

Land governance in the municipality of Oiapoque-AP-BR, from the perspective of land transfers from the union to the land estate of the Amapa's state

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ABSTRACT

The article analyses the process of land regularization in the municipality of Oiapoque (Amapá's state), with a theoretical perspective on the discussion of land governance in the municipality based on transfers of land from the Federal Government to the state of Amapá. The methodology was based on the main legal documents that attest to the transfer of land, especially Law No. 10.304/2001. The relevance and importance of the article lies in highlighting the overlapping parcels of land in the territory, and how the municipality is organizing itself to address the issue of a new territorial planning through responsible governance and effective planning.

KEYWORDS: Urban planning. Federal Law No. 10.304/2001. Land governance.

1 INTRODUCTION

The process of (mis)occupation and colonization in Brazil is a prelude to the factors that have led to the weakness of the land structure in the country, including those faced by the state of Amapá (AP) since its emancipation as a state (Brazil, 1988) due to the lack of land regularization. Notably, the singularities presented by the occupation of the municipality of Oiapoque-AP stand out, since it is a region with numerous specificities, including cultural, social and, above all, historical, which interconnect the process of local land governance and the new land ownership framework in light of the transfers of federal land to the state of Amapá.

With regard to the legal framework on land governance, there is a need to implement public policies in the context of revising the current Municipal Master Plan for Oiapoque-AP. In this sense, the purpose of this research is to analyze the transfer of land by the Federal Government to the land estate of Amapá and the governance of land that has repercussions on the development of the municipality of Oiapoque-AP.

2 METHOD

Initially, this work was conducted through exploratory research due to concerns arising from my work as a Legal Technical Assistant at the Amapá Land Institute-AMAPÁ TERRAS, which enabled me to have contact with the first surveys of internal documents, such as technical opinions, legal opinions, official letters, maps and reports. From the first impressions, the documents found served as objects of analysis and were given an analytical treatment. In this way, the organization of the documentary corpus, in the light of these configurations, was based on the stages supported by Bardin (2011), which consist of: a) pre-analysis; b) exploring the material; and c) processing the results, inference and interpretation.

It should be noted that the documentary corpus involved in the development of this research was organized as follows: reports; official letters; opinions, maps, located respectively on the official website of the Amapá Land Institute; and legislation that underpins the legal basis of the governance and land regularization process and its interrelationship with land transfer, as published on the federal government's Legislation Portal, the state government's website and the municipality's website.

It is inferred that the approach of this research is qualitative and quantitative, since both complement each other and are necessary in this investigation. The quantitative approach made it possible to quantify the universe of land and gross and net areas transferred to the land estate in 2022 to the state of Amapá, overlapping in the municipality of Oiapoque. With regard to the qualitative assessment, the main discussions and study trends in the investigative administrative processes and the thematic interests in the extension actions of the Land Institute of the State of Amapá-AMAPÁ TERRAS were analyzed, contributing to the conduct of public policies in the process of transferring federal land to the state of Amapá, and its relationship with land governance in the municipality of Oiapoque-AP.

As this is such a specific and recent issue in the state's legal, political and administrative system, the research turned to the legal foundations that deal with the transfer of land, namely: the 1988 Federal Constitution; Federal Law No. 10,304/2001, amended by Federal Law No. 14,004/2020; Regulatory Decree No. 8,713/2016; Complementary Law No. 628/2020, which deals with Oiapoque's Participatory Master Plan. The theoretical basis includes authors such as Tostes (2016, 2022), Torsiano (2017), as well as data obtained from the Brazilian Institute of Geography and Statistics (IBGE) and the Land Institute of the State of Amapá (AMAPÁ TERRAS).

3 RESULTS & DISCUSSION

According to data from the latest IBGE census (2022), the municipality of Oiapoque-AP has a population of 27,482 inhabitants, with a territorial area of 23,034.392 km², and is in a strategic geographical position, since it borders French Guiana to the north, the municipalities of Calçoene, Serra do Navio and Pedra Branca do Amapari to the south, the municipality of Laranjal do Jari to the west and the Atlantic Ocean to the east.

Oiapoque was promoted to the category of municipality by Federal Decree-Law No. 7.578, of 23-05-1945, so it has been 79 years in the making, with many uncertainties and promises.

