time for a variety of reasons, such as receiving a land title, and as a result, property value increases as well.



3. Higher property values tend to produce negative externalities such as higher property taxes, more land speculation, and a decrease in the neighborhood's social cohesion.



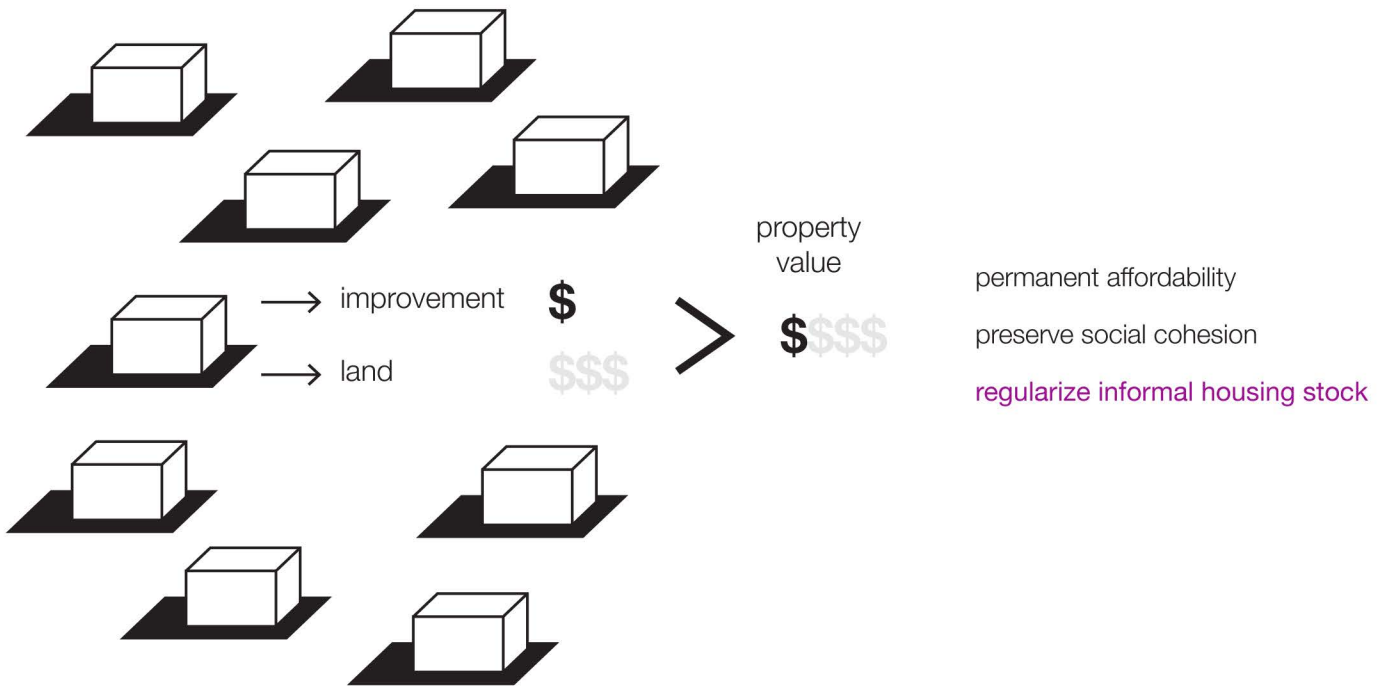
4. CLTs separate the cost of land from the cost of improvement and thus avoid all the negative externalities of land appreciation.



Figure 3 (cont.)

Why CLTs for informal settlements?

5. The cost of land is locked into the community creating a permanent affordable neighborhood and protecting its social cohesion.



As Harvey (2003b) argues, “we individually and collectively make the city through our daily actions and our political, intellectual and economic engagements” (p. 939). Therefore, the process of establishing a CLT is an acknowledgment that “the city *itself* is a commons” (Foster & Iaione, 2016, p. 288) and that everyone has “a right to change and reinvent the city more after our hearts’ desire. [...] The freedom to make and remake” (Harvey, 2012, p. 4).

The idea of “commoning” challenges the liberal-economistic model where the property is a dichotomy of *owners* and the exclusion of *non-owners* (Blomley, 2008). Being an *owner* of something gives a person access to the 9 types of property rights that Christman (1994) identifies: possession, use, alienation, consumption, modification, destruction, management, exchange, and profit-taking. However, “property is not just the objects or possessions or capital in isolation, but a set of relationships between the owner of some thing and everyone else’s claims to that same thing” (Krueckeberg, 1995, p. 307). In reality, “It is a set of relational rights that has become narrowly defined in relation to ownership” (Porter et al., 2011, p. 117). This becomes evident when talking about urban commons and CLTs. For this reason, I argue that the bundle of property rights should go beyond use-based and income-based rights that scholars on property rights have thus far centered on. Here, I contend that CLTs also provide the rights that the liberal-economistic model has eschewed, namely the right to stay in a place without being evicted by economic forces and the right to co-design the city while maintaining one’s social fabric. Table 1 compares which rights can be accessed according to the different property systems that have been discussed before:

Table 1

The bundle of rights seen from each property system in Peru: shaded rights highlighted in the existing literature; unshaded rights elaborated by the author

Property right	Land Titles	Certificates of Possession	CLTs	Notes
Use rights				
Possession	yes	yes	yes	
Use	yes	yes	yes	
Alienation	yes	no, see notes	yes	Alienated land goes back to local municipality. ¹⁴
Consumption	yes	yes	yes	
Modification	yes	yes, see notes	yes	Varies according to local municipality. In Pachacamac, possessors can legally build only if they have structure and facilities plans. ¹⁵
Destruction	yes	no	yes	Varies according to local municipality. In Pachacamac, it needs a legal title.
Management	yes	no	yes	Varies according to local municipality. In Pachacamac, it needs a legal title.
Income rights				
Exchange	yes	no	yes, see notes	CLTs often have a right of first refusal.
Profit taking	yes	no	yes, see notes	CLTs often have a cap on the profit made when selling the dwelling.
Relational rights				
Not being evicted by gentrification	no	no	yes, see notes	CLTs maintain affordability in perpetuity.
Maintain social fabric	no, see notes	yes	yes	Land titles undermine social fabrics.

Source: Own elaboration, highlighting rights detailed in existing literature and rights this thesis's argument contributes to the case for CLTs.

The practice of property rights in Peru demonstrates that use and income rights are necessary, but insufficient. Land titles grant the full bundle of rights over a property, but do not protect the neighborhood

¹⁴ Directive No. 004 -2019-COFOPRI: <https://cdn.www.gob.pe/uploads/document/file/1370600/rgg-n%C2%BA-075-2019-gg.pdf?v=1602697069>

¹⁵ Pachacamac Municipality 'Single Text of Administrative Procedures' numeral 3.206: <http://www.munipachacamac.gob.pe/portaltransparencia/pdf/tupa.pdf>

from the adverse effects of land appreciation. In contrast, certificates of possession grant a very limited version of the bundle of rights since they only recognize use rights. Instead, CLTs can grant the whole bundle of rights, while providing what I call relational rights, where residents can remain in the urban space they helped to co-design. The latter is usually ignored by property rights legislation and scholarship.

This thesis argues that informal settlements like the Sector exist as deregulated collective urbanizations. Roy (2009) coins the term deregulation to describe a calculated informality generated by purposive action and planning. In this sense, deregulation is a form of “commoning”. The collective co-production of space in informal settlements has instituted the basis of a self-governance system that has operated as a *de facto* property arrangement amidst the void left by previous property policies. Matos Mar (1985) explains how the informal Limeñx society has been relying on reciprocity to co-create its city amongst a state vacuum:

Absent authority and blocked institutional channels, the masses generate semi-autonomous pockets of power, based on asymmetric patterns of rural reciprocity adapted to the urban situation. They dispense with the state and oppose it. [...] Reluctantly, gradually, and sideways, the state, its institutions, and members of the ruling elites, are forced to accept the existence of expanding spheres of self-government. (p. 386)

For this reason, I approached this research with the hypothesis that CLTs might be the optimal way to address property arrangements of informal settlements for residents like Rubina. Fernandes (2011) argues that land titling is not the only way to provide tenure security as collective legal solutions, such as CLTs, “may correspond more closely with the collective nature of many informal development processes” (p. 39). Table 2 shows a summary from Basile & Ehlenz (2020) comparing how different policy models play out in informal settlements and why the CLT might be the property model for them:

Table 2

A comparison of informality policies and the community land trust model

Potential Areas of Impact	Policy Models			
	Mass Social Housing	Upgrading	Land Titling	Community Land Trust
Immediate affordability	○	●	●	●
	Limited affordability to lower income populations	Preservation of immediate affordability	Preservation of immediate affordability	Preservation of affordable housing subsidies at a unit-level through limits on resale equity and community-led ownership
Long-term affordability and security	○	◐	◐	●
	Limited long-term affordability due to additional economic burdens such as housing maintenance, incidental expenses, taxes	May lead to limited long-term affordability due to gentrification processes	May lead to limited long-term affordability due to gentrification processes in cases of location advantages	Guaranteed long-term affordability and security due to the removal of market speculative forces
Infrastructure improvement	◐	●	◐	◐
	Access to better infrastructure but may lack building quality	Guaranteed infrastructure improvements	Does not necessarily include any infrastructure improvement	Dependent on available funds
Maintenance of existing physical and social structures	○	◐	●	●
	Due to the relocation of residents, existing physical and social structures are not maintained	The majority of the existing physical and social structures are maintained	All physical and social structures are maintained	All physical and social structures are maintained
Potential for wealth building and reduction of poverty levels	◐	◐	○	●
	Increased social status	Improved living standards	It does not significantly reduce poverty levels	Possibility of wealth building through low purchase costs and access to affordable loans
Quality of life improvement	●	●	○	●
	Positive impact on quality of life	Positive impacts on living standards and quality of life	Limited quality of life improvements	Potential to contribute to feelings of security, stability, and improved quality of life
Community control	○	◐	◐	●
	No community control	Possibility of participation but with limited community control	Individual resident control once titles are distributed	Stewarding organization and representative board ensure community control

Key: ○, no potential for improvement or change
 ◐, limited potential for improvement or change
 ●, substantial potential improvement or change

Source: Basile & Ehlenz, 2020, p. 5

Finally, Williamson (2018, 2019) describes the different ways in which CLTs would function in the Global South, specifically in informal settlements. In the Global North, CLTs work as real estate developers since they buy land, develop affordable housing, and then sell it or rent it. They are non-profit and affordable, but developers, nonetheless. In contrast, informal settlements do not require property development, but rather the regularization of their existing housing and community stock, and a way to keep it affordable. In this regard, retrofitting informal settlements as CLTs would be a boon to the state, which would be providing affordable housing without massive expenditures or subsidies.

