



**INTERNATIONAL CONFERENCE ON WATER MANAGEMENT IN FEDERAL
AND FEDERAL-TYPE COUNTRIES**

*CONFERENCIA INTERNACIONAL SOBRE GESTIÓN DEL AGUA EN
PAÍSES FEDERALES Y SEMEJANTES A LOS FEDERALES.*

Policy and Legal Framework for Water Resources Management in Ethiopia

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Abstract

Ethiopia has adopted a federal system of government under the Federal Constitution of 1995 and has subsequently issued a Water Resources Management Policy and several laws with respect to water resources management of the country. The Federal Constitution provides that the water resources of the country are publicly owned and that the Federal Government has the overall mandate to determine the administration and management of the utilisation of the waters that are inter-regional and trans-boundary in nature while Regional States have the mandate to administer the water resources within their respective States in accordance with federal laws. As a result, the Federal Government has a prominent role in determining the manner in which water resources would be managed and utilised for various development purposes in the country. The Federal Government has also been given the mandate to delegate its powers and responsibilities to Regional States or other bodies for the proper management of the water resources of the country. The federal system of government itself calls for decentralised management of resources by which Regional States play an active role in the decision-making regarding water resources found within their respective regions. Currently, the government has adopted the river basin as a planning unit for the development and management of the water resources of the country which is in line with the Ethiopian Water Resources Management Policy. Most of the major powers and responsibilities of the Federal Ministry of Water Resources, which is the executive arm of the Federal Government with respect to water resources, has now been delegated to River Basin Organisations (RBOs) that are to be established phase-by-phase. It is expected that Regional States will play a prominent role in decision-making in the RBOs to be established although this is yet to be seen.

The objective of this paper is to provide an analysis of the policy and legal framework put in place for water resources management in the country and to point out some of the drawbacks in the current legal framework and challenges that might be faced by the RBOs. One of the major issues that this paper attempts to show is that it is highly critical that Regional States and other major stakeholders at both the federal and regional level play an active role in the RBOs to be established and that the legal framework should create this enabling environment for them to successfully manage the water resources of the country.

Keywords: integrated water resources management; river basin organisation; decentralisation; stakeholder participation

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I. INTRODUCTION

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1. Hydrology of Ethiopia

Ethiopia is located between 3⁰ and 15⁰ North latitude and 33⁰ and 48⁰ East longitude in what is commonly called the "Horn of Africa". The country has a land area of approximately 1.13 million km² and is bordered by Somalia and Djibouti in the East, the Sudan in the West, Eritrea to the North and Kenya to the South. The total population of the country is currently estimated to be 79.2 million (Central Statistical Agency, 1999) out of which 85% lives in the rural areas

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The total estimated annual renewable surface water resources from 12 major river basins and lakes are estimated at 122 billion m³ (Table 1) with per capita freshwater resources estimated at 1,924 m³ (Ministry of Water Resources, 2002). This figure indicates that the country has abundant freshwater resources. However, the water resource of the country is highly variable both temporally and spatially.

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In terms of spatial distribution of surface water resources, 90% of the water resources of the country are found in four river basins (Abbay [Blue Nile], Baro-Akobo [Sobat], Omo-Ghibe and Tekezze [Atbara]) with a population of only 40% while 60% of the population inhabits the high lands of the Eastern and central river basins and depend on less than 20% of the country's water resources (World Bank, 2006). The large runoff of the three river basins (Abbay, Baro-Akobo and Omo-Ghibe) is explained by the fact that the latter river basins occupy the Western and Southwestern parts of Ethiopia where the highest concentration of rainfall occurs. On the other hand, one should also note the fact that the three Eastern river basins (Afar-Danakil, Aysha and Ogaden) are virtually dry (refer to Table 1).

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Rainfall in Ethiopia also shows a high spatial and temporal variability. The highest mean annual rainfall, which is more than 2,700 mm, occurs in the Southwestern highlands of the country and gradually decreases in the North to less than 200 mm., Northeast to less than 100 mm and Southeast to less than 200 mm. In addition to this, arid and semi-arid

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as well as drought prone areas also exhibit significantly larger inter-annual rainfall variability. Consequently, drought has been a common feature especially in the Eastern part of the country (World Bank, 2006).

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Moreover, most of the major river basins of Ethiopia cut across more than one Regional State or are trans-boundary in nature. Ethiopia is upstream of all its trans-boundary rivers with more than 75% of the water resources flowing into neighboring countries. The Baro-Akobo, Abbay and Tekezze drain into the Nile system; Wabi-Shebelle and Genale-Dawa discharge into the Indian Ocean after cutting through Somalia; part of the Dawa River forms a border with Kenya. The Omo-Ghibe flows into Lake Rudolf or Turkana. This in itself is a major constraint on water resources development of the country since it requires negotiations with those countries sharing the water resources regarding water allocation and management of such trans-boundary rivers.

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With respect to groundwater resources, the information currently available is limited. However, it is estimated that the groundwater potential is approximately 2.6 billion m³.

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According to the water resources policy only a minority of Ethiopians - 42% - have access to potable water services and some 11% have access to improved sanitation. Urban areas have the highest coverage, where about 83% of the population has access to improved water supply and 55% to improved sanitation facilities.

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The estimated irrigation potential in Ethiopia is 3.7 million hectares. However, less than 5% (approximately 200, 000 hectares) is currently under irrigation. Out of the current irrigated area 38% is under traditional irrigation; another 38% public; 20% modern communal and only 4% is under private commercial farming (World Bank, 2006).

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The gross hydropower potential of Ethiopia is estimated at 650 TWh per year of which 25% could be exploited for power. However, the annual per capita electricity consumption (25 kWh) is among the lowest in the world. Of Ethiopia's total energy production, 95% comes from traditional resources such as fuel, wood, dung, crop residues and human and animal power. Ethiopia currently has 731 MW of dependable power, most of it hydropower (World Bank, 2006).