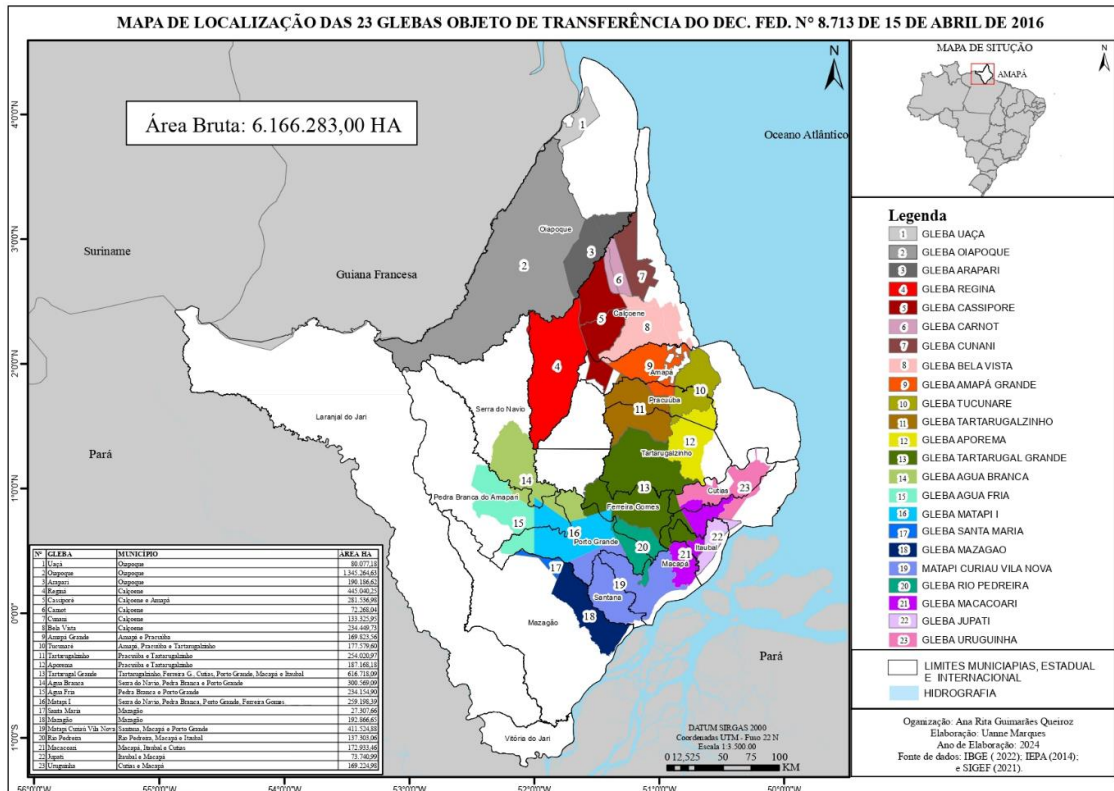
Table 1 - Urban and Rural Population of the State of Amapá and the Municipality of Oiapoque (1970-2010)

| YEAR | State of Amapá | | | Oiapoque-AP | | |
|------|----------------|---------|--------|-------------|--------|-------|
| | Total | Urban | Rural | Total | Urban | Rural |
| 1970 | 114.230 | 62.400 | 51.830 | 4.425 | 2.029 | 2.396 |
| 1980 | 175.258 | 103.719 | 71.539 | 5.028 | 2.515 | 2.513 |
| 1991 | 289.397 | 234.131 | 55.266 | 7.555 | 4.004 | 3.551 |
| 2000 | 477.032 | 424.683 | 52.349 | 12.886 | 7.842 | 5.044 |
| 2010 | 669.526 | 601.036 | 68.490 | 20.509 | 13.852 | 6.657 |

Source: IBGE - Demographic Census (2024).

Law No. 10.304, of November 5, 2001, modified by Law No. 14.004/2020, deals with the transfer to the State of Amapá of lands belonging to the Federal Government, and is regulated by Decree No. 8.713/2016. The referred Decree deals with the twenty-three plots to be donated, and the locus of this research was the overlapping plots in the municipality of Oiapoque-AP, which directly interfere with the Master Plan of the Municipality of Oiapoque: Uaçá, Oiapoque and Arapari.

Map 1- Gross area of the 23 plots in Decree No. 8.713/2016



Source: Queiroz (2024).

Among the overlapping plots in the municipality of Oiapoque-AP, the following plots have been transferred by means of Donation Terms¹ until December 2022: Arapari and Oiapoque, with the Uaçá plot remaining to be transferred.