2.3. The core components of Community Land Trusts

The core components of CLTs may vary depending on the context and legal system in which they want to be established. This section reviews five different perspectives on CLTs, including theory and practice, and it will be divided as follows: 1) CLT Theory; 2) the *Fideicomiso de la Tierra del Caño Martín Peña* (Caño Martín Peña CLT) in Puerto Rico, USA; 3) the Favela CLT model in Rio de Janeiro, Brazil; and 4) the Tanzania-Bondeni CLT in Voi, Kenya; and 5) the Peruvian CLT draft regulation. All the keywords extracted in this section have been systematized in a diagram to make a consolidated list of core components.

2.3.1. CLT Theory

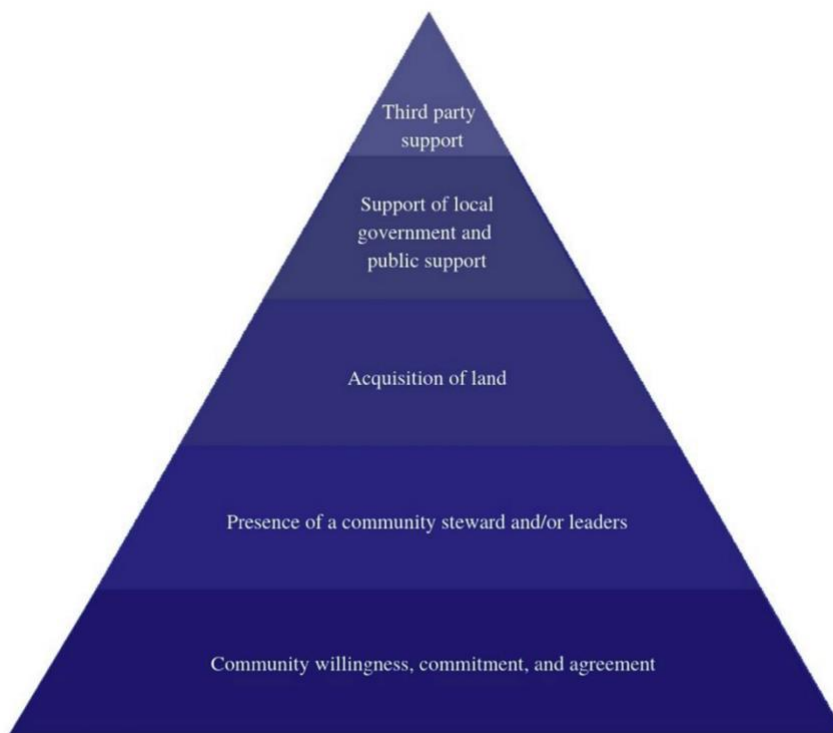
Part of the literature studies the theory behind the CLT model focusing on the conditions that it needs to be successful. Basile & Ehlenz (2020) explain that a CLT is a form of shared equity homeownership characterized by three components:

1. An open-membership non-profit organization that owns the land.
2. A governing board elected by the members of the organization.
3. A tripartite representation in the board composed of CLT residents, non-CLT community members, and public interest representatives.

Furthermore, they propose a conceptual CLT framework for Global South informal settlements that identifies five necessary conditions for success. These are community willingness, commitment, and agreement; the presence of a community steward or leaders; land acquisition; public sector support referring to legal feasibility; and support of allied institutions, organizations, and technical professionals. In their framework, each condition builds on the previous one (see Figure 4). In this sense, a strongly committed community and mature leadership are the base of the CLT model. Finally, they mention some caveats that need to be considered when establishing a CLT such as political support from the local government, the presence of illegal land markets that normally present resistance to regularization, and the capacity to reach resident consensus.

Figure 4

A conceptual framework for CLTs in informal settlements



Source: Basile & Ehlenz, 2020, p. 7

Zonta (2016) and DeFilippis et al. (2018) bring a Global North perspective. The former focuses on the importance of site acquisition and funding as the main recommendations to establish a CLT. For her, “CLTs should take advantage of existing housing units and bring them into the CLTs” (p. 12). This is because CLTs act as affordable and non-profit real estate developers in the Global North. It is easier to leverage existing housing stock and redevelop it to reduce reliance on financing for new constructions. Moreover, DeFilippis et al. (2018) “believe that essential to that soul (of the CLT) is, and must be, community control over land” (p. 2). They advocate for communal cooperation in accessing funding and negotiating land acquisition.

2.3.2. Caño Martín Peña CLT

The collaborators of the Caño Martín Peña CLT in Puerto Rico, USA, have been compiling lessons learned during its implementation process. Algoed et al., (2018) summarize the General Regulations for the Operation of the CLT¹⁶ and conclude on the following main points:

¹⁶ <http://app.estado.gobierno.pr/ReglamentosOnLine/Reglamentos/7587.pdf>

1. A registry that ensures the participation of members in electoral and deliberative assemblies.
2. Rules about the composition and eligibility of Board members. It also provides for the terms of the time of each member, the requirements for permanence, the causes for their removal, and the process of covering the positions in case of resignation.
3. The creation of permanent committees, joint committees with the Corporation, and temporary committees.
4. Elaboration of strategic plans in the short and long term that establish the acquisition and administration of new land or structures, and in what circumstances such investments must take place.
5. A right of first refusal to ensure the permanent affordability of the housing stock. This is also unpacked in Algoed & Hernández (2019).

Finally, they recount some experiences learned during the process of establishing the CLT such as the importance of a list of members to identify the families entitled to surface rights and to maintain direct contact with these families who own structures on collectively owned land, and the elaboration of a cadaster correlated with the information in the list of members.

Furthermore, Algoed et al., (2021) provide detailed documentation of the Caño Martín Peña CLT to build a framework to assess the feasibility of establishing CLTs for favelas in Rio de Janeiro, Brazil. They argue that establishing a CLT in an informal settlement needs some preconditions such as an already constituted community that has to reach a consensus about collective ownership; a way to transfer land to the community; an organized community and mature leadership; and the collaboration of professionals. Other preconditions are a constant threat of involuntary displacement; a large percentage of families without legal titles or secure tenure; a path to acquire the land; a strong sense of belonging; and the presence of support organizations that can provide technical assistance. Finally, they emphasize the importance of a legal instrument that can implement the CLT. For this, the paper explains the process of creating a CLT in Puerto Rico and offers several paths by which a CLT could be established in Brazil.

2.3.3. Favela CLT Model

Williamson (2019, 2018) advocates for the Favela CLT model. She argues that “favelas are already, in essence, informal CLTs” (p. 20) as they share similar core components such as:

1. A voluntary membership as the favela dwellers have developed a sense of belonging or are forced to live there by circumstance.
2. Publicly owned land. In this case, owned by the Brazilian government for “social benefit”.
3. Homes primarily owned by their residents.

4. A resident association, which is usually elected by the residents and is legally responsible for representing the community.
5. Affordability maintained through the years.

In addition, she shares similar preconditions to the previous case such as a consolidated community with a strong sense of belonging; a large percentage of households without legal titles; a reasonable likelihood to acquire land titles; a perceived threat of involuntary displacement; and a mature process of community organization supported by civil society and technical advisors.

2.3.4. Tanzania-Bonden CLT

This was the first CLT implemented in the Global South between 1991 and 2004 as a part of a slum upgrading program in Voi, Kenya. The residents were introduced to three tenure forms: housing cooperative, individual titles, and CLT, which was chosen by the majority (Midheme & Moulaert, 2013). Bassett (2005) recounts that the key features of the model were:

1. Emphasis on community participation in land management.
2. A ban on absentee ownership.
3. Restrictions on the sale of land
4. Provisions for community control of land such as a right of first refusal on the sale of improvements, vetting members interested in leasing CLT land, ensuring payment of property taxes, and determining ground rents for disadvantaged members.
5. Retention of individual ownership rights leaving the right to privacy, to bequeath housing, and to sell improvements.

Midheme & Moulaert (2013) summarize the main learning experiences from the implementation of the CLT:

1. Multi-stakeholder negotiation if informal settlement stands on public and private land.
2. A planning process with actively involved residents working together with the project planners. This process resulted in a spatial plan with zones for residential uses, commercial uses, a market, a health center, a community center, schools, and green areas.
3. The importance of legal feasibility to establish an entity that owns the land and a way to transfer the dwellings to individual owners – in this case through trust deeds.
4. A representative board composed of 9 trustees.
5. The planning of long-term development projects to invest the development fund of the CLT, composed of the money collected from each member.

2.3.5. Peruvian CLT draft regulation

In Peru, laws and regulations come in different phases. The first step is to approve the law, which declares new national compulsory rules. Then, that law is regulated in another document approved by a ‘Supreme Decree’. A Supreme Decree is the highest hierarchy law provision issued by the Peruvian Executive Power, and it has to be signed by the President of Peru and one, some, or all of his Ministers.¹⁷ In addition, some laws are regulated in different phases, which is the case of Law 31313. The *Decreto Supremo 012-2022-VIVIENDA* (Supreme Decree 012-2022-HOUSING)¹⁸ approves the regulation of part of Law 31313. The draft regulation of article 87 was published in November 2022 and is currently under review to be approved by Supreme Decree shortly. The following are the CLT core components of that draft regulation:

- Affordable housing: The main takeaway is that this CLT draft regulation is a section – the fifth chapter – of the *Vivienda de Interés Social* (Housing of Social Interest; HSI) draft regulation. According to article 81 of Law 31313, Housing of Social Interest is defined as housing promoted by the state to reduce the gap in qualitative and quantitative housing deficit. For this thesis, this is of utmost importance as it confirms that, in Peru, the regularization of informal housing stock through the implementation of a CLT counts as the creation of affordable housing. This is aligned with Williamson’s (2018, 2019) argument that informal settlements function as the affordable housing stock in Global South cities.

Article 24.- Community land trust. The CLT is the mechanism that promotes the creation, development, and administration of HSI projects, totally or partially, on land owned by the State or private property, granting surface rights for HSI and amenities that are part of the project.

- Actors: The role of each stakeholder involved in the establishment of a CLT - the state, a management entity, and the beneficiaries - is clearly defined.

Article 25.- Parts. The parts that make up the CLT are the following: a) The State, [...] owner of the land where the HSI project will be developed; b) Management Entity, [...] to whom the land owned by the State or private property is transferred for the creation, development, and administration of HSI projects and urban facilities; c) The beneficiaries of the CLT, [...] who are granted ownership, through the constitution of surface real rights.

- Land transfer: Unlike previously reviewed CLT models, where the land is owned by a non-profit organization that is in turn co-owned by the residents, in Peru, local governments, called Management Entities, will own the land. The land transfer will happen from the owner of the land,

¹⁷ <https://www.lawinsider.com/dictionary/supreme-decree>

¹⁸ <https://busquedas.elperuano.pe/normaslegales/decreto-supremo-que-aprueba-el-reglamento-de-acondicionamiento-decreto-supremo-n-012-2022-vivienda-21125606/#:~:text=DISPOSICIONES%20GENERALES&text=EI%20presente%20Reglamento%20tiene%20por,Ley%20de%20Desarrollo%20Urbano%20Sostenible.>

public or private, to local governments. Beneficiaries will receive surface rights once the houses in the CLT receive HSI status.