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Table 1: Surface Water Resources of Major River Basins

No	River Basin	Catchment Area (km ²)	Annual runoff (bm ³)
1	Abbay	199, 912	52.6
2	Awash	112, 700	4.6
3	Baro-Akobo	74, 100	23.6
4	Genale Dawa	171, 050	5.80
5	Mereb	5, 700	0.26
6	Omo-Ghibe	78, 200	17.90
7	Rift Valley Lakes	52, 740	5.60
8	Tekezze	89, 000	7.63
9	Wabe Shebelle	200, 214	3.15
10	Afar-Danakil	74, 000	0.86
11	Ogaden	77, 100	0
12	Aysha	2, 200	0
	Total	1, 136, 816	122 00

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Source: Ministry of Water Resources (2002)

2. Federal Administrative Structure of Ethiopia

Ethiopia has been established as a Federal Democratic Republic with a parliamentary form of government under the 1995 Constitution (Proclamation No. 1/1995). The country comprises of nine Regional States, namely, Tigray, Afar, Amhara, Oromia, Somalia, Benishangul-Gumuz, Southern Nations, Nationalities and Peoples, Gambella and Harari, delimited on the basis of the settlement patterns, language, identity and consent of the peoples (Articles 45, 46, 47 of the Federal Constitution). The capital city of the Federal Government, Addis Ababa, and Dire Dawa city enjoy full measure of self-administration, and are accountable to the Federal Government.

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Both the Federal Government and Regional States have their respective legislative, executive and judicial powers. The highest body at the federal level is the House of Peoples' Representative whereas the State Council is the highest organ of State authority at the Regional level (Article 50). All powers not given expressly to the Federal Government alone or concurrently to the Federal Government and Regional States are reserved to the Regional States (Article 52.1). Accordingly, the Regional States have the power to enact and execute their own constitutions and other laws as well as formulate and execute their economic, social and development policies, strategies and plans. Both the Federal Government and Regional States are required to respect each other's powers and mandates and, when necessary, the Federal Government may delegate the powers given to it under the Constitution to Regional States (Articles 50.8 and 50.9).

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The powers and duties of the Federal Government include: the duty to protect and defend the Constitution, formulate and implement the country's policies, strategies and plans with respect to overall economic, social and development matters, formulate and implement foreign policy and negotiate and ratify international agreements; formulate and execute the country's financial, monetary and foreign investment policies and strategies; and regulate inter-state and foreign commerce. The powers of Regional Governments, on the other hand, include establishment of a Regional State administration

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that advances self-government and democratic order, protection of the Federal Constitution, enactment of the Regional State constitutions and subordinate laws; formulation and execution of economic, social and development policies, strategies and plans of the State; administration of land and other natural resources in accordance with federal laws and establishment and administration of the state police force; and maintaining public order and peace within the Regional State. The Federal Government and the Regional States have concurrent power on matters of taxation.

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Local government entities consist of Regional States, Zonal and Woreda Governments.

The Federal Government is responsible for drawing up general policies pertaining to common interests and benefits while Regional Governments are usually implementers of these policies. Each of the nine Regional States has its own parliamentary assembly, which elects representatives to the upper chamber of the Federal Parliament, the House of the Federation. Each has taxing powers and administers its own budget, but in practice the assemblies have had to rely on the central government for funding.

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This decentralised system of government is expected to facilitate management of natural resources including the water resources of the country since it creates a federal structure with a number of highly autonomous Regional States as well as structures of self-governance within the lower levels of the States such as the Woreda (Districts, Kebele (which is the smallest unit of administration) and sub-Kebele levels). This devolution of power is designed to ensure that citizens at all levels, particularly at community and village levels, are empowered in political, economic and social aspects as the prime movers of development in their areas.

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II. LEGAL BASIS FOR WATER RESOURCES MANAGEMENT

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1. The Constitution

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As the supreme law of Ethiopia, all subsidiary laws or implementing legislation issued subsequently must be consistent with the Federal Constitution. To this effect, Article 9 of the Federal Constitution provides that "...any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect." The latter provision indicates that all subsequent legislation pertaining to water resources management should be in line with the provisions provided in the Federal Constitution.

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The Constitution has several provisions which have direct policy, legal and institutional significance for the management of the water resources of the country.

Article 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 — both surface and underground waters — are part of the public domain and are therefore vested in the State.

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The Constitution defines the powers and functions of the Federal Government and Regional States respectively with respect to the country's water resources management and administration. Accordingly, it is the Federal Government that has the mandate to enact laws for the utilisation and conservation of land and other natural resources including water resources of the country (Article 51.5) while the Regional States have the mandate to administer land and other natural resources in accordance with federal laws (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.

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More specifically, the Constitution stipulates that the Federal Government shall determine and administer the utilisation of the waters or rivers or lakes linking two or more States or crossing the boundaries of the national territorial jurisdiction (Article 51(11)). This provision gives the Federal Government very broad powers as regards water resources management since almost all the major water resources in the country are shared by two or more Regional States and therefore “link” the Regional States. On the basis of this provision of the Constitution, the determination and regulation of the use, allocation and protection of the water resources of the country as well as its administration largely rests with the Federal Government. Moreover, most of the river basins in Ethiopia are trans-boundary in nature and therefore the mandate to determine the administration and utilisation of these basins also rests with the Federal Government.

In strict legal terms, it may be argued that the exception to the above general rule would be those water resources of the country which remain confined within the boundaries of the respective Regional States such as groundwaters or some 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 indicates that water resources which are confined within a certain region will be administered by the respective Regional States subject to the laws issued by the Federal Government. However, the reading of the Constitution in such manner may not have been intended by those who drafted it. It would also be contrary to the principles of Integrated Water Resources Management (IWRM) and the river basin approach that are both pillars of the Ethiopian Water Resources Management Policy (WRM Policy) as we shall see later.

