



# WATER LAW IN FEDERAL COUNTRIES

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Excerpts from slides prepared for Water, Peace and Security tailor-made capacity development activities in Iraq. Please attribute authors when using materials.

# Content

- Differences of law between unitary countries and federal countries
- Overview of federal countries and their role in water issues
- Water law in federal countries
- Examples of the use and complexities of water law in federal countries
- Conclusions

# Unitary and federal countries

## Unitary countries

- Generally have one water law for the whole country and one set of laws on other related issues (e.g., agriculture, environment) that apply to the country.
- It can be seen as coherent, top down, and general.

## Federal countries

- Generally divide topics such as water into federal and state responsibilities based on the principle of subsidiarity.
- Many have decentralized water issues/laws/regulations to states.
- However, they retain control over water when it is an issue of interstate importance or when it concerns transboundary rivers.

Countries	Role of central government *	Defining roles	State law	Examples of basins	Water-sharing problems in these basins
Argentina	Joint	Constitution, Law, Ad hoc	Yes	Trahunco Basin	Between users
Australia	Joint	Law, Ad hoc	Yes	Murray-Darling Basin	Between human and nature
Austria	Joint	Law, Ad hoc	Yes	Danube Basin	Between uses and users concerning water-related risks
Belgium	Joint	Constitution, Law	Yes	River Meuse	Between uses (water quality) - international river
Brazil	Joint	Constitution, Law	Yes	São Francisco River	Between human and nature and users
Bosnia and Herzegovina	Joint	Law, Ad hoc	Yes	Sava River Basin	Between uses (lack of drinking water)
Canada	Dominant	Constitution, Law	Yes	Mackenzie River Basin	Between states
Emirates	Dominant	Law	No	Groundwater	Between uses (lack of drinking water)
Ethiopia	Dominant	Ad hoc	No	Nile River Basin	Between other countries part of the same river basin
Germany	Joint	Law	Yes	Elbe River Basin	Between uses (water quality)
India	Joint	Constitution, Law, Ad hoc	Yes	Cauvery River	Between states
Mexico	Dominant	Constitution, Law, Ad hoc	Yes	Valley of Mexico basin	Between uses and human and nature
Nepal	Dominant	Constitution	No	Pandai river	Between other countries part of the same river basin
Russia	Dominant	Law, Ad hoc	No	West of Russia	Between regions
Switzerland	Joint	Law	Yes	Melting glaciers	Between uses
South Sudan	Dominant	Law, Ad hoc	No	Nile Basin	Between other countries part of the same river basin
Pakistan	Join	Constitution, Law, Ad hoc	Yes	Kabul River Basin	Between states/countries
United States	Joint	Constitution, Law	Yes	Colorado River Basin -	Between uses
Venezuela	Dominant	Law	No	Tuy river basin	Between uses

## Water law in federal countries

- Water law is the specialized area of legislation and statutes that govern the ownership, usage, rights and protection related to a surface and groundwater within a country.
- In federal states, water law tend to be characterised by a multiplicity of complex legislation, (federal, state and local levels), making it difficult to work with
- However, water law can also contribute to address disputes that might exist between states (for example, giving the central government powers to address interstates disputes).
- It provides the central government control to mediate regarding problems with transboundary rivers and aquifers.

## Example: India

- Water is a state subject; however, the central government has authority when it concerns a transboundary river and covering two Indian states
- Tamil Nadu, Karnataka, Kerala and Puducherry have conflicts with each other on water sharing on the Cauvery
- Government of India is trying to mediate between the conflicting states
  - Decades of negotiations between the parties
  - However, there were not fruitful until the Government of India constituted a tribunal in 1990 to look into the matter.
  - After hearing arguments of all the parties involved (16 years), the tribunal delivered its final verdict on 5 February 2007.
  - It did not end there, as all four states decided to file review petitions seeking clarifications and possible renegotiation of the order.