Article 28.- Land transfer request. The Managing Entity requests the transfer of the identified land from the owner entity, for which it presents the urban capacity of the project [...] as well as the identification of beneficiaries.

Article 29.- Land transfer. The transfer of the land is approved through an administrative act, which has sufficient merit for its inscription before the Land Registry of SUNARP¹⁹. [...] The surface rights will be constituted once (HSI has been created).

- Third-party support: The importance of technical assistance in the process of creating housing of social interest is included in the regulation.

Article 33.- Technical assistance. The Managing Entity forms the multidisciplinary technical team whose purpose is to provide technical, legal, and/or financial assistance in favor of the beneficiaries to develop or strengthen their capacities that contribute to the proper execution of the HSI.

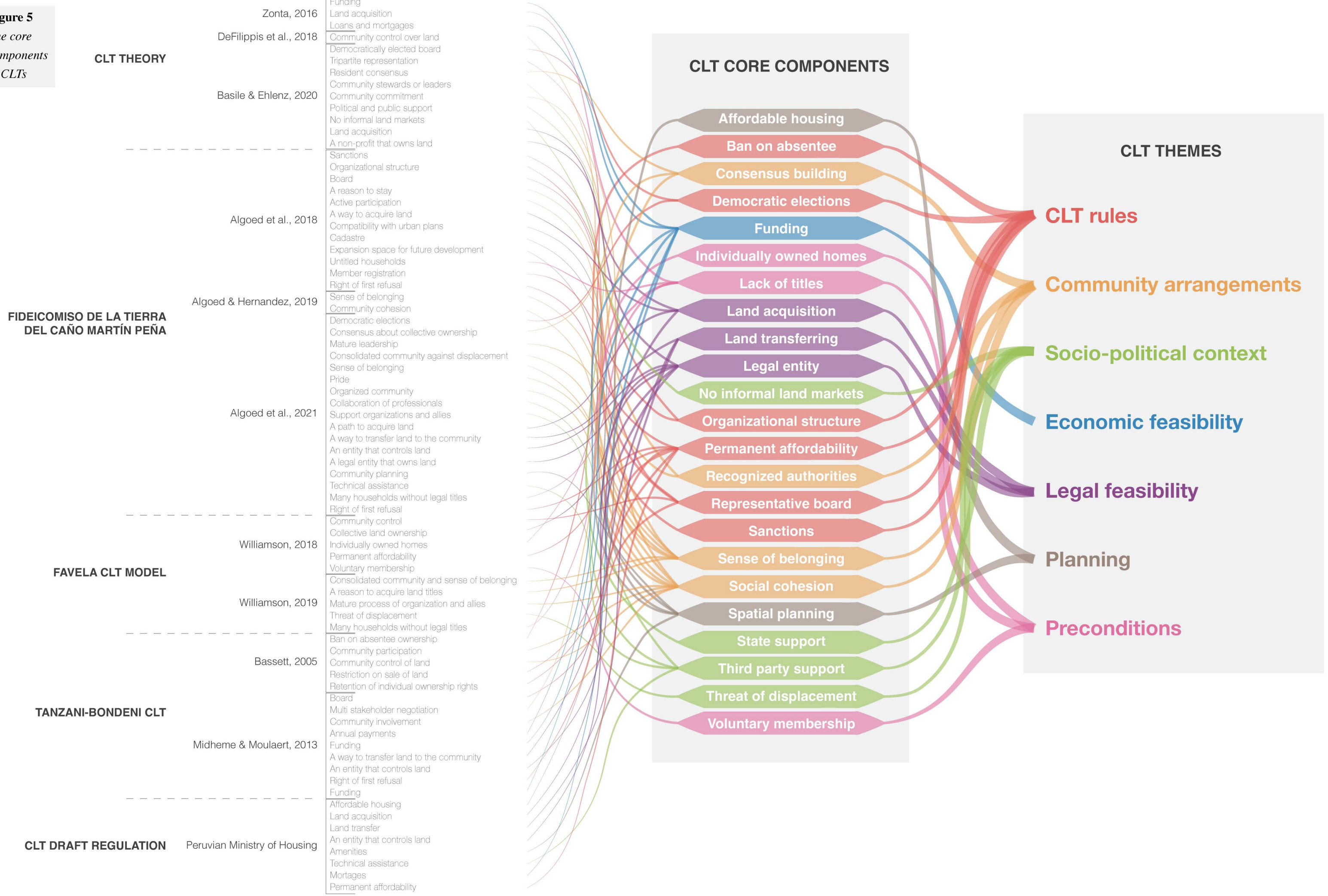
- Funding and permanent affordability: Beneficiaries will have full property rights over their dwelling. They will be able to mortgage it to access private funding, sell it, and leave it as an inheritance. The latter will secure affordability over time as well.

Article 34.- Scope of the surface HSI. The HSI that make up the CLT can be transferred, inherited, or mortgaged by the beneficiaries.

Building on these five different models, Figure 5 systematizes the main keywords that have been explained before. The result of this systematization is a list of CLT core components that are then grouped into broader themes:

¹⁹ National Superintendency of Public Records.

Figure 5
The core components of CLTs



2.3.6. CLT Characteristics in the Aggregate

According to the models reviewed in the sections above, there are 23 CLT core components, divided into 7 themes, that a CLT would need to be implemented successfully. It is completely valid to argue that some components will be more important than others according to the context in which the CLT wants to be implemented. However, this list provides a framework to assess the potentiality of establishing a CLT in informal settlements, especially in the Sector. Table 3 compares the presence of the core components for each of the five models:

Table 3

A comparison of the core components most present in each CLT model

CLT Model	CLT Theory	Caño Martín Peña	Favela CLT	Tanzania-Bondení	CLT draft regulation
CLT Rules					
Ban on absentee				yes	
Democratic elections					
Organizational structure ^[1]	yes	yes			
Permanent affordability ^[2]				yes	yes
Representative board	yes	yes	yes	yes	
Sanctions		yes			
Community arrangements					
Consensus building	yes	yes		yes	
Recognized authorities	yes	yes			
Sense of belonging		yes	yes		
Social cohesion	yes	yes	yes	yes	
Socio-political context					
No illegal land markets	yes				
State support	yes				yes
Third party support	yes	yes			yes
Threat of displacement			yes		
Economic feasibility					
Funding	yes			yes	yes

Legal feasibility					
Land acquisition	yes	yes			yes
Land transferring		yes		yes	yes
Legal entity	yes	yes	yes	yes	yes
Planning					
Affordable housing					yes
Spatial planning		yes			yes
Preconditions					
Individually owned homes			yes		yes
Lack of titles		yes	yes		
Organizational structure ^[1]		yes			
Permanent affordability ^[2]		yes	yes	yes	
Voluntary membership			yes		

^[1] Organizational structure has been included in both CLT rules and preconditions building on the Caño Martín Peña CLT experience. In CLT rules because of the registry that ensures the participation of members in assemblies, and in preconditions because of the list of members before the CLT implementation.

^[2] Permanent affordability has been included in both CLT rules and preconditions building on different experiences. In CLT rules because of instruments like the right of first refusal to ensure permanent affordability, and in preconditions because of the community's desire to maintain that settlement affordable in perpetuity.

Source: Own elaboration on Algoed et al., 2018, 2021; Algoed & Hernández Torrales, 2019; Basile & Ehlenz, 2020; Bassett, 2005; DeFilippis et al., 2018; Midheme & Moulaert, 2013; Williamson, 2018, 2019; Zonta, 2016

The comparison in Table 3 reinforces the literature review explained in section 2.2 that CLTs are a type of property regime that builds on the social cohesion of a neighborhood. Most of the models explored agree that community arrangements are paramount. In addition, all the models also agree on the importance of the existence of a legal framework that makes the implementation feasible and the elaboration of regulations that manages the CLT governance.

Chapter 3: Rubina and the Sector²⁰

One morning in 1984, a 24-year-old Rubina departed from her hometown in the Peasant Community of Andas, located in the Junín region, to the city of Lima. This was not her first trip to the Peruvian capital city as she had already lived there for two years after she graduated from high school. “I had gone to study...and progress, to come out of poverty <she laughs>, I lived with my cousin, but she died in a car accident, so I went back home” (Rubina M., personal communication, April 24, 2022). However, Andas was no longer the place where she grew up, as the Shining Path’s terrorist growing influence was causing massive migrations and Rubina would also become part of this. For the following ten years, she had to live in different rooms in Lima, while trying to find a job. This Struggle Period (1984 - 1994) for Rubina coincided with the late 80s when hyperinflation was seriously affected the Peruvian macroeconomy, and the initial years of Fujimori’s regime, where the ‘liberalization’ of policymaking halted housing programs.

I applied again to study at the university but didn’t reach the minimum grade. Then I wanted to study nursery at an institute but had no money. So, I began to sell food in Barrios Altos²¹. Then, I joined other vendors in a cooperative to buy a plot of land where we wanted to establish a market. After some years I still owed a large sum to the owner, so eventually, I got bored and just left to work somewhere else. (Rubina M., personal communication, April 24, 2022)

In 1994, Rubina got a hint that some people were parceling land in a zone called Manchay, part of the Pachacamac district, starting her Squatting Period (1994 – 1996). There, Rubina, along with other squatters, registered as a member of the Peasant Community of Collanac and established the first plots of the Sector, where she still lives up to this day.

Another cousin lent me a room in her house at Andahuaylas²² and a building contractor that worked there told me that a [peasant] community called Collanac was parceling land in Manchay. Mario and Maria were born in 1992, so it must have been 1994. I went on a Monday and the *Dirigente* (squatter leader) told me that a meeting was going to be held on Wednesday at 8 pm. That day they made a raffle, and I got the last plot of land <she laughs>. What could I do? It was better than nothing. My plot was full of stones, but they told me that I had to live there, or they would take that land back. [However] my problem was the economy²³, so the building contractor proposed that we could divide the land in half, 250m² each. I would look over the plot, while he helped with food. I accepted and we registered to become part of the Collanac peasant community. (Rubina M., personal communication, April 24, 2022)

²⁰ The testimonies of Rubina and her son Mario have remained as faithful as possible to the interviews. To achieve this, the following symbols have been used: < > to explain moments of the conversation such as laughter, [] to add words necessary for the understanding of the sentence, () to explain the words or language that they used, and words in Spanish are written in italic.

²¹ A traditional neighborhood at Downtown Lima established around the XVI century.