Table 2- Gross and Net Area of the Overlapping Plots in the Municipality of Oiapoque

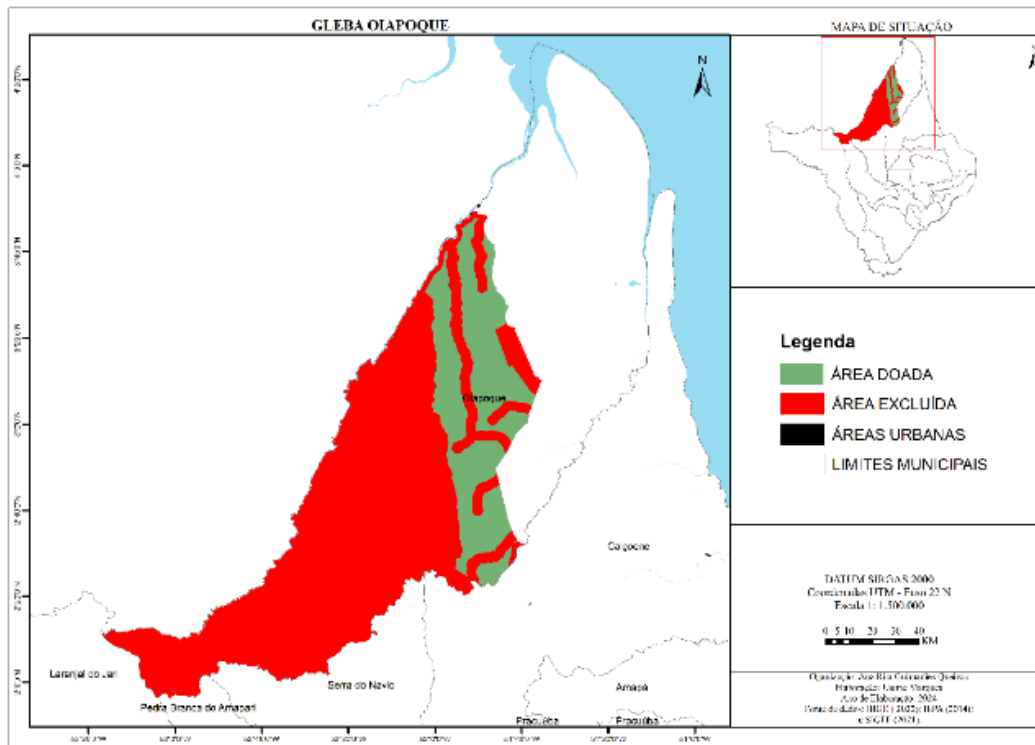
| NO. | PLOT | GROSS AREA (HA) | NET AREA (HA) | AREA REDUCTION (HA) |
|-----|--------------|---------------------|-------------------|---------------------|
| 1 | OIAPOQUE | 1.345.264,63 | 309.623,30 | 1.035.614,33 |
| 2 | ARAPARI | 190.186,62 | 90.788,55 | 99.398,07 |
| 3 | UAÇÁ | 80.077,18 | - | - |
| | TOTAL | 1.535.451,25 | 400.411,85 | 1.135.012,40 |

Source: Author (2024), based on data from AMAPÁ TERRAS (2023).

One can see that between the gross area provided for in Decree no. 8.713/2016 and the net area actually donated, there was a substantial decrease, corresponding to a reduction of 1,135,012.40 hectares (Table 02). The main reasons for the change in the size of the areas were the exclusion of conservation areas and indigenous lands, among others, as provided for in the resolutive conditions of the donation terms.

¹ Decree No. 8.713/2016. Art. 2-A. Inbra will issue a deed of donation, with the force of a public deed, signed by the President of Inbra, in favor of the State of Amapá, for the purposes of registration with the competent real estate registry office, subject to the provisions of Art. 1.

Map 2- Plot of Oiapoque



Source: Queiroz (2024).