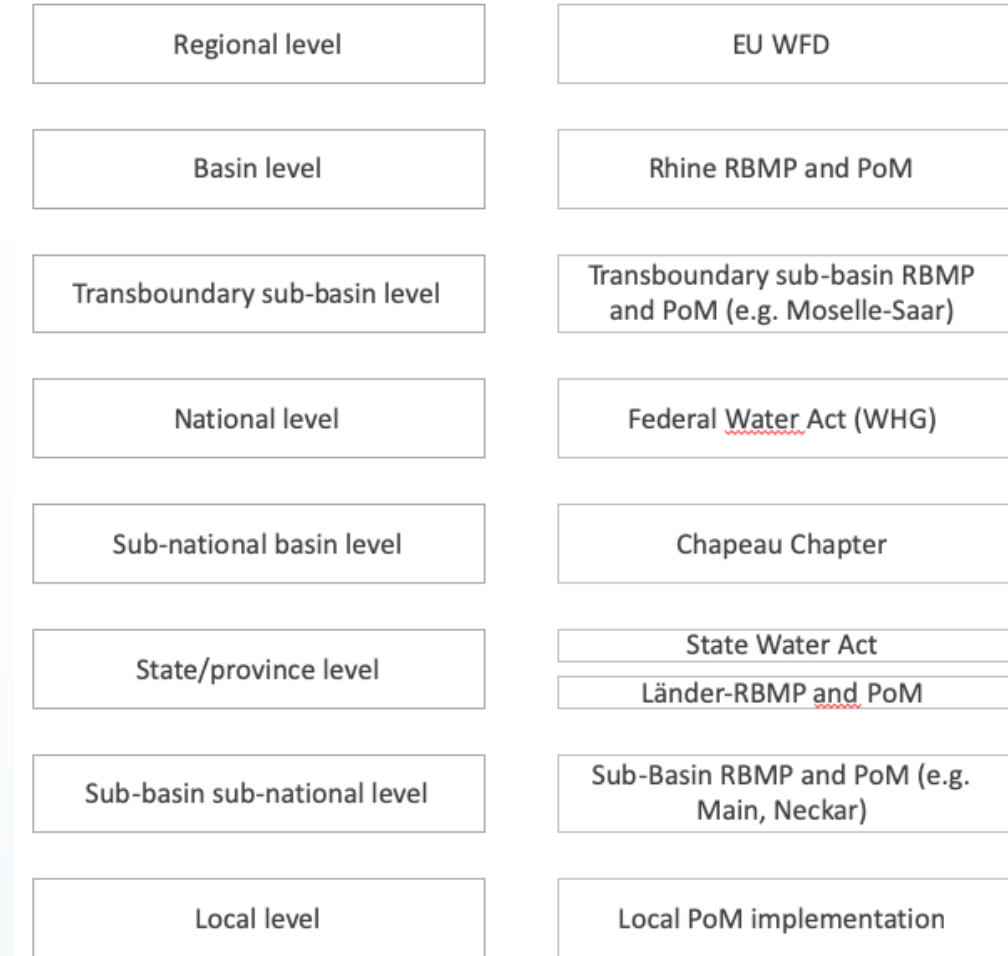


## Example: Australia

- Until the 1980s, water resources law was mainly state based, especially when referring to the conferral and regulation of water access rights.
- Water is a state subject; however since the last two decades the Commonwealth has been more involved in water issues.
- This gradual evolution of Commonwealth involvement in Australian water law has created a multiplicity of complex legislation, making it difficult to work with and to address water challenges.
- 2007 Water Act – it was introduced and premised on a complete federal takeover of management of the Murray-Darling Basin. However, this Act never received support from the Basin states to enable the takeover to fully occur.
- Therefore, when disputes arise the Commonwealth intervenes and try to mediate

## Example: Germany

- Germany consists of 16 states that hold the primary responsibility for water law and management
- Federal level provides the overarching framework with Federal Water Act
- States have their own state water acts that detail national level in different ways
- Local level (counties, cities) also have certain responsibilities, especially in water supply, permit issuance, etc.)
- Coordination not only between states and between states and federal level, but also at catchment level
- Also bound to supra-national and international water law (EU WFD, international water law)
- Dispute resolution politically or in court (Federal Administrative Court)





## Conclusions

- Water law in federal countries provides for decentralization of regulation (access, sharing, protection) of water issues.
- Decentralization of water management has various advantages (subsidiarity, political power distribution), but also comes with certain challenges.
- Water law in federal countries creates a multiplicity of complex legislation (country level, state level, local level), which makes it difficult to work with and to address some more local water challenges.
- Water law in federal countries retains control of the central government over water when it is an issue of interstates importance or when it is related to transboundary rivers.
- Water law in federal countries also plays a role of addressing interstates disputes and mitigating interests between different states.