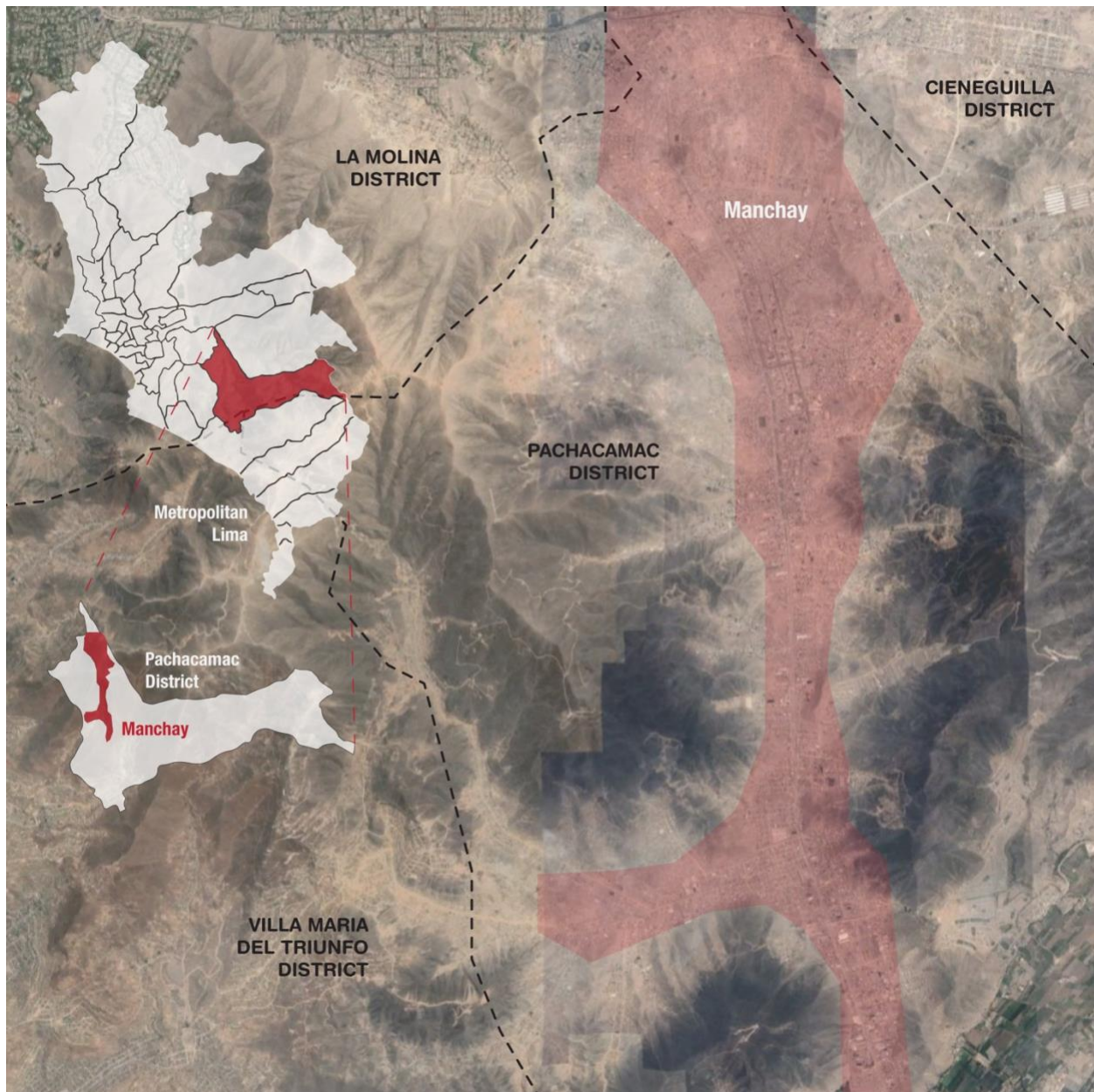
²² Andahuaylas is neighborhood that started as a squatter settlement in the Santa Anita district, close to Barrios Altos.

²³ She is referring to the fact that she could not afford to stop working.

Peasant community is the name that Andean indigenous communities received during the 1970s Agrarian Reform led by General Juan Velasco Alvarado, the first president of the Revolutionary Government of the Armed Forces period. Peruvian researchers have long argued if all peasant communities can be considered indigenous and, therefore, can access the right to prior consultation given by the International Labor Organization Convention 169. Rubina's experience is exactly what distorts this debate. If peasant communities were indigenous, then no outsider should be able to register with them, as their inhabitation of territory comes from ancestral times. In her testimony, peasant communities around Metropolitan Lima were already speculating on land even before the titling policy was introduced in 1996. The notion that squatters are always collectives that immigrate together from another region is a naïve approach to informality. In reality, contemporary squatter groups agglomerate as the chances and opportunities appear: squatters immigrate individually or in small groups, join or are placed into a collective, and/or buy land from land trafficking. They even organize themselves through social media and messaging applications, often colluding with land mafias, politicians, or peasant communities.

Figure 6

Location of Manchay



Source: Own elaboration on Google Earth

One night (between 1994 and 1995), some *negros* and *matones* (black men and thugs²⁴) came with rifles to abduct men to free their plots of land. Before having the *vivencia*²⁵, we had to fight other invaders (opposing squatters) that wanted to take our plot of land. There was a battle <she laughs>, the [Sector] had already sold those plots, but the invaders wanted them for free. Those invaders

²⁴ Evidence of the racial stigma that the Afro-Peruvian population has in Peru.

²⁵ *Vivencia* could be translated to the acknowledgment by the local municipality that you are living in a place.

then sell those plots to someone else that we don't know; they leave us the problematic [person]. They lit fire to a woman's shack to frighten us, but we fought against them. (Rubina M., personal communication, April 24, 2022)

The 'Battle for the Sector' adds some conflicting nuance to the situation of urban squatters in Lima. The romanticization that informal settlements battle land mafias to protect their lands is naïve and incorrect. Rubina's testimony provides evidence that land trafficking exists as a part of the bottom-up arrangements that informal settlements have in their self-governance systems: "The [Sector] had already sold those plots". In addition, it also shows how prone to displacement are informal settlements before they obtain land tenure. If police forces do not evict them, other squatter groups will battle for that land.

One aspect that will be present in Rubina's testimony is the creation of *invented* spaces (Miraftab, 2009) to fill the gaps that state policies have left at the urban margins. The *invited* spaces of public participation through which the state pretends to attend communal claims (Miraftab, 2020) have "often become the accomplice of neoliberal governance" (Miraftab, 2009, p. 43). In response, communities, through collective action, have been *inventing* their own spaces that directly confront authorities and destabilize the status quo (Miraftab, 2009). That Wednesday night meeting at the Sector is an example of an *invented* space, as well as some of the community workdays held during those years.

Initially, there were weekly meetings and biweekly *faenas*²⁶. Assisting was mandatory. If you didn't go, they would take the land from you. [...] I found that land with stones and to remove that stone I had to work. Burn a tire, heat the stone, and break it with a *comba* (Peruvian slang for sledgehammer). Then I sold each stone for 10 soles to truckers who then used them for construction. (Rubina M., personal communication, February 24, 2023)

I usually went alone to the meetings and *faenas* because the building contractor was never there. Previously he had charged me 100 soles²⁷ to build a shack and clean some stones. There were lots of stones <she laughs>, that is why it is called the [real name of the Sector]. One day (this happened in 1996) I registered my *vivencia*. So, I told this man that, since I went to every meeting and *faena* alone, it was better if I paid him back his 100 soles and I kept the plot of land for myself. He had lots of plots, so he just left. [...] The *vivencia* was also useful to obtain light (electric services). We (the Sector) joined as a whole and each paid 100 soles over 7 months to obtain the lightbox (electric meter). The community hired an architect to draft a plan and we got light. Also, we had barrels where they left us water. (Rubina M., personal communication, April 24, 2022)

These *invented* spaces such as the *faenas*, *ollas comunes*²⁸, and other ordinary daily actions that the Sector maintained during its formative years carried radicalism. In informal contexts, radical planning practices are insurgent to promote social transformation and inclusion. (Miraftab, 2009). This is why Roy

²⁶ A reciprocal and cooperative practice of communal work originated during the Inka period. Nowadays, *faenas* are held in peasant communities and squatter settlements.

²⁷ 16.26 soles inflation-adjusted in 2022 soles. Inflation-adjusted using the Consumer Price Index of the Central Reserve Bank of Peru at: <https://estadisticas.bcrp.gob.pe/estadisticas/series/anuales/resultados/PM05217PA/html>.

²⁸ Translated to Common Pots, when a group of women cook for the members of the community that suffer from food insecurity.

(2009) advocates for a calculated informality, a “pervasive socio-spatial logic” (Roy, 2015, p. 820), and “an idiom of urbanization, a logic through which differential spatial value is produced and managed” (Roy, 2011, p. 226). Also, Roy (2011) coins the term ‘subaltern urbanism’ to describe these geographies that do not belong to the elite classes and involve a ‘political society’ characterized by claims to habitation and livelihood that involve the violation of the law (Chatterjee, 2004).

Figure 7

Faena to clean stones from the streets



Source: Mario H.

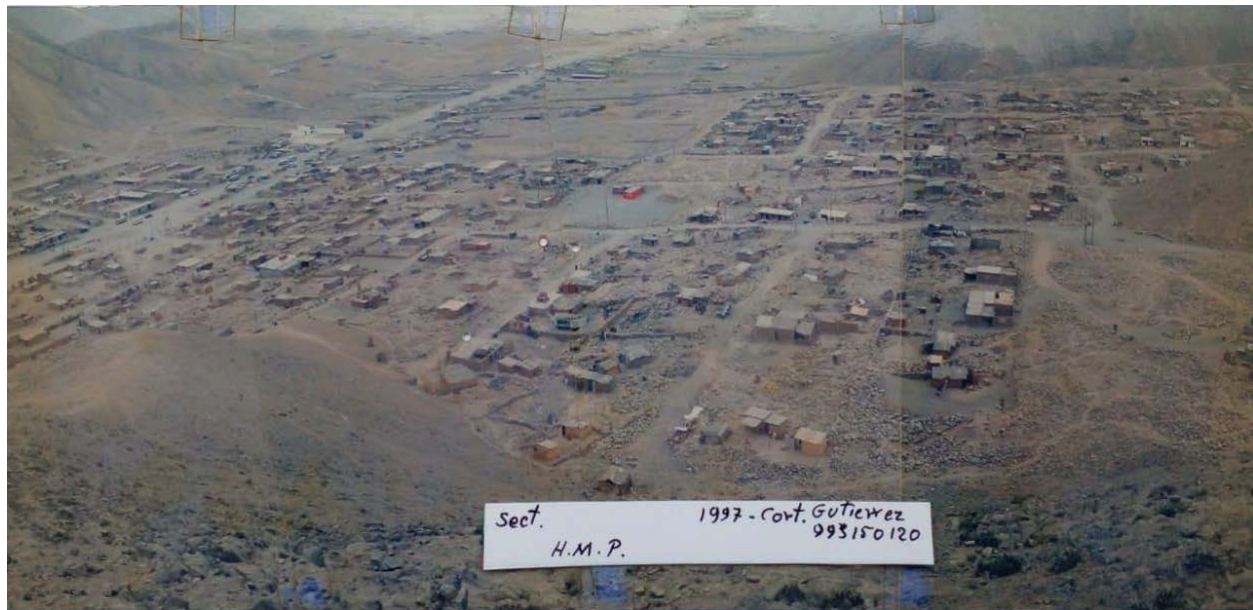
Rubina’s experience offers evidence of how important the creation of *invented* spaces of insurgent planning was. In contrast to what was described in the literature review, the Pachacamac municipality was already granting an early form of possession certificates, under the name of *vivencia*, to accelerate the provision of electricity. This was happening 10 years before Law 28687 – Municipal Certificates of Possession – was approved. This insurgent planning (Miraftab, 2009) that led to the acknowledgment of use rights in the Sector is what Calderón Cockburn (2019) calls “popular pressures” (p. 57). The local municipality opposed the authoritarian national regime, which was about to approve the titling policy that same year. This shows that “the state is not monolithic. Different state agencies may pursue different policies or specific actions [...]. State actions tend to depend, in turn, on squatters’ levels of organization, and the elite’s interest in the political support of squatters” (Álvarez-Rivadulla, 2017, pp. 6–7). Also, this

shows how intertwined the definition of the boundaries of legality by state action is with the burgeoning of informal settlements at a local level.

