1. BACKGROUND

Until about a decade ago, the water resources sector of Ethiopia did not have any clearly articulated and comprehensive policy or legal documents as such for the management and development of water resources. Except for the powers and responsibilities given by law to the respective government bodies, most of the policy, legal and regulatory framework for the management of water resources were based on Ministry directives and day to day practices within the relevant government agency.

This does not mean, however, that there were no legal provisions regarding the rights to and use of water resources in Ethiopia. The 1960 Civil Code of Ethiopia contained several provisions with respect to ownership and use of water for different activities such as domestic, irrigation, hydropower and industrial uses. The provisions were mainly premised on the riparian rights doctrine whereby a landowner whose land is crossed or bordered by flowing water has the right to use such water for different purposes. It also has provisions for allocating water in situations where potential disputes might arise between upstream and downstream users. The riparian rights doctrine on which the provisions of the Civil Code was based has in large part been replaced by a more increased government authority regarding water resources management due to increasing demands on water for different purposes and the need to appropriately plan and allocate its use. There is no evidence whether or not the provisions in the Civil Code have been implemented in practice since water resources in Ethiopia had not yet been developed to a significant extent.

The first attempt at a more comprehensive water resources management legislation was made in the preparation of a national water code and a subsequent water resources regulations in 1976 and 1985 respectively. The two legislative documents were discussed and revised in 1986 but were never adopted by the then Government. The draft water code and regulations were premised on the policy that all water resources are public property and covered pertinent provisions regarding, among others, the inventory and register of water resources and use of the country; permit system for different water uses; water fees and charges, water quality control, regulation of groundwater resources and establishment of water users associations. It also provided for the allocation of water rights and decentralization of water administration to water districts by delegation. Although the draft water code and regulations were not adopted at the time, they seem to have inspired some of the provisions of the current water resources management proclamation which would be discussed in a later section of this study.
Apart from the draft water code and regulations, the “Water Resources Utilization Proclamation” was issued in 1994 (Proclamation 92/1994). This Proclamation was never implemented due to its inherent weakness in addressing the fundamental issue regarding the country’s water resources management. The Proclamation did not take into account a river basin as the appropriate unit of management. Instead, it considered tributaries of rivers separate from the main stem of a river and gave the responsibility of managing and developing tributaries of rivers to regional states.

Currently, the “Ethiopian Water Resources Management Proclamation (Proclamation No. 197/2000 is the applicable law regarding water resources management in the country and will be discussed later on.

2. LEGAL BASIS FOR WATER RESOURCES MANAGEMENT

2.1 THE FEDERAL CONSTITUTION

As the supreme law of Ethiopia, all national policies, laws and institutional frameworks of the country must be in line with the Constitutional provisions of the Federal Government (see Art.9 of the Federal Constitution). The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation 1/1995, has several provisions which have direct policy, legal and institutional significance for the management of the water resources of the country.

Art. 40(3) of the Constitution provides for the public ownership of both rural and urban land as well as all natural resources. Thus, the water resources of the country are part of the public domain and are therefore vested in the State which holds the water resources in trust for the public at large.

The Constitution defines the powers and functions of the federal government and regional states respectively with respect to water resources management and administration. The Federal Government has the mandate to formulate and implement the country’s policies, strategies and plans in respect of overall economic, social and development matters (Article 50.2) while the Regional States have the power to formulate and execute economic, social and development policies, strategies and plans of the respective States.

More specifically, the Constitution stipulates that the federal government shall determine and administer the utilization of the waters or rivers or lakes linking two or more States or crossing the boundaries of the national territorial jurisdiction (Art. 51(11)). This provision gives the federal government very broad powers as regards water resources management since almost all water resources in the country are shared by two or more regional States and therefore ‘link’ the regional States. Thus, it means that determination and regulation of the use and allocation of the water resources of the country and the administration of such water resources largely rests with the federal government. Moreover, since most of the river basins in Ethiopia are transboundary in nature including the Abbay Basin, the jurisdiction of such river basins is also that of the Federal Government.

With respect to lawmaking regarding shared water resources (both transregional and transboundary waters), it is provided that the House of Peoples’ Representatives shall enact specific laws to this effect (Article 55.2a). This provision may form the basis for issuing a specific law for the establishment of river basin organizations (RBOs) either in the form of an enabling legislation detailing general provisions for setting-up RBOs in the country or a specific legislation for setting-up specific RBOs.
In strict legal terms, the exception to the above general rule would seem to be those water resources of the country which remain confined within the boundaries of the respective regional states such as groundwaters or lakes which do not ‘link’ regional States. Since powers not given expressly to the Federal Government are reserved to the Regional States (Article 52.1), this may mean impliedly that water resources within the confines of a certain region will be managed and administered by the respective regional states. The division of responsibilities between the Federal Government and the Regional States based on ‘inter-regional’ and ‘regional’ water resources might raise difficulties for water resources management of the country because this implies the fragmentation of water resources management and administration into flowing surface water resources and groundwater resources and lake bodies. The former will be under the jurisdiction of the federal government while the latter will be under the jurisdiction of the regional states. This would be a superficial division since surface waters and groundwaters including lakes should be managed as an integrated whole because the use of each, in both quantitative and qualitative terms, has an impact on the other.

Furthermore, it is provided by the Constitution that the Federal Government has the mandate to enact laws for the utilization and conservation of land and other natural resources while the Regional States have the right to administer land and other natural resources in accordance with Federal laws (Article 51.5 and Article 52.2d). This means that Regions have to abide by the laws of the Federal Government in administering and managing the water resources within their Regions and may possibly issue laws that are consistent with the laws of the Federal Government. Thus, the Federal Government has the mandate to issue laws with respect to the utilization and management of groundwater resources and lakes although these may be deemed to be confined within respective Regions and the Regional States may develop and administer such water resources in accordance with the laws issued by the Federal Government.

The above discussion of the Constitutional provisions regarding the management and administration of water resources in Ethiopia indicates that it is the Federal Government that has the central role for water resources management in Ethiopia. The rationale behind the above provisions of the Constitution seems to be that water resources should be considered as a hydrological unit and therefore the management and administration of such water resources should be integrated from the center by the federal government. Moreover, since most of the river basins of the country are inter-regional in nature, the development interests of the respective regions sharing the water resources within a given basin may give rise to conflicts thereby calling for careful planning; water allocation; balancing of interests and coordination among the regions and different sectoral agencies both at the Federal and Regional levels with the federal government playing the central role in this respect and the Regions responsible for the day-to-day administration and implementation of water resources projects in their respective jurisdiction.

On the other hand, integrated management of water resources should also take into account the federal system of government and the necessary participation of Regional States in decision-making regarding a shared river basin. The policy of decentralized decision-making, which is reflected in the Constitution, calls for regional states to have adequate role and participation in decision-making regarding the allocation and administration of the country’s natural resources including water resources. Thus, the establishment of a river basin authority should be able to take this factor into account and ensure adequate involvement of the concerned regional states in river basin management.