One other important provision of the Federal Constitution is that the Federal Government may delegate its powers and functions granted to it under Article 51 of the Constitution to Regional States (Article 50.9 of the Constitution). In other words, the executive arm of the Federal Government responsible for water resources (currently the Ministry of Water Resources (MoWR)) may delegate some of its powers and responsibilities given to it by law to Regions when it deems it necessary for the effective management and

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administration of the water resources of the country. Thus, the MoWR may, for example, delegate the power to issue permits for water resources use to Regional States by law if it deems it necessary. It is only through delegation, therefore, that Regional States may exercise the functions given to the Federal Government under the Constitution.

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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 is given a more or less centralised authority for water resources planning and management in Ethiopia. Regional States have limited powers with respect to issuing laws and decision-making regarding the allocation and use of the water resources of the country, unless they are specifically delegated some of the mandates given to the Federal Government by subsidiary laws.

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On the other hand, the federal system of government, which is an important basis of the Constitution, recognises the importance of decentralised management and adequate decision-making of the Regional States, in the political, economic and social affairs of the country. Moreover, the Federal Government cannot effectively discharge the mandates given to it under the Constitution unless it decentralises its powers and functions given to it under the Constitution. This calls for the Regional States to have an adequate role and participate in decision-making regarding the management of water resources within their respective regions. In light of this, it is necessary to define the degree to which decentralisation of powers and functions from the Federal Government to Regions or other water resources management bodies (e.g. River Basin Authorities) can be realised for effective management of the water resources of the country. What powers of the Federal Government are to be delegated to the Regions and in what manner and to whom are issues that are expected to be defined in subsequent laws of the executive arm of the Federal Government responsible for water resources.

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An important conclusion that one can reach from the reading of the Constitution, and the federal structure that underlies the basis for Regional States to play an increasing role in decision-making regarding the resources within their respective territory, is that it is not

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only the Federal Government that would be solely in charge of determining the management and administration of the water resources of the country but rather a division of roles between the Federal Government and Regional States needs to be set-up and clearly articulated.

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The central question that needs to be posed is therefore: how best should the Federal Government and Regional States coordinate and cooperate to achieve the purpose of IWRM in the country. In this regard, the Constitution clearly states the possibility of delegating the powers and functions given to the Federal Government to Regional States as and when necessary or relevant. Although the Constitution does not explicitly call for the possibility of delegation to other bodies such as River Basin Organisations (RBOs), it does not have any provision that negates this possibility as long as Regional States are on board in this kind of institutional arrangement. As we shall see subsequently, the WRM Policy clearly adopts the river basin as the basic unit for water resources management of the country and the subsequent laws provide for delegation to relevant organs although RBOs are not specifically mentioned.

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2.2 The Federal Water Resources Management Policy

The federal WRM Policy was issued in June 1999 (MoWR, 1999). As with any policy, it is essentially an instrument for achieving the intended goals and objectives in a given sector. The policy recognises that it is based on the constitutional provisions for water resources management and the overall macro-economic, social policies and development policies of Ethiopia.

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

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- water is a natural endowment commonly owned by all the peoples of Ethiopia;
- water resources development shall be underpinned by rural-centred, decentralised management, and a participatory approach as well as an integrated framework; and

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- focus must be on the promotion of the participation of all stakeholders, user communities, (particularly women’s participation) in the relevant aspects of water resources management.

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The above policy provisions indicates that the State holds water resources in public trust and the water resources development and management should be underpinned by a decentralised approach ensuring the participation of all stakeholders in decision-making in all aspects of water resources management.

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In the part of the WRM Policy dealing with general water resources management, the relevant provisions provide it will:

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- enhance integrated and comprehensive management of water resources that avoids a fragmented approach.
- recognise water as a scarce and vital socio-economic resource and to manage water resources on a 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.
- recognise and adopt the hydrologic boundary or “basin” as the fundamental planning unit and water resources management domain; and
- promote and advocate institutional stability and continuity in water resources management and ensure smooth transition during times of change.

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These policy provisions emphasise the necessity of an IWRM approach and that all aspects of water resources management including the management of surface and groundwater resources, water quantity and quality issues should not be treated in a fragmented manner. It also recognises the need for water resources management to be integrated with other aspects of natural resources management and the need for inter-sectoral coordination at all levels. It emphasises the need to ensure institutional stability

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and continuity while at the same time ensuring a smooth transition in times of change. What seems to be pointed out here is that existing institutions which are operating more or less effectively at different levels should continue to operate with the least possible disruption and that it is essential to clearly define the roles and responsibilities that ought to be given to the federal and regional agencies as well as other stakeholders responsible for different aspects of water resources management.

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The Policy also underlines that the law should ensure the meaningful participation of all stakeholders in water resources management. In light of this proviso, the water resources management legislation needs to incorporate provisions that ensure an effective mechanism for the participation of all stakeholders in various aspects of water resources management – the government, private sector and the civil society at large.

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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 although there are also provisions reflecting the need for decentralised management. The WRM Policy, on the other hand, while endorsing the principle of IWRM, calls for decentralised management whereby different functions of water resources management can be devolved to regions and the participation of stakeholders at all levels. How decentralised management of water resources is to take place as well as defining the roles of the different stakeholders needs to be carefully thought out in subsequent legislation. It may be particularly difficult in the Ethiopian context to set up appropriate institutional arrangements where all stakeholders will be involved in different aspects of water resources management due to the relative lack of experience in setting up such mechanisms. However, the Policy clearly provides for this.