Furthermore, the building contractor is a central piece in Rubina's search for a plot of land. He seems an early form of a land trafficker whose strategy was to help migrant rural women squat land and leave them to look after the plots in different parts of Lima, while he kept half of each of those plots. This probably took time as local municipalities had first to acknowledge the existence of those informal settlements to give them a *vivencia*; then the building contractor could sell those plots. This method contrasts with the violent group described before, who abducted men and fought to claim previously squatted land. This method was probably faster as traffickers could claim a *vivencia* by force and then sell those plots immediately. In both cases, the key objective is obtaining the *vivencia*, which gave a *de facto* tenure over land: "After I obtained the *vivencia*, everything was calmer. Some people began to build schools, churches, parks. I also worked for a school and met lots of people around Manchay" (Rubina M., personal communication, April 24, 2022). Clearly, land mafias were already occurring even before COFOPRI was established in 1996 and, in this regard, the titling policy, isolated without land use planning, was destined to be irrelevant as it did not challenge the illegal land markets that were blooming. As for Rubina, she tricked the building contractor with a trick of her own. She leveraged the social cohesion of the Sector assisting the *faenas* and registered the *vivencia* by herself. Despite there is some intention to morally justify her action – "I paid him back his 100 soles" – she managed to trick the building contractor to keep the plot for her family. Furthermore, the building contractor's strategy provides evidence of the gender roles in squatting environments. Women were intended to look after the land, while men had to leave the settlement to go to work.

Figure 8

The Sector in 1997



Source: Mario H.

Obtaining the *vivencia* set up a Regularization Period for Rubina (1996 – 2006) where she was already tenured by the local municipality and no longer had to resist outsiders’ influence to take her land. During this period, the Sector established its Neighborhood Council to organize the settlement’s self-governance. Before 2003, the organization of the settlement was in the hands of the Collanac community, which decided who the local representatives would be. In 2003, Law 27972²⁹ – Organic Law of Municipalities – was approved, and it included the registration of neighborhood organizations as a municipal competence: “Article 73, Number 5.3. Organize the records of social and neighborhood organizations in their jurisdiction”. From that moment onwards the Pachacamac municipality needed to register every neighborhood organization in the district, so the Sector broke away from Collanac and drafted its statute defining that the settlement was going to be represented by a democratically elected Neighborhood Council for 2-year periods. Other rules are that each neighbor must pay a monthly 3 soles fee for administrative expenses and the possibility to discuss neighbor-led initiatives during meetings to vote for their approval.

During the first half of 2006, two different events would alter the urbanization situation in the Sector. First, the Municipal Certificates of Possession, to accelerate water and sewage provision, became a

²⁹[https://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/BCD316201CA9CDCA05258100005DBE7A/\\$FILE/1_2.Compendio-normativo-OT.pdf](https://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/BCD316201CA9CDCA05258100005DBE7A/$FILE/1_2.Compendio-normativo-OT.pdf)

national policy through Law 28687. All local municipalities began issuing certificates, which would lead to the escalation of the land mafias over the next few years. In Pachacamac, the certificate of possession replaced the *vivencia*. Second, the presidential candidates for that year's elections toured Peru offering campaign promises. Alan García, of the APRA political party, assured that he would supply Manchay with water and sewage. He probably leveraged the brand-new possession law to make this promise, and this clever maneuver led him to win the elections and govern Peru until 2011. Recalling Calderón Cockburn (2019), “the property title was the end of a road in which services were first provided, but the titling policy from 1996 imposed the title as one of the first steps and an essential requirement for the provision of services” (p. 56). Finally, every informal settlement in Peru could receive water and sanitation through municipal certificates of possession.

From Rubina’s side, this period aligns with her disconnection from the Sector due to labor reasons. During the 90s, Mario and María, her twin children, were in their initial school years and she, as a single mother, had to increase her working hours and find a different job. By the end of that decade, she changed work and began to work at my house, which also reduced her assistance to the *faenas* in the Sector. As her children grew up, the need for a better-equipped home also increased. Equipped with a possession certificate and the promise of water and sanitation, she wanted to improve her home and build a brick first floor. However, her experience depicts how the titling model distorted the sequence of urbanization in informal settlements because, by that time, it was mandatory to have a land title to obtain the legal authorization to build a home.

Alan Garcia told us he was going to give us water and sewage during his campaign and he did it. [However] I wanted to build something, so I went to the municipality with my property taxes receipt. They told me I couldn’t build because I didn’t have a legal title. To this day we still don’t have a title. (Rubina M., personal communication, April 24, 2022).

Today, the municipality of Pachacamac grants self-construction permits to residents with certificates of possession that have structure and facility plans. Rubina did not know this before the interview, which means that she has not pursued her desire to build a masonry dwelling on her land. As of today, she still lives in a wooden shack.

As a result of its nationally recognized land tenure, the Sector entered a Consolidation Period (2006 – 2016). During this period, the Neighborhood Council established two main self-governance rules: *ampliaciones* (extensions) and conflict resolution. First, as explained in the literature review, the certificates of possession increased land trafficking, which became an ad-hoc funding strategy for the Sector to finance neighborhood improvements or to hire professionals. The council began to carry out *ampliaciones* where the settlement is expanded through the plotting of surrounding land (Mario H., personal communication, March 7, 2023). These plots are then released in an illegal land market with the commitment that the buyers

would be registered as part of the Sector to obtain their certificate of possession. Nevertheless, the practice of land trafficking is dangerous. Illegal land markets regulate themselves through other illegal practices such as fake complaints or intimidation. Mario, Rubina's son, was president of the Neighborhood Council from 2015 to 2016 and experienced a failed attempt to carry out an *ampliación*.

In my administration, I told the neighbors that, to grow, we needed money. So, I proposed to expand because I saw that the previous leaders had done it as well. 30 lots at 10 or 15 thousand soles were going to fundraise more than 300 thousand soles. This would be used for neighborhood projects or improvements. [However] it could not be carried out because some traffickers wanted half the money. (They exercise their authority through complaints and intimidation.) I was denounced 8 times. They get fraudulent documents and lie saying that we are trespassing on their property or they make an agreement with some neighbors who also want part of the money. Sometimes they resort to intimidation through weapons or death threats. (Mario H., personal communication, March 7, 2023)

Second, as the Sector expanded more physically with the arrival of new neighbors, new disputes could ensue. This led to the need for the Neighborhood Council to begin to act as a conflict resolution body with the capacity to impose pecuniary sanctions or even order expulsions.

I had an issue with a man who was *fumón* (a cannabis smoker) <sighs>. I had my breeding of guinea pigs, and someone stole from me and no neighbor knew who it was. Later we found out but initially, no neighbor wanted to be my witness because that man was a *fumón*. They were afraid that he would become violent or hurt them. [...] When he started stealing from other neighbors, we complained during a meeting with the Neighborhood Council. We told them that we couldn't allow that kind of people and it was better that they leave. The council decided that he should sell his land and leave. (Rubina M., personal communication, February 24, 2023)

A concrete example of how these two council roles worked in practice is the case of their communal premise. At some point after 2006, the council acted as a conflict resolution body and expelled a neighbor from the Sector. Alienated land that had use rights through a municipal certificate of possession is supposed to go back to the local municipality (see Table 1 on p. 19), so immediately the Neighborhood Council asked a neighbor to live there. Initially the idea was to sale that parcel through the illegal land market. However, a recent *ampliación* had left more revenue than expected and the council decided to build a community premise instead (Rubina M., personal communication, April 24, 2022; February 24, 2023; Mario H., personal communication, March 7, 2023).

Figure 9

Faena to build the communal premise during the late 2000s



Source: Mario H.

By the end of this period, most of the collective claims that had been advocated by the original Sector households were achieved. Despite land titles were still in process, they all had certificates of possession and services. Ironically, even though these were obtained through collective processes, they have undermined the collective structure in the Sector. Most of the original residents have stopped going to the meetings because they consider that they already have what they need. Rubina in particular stopped going after Mario was elected council president and began to represent the family.

Of the neighbors below (the first houses) there are only a few [that go to the meetings]. Now each person takes charge of their land. [...] The people above (new houses at higher altitudes) do not have water or electricity. They still need the board to register them, hold meetings, and organize *faenas*. That part is still full of stones and they must clear their way. (Rubina M., personal communication, February 24, 2022)

According to Mario, meetings are now held every 3 months or if they are needed (Mario H., personal communication, March 7, 2023). “Parks do not gather the same collective interest by the neighborhood” (Mario H., personal communication, August 17, 2022) he says to explain why neighbors are no longer eager to participate in collective action to advocate for other amenities.

The final blow to the deteriorating social cohesion of the Sector was dealt during the last months of Mario's administration when he started the process to obtain land titles. In Peru, to formalize an informal settlement, COFOPRI performs the Legal Physical Land Planning. They visit the settlement to verify the concordance between their physical and legal reality, especially to avoid overlapping areas with other third-party properties. Often, informal settlements try to accelerate this process by doing it on their own. They hire an architect or engineer to elaborate a settlement profile that consists of a description, geographical coordinates, and a land use plan. Then, they present this profile to the National Superintendency of Public Records (SUNARP) to verify overlapping areas. The result of this search is presented to COFOPRI, which proceeds to the provision of land titles. Mario followed this process and, upon obtaining the property search result, discovered that land titling was not possible for the Sector since that land belongs to the Collanac peasant community and, even worse, is currently under litigation with another peasant community called Llanaviva (Mario H., personal communication, March 7, 2023). According to article 89 of the 1993 Constitution, indigenous land is imprescriptible, so the Sector cannot claim adverse possession and, therefore, will never be able to receive a land title. Collanac members have told them that the only possible way out for them would be to buy that land from the litigation winner but, at the same time, they cannot be evicted as their use rights are nationally and legally recognized by the municipal certificate of possession.

Figure 10

The Sector Gateway in 2012



Source: Mario H.