Finally, another important provision of the Federal Constitution is that it may delegate its powers and functions granted to it under Article 51 of the Constitution to Regional States when it finds it necessary (Article 50.9 of the Constitution). This means that the executive arm of the Federal Government (the Ministry of Water Resources) may delegate some of it powers and responsibilities given to it by law to Regions when it deems it necessary for the effective management and administration of the water resources of the country. Thus, the Federal Government may, for example, delegate the power to issue permits for water resources use to Regional States by law if it deems it necessary.
2.2 CONSTITUTIONS OF REGIONAL STATES WITHIN THE ABBAY BASIN

Three Regional States namely, the Oromia, Amhara and Benishangul/Gumuz Regional States share the Abbay Basin respectively. Since it has been difficult to get hold of the Constitution of the Benishangul/Gumuz Regional State, this study has restricted itself in examining the relevant provisions of the Oromia and Amhara Region State Constitutions.

The Revised Constitution of the Oromia Region and the Constitution of the Amhara Region contain provisions that have a more or less similar wording to that of the Federal Constitution pertaining to the management and administration of water resources. Article 40.3 of both the Oromia and Amhara Constitutions provides that the ownership of rural and urban land as well as all natural resources is exclusively vested in the State and people of the respective Regions. However, in case of water resources, the Federal government has been given the power to determine the utilization and administration of waters that links two or more Regions. Therefore, the ownership vested in the regional States, is limited in the sense that the allocation and administration of waters within the respective regions shared with other regional States is under the jurisdiction of the Federal government and not the regions, unless delegated specifically by law by the Federal government. In other words, the ‘exclusive ownership’ of water resources by Regions as provided in the respective Regional Constitutions is questionable since it is the Federal Government that has the mandate to make decisions regarding the allocation and administration of water resources that are shared between two or more regions to potential users unless of course this mandate is specifically delegated by law to the Regional States.

Both Constitutions further provide that the power of the respective regional States shall be to administer land and natural resources in accordance with the laws enacted by the federal state. These provisions are consistent with the Federal Constitution. What this clearly indicates is that the mandate to issue laws with regard to the utilization and protection of water resources is that of the Federal Government.

2.2.1 Assessment

The Constitution of the F.D.R.E has put in place the basic legal framework as regards water resources management in the country. “Water Resources Management” has been defined by the Ethiopian Water Resources Management Proclamation (Proclamation No. 197/2000) as ‘activities that include water resources development, utilization, conservation, protection and control’. As part of the natural resources of the country, water resources, are exclusively vested in the State, and is therefore part of the public domain. Moreover, the Constitution has specifically given the Federal Government the power to determine and administer the utilization of water resources that are trans-regional and transboundary in nature. This actually means that the large bulk of the water resources of the country are under the mandate of the federal government since all of the river basins of Ethiopia are shared by two or more regional states. Even though the Constitutions of the Regional States have exactly the same provisions as that of the Federal Constitution regarding ownership of land and natural resources within their respective regions, their mandate to make decisions on utilization (allocation) and administration with respect to water resources within their region is limited unless delegated by law by the Federal Government. Accordingly, it is the Federal Government that has a central control over the planning, management and administration of water resources of the country. The Regional States, therefore, have to abide by the policies and laws issued by the Federal Government regarding the management and administration of the water resources within their respective Regions.

As was mentioned above, the jurisdiction of the Federal Government, according to the Constitution of the F.D.R.E, is to determine the utilization and administration of the water resources that ‘link’ regional states or cross the boundaries of the country. This implies that the determination of the utilization and administration of water resources that does not ‘link’ regions or is not transboundary in nature are within the jurisdiction of Regional States. Such water resources may include groundwaters and lakes as long as they are confined within the respective regional states. This situation might create difficulties in the administration of water resources since surface waters and groundwater may be hydrologically connected to each other within a basin.
Another issue that needs to be examined is who is to issue laws regarding water resources that do not ‘link’ regional States. The Federal Constitution provides that the Regional States will administer their water resources in accordance with the laws that will be enacted by the Federal Government and the Regional Constitutions have provisions to the same effect. Thus, it seems that the Federal Government has the mandate to issue laws regarding the use of groundwater and lake bodies while the Regional States have the mandate to administer such water resources in accordance with the laws issued by the Federal Government. In other words, it is questionable that Regions may issue laws regarding the conditions for the utilization of groundwater and lakes confined within their Region except to ‘administer’ such water resources (such as issuing permits) in accordance with the laws issued by the Federal Government.

Another important provision of the Constitution is the mandate given to the House of Peoples’ Representative to issue laws regarding the utilization of waters that link two or more regional States. This provision would be a basis for issuing laws for the establishment of river basin organizations since river basins in Ethiopia are clearly shared by two or more Regional States.

In sum, the Constitution seems to take a basin-wide approach to the management of water resources of the country since it recognizes the integrated nature of water resources as well as the impacts and competing interests that such resources may give rise among different users and users. It is because of such considerations that the Federal Government has been given a central role in the management of water resources of the country. However, a major flaw of the Constitution is that it attempts to fragment water resources into two jurisdictions—the Federal and Regional and effectively creates a problem of separating groundwater from surface waters. This should not have been the case since all water resources should be managed in an integrated manner.

The Federal system of government set-up by the Constitution also recognizes the importance of decentralized management and the active participation of Regional States up to the lowest level in the development and management of natural resources including the water resources of the country. In light of this, it may be necessary to define the degree to which decentralization of powers and functions from the Federal Government to Regions or other water resources management bodies (e.g. river basin authorities) can be realized for effective management of the water resources of the country. The Constitution does not spell out the details of how basin-wide management should take place because this is expected to be clearly defined in subsidiary laws and policies to be issued by the executive arm of the Federal Government which has been given the mandate to this effect as we shall see in subsequent sections of this study.

2.3 THE FEDERAL WATER RESOURCES MANAGEMENT POLICY

The Federal Water Resources Management Policy (hereinafter the WRM policy) was issued in June 1999 and, as any policy, is essentially an instrument for achieving the intended goals and objectives of a given sector. The policy recognizes that it is based on the Constitutional provisions for water resources management and the overall macro-economic, social policies and development strategies of the F.D.R.E. Accordingly, the objective of the policy is to further articulate and elaborate the overall principles and directions the country should follow regarding water resources management of the country. This section will discuss only some of the provisions that are relevant to the legal and institutional framework for water resources management raised in the policy document since they form the basis for subsequent translation of these provisions into law.

With respect to the fundamental principles that should inform water resources management, the policy states, among other things that:

- Water is a natural endowment commonly owned by all the peoples of Ethiopia,
- Water resources development shall be underpinned on rural-centered, decentralized management, participatory approach as well as integrated framework,
- Promotion of the participation of all stakeholders, user communities, particularly women’s participation in the relevant aspects of water resources management.
The above policy provisions seem to stress that the State holds water resources in public trust and that water resources development and management should follow a participatory approach with decentralization as a basic principle and the participation of all stakeholders with emphasis on women in all aspects of water resources management. This implies that any institutional set-up for water resources management should aim at ensuring participation of all stakeholders and a proper coordinating mechanism should be put in place to this effect.

In the part on general WRM policy, the relevant provisions are:

- Enhance the integrated and comprehensive management of water resources that avoids fragmented approach,
- Recognize water as a scarce and vital socio-economic resource and to manage water resources on strategic planning basis with long term visions and sustainable objectives,
- Ensure that water resources management is compatible and integrated with other natural resources as well as river basin development plans and with the goals of other sectoral developments in health, mines, energy, agriculture etc.,
- Recognize and adopt the hydrologic boundary or “basin” as the fundamental planning unit and water resources management domain,
- Promote and advocate institutional stability and continuity in water resources management and ensure smooth transition during times of changes.