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The Policy articulates the need to establish RBOs on a phase-by-phase basis for the sustainable and integrated management of the water resources of the country. As we shall later on, the approach currently being taken in Ethiopia is to establish RBOs by delegating some of the powers and responsibilities given to the Federal Government to

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such RBOs. The phase-phase approach of establishing RBOs seems to be taken in order to learn lessons from established RBOs before replicating such organisations in other river basins. One of the crucial issues in this regard is whether or not the Regional States will have an adequate decision-making role in the RBOs to be established in order to avoid tensions between the RBOs and Regional States represented in the RBOs.

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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 WRM 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 arrangements 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. In the following sections, we shall examine the legal framework set up for water resources management in Ethiopia.

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III. THE LEGAL FRAMEWORK

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1. The Ethiopian Water Resources Management Proclamation

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The Ethiopian Water Resources Management Proclamation, issued in March 2000 (Proclamation No.197/2000), is currently the basic legal instrument governing the management, planning, utilisation and protection of water resources in Ethiopia.

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The Proclamation provides the fundamental principles that need to be taken into account for the management and administration of the water resources in the country (Article 6).

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The basic thrust of these fundamental principles is that water resources management and administration in the country should be based on the Ethiopian WRM Policy, the Integrated Basin Master Plan Studies and the water resources laws of the country. It also stipulates that the management of water resources of Ethiopia shall be based on a permit system (Article 6).

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The MoWR is designated as the “Supervising Body” at the federal level 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.” It is not quite clear what the phrase “water resources at the central level” refers to. Again, as with the Constitution, this provision seems to imply that the management of water resources that do not “hydrologically link” Regional States or are not trans-boundary in nature (i.e confined groundwaters and lakes) are under the jurisdiction of Regional States. This duality of approach to water resources management (federal and regional levels) has to be clearly addressed in subsequent laws if a unified management and regulatory approach is to be adopted for IWRM in the country.

Overall, the Proclamation gives the MoWR 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 trans-boundary, the exception

being confined to groundwaters and lakes confined within Regional States' boundaries. 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 MoWR may delegate its powers and duties given to it under the Proclamation to an appropriate body for the effective execution of its responsibilities (Articles 2.7 and 8.2). Accordingly, the MoWR may delegate all or some of its powers and duties to Regions or RBOs as and when it deems it necessary.

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The Supervising Body has been given broad 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; and issuing 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 (Article 8.1).

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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 broad 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 subsequent laws to be issued for its proper implementation. The Proclamation provides that detailed regulations and directives will be issued for its implementation by the Council of Ministers and the MoWR respectively.

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The Proclamation is generally consistent with the relevant provisions of the Federal Constitution. 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.

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The Proclamation gives the MoWR 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 centralised. However, the Proclamation provides for the delegation of the powers and duties given to the MoWR to the appropriate body whenever it deems it essential for the efficient management of the water resources of the country. This provides the basis for the MoWR to delegate some or most of the powers and duties it holds under the Proclamation to the respective Regional States or to RBOs.

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One important issue that has to be addressed in subsequent legislation is to what extent the powers and duties that the MoWR is currently given under the Proclamation should be decentralised to Regions or other appropriate bodies such as RBOs. 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 regions. This would call for some of the mandates given to the MoWR by law to be delegated to the Regional States, or to a body in which the Regional State have a voice in decision-making in order to put in place an effective water resources management in the country. This is not 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

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Regional States or alternatively to the RBOs to be established. The question to be addressed in this should be: which agency or body – be it at the Regional or at the basin level – can best carry out a given function currently under the mandate of the MoWR and which should be retained by the Ministry itself?

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There are also some issues that the Proclamation does not clearly address although articulated in the WRM Policy. For instance, it does not provide for the need of inter-sectoral coordination at both the federal and regional levels. The effective implementation of the Proclamation is largely dependent on such coordination because water resources development is largely related with the appropriate management of land and 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 inter-sectoral coordination would have provided the legal basis for more articulation in subsequent laws such as the establishment of RBOs.

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The Proclamation also does not provide for the establishment of RBOs by subsequent legislation except for the provision that the MoWR may delegate some of its responsibilities to appropriate bodies to effectively discharge its responsibilities. The latter provision is the only legal basis that enables the MoWR to establish RBOs although the Policy clearly mentions this.

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2. The Ethiopian Water Resources Management Regulation

The Ethiopian Water Resources Management Regulation was issued by the Council of Ministers in March 2005 (Regulation No. 115/2005). The objective of the Regulation is to provide detailed provisions for the effective implementation of its parent legislation- the Water Resources Management Proclamation. A review of the Regulation 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; construction works;

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waste water discharge as well as providing the conditions for the issuance, renewal, revocation etc of such permits. It also provides provisions for fees for application for permits as well as the requirements of water charges to be paid for different uses of water although the amount of charges payable are left to be determined by the Council of Ministers and issued in a subsequent regulation (Article 31.4).

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The Regulation gives the mandate to the “Supervising Body” or to an organ delegated by it to receive applications for permits and make the necessary decisions accordingly (Article 3). Accordingly, the MoWR or an organ delegated by it shall issue permits. However, it is not realistic, for instance, for the Ministry to issue water use/wastewater discharge permits throughout the country. Such day-to-day operations could be effectively done by the Regions or the RBOs that are expected to be established instead of the MoWR. In fact, the practice to date indicates that, since the issuance both the Proclamation and Regulation, the MoWR has not yet started to implement the permit system that is required under the law although various water resources projects are currently being undertaken in the respective Regions.

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The above discussions regarding both the Ethiopian Water Resources Management Proclamation and regulation reveal that, as they stand, the Federal Government retains most of the mandates regarding water resources management but has the power to delegate such mandates to appropriate bodies – be it to Regional States or other organs such as RBOs – in order to effectively manage the water resources of the country. The rationale behind the whole policy and legal framework seems to be that the country's water resources should be held in public trust and its management coordinated and integrated with the Federal Government playing a prominent role in the decision-making regarding determination and allocation of water resources of the country for different development purposes and delegate such powers to appropriate bodies when it deems it necessary.