This event followed by corruption scandals in the next administrations marked the start of an Individualization Period (2016 – onwards) where a sort of “every person for themselves” attitude invaded the settlement, as described by Rubina:

After Mario was president, the council also began to steal from the Sector. Initially, the council members were related to our community, but when outsiders began to be part, problems began. They sell plots of land (*ampliaciones*) and steal that money. The Board changes every two years, but they always steal. There is no progress. So, now the majority does not want to assist to the meetings. We are not a community anymore; we no longer have *faenas* together. (Rubina M., personal communication, April 24, 2022)

In the beginning, the council was respected because they registered us and placed us [in the land], but little by little they have moved away [from the people]. When the council joined with the land traffickers, the municipality, and the police station, the neighbors stopped trusting. (Rubina M., personal communication, February 24, 2023)

Rubina identifies two major factors that have contributed to the erosion of social cohesion in the Sector: the influx of outsiders and the growth of land trafficking. These factors are mutually reinforcing, as the illegal sale of land has facilitated the arrival of new residents, while the settlement's increasing population has made it more attractive to land speculators and mafias. As a result, collective structures that once existed in the community have been replaced by pervasive market logic, and informal settlements have become enmeshed in illicit activities that have been enabled by past property policies. In the early days of the Sector, Neighborhood Councils worked to promote the common good by fostering the development of the settlement. However, today's councils are perceived as prioritizing personal gain over the collective interest. Moreover, residents' trust in authorities has been eroded by their perceived collusion with land traffickers, and the absence of state support during the Covid 19 pandemic has further widened the social divide. In this context, individuality has become the primary defense mechanism for residents, as traditional social structures have been dismantled. The only remaining vestiges of community cohesion can be found in the dance and painting workshops organized by social organizations and nonprofits.

The recent behavior of Neighborhood Councils in the Sector can be attributed to the rapid land appreciation in the area. As Metropolitan Lima expands, the once remote Manchay settlement has become closer to residential and industrial districts such as La Molina, Santa Anita, and Ate, to the north; Villa El Salvador, Villa Maria del Triunfo, and San Juan de Miraflores, to the east; and Lurin, to the south. The recent improvements made to Víctor Malásquez Avenue have further increased connectivity between Manchay and surrounding areas. At the local level, residents are dividing their original 500 m² plots into smaller subplots of 125 m². One of the subplots is kept for personal use, while the other three are sold or rented out.

Currently, the Neighborhood Council offers 125 m² unserved plots for 10,000 soles and neighbors sell served plots at 90,000 soles. Table 4 shows how the land has appreciated in an illegal land market.

Rubina initially paid 100 soles for 500 m² in 1994, which would be 0.01 soles per m² in 2018 soles. Rapidly the land appreciated and the Collanac community began to sell parcels at 0.11 soles per m² in 1998. In 2018, Rubina’s neighbors were selling part of their parcels for 720.00 soles, which means that the land around Rubina’s household is being sold at a price 7,000 times more expensive in just 20 years. All these prices are assessed through conversations between neighbors and other sectors within Manchay since they are not market-assessed. To make a comparison with a formal real estate market, Table 5 shows land appreciation in La Molina district, a high-income district located north of Manchay. In La Molina, in the same period, land became almost 14 times more expensive. At least in these two districts, there has been a land appreciation effect (see Figure 11). However, in Manchay land prices have skyrocketed and all these real estate transactions are happening in an illegal land market as parcels without a land title cannot be legally sold.

Table 4

Cost per m² in the Sector: 1993 – 2018 (inflation-adjusted in 2018 soles)

Year	Cost per 500 m ² (S/)	Cost per m ² (S/)	Change factor (in relation to the previous year)	Change factor (in relation to 1998)
1994	5.57*	0.01		
1998	110.00	0.11	18.97	
2005	7,333.33	8.13	75.04	75.04
2011	56,170.21	91.76	10.29	857.82
2018	360,000.00	720.00	6.85	6,737.46

*Originally 100 soles in 1994.

Note: Inflation-adjusted using the Consumer Price Index of the Central Reserve Bank of Peru at:

<https://estadisticas.bcrp.gob.pe/estadisticas/series/anuales/resultados/PM05217PA/html>

Source: Own elaboration on Mario H., personal communication, March 7, 2023

Table 5*Cost per m² in La Molina district: 1993 – 2018 (inflation-adjusted in 2018 soles)*

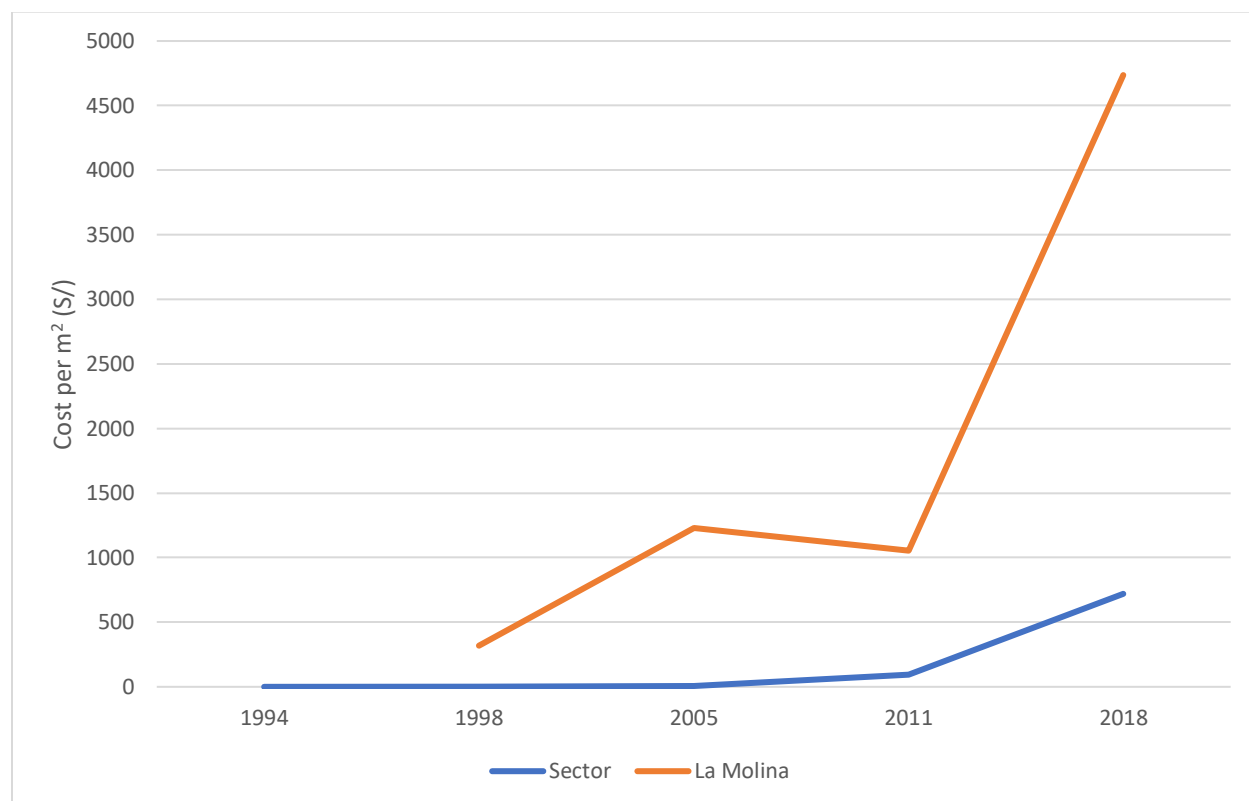
Year	Cost per m ² (S/)	Change factor (in relation to the previous year)	Change factor (in relation to 1993)
1998	318.53		
2005	1,229.11	2.86	2.86
2011	1,054.24	-0.14	2.31
2018	4,736.19	3.49	13.87

Note: Inflation-adjusted using the Consumer Price Index of the Central Reserve Bank of Peru at:

<https://estadisticas.bcrp.gob.pe/estadisticas/series/anuales/resultados/PM05217PA/html>

Source: Own elaboration on Indicators of Costs for Rent and Sale of Housing Units at:

<https://www.bcrp.gob.pe/estadisticas/indicador-de-precios-de-venta-de-departamentos.html>

Figure 11*Cost per m² in the Sector and La Molina district: 1993 – 2018 (inflation-adjusted in 2018 soles)*

Source: Own elaboration on Tables 4 and 5

Over the course of several conversations, Rubina and Mario explained to me that people that are willing to pay for this land are unable to obtain bank loans or pay the full price outright. As a result, they borrow from family members or turn to informal money lenders. These lenders are typically formal entrepreneurs who offer low-interest loans in exchange for collateral in the form of the certificate of possession. However, some of these lenders use aggressive tactics to collect payment and seize collateral. In cases where the borrower cannot repay the loan or refuses to surrender the property, the lender may resort to intimidating or threatening the borrower with violence. Despite the risks, many people like Rubina have no other option but to turn to these lenders because housing programs can only be accessed by having a land title. Rubina, for instance, borrowed 2,000 soles from an electrical appliance businessman to install sanitary ware in her home. She repaid the loan years later, highlighting the challenges and risks of informal lending in these situations.