The above policy provisions emphasizes the necessity of integrated water resources management approach and that all aspects of water resources management including the management of surface and groundwater resources, water quality and quantity issues should not be treated separately or in a fragmented manner. It also recognizes the need for water resources management to be integrated with other aspects of natural resources management which implies for inter-sectoral coordination at both the Federal and Regional levels. The need to manage water resources on the basis of strategic and long term planning is also stressed. More importantly, it stresses the adoption of the basin as the hydrologic unit of water resources management as well as the need to ensure institutional stability and continuity while at the same ensuring a smooth transition in times of change. This policy provision is worth considering when intending to establish river basin organizations because essentially the RBOs usually take over some or most of the roles and functions of existing institution at both the Federal and Regional levels. What seems to be pointed out here is that existing water related institutions which are operating more or less effectively at both the Federal and Regional levels should continue to operate with the least possible disruption and that it is essential to clearly define the functions and mandates that ought to be given to a basin organization and to the Federal and Regional agencies responsible for different aspects of water resources management.

With regard to the policy on institutional and legal framework, the policy document on enabling environment provides additional relevant provisions:

- Promote appropriate linkage mechanisms for the coordination of water resources management activities between the Federal and Regional Governments
- Establish phase-by-phase Basin Authorities, for efficient, successful and sustainable joint management of the water resources of the basins through concerted efforts of relevant stakeholders,
- Create conducive environment for the enhancement of linkages and partnership between the Federal and Regional states on the basis of the Constitution for the realization of efficient, sustainable and equitable water resources management,
- Provide the legal basis for active and meaningful participation of all stakeholders…
The above policy provisions on legislative and institutional framework (the enabling environment) underline the necessity for coordination and linkage regarding the institutions responsible for water resources management at the Federal and Regional levels. In the context of establishing a river basin organization, this calls for defining clearly in law not only the coordination and linkage mechanisms between the RBO and Regions and defining the specific functions and roles that needs to be undertaken at the Federal and Regional levels but also the coordination between the Regions sharing a specific river basin.

Another important policy element is the proviso for the establishment of river basin organizations on a phase-by-phase basis. The approach currently taken in Ethiopia is consistent with this policy provision since the intention is to establish an RBO in the Abbay basin and learn lessons from it before replicating such RBO in other basins.

Again the policy stresses that the law should ensure meaningful participation of all stakeholders. In the course of formulating the legal framework for establishment of RBOs, therefore, one needs to consider an effective mechanism for the participation of stakeholders-both government and non-government organizations- which have a stake in water resources management.

### 2.3.1 Assessment

The WRM policy contains very relevant provisions that need to be considered for effective management of the water resources of the country including the establishment of RBOs. It clarifies and articulates the general provisions that are provided in the Federal Constitution setting the scene for spelling out the policy provisions in subsequent laws and regulations for water resources management. It should be noted that the water resources policy is, by its nature, a guideline or framework document that needs to be translated into specific laws, regulations, plans and strategies as well as appropriate administrative set ups for its proper implementation. Moreover, it is not the province of the policy to address in detail the specific roles and functions of the different water resources management institutions both at the Federal and Regional levels since this is left to subsequent legislation on water resources management.

Some of the relevant issues incorporated in the policy document and need to be addressed in devising a legal framework for the establishment of an RBO are highlighted as follows:

#### 2.3.1.1 Integrated Water Resources Management

The WRM policy underlines the need for integrated water resources management which implies the need for surface water and groundwater as well as water quantity and quality issues be treated together. This policy principle goes beyond this since the management of water resources is interlinked to the management, use and protection of other natural resources and calls for integration with other sectoral activities such as agriculture, health, power etc. Thus, inter-sectoral coordination and cooperation is another element that ought to be considered when taken an integrated and basin-wide approach to water resources management.

One perceived drawback of the Constitution as discussed above is the fragmented approach taken in defining the mandates of the Federal Government and Regional States by giving the mandate for the management and administration of water resources shared by Regions as well as transboundary waters to the Federal Government which implies that water resources confined within regions such as groundwater and lakes are under the jurisdiction of Regional States. In light of what is provided in the Constitution, the policy provision which stipulates that surface water and groundwater should not be treated separately but as an integrated whole, although logical, seems to be inconsistent with the Constitution.
2.3.1.2 Adoption of a Basin-wide Approach

The policy has clearly stipulated that the basin should be taken as the hydrological boundary and form the basis for water resources planning. This policy provision provides a clear foundation for the establishment of RBOs. Moreover, the policy endorses the establishment of RBOs on a phase-by-phase basis which is the direction currently being undertaken by the Ministry of Water Resources.

2.3.1.3 Coordination and Linkages

The need for appropriate coordination and linkage among the responsible government agencies responsible for different aspects of water resources management both horizontally among sectors and vertically between the Federal and Regional government bodies is also stressed in the policy. This is also one important factor that needs to be addressed in the legislation for setting up the Abbay Basin Authority.

2.3.1.4 Decentralized Management

In the discussion of the Constitutional provisions relevant to water resources management and administration, we have seen that the Federal Government has been given a more or less exclusive mandate with respect to water resources management in Ethiopia. On the other hand, effective water resources management and the federal system of government where Regions have a prominent role in water resources management and administration within their respective regions calls for some form decentralized management of the different functions of water resources management to regions or to river basin organization which may include water resources planning, issuing permits for different water uses, operation of water resources projects, financing etc. Therefore, adequate participation of regions in different aspects of water resources management in a decentralized manner might be called for when formulating legislation of a river basin organization such as in the Abbay basin. This is clearly provided in policy document. The Constitution provides that the Federal Government may delegate some of its powers and functions to the Regions. Therefore, delegation of some of the powers and functions to regions or to a specific river basin authority where regions are represented would be essential in subsequent legislation.

2.3.1.5 Institutional Stability and Continuity

The policy provides for the promotion of institutional stability and continuity and a smooth transition when new organizations, such as a river basin organization is established. This is an important provision that ought to be taken account when establishing a new river basin organization such as the Abbay Basin. The river basin organization will necessarily have to take over some of the functions and roles that existing institution at the Federal and Regional levels have currently. What seems to be stressed in the policy is that when existing institutions function well and play an appropriate role in their respective spheres of water resources management, then this should continue and might not be replaced by the new river basin organization.

Therefore, it is essential to consider and clearly define in legislation the respective functions and roles to be undertaken by the newly set-up river basin organization and by the various existing Federal and Regional water resources Ministries, bureaus etc. and how they would interact with each other.