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As we shall see in the subsequent section, the approach taken in Ethiopia currently is to decentralise water resources planning and management functions to RBOs at the basin

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level. Accordingly, RBOs are to be established phase-by-phase in each of the river basins of the country and most of the functions of the Federal Government delegated to such RBOs. This is basically in line with the WRM Policy discussed earlier, although the subsequent water resources management laws discussed earlier have not clearly articulated the river basin approach.

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IV. ESTABLISHMENT OF RIVER BASIN ORGANISATIONS

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As mentioned earlier, the WRM Policy of Ethiopia has adopted the river basin as a planning unit for IWRM of the country. It is the first time that the policy has been translated into a legal framework for the establishment of RBOs for each of the river basins of the country on a phase-by-phase basis by delegating some of the mandates of the Federal Government (MoWR) to such RBOs. Following will be a discussion of the law issued for the establishment of RBOs.

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1. River Basin Councils and Authorities Proclamation

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The River Basin Councils and Authorities Proclamation was issued in July 2007 (Proclamation No. 534/2007). The Proclamation seems to be envisaged as a framework or enabling legislation for the establishment of RBOs for each river basin of the country by subsequent subsidiary legislation. To this effect, the Proclamation provides that River Basin High Councils and Authorities shall be established by Regulations to be issued by the Council of Ministers (Article 3.1). In other words, the Council of Ministers is given the mandate to create specific RBOs through more detailed regulations which presumably will further elaborate the powers and responsibilities of the RBOs to be established in the respective basins of the country. The Proclamation also provides for the possibility of merging two or more river basins under the jurisdiction of a single RBO (Article 3.2).

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Although the justification for issuing an enabling law for the establishment of RBOs is not provided in the preamble of the Proclamation, the justification for this seems to be based on the WRM Policy which states that RBOs would be established on a phase-by-

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phase basis. The phase-by-phase approach to establish RBOs may have been adopted in the Ethiopian context due to the fact that there is as yet no significant water resources development projects/activities in most of the river basins of the country at present except for a few basins where there are on-going and planned water resources projects (e.g. the sub-basins of the Nile such as Abbay, Tekezze and Baro-Akobo) which would result increasing pressures on the water resources of the basin and potential conflicts among the Regional States found within the basins which calls for coordinated planning and allocation of water resources for different uses.

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The Proclamation provides for a two-tier organisational set-up for the RBOs to be established, namely, River Basin High Councils being the highest policy and strategic decision-making body and River Basin Authorities, which will be the administrative/technical arm of the Basin High Councils.

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The members of the Basin High Councils (BHCs) are to be designated by the government and their accountability is also to be determined by regulations issued by the Council of Ministers (Article 5). It is not clear why the membership of the Council is left to the designation of the government instead of specifically providing by law the composition of the BHC. In the Regulation establishing the Abbay Basin Authority, which will be briefly discussed in the next section, it is provided that the members of the Abbay Basin High Council will be designated by the government upon the recommendations of the MoWR. The present writer believes that stating the members of the BHC by law would have created legal certainty as to which stakeholders are to participate in the decision-making at the highest level than leaving it to the discretion of the government (presumably the Council of Ministers) to designate the members of the BHC. This would have clearly ensured that major stakeholders in the river basin have been included and legally recognised as the main decision-makers in the basin.

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According to the discussion this writer had with an expert involved in drafting the Proclamation,² it is expected that the BHC will be chaired by the Prime Minister or his

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² Head of the Legal Services of the MoWR.

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Deputy and composed of political representatives and representatives from the relevant Ministries engaged directly or indirectly in decision-making regarding the management and development of the water resources of the country at the federal and regional levels. Representatives of other stakeholders such as water users associations, the private sector, civil society etc, are also to be included as non-voting members. Ensuring the participation of the major stakeholders in decision-making within each RBO to be established such as the Regional States within the basin and other sectors involved in planning and development of the water resources in the respective basins is critical in order to create a sense of ownership among the Regional States involved and to enhance a sustainable and collaborative IWRM approach.

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Article 6 of the Proclamation gives the following powers and responsibilities to the BHCs:

- to provide policy guidance and planning oversight to ensure high level coordination among stakeholders for the implementation of IWRM in the basin;
- to direct the preparation of the river basin plans and submit the same for approval to the Government;
- to propose to the Government the rate of water charges to be paid by water users in the basin;
- to examine and decide on the appropriateness and prioritisation of constructing major water works in the basin;
- to examine and decide on water allocation rules and principles in normal times and in times of water shortage as well as in times of drought or flooding;
- to manage water use disputes between Regional States in the basin;
- to provide information and advisory support to the body in charge of negotiating with neighboring countries with respect to the basin where the basin is part of a trans-boundary basin; and
- to establish standing or ad-hoc committees necessary for discharging specific activities.

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It is not the objective of this paper to specifically discuss each of the mandates given to the BHC under the Proclamation and their relevance since this would require another lengthy paper. However, some general comments with respect to the given mandates are called for at this juncture. The above mandates given to the BHCs indicates that the BHCs will be involved in the deliberations and decision-making on some of the major issues that are required for JWRM in a specific river basin. The BHC is envisaged to be the highest policy decision-making body for a specific river basin and to be the forum where decision-making involves all major stakeholders at the federal and regional level.

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It is usually at the level of the BHC that different interests, which may be in conflict with each other, may arise because of different stakeholder groups represented in this body ranging from politicians at the federal and regional level, different sectoral agencies, public utilities, the private sector etc. In light of the political and sectoral representation at this level and the technical nature of some of the decisions to be made, the BHC requires a strong technical support in order for it to play an adequate role in harmonising the different interests involved in the process of decision-making. The BHC is expected to give policy guidance and examine basin specific policy issues and strategies, plans, programs and projects as well as decide on water allocation principles and rules that would apply among water users and Regional States. It is also envisaged that it will mediate disputes that may arise among Regional States (e.g. on water allocation or prioritisation of projects among Regions). The provision that the BHC can establish standing or ad-hoc committees for discharging specific activities may have been provided to render this technical support. Unless the BHC has adequate technical support, it is highly questionable that it will be an independent decision-making body for most of the matters submitted to it by the Basin Authority due to their technical nature. It may simply end up as a body that endorses what is presented to it.