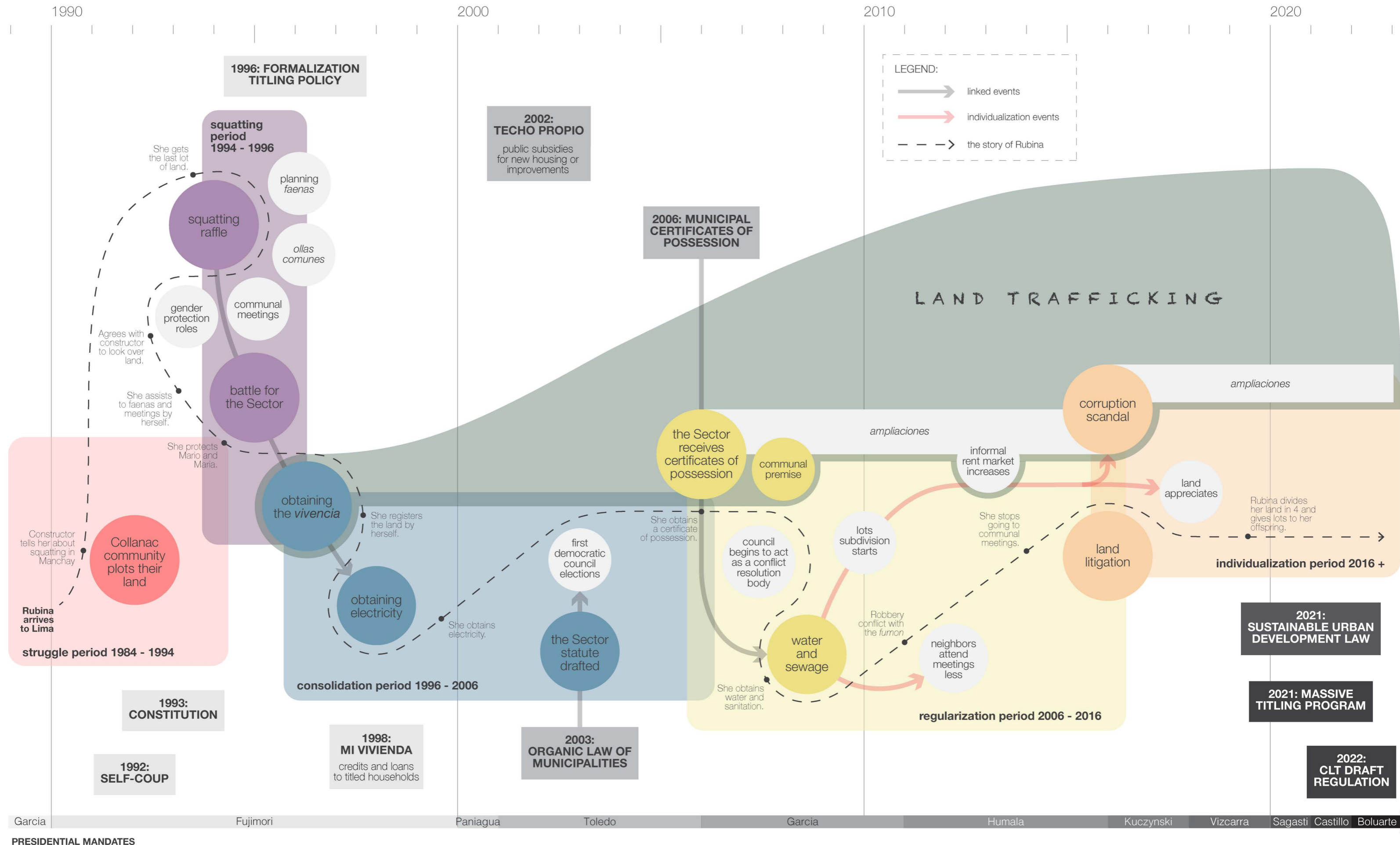
Finally, there appears to be no intention to maintain the settlement's affordability, as land has been commodified based on its spatial location. Residents living next to the avenue have built multi-story structures and are renting rooms to Venezuelan immigrants, while those on the inner streets have established light industrial businesses such as automobile repair shops. Rubina also divided her plot, gave 3 to her children, and kept one for herself. She desires to sell her subplot and relocate to a better neighborhood, but her limited outside options prevent her from doing so. In contrast, Mario wishes to remain in the Sector as he enjoys the weather and aims to purchase his siblings' subplots to profit from them.

The lot must be more expensive (increase in price and therefore in property tax) because to live you have to build. One has to keep going. Mine cost me very cheap, almost nothing, and now it has appreciated a lot. Right now, it has water, drainage, electricity, gas, everything. (Rubina M., personal communication, February 24, 2023)

I see that the climate is calm, there is always sun. When I go out to Lima, I feel the cold. [...] That's why I told my sister to sell me her part to rent it out. [...] (I plan to) stay here and have a source of income. (Mario H., personal communication, March 7, 2023)

The changing tides in Peruvian property rights and all the loopholes in their regulations have altered the community arrangements of the Sector. Figure 12 summarizes both the story of Rubina and the Sector, along with the different public policies introduced over the last 30 years:

Figure 12
The Story of Rubina and the Sector



Chapter 4: On Informality and Community Land Trusts

This thesis began with the proposition that, given that informal settlements have been existing as deregulated collective urbanizations on the ground for so much time, then the CLT might be the optimal way to address their property arrangements. Bringing together the literature review in Chapter 2 and the testimonies gathered in Chapter 3, Table 6 analyzes the compatibility between the CLT core components and the self-governance in the Sector.

Table 6

A comparison of CLT core components and the self-governance system in the Sector

CLT core component	Self-governance in the Sector	Is the component achieved?
CLT Rules		
Ban on absentee	<i>“They told me that I had to live there or they would take that land back.”</i>	Partially , according to the COFOPRI Directive mentioned in chapter 2.2, that land goes back to the local municipality. The Neighborhood Council acts before this happens leaving someone to look after the plot. Then that land is sold in the illegal land market.
Democratic elections	<i>“The Board changes every two years.”</i>	Yes , there are democratic elections between different candidates.
Representative board	<i>“When outsiders began to be part, problems began.”</i>	Partially . Elections should result in a representative board, but some original residents, like Rubina, do not feel represented by new neighbors.
Sanctions	<i>“The council decided that he should sell his land and leave.”</i>	Yes , there is a clear sanction system.
Community arrangements		
Consensus building	<i>“We complained during a meeting with the Neighborhood Council.”</i>	No , it seems that the council has the last unappealable word. No effort to build consensus.
Recognized authorities	<i>“The Board also began to steal from the Sector.”</i>	No , since the council began to steal and prioritize their personal gain there is a clear lack of trust towards authorities.
Sense of belonging	<i>“Parks do not gather the same collective interest by the neighborhood.”</i>	Partially , there is an “every man for itself” logic but also some neighbors enjoy living in the Sector.
Social cohesion	<i>“We joined as a whole and each paid 100 soles during 7 months to obtain the light box.”</i>	Partially , historically the Sector neighbors have joined to advocate for collective claims but that collectivity has been undermined in the last few years.

Socio-political context		
No illegal land markets	<i>"[The Sector] had already sold those plots."</i>	No , the Sector self-governance is based in an illegal land market.
State support	<i>"Alan Garcia told us he was going to give us water and sewage during his campaign and he did it."</i>	Partially , previously the Sector has had support from the government but now there is a void due to the pandemic.
Third party support	Dance and painting events organized by non-profits.	Partially , there are non-profits that work in Manchay but not one that specifically works in the Sector.
Threat of displacement	<i>"They lit fire to a woman's shack to frighten us, but we fought against them."</i>	No , because certificates of possession have given them tenure and protect them against eviction. Also, no risk of gentrification.
Economic feasibility		
Funding	<i>"30 lots [...] were going to fundraise more than 300 thousand soles [...] for neighborhood projects or improvements."</i>	Yes , called <i>ampliaciones</i> but it is funding that comes from a land trafficking. They also raise money through administrative fees and renting out the communal premise for events.
Legal feasibility		
Land acquisition	-	No , despite Law 31313 enables land acquisition by the legal entity, the land is currently under litigation.
Land transferring	-	Yes , the CLT draft regulation enables land transferring to the Managing Entity.
Legal entity	-	Yes , the CLT draft regulation defines local governments as Managing Entities which will administer land.
Planning		
Affordable housing	125 m ² served plots for 90,000 soles and unserved plots for 10,000 soles.	No , land is no longer affordable and people have to resort to informal lenders to pay them.
Spatial planning	The council decides about prioritizing infrastructure and communal amenities.	Yes , although it depends on the agenda of the Neighborhood Council, the communal premise and the park are examples.

Preconditions		
Individually owned homes	There is a large informal real estate market.	Yes , but it will depend on how the informal real estate market evolves. If neighbors mostly sell their subplots, then most homes will be individually owned. If neighbors prefer to rent, then this component is not achieved.
Lack of titles	<i>“To this day we still don’t have a title.”</i>	Yes , not a single household in the Sector has a legal land title. They only have possession certificates.
Organizational structure ^[1]	<i>“We registered to become part of the Collanac peasant community.”</i>	Yes , there is an updated list of residents.
Permanent affordability ^[2]	<i>“One has to keep going. Mine cost me very cheap, almost nothing, and now it has appreciated a lot.”</i>	No , completely the opposite. There is a desire for plots to appreciate and make profit through sale or rent.
Voluntary membership	<i>“(My plan is to) stay here and have a source of income.”</i>	Yes , but not exactly voluntary. Residents do not have outside options to buy land somewhere else.

^[1] In this table, organizational structure has been included in preconditions because it assesses the potentiality of implementing a CLT in the Sector.

^[2] In this table, permanent affordability has been included in preconditions because it assesses the potentiality of implementing a CLT in the Sector.

Source: Own elaboration

As Table 6 shows, the self-governance of the Sector does not greatly differ from CLT core components since more than half of the components are fulfilled. However, a detailed view of each CLT theme provides insight into the Sector's main weaknesses, from the perspective of one of its originating households, in establishing a CLT:

First, the Sector already has established local rules that can serve as a foundation for creating CLT rules. Despite some members may not feel adequately represented, which is sometimes a challenge in democratic systems, two decades of experience organizing democratic elections provide a solid framework to manage neighborhood affairs, establishing clear processes to address the issue of absent or dysfunctional neighbors. From a governance approach, the Sector’s Neighborhood Council is a consolidated institution recognized by both the Pachacamac municipality and the neighbors.

Second, the main flaw of the Sector is the lack of community arrangements, which is a critical component of successful CLT models explored in the literature review. The once reciprocal society based on solidarity that existed during the 90s has now given way to a more individualistic approach to settlement development. The Sector went from joining as a group to advocate for electric services to a “now each person takes charge of their land” (Rubina M., personal communication, February 24, 2023) approach. This shift towards individualism represents that the 90s *zeitgeist*, which sought to empower households to solve their own needs through market mechanisms, has been finally achieved. Evidence of this is the latest council

administrations who have prioritized their personal gain at the expense of the neighborhood, increasingly affecting the social cohesion and sense of belonging that once characterized the Sector.

Third, perhaps one of the reasons why cohesion has decreased in the Sector is because they do not have a need to deal with a hostile socio-political context. The Sector residents have not faced an eviction risk since they registered their *vivencia* at the Pachacamac municipality in 1996. There is no reason for neighbors to rally against a larger threat. Furthermore, implementing a CLT would be extremely difficult since their funding is entirely based on the illegal sale of land. Basile & Ehlenz (2020) explain how illegal land markets are the main opposers to land regularization. These illegal practices could be resolved with the state's or third parties' support, but both are absent in the Sector, especially after the Covid 19 pandemic. In environments of state neglect, other powers, such as land mafias, thrive to seize power.

Fourth, the implementation of a CLT will decrease the quantitative housing deficit but not the qualitative one; a shack in an informal settlement is still a shack. However, the Sector seems to be a neighborhood that understands the need for fundraising to achieve economic feasibility. The existence of illegal land markets and lenders in the Sector means that there are people willing to buy property and that neighbors willing to go into debt to improve their homes, respectively. Implementing a CLT gives access to both. In fact, not only does it retrofit the existing housing stock into affordable housing, but the CLT draft regulation mentions that, upon the formation of a CLT, the local government commits to providing new individually titled housing of social interest. These would be a gateway for residents to access loans, mortgages, and state subsidies that right now need an individual land title.

Fifth, Peru has the advantage that it already has a law that makes CLTs legal. It is not necessary to work around current property rules to find a way to establish a legal entity or to perform the land transfer, as was done in Puerto Rico, Brazil, and Kenya. However, the Sector must deal with a huge land struggle, and land is probably the main component of a CLT. Litigation between peasant land is common in Peru and is usually encouraged by land mafias that wish to profit from it. The whole situation is a legal conundrum since the Sector residents are legally recognized to use the land of a third party that, at some point, may want to evict them. It is an example of what Rose (1988) calls the 'muddy rules' in property rights, a situation in which ambiguous rules alter the clarity of the relationship between the parties causing users not to know their rights and obligations.