2.3.1.6 Stakeholder Participation

The policy document has several provisions regarding the necessity of the participation of all stakeholders in water resources management. How this will be realized in the setting up of a river basin organization such as in the Abbay Basin needs to be carefully thought out. This is usually easier said than done. It may be especially difficult in the Ethiopian context to set up body where all representatives of stakeholders will be involved at all levels due to lack of experience in setting up such mechanisms and the existence of a wide range of stakeholders.
3. THE LEGISLATIVE FRAMEWORK

3.1 THE ETHIOPIAN WATER RESOURCES MANAGEMENT PROCLAMATION

The Ethiopian Water Resources Management Proclamation No. 197/2000 entered into force on March 9, 2000. The stated purpose of the Proclamation is “to ensure that the water resources of the country are protected and deployed for the highest social and economic benefits of the people of Ethiopia; to follow up and supervise that they are duly conserved; to ensure that harmful effects of water are prevented; and that the management of water resources are carried out properly (Article 3)."

It lays down fundamental principles that need to be taken into account in the management and administration of water resources in the country. The basic thrust of these fundamental principles is that water resources management and administration in the country should be based on the Ethiopian Water Resources Policy, the Integrated Basin Master Plan Studies and the Water Resources Laws of the country and that the ‘Supervising Body’ shall ensure that any water resources related activities in the country are conducted accordingly. It may be argued, therefore, that the Water Resources Management Proclamation has given a legal recognition of the Integrated River Basin Master Plans in that it provides in law that any water resources activity should be based on the IRBMPs.

As regards ownership of water resources of the country, it is provided, consistent with the Constitutional provision, that they are the common property of the Ethiopian people and the State (Art.5) which implies that the State will play a major role in the management, allocation, utilisation and protection of the water resources of the country.

The ‘Supervising body’ is defined as ‘the Ministry where it pertains to water resources at the central level, or any organ delegated by the Ministry…’ The latter is further elaborated in Article 8.2 of the Proclamation which says, ‘the Supervising body may, where necessary, delegate its powers and duties to the appropriate body for efficient execution of its duties.’ ‘Ministry’ is defined as the Ministry of Water Resources. Again, as with the Constitution, the Proclamation seems to differentiate between two types of water resources that may fall with the Federal jurisdiction (the Ministry of Water Resources) and those that fall within the jurisdiction of Regional States. However, it is not quite clear what the phrase ‘water resources at the central level’ refers to. If it is to be consistent with the Constitution, this phrase should be interpreted to mean those water resources that link (or are shared between) two or more regional states or are transboundary in nature. This would effectively exclude those water resources that do not link regional states or are not transboundary such as groundwater resources and lakes. Accordingly, the ‘Supervising body’ for water resources that remain confined within the Regions will be the respective Regional States.

As commented upon earlier on with respect to the Constitution, such separation between flowing surface waters and groundwater and lakes is inappropriate for river basin management as all water resources within a given basin should be treated as a unified whole. The discussion that this Consultant had with the Head of the Legal Services of the MoWR revealed that the phrase ‘water resources at the central level’ was included inadvertently in the Proclamation and that the intention was to include the management and administration of all water resources including groundwater and any surface water within the mandate of the Ministry of Water Resources. However rationale it is, this approach would have been inconsistent with the Constitution as it now stands unless the Constitutional provision (Art 51.11) is amended.

The responsibility for planning, management, utilisation and protection of water resources are given to the ‘Supervising body’ in the Proclamation. If the above interpretation of the Federal and Regional jurisdiction is taken literally, this means that the Ministry of Water Resources shall be responsible for the planning, management, utilisation and protection of water resources that are shared between two or more Regions or are transboundary in nature while the Regions are responsible for the planning, management, utilisation and protection of water resources confined within their respective Regions.
Overall, the Proclamation gives the Ministry of Water Resources the predominant jurisdiction over the management, utilisation and administration of the water resources of the country since the bulk of the water resources are either trans-regional or transboundary, the exception being confined groundwaters and lakes. This has significant implications for the management and planning of the water sector as a whole because of its highly centralised approach. However, it is clearly provided that the “Supervising body” may delegate its powers and duties given to it in the Proclamation to the appropriate body for the effective execution of its responsibilities (Articles 2.7 and 8.2). Accordingly, the Ministry of Water Resources may delegate all or some of its powers and duties to Regions or river basin organisations as and when it deems it necessary. This also holds true for water resources under ‘Regional jurisdiction’.

However, since detailed regulations are expected to be issued for the implementation of the provisions of the proclamation, these issues may still be addressed in the subsequent regulations and the Ministry has been given the power to delegate its responsibilities to appropriate bodies.

The Supervising body has been given broad regulatory powers under the Proclamation which include the establishment of an inventory of water resources and registry of actions; issuing permits of professional competence as well as for water use and construction; allocation of water resources; establishing required standards for the design and construction of waterworks and monitoring same; issue guidelines and directives for the prevention of pollution of water resources as well as for water quality and health standards in consultation with other concerned public bodies.

A major aspect of the water resources Proclamation is that most water resources use and construction works are to be based on a permit system. The Proclamation has several provisions regarding the application, issuance, duration, suspension and revocation of permits. It also provides for the payment of fees and water charges for use to the Supervising body. The amount and criteria for determining fees and charges is left to subsequent regulations. The establishment of water users associations in a voluntary manner is also envisaged. Details of their establishment and organisation will also be specified in the regulations. There are also provisions relating to settlement of disputes and adjudication the procedures of which are to be specified in regulations.

Generally, the Proclamation has laid down the general conditions that need to be fulfilled for anyone wishing to use water resources for different purposes. The details of most of the provisions of the Proclamation are expected to be provided in the Regulations to be issued in the future. The Proclamation provides that detailed regulations and directives will be issued by the Council of Ministers and the Ministry of Water Resources respectively for its implementation.

One essential point that needs to be stressed here is that the provisions of the Proclamation including any subsequent laws and regulations that may be issued by the Ministry of Water Resources with respect to the management and administration of water resources of the country are applicable on Regions or any other body such as a river basin organisation irrespective of whether the water resources are inter-regional, transboundary, groundwater resources or lakes unless, of course, the power to issue laws for specific purposes is delegated. This stems from the Federal Constitution which gives the power to enact laws for the utilisation and conservation of natural resources to the Federal Government or, in other word, to the executive arm of the Federal Government which is the Ministry of Water Resources while the Regional States have been given the responsibility to administer their water resources in accordance with Federal laws. Thus, although Regions may issue permits for groundwater resources, they have to abide by the Federal laws, which determines the conditions for issuing permits for their utilisation and protection.
3.1.1 Assessment

The water resources management proclamation is currently the basic legal instrument of governing the management, planning, utilisation and protection of water resources in Ethiopia. The Proclamation is generally consistent with the relevant provisions of the Constitution of the F.D.R.E. More importantly, it provides for the first time a clear set of provisions for the management, utilisation, protection and administration of the water resources of the country through a permit system. It has also stipulated provisions laying down the general requirements for the issuance of permits for those wishing to develop water resources for different purposes. However, for the Proclamation to be effectively implemented, there is a need for the issuance of detailed regulations on matters provided for in the Proclamation. According to the information obtained from the Head of the legal services of the Ministry of Water Resources the draft regulations has already been finalized and submitted to the Council of Ministers for approval.

The Ministry of Water Resources has been given extensive mandates with respect to the management and administration of the water resources of the country. As the Proclamation now stands, the management and administration of water resources seem to be too centralized. However, the Proclamation provides for the delegation of the powers and duties given to the Ministry of Water Resources to the appropriate body whenever it deems it essential for the efficient management of the water resources of the country. This proviso provides the basis for the Ministry of Water Resources to delegate some or most of the powers and duties it holds under the Proclamation to a river basin authority or to respective Regional States. Thus, one of the tasks in the current institutional study for the Abbay Basin should be to identify those functions and roles that existing institutions responsible for water resources management both at the Federal and Regional levels should retain and those functions and roles that the new Abbay Basin Organisation should take over and clearly spell it out in the future legislation for the establishment of the Organisation.