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Moreover, as we shall see subsequently, most of the matters to be deliberated upon and/or decided by the BHC are to be submitted to it by the Basin Authority which is to serve as the secretariat (administrative and technical arm) of the BHC. It is therefore highly important for the Basin Authority to have from the outset involved the relevant

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stakeholders within the Regional States of the basin in the preparation of basin specific policies, plans, identification of priority projects, determination of water charges etc so that such matters will not be unduly contentious when it is submitted to the BHC thereby avoiding potential conflicts that may arise at this level.

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The other mandate given to the BHC is that of resolving conflicts that may arise among Regional States (Article 6.6). Potential conflict among Regional States may arise, for instance, with respect to water allocation and prioritisation of projects within the basin. In this respect, it is appropriate that such mandate is given to the BHC since it is expected to be composed of representatives at the highest political level both from the Federal Government and Regional States able to deal with such kind of conflicts. However, the possibility that potential conflict of interests may arise between Federal Ministries and Regional Bureaus or between the Basin Authority and Regional Administrations with respect to mandates over water resources and other natural resources management and who is to resolve such kinds of potential conflicts seems to have been overlooked. It is believed that the BHC is best able to handle this issue because of the reasons given above.

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Finally, the BHC is given the responsibility to provide information and give advisory support to the body in charge of negotiations with neighboring countries when the basin is trans-boundary. The mandate to negotiate with riparian countries is that of the Federal Government. The role of the BHC in this respect would be important since there needs to be adequate coordination and consistency between basin plans prepared by the RBOs and those that are planned and agreed upon among the riparian countries in a specific trans-boundary river basin.

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As mentioned before, the Basin Authorities are envisaged to be the technical arm of the RBOs. The Proclamation provides that the Basin Authority shall serve as a secretariat of the BHC (Article 8).

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The Basin Authorities will have dual accountability, first, to the BHC on matters that fall within the mandate of the latter as provided in Article 6 discussed above. Secondly, it is accountable to the MoWR on matters falling under its jurisdiction (Article 10).

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Article 9 of the Proclamation provides for the powers and responsibilities of the Basin Authorities which are *inter alia* as follows:

- To initiate policy measures for implementation of JWRM in the basin and submit same to the BHC for approval and subsequent follow-up;
- to prepare and submit the basin plan to the BHC and monitor its implementation upon approval;
- without prejudice to the power given to Regional States by law, to issue permits applicable to the basin's water use and water works and ensure that the terms of the permits are complied with;
- to collect, compile, analyse and disseminate information for proper planning, administration and management of water resources in the basin;
- to develop and use a river basin model in order to guide and support its basin water resources strategic planning and water administration functions;
- to give advice and technical support to the BHC and the Ministry on dispute resolution in relation to the allocation and use of water resources of the basin;
- to set up a forum for effective networking among stakeholders;
- to collect water charges from users; and
- on the basis of instructions from the BHC, to prepare and provide necessary information for the concerned body in charge of negotiations with other countries concerning trans-boundary river basins.

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As we can see from the above powers and responsibilities given to the Basin Authority, several important mandates that were under the Federal MoWR have now been delegated to the Basin Authority. Similar to what was pointed out earlier, it requires another paper to deal with all the issues related to each and every power and responsibility that has been given to the Basin Authority. However, this paper will attempt to raise some of the major issues that need particular attention.

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The basic issue that may arise at this point is: will the Basin Authority have the capacity to effectively carry out some of the functions delegated to it by itself or will some of the delegated functions be best carried out by existing institutions responsible for water resources management at the federal and regional level, or by the Authority in strong collaboration with such institutions?

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For instance, the Basin Authority has been given the mandate to prepare river basin plans. The Proclamation itself provides several elements that should be incorporated in the basin plans such as available water resources of the basin; watershed management (in the basin); quantification of the current and future level of water use in the basin; trend analysis depicting possible future uses; means of implementing the plan, including implementing actors, action plans and budget requirements; and water activities of stakeholders in the basin etc. (Article 18).

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Although it is important for the Basin Authority to have this mandate in order to promote IWRM in the basin, most of the activities required for the preparation of the basin plan needs to be supported by substantial information that it can gather both from the Federal MoWR which has the experience and most of the information and resources necessary (e.g. hydrology data) for the preparation of such plans.

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More importantly, the Authority will require the strong collaboration and active involvement of the relevant bureaus and other stakeholders in the respective Regional States that share the basin which are actually undertaking water related development activities that are required for the preparation of such plans. There is also a need to reconcile the preparation of basin plans with that of natural resources based Regional plans (e.g. land, watershed management). The active involvement of all stakeholders at the federal and regional levels is therefore vitally important for the Basin Authority to effectively discharge this function.

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The Proclamation provides that all persons have a duty to cooperate with the Basin Authority for the implementation of its mandates (Article 19). However, this general obligation may not give the Authority adequate clout to get the cooperation of all stakeholders at both the federal and regional levels unless a clear mechanism is established that creates a strong functional linkage between the Basin Authority vis-à-vis the relevant federal and regional agencies involved in water and other natural resources management. There may likely be some tensions concerning mandates between Regional States and the Authority especially at the early stages of its establishment. Therefore, it may be necessary for the Authority to devise a clear mechanism that enables it to actively engage all stakeholders particularly at the Regional level by playing a coordinating role in the preparation of the basin plans so that all stakeholders feel that their interests are adequately incorporated in such plans. It should be clear that the development of river basins cannot be effectively managed without the full participation of the concerned Regional States. Moreover, the Basin Authority may not have the necessary resources at the early stage of its establishment, both in terms of manpower and finance, to undertake such activities unless it gets strong support and cooperation from the relevant federal and regional authorities who already have most of the resources that enable the Authority to stand on its feet. The support of the BHC, which represents decision-makers at the highest political level, is also essential.