The Oiapoque plot was transferred by Deed of Donation No. 08/2022, on April 7, 2022. In this act, the areas to be excluded from the aforementioned term were established:

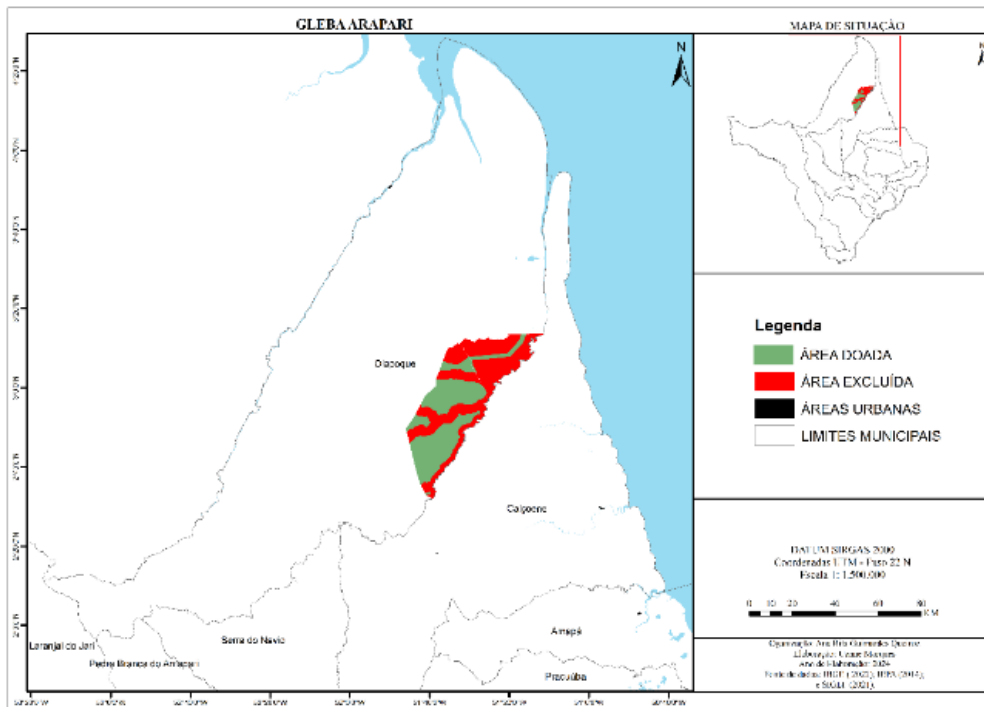
SECOND CLAUSE - After a technical analysis to materially identify the areas to be excluded from the donation, under the terms of Law No. 10.304, of 2001 and Decree No. 8.713, of 2016, the following areas are excluded from the donation:

- 1 - listed in items II to X of art. 20 of the Federal Constitution, referring to the areas of interest to the Union Patrimony Secretariat - SPU, with an area of 258,892.2158 ha (two hundred and fifty-eight thousand, eight hundred and ninety-two hectares, twenty-one ares and fifty-eight centiaries), as per Annex III;
- 2 - related to item XI of art. 20 of the Federal Constitution, referring to the Uaçá Indigenous Land, with an area of 22,357.8486 ha (twenty-two thousand, three hundred and fifty-seven hectares, eighty-four ares and eighty-six centiaries), as per Annex IV;
- 3 - referring to the Federal Conservation Unit Montanhas do Tumucumaque National Park, with an area of 872,030.9824 ha (eight hundred and seventy-two thousand and thirty hectares, ninety-eight ares and twenty-four centiaries), as shown in Annex V. (Author's version, 2024).

It is worth noting that this is an extensive area that has been excluded, i.e. 1,035,614.33 hectares have been reduced from the area to be donated, mainly due to the Montanhas do Tumucumaque National Park Federal Conservation Unit, which left a net area of 309,623.30 hectares.

The entire land parcel is overlapped by the municipality of Oiapoque, and it can also be seen that its extent is rural, without reaching the municipality's urban area (Map 2).

Map 3- Plot of Arapari



Source: Queiroz (2024).

On June 30, 2022, the Arapari plot was transferred under Donation Agreement No. 10/2022. However, as can be seen on Map 03, areas were excluded from the donation agreement, in accordance with the second clause of the agreement, following the same criteria as the Oiapoque plot of land:

AREAS TO BE EXCLUDED FROM THE DONATION

SECOND CLAUSE - After a technical analysis to materially identify the areas to be excluded from the donation, under the terms of Law No. 10.304, of 2001 and Decree No. 8.713, of 2016, the following areas are excluded from the donation:

- 1 - listed in items II to XI of art. 20 of the Federal Constitution, referring to the areas of interest of the Union Patrimony Secretariat - SPU, with 65,074.6070 ha (sixty-five thousand and seventy-four hectares, sixty ares and seventy centiaries), as per Annex IV;
- 2 - referring to the federal settlement PA Vila Velha do Cassiporé, with a total area of 27,630.0858 ha (twenty-seven thousand, six hundred and thirty hectares, eight ares and fifty-eight centiaries), as per Annex V; and
- 3 - referring to the Uaçá Indigenous Land, with a total area of 25,364.2973 ha (twenty-five thousand, three hundred and sixty-four hectares, twenty-nine ares and seventy-three centiaries), as per Annex VI.