One other important aspect provided in the Proclamation is the provision which stipulates that all water resources activities and socio-economic strategies as well as investments related to water resources in the country should be based on the WRM policy and the Integrated Basin Master Plans and that the Ministry of Water Resources shall ensure adherence to this. Although the River Basin Master Plans have not been issued as legal instruments and therefore can not in themselves be considered to have a force of law, giving it legal recognition in the Proclamation and ensuring that it is implemented would arguably give such master plans a semi-legal status. This is important since one of the main objectives of the RBOs including the Abbay Basin Organisation will be to implement the integrated river basin master plans.

Most of the provisions provided for in the water resources management policy have not been addressed by the Proclamation. Some of the perceived gaps of the Proclamation are the following:

3.1.1.1 Lack of Integrated Water Resources Management

The Proclamation does not adequately address the issue of integrated water resources management which is clearly provided in the WRM policy. Similar to the Federal Constitution, it provides for separate water resources management by way of giving the Ministry of Water Resources jurisdiction over what it calls ‘ water resources at the central level’ which implies that water resources that are not at the ‘central level’ are within the jurisdiction of the Regional States. Although the term ‘central level’ is not defined in the Proclamation itself, it seems safe to interpret the term in accordance with the Constitution of the F.D.R.E which gives the Federal Government and thus the Ministry of Water Resources jurisdiction over inter-regional and transboundary water resources while Regional States have jurisdiction over water resources confined within their respective boundaries. This division into ‘Federal’ and ‘Regional’ waters complicates matters since it is difficult and, indeed, inappropriate to treat water resources separately.
Moreover, such separation may bring about a potential conflict between the Federal and Regional States with respect to matters as to what their mandates are over water resources found within a given Region. For instance, who is to determine by law the conditions of use of groundwater resources or lakes confined within a certain Region. According to the Federal Constitution, this power to issue law as regards the utilisation of natural resources (including water resources) is given to the Federal Government. The Regional States are given the responsibility to administer natural resources in accordance with the laws enacted by the Federal Government. Therefore, it is the Ministry of Water resources that determines by law how groundwater resources found in Regions are to be utilised and the Regional States have to abide by these rules. However, this is not clearly articulated in any existing law including the water resources management Proclamation and thus may create uncertainties as to what mandates are left to Regional States.

3.1.1.2 **No Provisions Regarding Intersectoral Coordination**

The Proclamation does not have any provisions regarding inter-sectoral coordination for water resources management at both the Federal and Regional levels. The effective implementation of the Proclamation and of the Integrated River Basin Master Plans is largely dependent on such coordination because the water resources development is largely related with the management of other natural resources. This issue might not have been addressed in the Proclamation with the expectation that it will be dealt with in other laws or subsidiary legislation. However, as the basic legal instrument for water resources management of Ethiopia, it is believed that a provision in the Proclamation providing for the need of inter-sectoral coordination would have provided the legal basis for more articulation in subsequent laws such as the establishment of river basin organisations.

3.1.1.3 **Does not clearly address the adoption of a River Basin Approach**

Except providing for the possibility of delegation of the powers and duties of the Ministry of Water Resources to appropriate bodies when necessary for the efficient management of water resources, the Proclamation does not expressly address the need for the establishment of River Basin Organisations or that there would be subsequent laws for the establishment of RBOs. In other words, there is no ‘framework’ river basin management law as yet. However, the general provision of delegation to ‘appropriate bodies’ may include river basin organisations and thus the Ministry of Water Resources can delegate its powers and duties to newly established RBOs.

3.1.1.4 **Centralization versus Decentralization**

One important issue that has to be addressed is how much of the powers and duties that the Ministry of Water Resources is currently given by law should be decentralized to Regions. Clearly, most of the water resources development and management activities are going to be implemented in the respective Regional States. Accordingly, the Regional States will have to play a greater role and feel a sense of ownership in water resources management activities in their respective areas which means some of the mandates given to the MoWR by law have to be delegated to the Regional States in order to put in place an effective water resources management in the country.

This is not clearly addressed in the Proclamation except the provision in the Proclamation giving the MoWR the power to delegate some of its functions. For instance, the MoWR has the mandate to issue permits for water use, waste water discharge and water works. In order for the MoWR to carry out the latter function effectively, it would seem that this function should be delegated to the respective Regional States or alternatively to the River Basin Organisation to be established. The question to be addressed should be: Which agency or body- be it at the Regional level or at the Basin level- can best carry out a given function currently under the mandate of the Ministry of Water Resources and which should be retained by the Ministry itself?
3.2 THE DRAFT WATER RESOURCES MANAGEMENT REGULATIONS

The Draft WRM regulations has been prepared by the Ministry of Water Resources and submitted to the Council of Ministers for approval. The objective of the Regulations is to provide detailed provisions for the effective implementation of its parent legislation—the Water Resources Management Proclamation. A review of the draft regulations shows that it is mainly a further elaboration of the Proclamation providing in detail the main requirements for the issuance of permits for different uses of water and the conditions for the issuance, renewal, revocation etc of such permits. It also provides for fees for application for permits as well as water charges to be paid for different uses of water such as for irrigation; industrial use; hydropower; drinking water supply etc and a schedule is attached to this effect.

The Draft Regulations gives the mandate to the “Supervising Authority” to receive applications for permits and make the necessary decisions accordingly. As was discussed earlier, the “Supervising Authority” as defined in the Proclamation is the Ministry of Water Resources for those waters that are ‘central’, and which, to be consistent with the Constitution should be interpreted as those water that are shared among regions and transboundary waters. Accordingly, the Ministry of Water Resources shall issue permits for a large part of the water resources of the country and the Regions will issue permits for groundwater use and lake bodies confined within their own boundaries. However, as with the Proclamation, the Regulations does not expressly articulate the mandates of the Ministry of Water Resources and the respective Regional States with respect to the issuing of permits. Clearly, the Regulations does not delegate the Regions to issue any water use/waste water discharge permits within their own respective regions. The Ministry still retains the mandate to issue permits for a large bulk of water resources of the country. As mentioned earlier, it is not realistic for the Ministry to issue water use/wastewater discharge permits that can and should effectively be done by the Regions themselves. This mandate could have been delegated to Regions under the Regulations but has not been done so. Such day-to-day operations could be effectively done by the Regions themselves instead of the Ministry of Water Resources.

One crucial and related issue in this respect is the collection of fees for permits and water use charges. According to the regulations it is the “Supervising body” that collects fees and water use charges. Thus, the Ministry of Water Resources would have the mandate to collect fees and water use charges for most of the water resources projects to be undertaken in the Regions. Although the mandate to collect bulk charges for water use is expressly given as the mandate of the Ministry of Water Resources, it may be highly questionable whether or not this mandate should be delegated to Regions who usually administer water resources projects in their respective regions and therefore need such sources of income to recover capital and O and M costs.