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Another point that may require particular attention is the administration and enforcement of the permit system which is the mandate of the Authority under the Proclamation. Clearly, the Basin Authority needs to have this mandate for it to properly administer and allocate water resources in the basin, gather information on water quantity and water quality in the basin etc. The issue here is: will the Basin Authority have sufficient resources (both manpower and financial) to adequately implement and enforce the permit system, particularly if it applies to all water uses (except for domestic use which has been defined and excluded by law) within the basin? Even currently, the MoWR has not been able to actually implement the permit system. It is believed that Regional States (including those at the district level) should actively participate in the issuance and enforcement of the permit system. In this respect, it may be necessary to consider which

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type of permit issuance functions should be given to the Regional States. It might be appropriate for Regional States to be given the mandate to administer permits with regard to small scale water uses and groundwater abstraction while leaving the mandate for the issuance of permits for large and medium scale water uses (e.g., large and medium scale irrigation and hydropower schemes) for the Basin Authority rather than bog down the Authority with this huge administrative matter. In any event, it would be important that this issue be carefully considered during the initial phase of establishing the Basin Authority so that means could be found to involve Regional States in such functions. The enforcement of the permit system may be particularly challenging and this may be better given to the Regional States especially at the initial stage. The problem however that might arise in this case is whether the Regional States have to be specifically delegated to carry out this mandate since the law provides that mandates given to the Federal Government have to be specifically delegated by law. Therefore, the Federal Government (basically, the Council of Ministers) may need to issue a regulation delegating this function to the Regional States.

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An interesting issue that also relates to the issuance of permits is the provision in the Proclamation related to the mandate given to the Basin Authority. It says "*without prejudice to the power given to Regional States by law*, issue permits applicable to the basin's water use..." (Article 9.5). The italicised phrase implies that Regional States have certain mandates to issue permits which are not that of the Federal Government. Again this issue comes back in the Proclamation. Does this mean that Regional States have the mandate to issue permits for those water resources that do not "link" Regional States as provided in the Constitution? This ambiguity may prove to be contentious as regards the mandates given to the Basin Authority vis-à-vis Regional States. It should have been clearly stated that the Authority has the mandate over all water resources within the basin to avoid this contention. It is not clear what inspired the lawmaker to provide such an exception if a unified and integrated basin approach is the objective sought.

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The Basin Authority has also been given the mandate to establish a basin wide information system and to develop river basin models (Articles 9.6 and 9.7). There is no question that establishing such knowledge base and analytical methods at the basin level are important as a planning tool and for decision-making as well as for effective water resources management and development. However, huge investment is required for the collection and processing of hydrological data and for monitoring the impact of water resources developing in the basin. Currently, most of this function is done at the federal level by the MoWR (more specifically the Hydrology Department) which has a central database for most of the river basins of Ethiopia. It is questionable that the newly established Basin Authorities can take over this function easily due to the high investment requirements and human power needed to establish an effective and functional basin information system. In light of this, there seems to be a clear need for the MoWR to continue with this function, at least for some period of time and gradually transfer such mandates to the Basin Authority while at the same time building the capacity of the Basin Authority to adequately discharge such functions. Accordingly, it may have been necessary to clearly provide by law that this function be carried out by the Basin Authority with adequate assistance and cooperation of the MoWR.

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The Basin Authority has been given responsibility to give advice and technical support to the BHC and the MoWR on dispute resolution in relation to the allocation and use of water resources of the basin (Article 9.8). As was discussed earlier, the BHC is given the mandate to resolve disputes that may arise among Regional States. So this provision seems to imply that the Authority would give advice and support to the BHC on disputes that arise between Regional States. However, it is not clear on what kind of disputes the Basin Authority is to give advice to the MoWR. Presumably, this provision implies that the Authority would give advice to the MoWR in case of disputes that may arise among water users in the basin. Such disputes among water users may usually arise as a result of violations of the conditions provided in the water use permits that are to be administered by the Authority. In such cases, the Water Resources Management Proclamation gives the responsibility to the MoWR to decide on such disputes in the first instance unless this is delegated by it (Article 18). It seems to be absurd and impractical to submit disputes

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among water users in the basin to the MoWR. This mandate should have been delegated to the Basin Authority which administers the permit system in the basin and is closely familiar with the disputes that may arise among water users in the basin.

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One final issue that ought to be addressed regarding the mandates given to the Basin Authority is the issue of collection of water use charges and the financial sustainability of the Authority. The Proclamation provides that the Basin Authority has the mandate to collect water charges from users (Article 9.10) and also stipulates that the source of the budget of the Authority will be from funds allocated by the Federal Government and the water charges to be collected by the Authority. As mentioned earlier during the discussion of the Water Resources Management Regulation, the determination of water use charges for different purposes is left to be determined by the Council of Ministers by subsequent Regulation. The amount of water charges to be paid by water users has not yet been issued as law. Two types of water charges are envisaged in the Water Resources Management Proclamation, namely, charges for water use payable annually (Article 31) and charges for the discharge of treated wastes which are allowed by permits (Article 22). However, what type of water users shall pay such water charges is not yet clear and is expected to be clearly defined in the regulation to be issued by the Council of Ministers. The Authority requires a substantial source of income for it to function sustainably and independently in the future. It is questionable whether the water use and waste discharge charges that it can levy would provide it with an income for it to operate effectively in the near future since there are as yet no significant water resources projects in most of the river basins. Thus, most of the budget to be allocated to the Authority will have to come from the coffers of the Federal Government for some time to come.