Sixth, there is a notion about planning and the importance of public amenities for residents. During the 2000s, the Neighborhood Council decided to build the community premise that was later used for assemblies and is now also rented out in case a neighbor wants to organize an event such as weddings or birthdays. During his administration, Mario contacted me to design the park and the youth center, which unfortunately were not built due to a lack of financing and municipal support. In addition, there has been a

constant search for basic services and legal land tenure. While it is true that perhaps the planning could be more participatory since the council makes all the decisions, the development of the settlement has been a priority at least until the Mario administration. On the other hand, the need for affordable housing is not understood as land is currently seen as a source of income, but it may be because neighbors have yet to experience the effects of property tax increases.

Seventh, while the Sector possesses most of the necessary conditions to establish a CLT, it, unfortunately, lacks the motivation to maintain affordable housing. One of the fundamental principles of a CLT is to ensure that housing remains affordable in perpetuity by separating the land's value from any improvements made to it. If implemented in the Sector, this could drastically decrease the cost of homes if they were to receive a land title, particularly as most properties are still shacks constructed from primarily wooden materials. Nevertheless, the neighbors appear to be moving in the opposite direction, taking advantage of the area's increasing land value due to its proximity and connectivity to other districts. Without this appreciation in property value, it would be unlikely for the community to profit from their homes. So, it is understandable that for the Sector neighbors, permanent affordability is not a priority.

Chapter 5: Conclusions and further research

In conclusion, although Table 6 indicates that the Sector meets more than half of the core components required for a CLT, a more in-depth analysis highlights its shortcomings, at least from the perspective of one of its households, in meeting the most critical factors. The community's diminishing social cohesion, complications with litigated land, and a lack of motivation to maintain affordable housing render it an unsuitable location for establishing a CLT. However, there are certain lessons to be drawn from this case concerning the improvement of the draft CLT regulation.

The fact that the Sector and Rubina's household may not be ideally situated for a CLT does not necessarily mean that other informal settlements – nor other communities within this settlement – cannot benefit from this property regime. This thesis suggests that households like Rubina's in settlements similar to the Sector may not be suitable for a CLT. However, many communities in informal settlements in Metropolitan Lima could potentially benefit from this type of property regime. According to Espinoza and Fort (2020), half of the urban expansion in Metropolitan Lima over the past two decades has been informal. Furthermore, Torres & Ruiz-Tagle (2019) have reported that 16% of the total area of Metropolitan Lima is occupied by over 4,333 informal settlements that are either in the process of receiving a property title or have already received one. Of these settlements, COFOPRI has formalized 3,180, 1,106 are in advanced formalization stages, and 47 are in the early stages of formalization. In addition, it is estimated that 54% of the area is occupied by informal settlements that have not yet started the formalization process. Therefore, many different types of informal settlements in Metropolitan Lima share certain similarities but also have differences based on their age and location within the city.

Several patterns are common among informal settlements in Peru. Given the prevalence of informal settlements in Peruvian cities and the likelihood that CLTs will be implemented there, the CLT draft regulation must address critical issues such as:

1. All informal settlements in the country have a Neighborhood Council which is established either to advocate for claims or because they have been registered by the municipality following the Organic Law of Municipalities. These councils have an established board and internal rules that include the ability to hold elections, resolve conflicts, and apply sanctions. The regulation should take into account the importance of social cohesion in a neighborhood, as the literature review has shown that it is crucial for the success of a CLT. Therefore, it should consider the composition of the Neighborhood Council, its electoral period, and the scope of its authority, to establish the CLT rules based on that existing structure.
2. All these settlements likely have some form of an illegal land market, which can be promoted by the Neighborhood Council or by external traffickers. The illegal sale of lots is currently the biggest

driver of urbanization in Peru. One way to deal with them is to facilitate the access of low-income households to a legal real estate market. Currently, households need a land title and credit history to access housing programs, which prevents informal dwellers of accessing them. CLTs give individual titles that households might leverage to access such housing programs. In this sense, the CLT regulation must not be isolated from other programs and land use policies.

3. Most settlements likely have a municipal certificate of possession, and the ones that stand on public land are probably progressing towards titling through property titles. According to Torres & Ruiz-Tagle (2019), the Metropolitan Municipality of Lima has a registry of settlements that are progressing towards formalization through property titles. This presents an opportunity for the Peruvian government to promote pilot projects for CLT implementation. Both the titling policy and the CLT provide residents with individual property titles, only the latter will also protect them from land speculation.
4. Since the certificate of possession is personal, most beneficiaries are likely to live in the settlement, despite renting out part of their properties. It is necessary to specify the different situations that can arise in informal settlements when identifying the beneficiaries of the CLT. For example, a resident could have possession of their lot, bought it but not become independent from the original possessor, be renting it from the original possessor, or merely be in charge of taking care of it so that a land trafficker can later sell it. The correct identification of the tenants of each property is crucial to ensure that affordable housing in the CLT serves the population that needs it the most.
5. Most informal dwellers have to remain in their settlements due to a lack of outside options to buy a new place and move away, whether voluntarily or involuntarily. Although there is an informal market to sell their plots, they are often unable to buy a new place outside their settlement. That is why they resort to dividing them and sell or rent only a part of their plot. The draft regulation states that the housing of a CLT is considered Social Interest Housing. Still, it should be classified as Priority Social Interest Housing since this type of housing is targeted to benefit the lowest socioeconomic sectors who have no outside options to enter the housing market. It is essential to establish this classification to prioritize those in most need of affordable housing.

Nevertheless, the largest challenge for the regulation project policymakers is to consider those characteristics that informal settlements do not have in common:

1. Taking the case of the Sector again, perhaps the implementation of a CLT is a matter of timing (leaving aside the land litigation issue). At some point in its history, the Sector's residents all had a strong social cohesion and a need for affordable housing, making it a suitable candidate for a CLT. Many situations have shifted significantly in the Sector since 2006 when municipal

certificates of possession were introduced as a national policy and land trafficking increased considerably. Perhaps the optimal moment to implement a CLT in an informal settlement is related to the milestone at which individual property policies begin to be introduced. As previously explained, in Metropolitan Lima there are informal settlements in different stages of consolidation. Given that in Peru, a CLT is a method to generate housing of social interest, the draft regulation does consider that suitable land with “the urban and building conditions, such as zoning, the feasibility of services and urban parameters and buildings” must be identified. However, it is also important to consider the state of social cohesion of the informal settlement since a CLT is a long-term neighborhood commitment and not merely a property ownership arrangement. For this reason, it would be necessary to include a social pre-feasibility study with participatory workshops where residents, through voting or consensus, decide freely and knowledgeably if they wish to establish a CLT in their neighborhood. By incorporating it, policy-makers can ensure that a CLT is not imposed on a community but instead is a genuine reflection of their current needs and desires.

2. Another option is that the implementation of a CLT is related to the spatial location of the informal settlement and the risk of gentrification that it is experiencing. For instance, the Sector is situated on the outskirts of Metropolitan Lima and has witnessed its inclusion in the urban area as the city expands and connectivity improves. In contrast, many settlements are located in central Lima, where the recent boom in shopping centers has led to a higher risk of gentrification in lower-middle-class areas with abundant informal economies. Peru has had a shopping center boom in recent years. In 2000, there were 8 shopping centers all concentrated in Lima, in 2016 there were more than 70 and they are located in 13 regions of the country (Lampadia, 2016). As developers increasingly invest in real estate, the threat of displacement looms over informal settlements near shopping centers. In light of this, the installation of a CLT may be more effective in settlements that face a higher risk of displacement due to gentrification. The participatory workshops mentioned earlier can play a crucial role in identifying these fears and concerns within the community. By incorporating the CLT as a tool to protect residents from displacement, the workshops can foster a sense of ownership and empower the community to safeguard their settlement against potential gentrification. Therefore, policymakers must consider the spatial location and gentrification risk when evaluating a settlement's suitability for a CLT. By doing so, they can tailor the implementation of a CLT to the specific needs of the community and ensure that it serves as an effective tool for safeguarding their housing rights.

Furthermore, Peru has had 2 very different property policies: a neoliberal land titling policy and a progressive land possession policy. Yet both caused adverse effects. The life story of Rubina provides an opportunity to learn of unsuccessful previous property policies:

1. The land titling policy failed to integrate informal communities because it was isolated. Since the Ministry of Housing was closed, there was neither land planning nor housing programs. Above all, the policy completely ignored the bottom-up situation of informal settlements. A clear example is the case of Rubina in which the land titling cannot proceed because the land belongs to someone else. Faced with this situation, the state does not have the tools to implement its own public policy. A policy aimed at low-income families that can be stopped by a legal blockade is bound to fail. So, the CLT regulation should not only relate to land planning instruments and housing programs but should also do extensive work to know the needs, neighborhood rules, and current situation of the informal settlement.
2. The land possession policy was successful in recognizing informal settlements but had adverse effects because it had loopholes that could be easily distorted. It gave decision-making power to many individuals and created opportunities for corruption in the process. Currently, the land mafias are in collusion with local leaders, police, public officials, or politicians since these are important figures in the process to obtain a municipal certificate of possession. When individuals must make decisions, there is likely to be more room for corruption. In this sense, the traditional CLT Tripartite Board might be a way to face this loophole. A Tripartite Board is composed of one-third of residents, one-third of members of the local government, and one-third of members from outside the community. In the certificates of possession model, decision-making is concentrated on a few specific stakeholders. In CLTs, decision-making must be debated among the members of the board who reach a consensus for the public benefit of the neighborhood, making it a powerful tool against illegal land markets. Moreover, the draft regulation states that the owner of the land will be the local government, something that has not been seen in any case study explored. This is a change that needs further investigation, but it could be risky as it would reduce the autonomy of the CLT and perhaps enter the same loopholes as previous property policies.

Finally, further research will determine which property arrangements are better for each typology of informal settlement. Ideally, neighbors should be able to decide from a list of property policies how they want to inhabit their space. As for the Sector, evidence presented here highlights that some households want a property arrangement that enables them to remain in their place while profiting from it. In this sense, municipal certificates of possession have worked towards this end but they have unleashed a huge illegal land market, which has exceedingly harmed Peruvian cities. In contrast, land titles, which the Sector neighbors desperately want, will not fulfill their desire as, due to gentrification, they will probably be displaced sooner or later. This is research that should be revisited in a decade or two. So, which property arrangement would benefit them? Some recent trends indicate that CLTs around the world are adding rental housing to their portfolio (Ciardullo, 2013). In addition, some global south countries are promoting rental

housing as a way to deal with the low-income housing shortage. Perhaps a combination of these two, a CLT that prioritizes rent, would be the best option for residents like Rubina and others in the Sector. While it is true that on first impressions this may raise equity issues, it is important to remember that a CLT separates the land from the infrastructure. Since the land is an inelastic good, the owner would not be able to increase the rent on their initiative. In this way, the tenant would pay a just rent for leasing the improvement, while the owner would be limited from commodifying that land.

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