This is an issue that would seem to create a potential conflict with the Regional States. The issue is: why should the Ministry of Water Resources collect water charges for those water resources projects undertaken in Regions? Moreover, the Regulations has attached tariff rates for different water uses such as for irrigation; industry; hydropower; water supply etc. The issue here also is: why shouldn’t the Regions or the relevant sectors at both the Federal and Regional levels or alternatively the basin organisation set rates for certain water uses such as, for instance, water supply or electricity? Wouldn’t there be an overlap of mandates, for instance, between the Ministry of Water Resources and the Ethiopian Electric Lights and Power Corporation (EEPCO) which has the mandate by law to set tariffs for the use of electricity?

The Draft Regulations does not provide for the establishment of Basin Organisations and the modalities for their establishment. This could have been provided in the Regulations expressly and form the basis for the their establishment instead of having general provisions regarding delegation in the WRM Proclamation.
3.2.1 Assessment

The draft Regulations does not add much to what is provided in the WRM Proclamation. What it essentially does is elaborate upon the provisions of the Proclamation regarding the permit system and set fees and charges for water use. In the view of this Consultant, the power to issue permits including collection of fees and charges for water use/waste discharge may better have been delegated to Regions under the Regulations instead of the Ministry retaining such mandates except in situations where the Ministry or the basin organization is directly involved in the operation of water resources project such as irrigation or hydropower.

3.3 The Draft Proclamation for the Establishment of (the Abbay) Basin Water Resources Authority

The Draft Proclamation for the Establishment of (the Abbay) Basin Water Resources Authority was prepared by the Ministry of Water Resources. According to the discussion made with the Head of the Legal Services of the MoWR, the Proclamation was drafted with the intention of establishing the Abbay Basin Water Resources Authority but has been currently suspended because of the launching of the on-going Institutional Setup Studies of the Abbay Basin Project.

The Draft Proclamation gives the Authority a number of mandates (powers and duties) that is currently held by the MoWR under its establishment Proclamation (Proclamation 4/1995) and more articulated in the Water Resources Management Proclamation. It is not the purpose of this study to discuss in detail each of the mandates given to the Authority in the Draft Proclamation since the document is still a draft. However, it might be relevant to raise some issues regarding the mandates given to the Authority in the Draft Proclamation in order to examine what roles and functions should a River Basin Organization such as the Abbay Basin Organization take over from existing institutions and what roles and functions should be retained by existing institutions at both the Federal and Regional levels in the Ethiopian context.

The powers and duties given to the Authority under the draft proclamation seems to be very broad in light of the fact that it will be a new institution in the Ethiopian context with little or no experience in basin management. Moreover, some of the mandates given to the Authority might best be undertaken by existing institutions already in place rather than for the Authority itself to take on the some of the day-to-day operations and management functions.

For instance, the Authority is given the mandate to issue permits for water resources use and construction works within the basin in accordance with the relevant law. However, it would seem that the mandate to issue permits for water use or waste water discharge be best given to the respective regional water resources bureaus rather than bog down the Basin Organization on such administrative matters. The conditions on when water is to be abstracted and the determination of bulk water shares to which each region is entitled to and to monitor same can be the mandate of the Basin Organization.

The Basin Authority is also given the mandate to collect water charges in accordance with the law issued to this effect. This may also be given to the Regional States themselves since they are usually the ones who basically manage and operate the water resources projects within their respective regions and also need to have some income to run the projects. It may be the case, that the River Basin Organization itself is given the responsibility of operating major dams and water resources projects within the basin. In such cases, the RBO may be given the mandate to collect water charges. The Draft Proclamation envisages such situation, when it gives the Authority the responsibility to implement multi-purpose water resources projects within the Basin, when necessary.
From the reading of the provisions, the mandate for the preparation of the master plan is not given to the Authority. What is given to the Authority is to examine any water related development plans and programs and ensure that they are consistent with the master plan and to ensure that the development project and studies within the master plan are implemented. In other words, it is the Ministry of Water Resources that retains the mandate of the preparation and when, necessary updating, of the master plan. It is believed that one of the main functions of the RBO should be to focus on basin-wide planning and on the basis of the master plan set bulk water shares to which the respective regions would be entitled to. Thus, the mandate to prepare and update master plans and see to their implementation might best be done by the Abbay Basin Authority.

The above are mere examples of some of the powers and duties given to the Basin Authority in the draft proclamation. They have been cited only to show some of the issues that need to be considered when defining the specific powers and responsibilities of the basin organization and of the various existing federal and regional agencies. What ought to be underlined here is that in formulating through legislation the powers and duties of the Basin Organization, one needs to ask, who would best do a specific function better-the RBO or the existing agencies at the federal and/or regional levels? This also begs the issue of who has the adequate capacity both in terms of manpower and finance to discharge its given mandates efficiently.

The Proclamation also provides that the Authority will have a Board composed of a person designated by the Minister of Water Resources as Chairman and members comprising of Heads of the Region’s Water resources, agriculture, irrigation office, investment and environmental protection bureaus respectively and Heads of the Ministry’s Basin Development Studies Department and Water Resources Administration and Utilization Department. At the Authority level, the composition of the Board looks quite representative with the Ministry of Water well represented because of the fact that it still needs to play a significant part in the regulation and management of the water resources especially in river basins of major importance.

The Regions also seem to be well represented with the technical bureaus. However, it might be important to include the finance and economic development bureau because of its important role in the financing of project and planning in regions as well as a representative from the Regional Council as part of the political decision-making body. The Board is generally given the mandate to set the policy and strategic directions within the Basin.

What is clearly lacking in the draft Proclamation is an inter-sectoral coordinating body at the Federal Level. This is very important in light of the fact that it is at the Federal level that the major policies, strategies, legislative, planning and financing decisions regarding the use and management of the natural resources of the country including land and water resources are made. In light of this, a Ministerial Council comprising of the relevant Ministries and agencies at the Federal level including representative from the Regions at a higher level (or alternatively the Regional Affairs Ministry) needs to be established which would provide the ultimate authority in major policy decisions regarding the basin.

One final issue that needs to be addressed with regard to the establishment of a river basin authority is how to approach the law making for its creation. Basically, two approaches may be followed. One is to establish each river basin organization such as the Abbay Basin Organization, Baro-Akobo Basin Organization; Awash Basin Organization etc by separate laws or, in the Ethiopian context by specific Proclamations. The other approach is to first devise a ‘framework’ or ‘enabling’ legislation that contains provisions for the establishment of river basin organizations mainly incorporating provisions on: how management of a river basin is to take place such a how ministerial coordination at the Federal level is to take place; composition of the River Basin Authority; the general powers and duties of the Basin Organization and of existing institutions at the Federal and Regional levels; who is to monitor the RBO and provisions on dispute settlement mechanisms etc may be possible contents of the enabling law. Based on the enabling law, the Council of Ministers would be given a mandate to create specific river basin organizations such as the Abbay Basin Organization, through more detailed regulations clearly defining the powers and responsibilities of the Basin Organization and the respective government organs at the Federal and Regional levels.
In the case of Ethiopia to date, it seems that the first option of directly establishing a river basin authority with specific duties and responsibilities has been preferred. A case in point is the establishment of the “Awash Basin Water Resources Administration Agency” in 1998 which shall be briefly discussed subsequently. This is one possible option that may be taken. However, the potential problem with this option is that, if through time, there are some gaps or inadequacies found in the powers and responsibilities given to the river basin organization by the legislation and needs amendments, then it has to again pass through the whole legislative process and approved as law by the House of Peoples representatives which may take a lot of time to pass a law.