(Author's version, 2024).

The Arapari plot is located exclusively in the municipality of Oiapoque and overlaps a rural area. From the gross area of 190,186.62 ha, there was a reduction of 99,3890.07, leaving a net area of 90,788.55 ha. The exclusions stand out among areas of interest to the Union and federal settlements. The Brazilian Federal Constitution from 1988 was concerned with urban issues, whether social or legal, dedicating a chapter of its own called "Urban Policy", in art. 182 (Brasil, 1988). The text states that the urban development policy should be implemented by the

municipality, in accordance with the general guidelines established by law, with the aim of organizing the full development of the social functions of the city and guaranteeing the well-being of its inhabitants.

Next, the constitutional text states that urban property must fulfill its social function when it meets the fundamental requirements of city planning set out in the Master Plan (§2º, art. 182, Brasil, 1988). Therefore, according to Hely Lopes Meirelles (2016, p. 518 and 519):

[...] the Master Plan or Integrated Development Master Plan, as it is modernly called, is the complex of legal norms and technical guidelines for the overall and constant development of the municipality, from a physical, social, economic and administrative point of view, desired by the local community. It should be the expression of the residents' aspirations for the progress of the municipal territory as a whole. It is the technical legal instrument that defines the objectives of each municipality, and therefore has supremacy over others, to guide all the activity of the Administration and the administered in public and private undertakings that interest or affect the community. (Author's version, 2024).

On the other hand - despite the fact that there is a legal provision for urban public policy to be the responsibility of the municipality when drawing up the Master Plan - the right to housing and property overlaps with just one entity. The right to decent housing provided for in the Federal Constitution (Brasil, 1988) emerges from the dignity of the human person as a foundation provided for in Article 1, III, which is a common competence of the Union, States, Federal District and Municipalities, therefore, it is the inalienable duty of the three federative entities to provide the fundamental human right to decent housing to people in situations of social vulnerability.

As part of this discussion, it is worth highlighting item XXIII, art. 5, of the Brazilian Constitution, which ensures that property will fulfill its social function, with specific provisions aimed at defining the social function of urban property (art. 182, § 2º, Brasil, 1988) and rural property (art. 186, Brasil, 1988). In the same sense, the Civil Code, in art. 1.228, § 1, provides as follows:

The right to property must be exercised in accordance with its economic and social purposes and in such a way that flora, fauna, natural beauty, ecological balance and historical and artistic heritage are preserved, as well as air and water pollution is avoided. (Author's version, 2024).

At this point, the relevance of debating the issue of urban land regularization stands out, as it highlights the problem faced in land governance for the organization of cities, especially when interrelated with the reconfiguration of land assets, as observed with the transfer of new areas of land (plots) from the Union to the state's land assets, since the problem of land in the state of Amapá is known to the population, a fact that has been going on since the state was created with the Federal Constitution of 1988 (Ferreira; Tostes, 2022).

Although all the areas donated are in rural areas, this fact alone does not mean that it is impossible for the federal entities to govern the land. According to the head of Article 182 of the 1988 Federal Constitution, land policy has a specific chapter dedicated to Urban Policy, which must be implemented by the Municipal Government, with the aim of organizing the full development of the social functions of the city and guaranteeing the well-being of its

inhabitants, as well as the obligation for the Master Plan for cities with more than twenty thousand inhabitants to constitute the basic instrument of urban development and expansion policy.

Having said that, the construction of Oiapoque's Participatory Master Plan stands out, regulated by Complementary Law No. 628/2020, which took place under the coordination of José Alberto Tostes, and support from the Federal University of Amapá-UNIFAP. According to Tostes (2016, 2022), the relationship with public policy throughout the process of building the Municipal Master Plan was tense with the municipal government at the time, mainly due to disagreements between the university and the city hall over the direction of the work. These accounts are contained in various reports on the construction of the Oiapoque Municipal Master Plan in 2019.

The municipality of Oiapoque has specific characteristics for developing a land policy, including: the extensive reserve areas (Cape Orange National Park; FLOTA, Tumucumaque Mountains); the indigenous areas (Juminã, Galibi, Uaçá, Tumucumaque Park); and the limited border area.