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2. Regulation for the Establishment the Abbay (Blue Nile) Basin High Council and Authority

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At the time of writing this paper, a Regulation had been approved by the Council of Ministers for the establishment of the Abbay (Blue Nile) Basin High Council and Authority. However, this regulation had not yet been issued in the official gazette.⁴

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There may be several reasons why the Abbay Basin was selected as a priority for the establishment of a River Basin Authority. The Abbay Basin has the greatest runoff (52 billion m³) as compared to other rivers basins of Ethiopia. The basin is shared by three Regional States, namely, the Amhara, Oromia and Benishangul-Gumuz Regional States.

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There are also several water resources development projects currently under construction and planned within the basin. These factors may lead to competition and increase pressures over water resources in the basin both in quantitative and qualitative terms and therefore call for the need to plan water resources development in an integrated manner with the Regional States sharing the basin actively involved in all aspects of decision-making.

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Moreover, the Abbay Basin is the major contributor to the entire Nile Basin flowing westwards towards Sudan and Egypt downstream. In 1999, the Nile Basin countries have established a cooperative framework under the auspices of the Nile Basin Initiative (NBI). One component of the NBI, is known as the Subsidiary Action Program (SAP). The Eastern Nile Subsidiary Action Program (ENSAP) is one sub-component of SAP whose members are Egypt, Ethiopia and Sudan. ENSAP focuses on identifying and preparing water related investment projects to be implemented in the member countries. Currently, there are several projects being implemented or at the planning stage.⁵ It is therefore essential to coordinate the plans and projects identified within the NBI with that to be prepared and identified by the Abbay RBO.

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The Regulation does not add much to what is provided in the Proclamation except providing for the establishment of the Abbay Basin High Council and Authority. The

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⁴ This writer got hold of the approved draft from the MoWR.

⁵ For more information on NBI and its programs, please refer to its website: <http://www.nilebasin.org>.

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Head Office of the Authority is to be the capital of the Amhara Regional State which is one of the Regions in which the basin found.

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The composition of the Basin High Council is to be determined by the Government upon the recommendation of the MoWR. As was mentioned earlier, it is not clear why the designation of the Council members is left to the Government as it would create uncertainty as to which stakeholders are to be members of the Council particularly with respect to Regional States. The powers and responsibilities of the BHCs and the Authority are those provided in the Proclamation. So the comments given earlier when discussing the Proclamation are equally applicable here.

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In the view of this author, it would have been better for the Regulation to have provided further provisions that further define the responsibilities of the Basin Authority vis-à-vis the Regional States (including sectoral bureaus) as well the Federal MoWR with respect to some of the functions given to the Authority.

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V. CONCLUDING REMARKS

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The current approach taken in Ethiopia is clearly in the direction of managing the water resources of the country at the river basin level by establishing RBOs for each river basin in phases. This generally seems to be in line with the trend of adopting IWRM that is at present lauded universally.

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Most of the important functions that were given by law to the MoWR have now been delegated to the RBOs that are yet to be formally established. Although it is too early to pass judgment on the effectiveness of the current legal regime and the performance of the RBOs, there are several issues that one can foresee as being some of the major challenges that may be faced by the RBOs and may need to be addressed by subsequent legislation (although some of the issues may not be addressed by law).

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The RBOs need to ensure a strong coordination between the various stakeholders at the regional level and actively promote their participation in decision-making in order to discharge their functions effectively. The river basins cannot be effectively managed without the full participation of the concerned Regional States sharing the basin. Moreover, they will require a strong technical support from both the MoWR and the Regions for the preparation of basin plans, establishing an adequate data and information system etc. Due to the lack of experience, particularly at the initial stages, it is crucial that they maintain a strong link at all levels with all stakeholders in order to create a sense of ownership by all stakeholders of what is being performed by the RBOs. Creating a strong forum for stakeholders' participation from the outset is therefore essential. This would presumably reduce tensions between the RBOs vis-à-vis Regional States and the MoWR.

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Some of the functions given to the RBOs would be better performed by the Regional States and the MoWR especially during the transition period until the RBOs are well established. As was mentioned earlier, administration and enforcement of the permit system within the basin is an arduous task that the RBOs cannot perform effectively by themselves. The respective Regions within the basin may well perform this task more effectively and some aspects of the administration and enforcement of the permit system, especially for small scale irrigation and groundwater abstraction should be delegated to Regions by law.

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There are likely to be tensions and potential conflicts between the RBOs vis-à-vis the Regional States and MoWR with respect to their respective mandates and identifying priority water resources. Already, there is a loophole in the law which seems to make a distinction between water resources under federal jurisdiction and those under regional jurisdiction (confined groundwater and lakes within Regions). This would be a superficial distinction and, in the view of this author, all water resources found within the basin should be managed in an integrated manner. Thus, the law should further clarify the mandates between the RBOs, Regional States and the MoWR.

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Another potential source of conflict that may arise is that concerning resource and water allocation among Regions and the financing of major projects. Regional States are not on an equal footing in terms of water resources development and capacity and this may result in potential conflict over allocation of resources and prioritising projects. The Basin High Council, which is the highest policy making body in the respective RBOs to be established is given the mandate to resolve such potential conflicts. As the BHC will be composed of representatives at the highest political level from both the Federal Government and Regional States found within the basin, it will be best placed to resolve such potential conflicts.

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One of the most challenging aspects for the RBOs will be to ensure their financial stability and independence by having their own source of income. One of the major sources of their income is from the water charges they levy from water users in the basin. However, this is unlikely to be significant in the short term since there is as yet no significant water resources development in the respective basins. Thus, the RBOs may have to depend on the budget that will be allocated from the Federal Government for some time in order to operate effectively. This in itself may prove to be a constraint to the effective performance of the RBOs and may lead to decision-making on water resources management reverting back to the Federal Government.

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