However, in the second option, the House of Peoples Representatives passes the enabling framework legislation and leaves it to the Council of Ministers to issue regulations for the creation of specific river basin organizations. The advantage of establishing river basin organizations by regulations passed by Council of Ministers is that whenever it needs amendment it does not have to go through parliament but can relatively easily and in presumably less time be amended and passed by the executive arm of the government. Thus, it may be better to consider which of the two law making options are better in the Ethiopian context.

### 3.3.1 Assessment

#### 3.3.1.1 Clearly identifying the mandates of the Basin Organization vis-à-vis the Ministry of Water Resources and the Regional States

The Draft Proclamation for the establishment of the (Abbay) Basin Water Resources Management Authority, as it stands currently, does not seem to adequately address some major issues that need consideration when drafting a legislation for the establishment of River Basin Authorities.

One important element that needs to be kept in mind during the drafting of the law for the establishment of the Abbay Basin Organization is clearly defining the mandates of the Basin Organization vis-à-vis the existing water resources institutions at the Federal and Regional levels, namely, the Ministry of Water Resources and the Regional Water Resources Bureaus. According to the existing legal framework, all the relevant mandates for water resources management in the country with respect to water resources shared between or among regional states in a given basin or are transboundary in nature are in the hands of the Ministry of Water Resources. What is currently provided in the legal framework is that the Ministry of Water Resources may delegate its mandates to any other organ when it deems it necessary for the efficient management of the water resources of the country. Based on this provision, the MoWR may delegate by law some or all of its mandates to a newly established Basin Organization or to the respective regional states. This ought to be determined by carefully addressing the question: which body or organ can best undertake the different powers and duties that currently are under the mandate of the MoWR. In responding to this question, one needs to also take into account the Ethiopian context and the capacities of the existing institutions to carry out the different roles and functions and what the newly established Abbay Basin Organization may realistically take over as its mandate particularly in the initial stages of its establishment.

One option that may be taken is to establish a full-fledged basin authority with all or most of the current mandates of the MoWR delegated to it by law. However, this option does not seem to be realistic at the initial stages for two main reasons. Firstly, it would be premature to presume that the newly established basin organization will have adequate capacity both in terms of manpower and finance to carry out all the current mandates of the MoWR. Secondly, the Regional States need to adequately participate in the management of the water resources of the Basin in order to create a sense of ownership and to decentralize some of the management functions that are now in the hands of the Ministry to the concerned Regions.
Not only that, the development of all water resources and related natural resources projects identified in the master plan are going to be implemented in the respective Regions and unless they actively participate, as equal partners in the management of the water resources within their own Regions, it might be difficult for the Abbay Basin Organization to effectively carry out its intended functions.

In the view of this Consultant, the role that the Abbay Basin Organization should take over should in the initial stages not be directly taking the implementation of water resources projects and the operational and management functions that can be done more effectively by the respective regional states themselves. It may be better at the initial stages for such Basin organization to focus on basin-wide planning; creating a better coordination mechanism among the relevant water related agencies within the basin; set bulk water shares on the basis of clear strategies and basin-wide planning; act as a dispute resolution body if potential disputes arise among the concerned regions etc.

3.3.1.2 Inter-Sectoral Coordination

The draft Proclamation does not provide for inter-sectoral coordination at the Federal Level. This should be addressed when drafting the legislation for the establishment of the Abbay Basin Organization because the main decision-making bodies as regards the overall policy and strategic directions; financing; planning etc of water and other related natural resources are found at the Federal level.

3.3.1.3 Linkage between the MoWR, the Basin Organization and the Regional States

One other issue that might need to be addressed is establishing a clear linkage between the three tiers that will be most directly involved in the country’s water resources management, namely, the MoWR, the Basin Organization and the respective regional states. As the law now stands, there is no direct link or reporting requirements, for example, between the MoWR and the Regional States in water resources management except that the Ministry gives support to the regions when required or requested. However, it is necessary to create certain requirements by law for the regional states to report on their activities to the Basin Authority on mandates that may be delegated to them by the Ministry so that the Authority and the Ministry can monitor such activities that have been delegated to Regions. In the case of the Basin Authority, this may not be an issue since it certainly will be made accountable to the Ministry for its overall activities.

3.4 The Awash Basin Water Resources Administration Agency

The Awash Basin Administration Agency was established pursuant to Proclamation No. 129/1998. It is established as an autonomous agency having its own legal personality and accountable to the Ministry of Water Resources (Article 3).

Its stated objectives is to ‘administer, allocate and regulate the utilization of the surface water resources of the Basin.” This implies that the Authority does not have any mandates with respect to groundwater resources within the basin.

The powers and duties of the Agency are, among others:
- To administer the available water of the Basin that flows across or lies between more than one Regional Government and regulate the flow of water of such rivers;
- To issue permits pursuant to appropriate law, to construct and operate water works, in relation to waters referred to above and regulate same;
- To allocate water to permittees and collect bulk water charges for water use as determined by the Government.
The issues that arise here are similar to what has been discussed earlier regarding the draft Proclamation for the establishment of (the Abbay) Basin Water Resources Authority. In other words, are the powers and duties given to the Agency relevant for the effective management of the water resources within the Awash Basin? Shouldn’t existing operational agencies, particularly at the Regional level undertake some of the mandates given to the Authority? Is there any involvement or representation of the Regional States or water related sectors sharing the water resources of the Awash basin provided by law? Is there inter-sectoral coordination at the Federal level? For most of the latter question the answer seems to be in the negative. It is submitted here that the Proclamation needs to revised in order to create a more focused Basin Organization in the Awash Basin which can play an effective role in the management of the water resources of the Basin.

One way to address the above issues is to examine the lessons learned from the Agency to see whether or not it has effectively discharged the mandates given to it under the Proclamation to date and probably revise its mandates accordingly.

4. REGIONAL WATER RESOURCES MANAGEMENT POLICIES AND LAWS

Regional States have already started issuing their own regional water resources policies and laws. One of the Regions, within the Abbay Basin, the Regional State of Oromia has issued a water resources policy in 2002 and a draft regulation for the management of water resources has already been prepared. This proliferation of policies and laws issued or to be issued by the respective regions is bound to create confusion as it might be difficult to delineate clearly what the mandates of the Federal Government vis-à-vis the Regional States both on the issue of issuing water resources management policies and laws and with respect to the mandates they have in water resources management.

By and large, both the water resources policy and draft regulations for water resources management of the Oromia Regional State, are *mutatis mutandis*, similar to those issued by the Federal Government. The problem that arises is in what sphere of water resources management does the Federal Government has jurisdiction over the water resources existing within the boundaries of the respective Regional States and what is the jurisdiction and role of the Regional States with respect to the water resources found within their own Region? Moreover, another question that may be posed is whether Regions have the mandate to issue policies and laws on water resources that are already within the jurisdiction of the Federal Government.