Thus, even though the ten-year legal deadline for reformulating the Oiapoque Municipal Master Plan has not passed, due to the changes in the state's land heritage, there is an urgent need to revise it in order to take into account the new territorial dimension of heritage and define responsible land governance, as Torsiano (2017) points out:

Governance is a concept that includes complex mechanisms, processes and institutions through which citizens and groups articulate their interests and exercise their legal rights and obligations. By extension, land governance encompasses the norms, processes and organizations through which decisions are made and the way in which conflicting interests regarding land are managed. The concept of governance encompasses both the legal and normative frameworks on land and the traditional and informal practices that have social legitimacy (Torsiano, 2017, p. 24). (Author's version).

With regard to the municipality, it is considered to be an inducer in the development of the region, and in this context, municipalities play an important role in this process, which is why their participation in the construction of the Master Plan is fundamental in the set of factors for the good use of the territory, ensuring with society the local vocations.

Ferreira and Tostes (2022) state that, for years, it has been said that there is a lack of land management in the state of Amapá. This land problem is known to the population and dates back to the transformation of the Territory into a State by the 1988 Constitution. In this way, the absence of regularized land in the name of the state can be considered one of the obstacles to Amapá's economic and regional development. Furthermore, with the areas excluded, it is still not possible to identify the entire land network of the state, considering the territorial area of 142,470.762km² (IBGE, 2022).

For Costa and Lui (2021, p. 10), "[...] governance appears in the vocabulary of public policy analysts as a counterpart to the traditional conception of public management, based on state action" (Author's version). The authors also add:

Based on the many contributions on the subject, we can say that the idea of governance refers to the way in which social actors and political and economic agents,

representing the state, the market and society, organize, articulate and interact in a given political-institutional context, in the process of designing, implementing, monitoring and evaluating actions and policies of public interest (Costa; Lui, 2021, p. 10). (Author's version).

Land governance is usually referred to as land administration in the literature. On the other hand, Torsiano (2017) defines land governance as follows:

[...] it consists of the management of the territory, exercised by the State, in all its aspects and in an integrated manner, from the existence of a land registry, through an adequate registration system, a set of rules for the efficient use and occupation of land to the management of land markets and land taxes. Land governance means land administration exercised by society as a whole, that is, with social participation (Torsiano, 2017, p. 4). (Author's version).

Still in the context of defining the expression, Torsiano continues:

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Alfonsin (1997, p. 24) corroborates this thought in the following terms:

[...] a process conducted in partnership between the public authorities and the beneficiary population, involving the legal, urban, and social dimensions of an intervention that primarily aims to legalize the residence of inhabitants in irregularly occupied urban areas for housing purposes, and additionally promotes improvements in the urban environment and the quality of life in the settlement, as well as encourages the full exercise of citizenship by the community, which is the subject of the project. (Author's version).

Regarding these concepts, Fernandes (2007, p. 24) highlights the dynamic nature of the governance process, stating that "[...] land regularization policies cannot be formulated in isolation. They need to be combined with other preventive public policies to break the cycle of exclusion that generates informality." Therefore, he understands that land regularization is not a static process and is linked to other factors in the process of "good" land governance.

From the perspective of the Federal Court of Accounts (TCU, 2022), in its analysis of data on territorial and land governance, "[...] the lack of knowledge about the national land registry hinders the proper management of public lands and the execution of various public policies with territorial components, impacting public spending and the exercise of rights for countless individuals." That said, it is necessary to highlight that the land parcels transferred until December 2022 are largely overlapping rural areas (Map 2), which represent the greatest land conflict zones due to land grabbing.

4 CLOSING REMARKS

The central theme of this text has led to a discussion about the need to reform the current Master Plan of Oiapoque, because it has not included in its planning the new areas provided for in Decree 8.713/2016, which implies the territorial planning of the municipality.

From this perspective, for a long time there was a lack of land management in the state of Amapá, in which the problem (absence) of land in the state of Amapá could be considered one of the obstacles to economic and regional development.

The results of this research have a direct bearing on this idea, which interrelates governance with local land regularization. Although the lapse of time was the justification for the absence of land governance, with the land effectively owned, the state and municipal governments must establish public policies aimed at ensuring legal certainty for the development of the region, in light of the new territorial planning based on Law 14.004/2020.

It is undeniable that the lack of land-title regularization was, in part, one of the factors limiting the region's development, the result of decades of legal uncertainty. An understanding between the various parties involved in this process, including federal entities and society, is essential to ensure that land regularization serves as an instrument of land governance and ensures the long-awaited legal certainty.

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