



# The Human Right to Water and the Law of Transboundary Aquifers in Latin America: Synergies of the Guarani Aquifer Agreement and the Jurisprudence of the Inter-American Court of Human Rights

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## INTRODUCTION

In the imminence of the entry into force of the Guarani Aquifer Agreement, many questions arise as to its implications to the management of the Guarani Aquifer. This research aims to analyze the human right to water, with special consideration of the jurisprudence of the Inter-American Court of Human Rights, in order to verify its impacts on the Law of Transboundary Aquifers and on the Guarani Aquifer Agreement. The main issue discussed is the legal interaction of the obligations that arise from the human right to water and the legal parameters that must be complied with in the management of the Guarani Aquifer.

## METHODOLOGY

The methodology adopted consisted on the verification of doctrinal and jurisprudential concepts of the human right to water and of the main principles embodied by the Guarani Aquifer Agreement, namely the principle of equitable, reasonable and sustainable utilization, the prohibition of transboundary harm and the principle of cooperation. Special attention was given to the recent jurisprudence of the Inter-American Court of Human Rights and the development of the environmental dimension of the human right to water, which considers the impact of international environmental law on the implementation of the human right to water.

## RESULTS

It can be observed that the normative elements of the Guarani Aquifer Agreement are not incompatible with the human right to water as conceived by the Inter-American Court of Human Rights. In fact, the concept of human right to water that was developed in Advisory Opinion n° 23/17 is directly related to international water law. In the reasoning of the Inter-American Court of Human Rights, the protection of the environment and the fulfillment of human rights obligations are intrinsically connected. Thus, the implementation of the human right to water includes not only the sufficient access to water, in both quantity and quality, in order to satisfy basic human needs, but also the protection of the environment inside or outside the State's territory.

In the light of these considerations, the Guarani Aquifer Agreement contains several rules that must be interpreted in accordance with the human right to water, as they are mutually complementary. These rules are (i) the equitable, rational and sustainable utilization of shared resources, that represents the maximization of benefits for the Riparian States and their populations and the consideration of social, economic and environmental aspects in the water allocation process; (ii) the prohibition of transboundary harm, which determines that States must take all necessary measures to avoid transboundary damage; and (iii) the principle of cooperation, that requires States to fulfill the procedural obligations to negotiate, consult and exchange information, in order to give more transparency and to consider the inputs of the relevant stakeholders in the projects and uses implemented in the aquifer.

Accordingly, the consideration of these rules in the context of the clarifications of the Advisory Opinion n° 23/17 requires States to implement international water law principles in accordance with the civil, political, social, economic, cultural and environmental rights that are directly affected by the aquifers' utilization and protection. For instance, the equitable, rational and sustainable use of shared resources must consider the needs of the populations that depend on the aquifer for the satisfaction of their basic human needs, which includes the access to water. Furthermore, the prohibition to cause transboundary harm represents the States' obligation to protect human rights in their jurisdiction, which is not limited to their territorial space. Lastly, despite being an inter-State obligation, the principle of cooperation is complemented by the States' obligation to abstain from preventing or hindering other States to fulfill their human rights obligations.

## CONCLUSIONS

Even though the obligations that arise from the human right to water are subsidiary to the rules established on the Guarani Aquifer Agreement, the core obligations of the human right to water must be respected by the Riparian States in the water allocation analysis and in the implementation of projects that may affect the shared resource. Hence, as the Law of Transboundary Aquifers is still consolidating itself in international law, especially in Latin America, the present research argues that the Guarani Aquifer could be used as a paradigm for the management of transboundary aquifers in accordance with the human right to water, given the compatibility of the Guarani Aquifer Agreement and the Inter-American Court of Human Rights' jurisprudence. These considerations impact positively the assurance of water security for the communities that rely on this aquifer, especially considering the instability that arises with climate change when it comes to access to water.

## REFERENCES

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