It seems that one of the main source of confusion lies in that the Federal Constitution has impliedly provided for what one may call “Federal Water Resources” and “Regional Water Resources”. However, it is nowhere provided clearly which type or category of water resources are under the jurisdiction of Regional States. It is only by implication that one might interpret the provision of the Constitution as giving jurisdiction to Regional States over groundwater resources and static water bodies such as lakes since it provides that the Federal Government shall determine and administer those water resources that are shared by the Regional States and are transboundary in nature.

Be that as it may, the mandate to issue water resources management laws seems to be that of the Federal Government and for the Regions to administer their water resources in accordance with the law enacted by the Federal Government. In this sense, the question arises: can regions issue laws for the management of the water resources within their regions irrespective of whether such water resources are “Federal” or “Regional”? From the perspective of this Consultant the answer would be that regional states do not seem to have a mandate to issue laws regarding water resources management but only to ‘administer’ their water resources in accordance with the law issues by the Federal Government. For instance, the Regions may issue permits for groundwater use within their Regions but only according to the law issued by the Federal Government regarding how groundwaters are to be used; what are the conditions for issuing permits; what precautions need to be made with regard to utilization of groundwaters etc.
Moreover, with respect to the issuance of policies by the respective regional states, it is equally arguable as to whether Regions should issue policies as regards water resources management because this is also largely the jurisdiction of the Federal Government according to the Constitution. One may argue that they may issue water resources policies as long as it is consistent with the national water resources management policy. However, this may not usually be the case as there sometimes may be inconsistencies between the Federal and Regional water resources management policies and then, a potential conflict of jurisdiction may arise between the Federal and Regional States.

To illustrate, the Oromia water resources policy states as one of its general principles that “the regional water resources are owned by the people of Oromiya, however, the access to neighboring people should be taken into consideration.” Is this really consistent with the provisions of the Federal Constitution and the Water Resources Management Policy and Proclamation? “Ownership of Water Resources” implies the right to determine the allocation of water resources to various users. In this sense, the policy provision of the Oromiya regional state implies that the Oromia region has the right to allocate the water resources of the Region with the proviso that it will take into account the rights of neighboring people (or regions).

However, with regards to water resources shared by Regions, it is the Federal Government that has the mandate to determine water allocation among the regions sharing water resources within a given basin and not the respective regions. In this sense, the policy provision of the Oromiya Regional State as regards ownership of water resources is inconsistent with that of the Federal Constitution, national water resources policy and the Federal Water Resources Management Proclamation. There are additional examples that can be cited from the Oromia water resources policy that may potentially conflict with the Federal Constitution, policy or law.

However, what is intended to be stressed here is whether or not there is a need to issue further water resources policies at the Regional level as long as there is a national water resources management policy that governs water resources management throughout the country at the Federal level. It is submitted that this is a crucial issue that needs to be discussed soon in order for the smooth functioning of a river basin organization and, of course, efficient water resources management of the country.

When coming to the draft regulations of the Oromia Regional State for the management of water resources, the same potential conflict with that of the Federal Water Resources Management Proclamation and the Regulations issued pursuant to it is also foreseen. For one thing, the issue arises: does the Oromia Regional State have a mandate to issue detailed laws for the utilization of water resources (even for the use of groundwater and lake bodies found within the Region) within its Regions in light of the provisions of the Federal Constitution? The answer as mentioned above seems to be in the negative.

From the reading of the draft regulations, the “Scope of Application” of the draft regulations is ‘without any prejudice to the provision of the “the Ethiopian Water Resources Management Proclamation No. 197/2000 and any regulations issued thereunder’ and also further articulates that ‘the Regulations apply to the use and management of water resources which do not link two or more states or which do not cross the boundaries of the national and/or Regional territorial jurisdiction in the content of Articles 51.11 and 52.2d”. What the latter provision seem to say is that the regulations shall apply only to those water resources that remain confined within the Oromia Regional State and are not shared with other regions or are not transboundary water resources. In other words, the scope of the draft regulations is very narrow in nature governing groundwater resources and lakes that do not cross the Region’s boundaries.

However, this is not explicitly mentioned anywhere in the draft regulations and can only be implied from the latter provision. When it comes to the detailed provisions of the Draft Oromia Regulation, it is not at all clear whether the provisions apply to all water resources use in the Region or not. This should have been explicitly stated in the regulations, if at all it only applies to groundwater resources and other static water bodies. In this sense, there is a great possibility for a potential conflict that might arise between the Federal Government (or the Ministry of Water Resources) and the Oromia Regional State over their respective jurisdiction on water resources that exist within the Region.
This type of potential conflict could be avoided only if it is only one of the bodies, in the Ethiopian context-the Federal Government- that has the mandate to issue laws regarding the management of water resources in the country.

4.1 ASSESSMENT

As mentioned earlier, it seems that each regional state is currently intending to issue its own water resources policy and law in regard to water resources within their region purportedly in line with the Federal Constitution, Policies and Laws. One issue that has to be addressed, however, with respect to water resources of the country is: is this really necessary?

The Federal Government has already issued the necessary policies and laws with regard to water resources management of the country which in large part is its mandate. In this respect, wouldn’t it be a simple replication or overlap or, sometimes, a breeding the ground for the creation of potential conflict for the Regional States to issue their own laws or policies on water resources management for their own Regions? These are issues that have to be discussed in depth with the Regional Governments and the relevant stakeholders in Regions because they may have serious implication on the establishment of river basin organizations since the regional states might see the establishment of such RBOs as unduly interfering with their current mandates. Thus, it is necessary to ensure from the outset that potential areas of overlap and confusion over mandates are address clearly and understood and accepted by all concerned at the Regional as well as at the Federal level.

5. TRANSBOUNDARY ISSUES

Most of the river basins in Ethiopia are transboundary in nature since they cross the boundaries of the country to neighboring countries. The Abbay river is no different in this respect. The river crosses the boundary of Ethiopia and flows to Sudan and Egypt and is therefore a transboundary river. As discussed earlier, it is the Federal Government and thereby the Ministry of Water Resources that has the mandate to determine and administer the utilization of transboundary waters according to the Constitution.

Currently, a transitional cooperative forum of the Nile basin states has been agreed upon and established by the Nile basin countries and is known as the Nile Basin Initiative (NBI). The NBI has different programs within it and one of its programs known as the Subsidiary Action Program (SAP) has as its objective the identification and implementation of water resources projects within the participating countries of the program. The program is divided into two sub-basins of the Nile, one of which is the Eastern Nile Basin Subsidiary Action Program (ENSAP) whose member states currently are Ethiopia, Sudan and Egypt. The Eastern Nile Basin countries have established what is called the “Eastern Nile Technical Regional Office (ENTRO) whose head office is based in Addis Ababa, Ethiopia.

Since the Abbay Basin is part of the Eastern Nile Basin, some of the projects that are or will be identified by the Eastern Nile Basin Countries will be implemented in the Basin. The water resources projects proposed by Ethiopia are mainly drawn from the Abbay Basin Integrated Water Resources Master plan. Thus, the issue is: when the Abbay Basin Organization is established, what role would it have in the implementation of the projects under the ENSAP. The role of the Abbay Basin Authority vis-à-vis the on-going activities within the NBI, particularly as it relates to the Abbay Basin needs to be clarified.