SALALE UNIVERSITY



SCHOOL LAW

The effect of the applicability of the right to privacy during the time of search and seizure the case of Amhara region north mecha woreda

Appraisal of the Right to Privacy during the time of search and seizure; The case of Amhara Region North Mecha Woreda

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Thesis Approval

The thesis titled “APPRAISAL OF THE RIGHT TO PRIVACY DURING THE TIME OF SEARCH AND SEIZURE; THE CASE OF NORTH MECHA WOREDA” by SILTANU BELETE is approved for the degree of Bachelor of Laws.

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Declaration

Here by I declared that this senior thesis is original and has never presented in any other institution to the best of my knowledge and belief. I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principles of academic honesty and integrity, misrepresentation of any idea/data, source will constitute sufficient ground for disciplinary action by the university and can also evoke criminal sanctions from the state and civil liability from the source which have not been properly cited and acknowledged

Declared by;

Signature……

Date……

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2. Examiner	signature	Date

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Acronyms /abbreviations

ACRWC: African Charter on the Right and Welfare of Child

ATP: Anti-Terrorism Proclamation

FDRE: Federal Democratic Republic of Ethiopia

ICCPR: International Convention on Civil and Political Right

ICESCR: International Covenant on Economic, Social and Cultural Rights

UDHR: Universal Declaration of Human Right

UNCRC: United Nation Convention on the Rights and welfare of Child

UNCMW: United Nation Convention on Migrant Workers

RACSPP: Revised Anti-Corruption Special Procedure and Rues of Evidence Proclamation

Abstract

This research paper deals about the Appraisal of the right to privacy during the time of search and seizure in north Mecha woreda. The right to privacy is guaranteed in global regional and in different nations legal frame works. Similarly, Ethiopia also incorporated this right to privacy in the FDRE constitution to protect individual's right from unreasonable interference of search and seizure by the government organs particularly by police officers.

Even though the right to privacy is recognized in the substantive and procedural laws of Ethiopia, there is unreasonable interference on the right to privacy of individuals by police officers in north Mecha woreda. As to the finding of the researcher, there are the problems of issuance of the warrant by courts without the stringent requirement of the law on the given information(mere information), police officers also practically searched and

seized without following the specificity requirements of the procedure, the practical problems of issuance of search warrant again and again on the same offense against the same offender, the problem of search and seizure after the prescribed period of time(at night) without court authorization, conducting repeated search by one search warrant again and again, searching of vehicles without warrant even if the crime has not a grave nature that justifies search without warrant, coupled with the absence of cooperation between courts and police officers to protect the right to privacy of the individual. The researcher based on the identified problems under the finding of the study recommends to all concerned parties namely, police officers, courts.

CHAPTER ONE

1. Introduction

This chapter includes a background of the study , statement of problem , basic research questions , objective of the study , significance of the study ,scope or limitation of the study and operational definition of key terms.

1.1 Background of the Study

In the present time human rights would have got a great recognition throughout the world. These human rights would have been recognized under global legal instruments including; UDHR, ICCPR and ICESCR. Moreover, regional human right instruments and national laws are also providing legal recognitions to human rights based on the global legal instruments and principles. Among these human rights, the right to privacy is one of the fundamental human rights.

The right to privacy is explicitly stated that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks up on his honor and reputation (Art. 12 of the UDHR). Everyone has the right to protection of the law against such interference or attacks."[1] As well of ICCPR provide the same concept as to that of the UDHR (Art. 17 of ICCPR).[2]In Ethiopia, the right to privacy has long been recognized since the period of Emperor Haile Selassie (Art. 25 0f the 1931 constitution) , the revised constitution of 1955, and 1987 repealed constitutions.

As the UN Convention on migrant workers provides that *"No migrant worker or member of his family shall be subjected to arbitrary or unlawful*

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1 [1] The universal declaration of human rights ,1948, adopted by General assembly resolution AIRES/217A 1948,Art 12

2 International Covenant on Civil and Political Rights, 1966, adopted by UN General Assembly, Art.17

[3]The Constitution of the Federal Democratic Republic of Ethiopia, proc. No. 1/1995, Neg. Gaz.Art.26(1)

interference with his or her privacy, family (Art ,14 0f UN convention migrant worker)

Privacy right of children's is also recognized under the UNCRC, in which children's are protected from any arbitrary interference on their privacy.

The protection of the right to privacy is incorporated in regional legal instruments in addition to that of global instruments**.** *Every individual shall have the right to respect of the dignity inherent in a human being and to the recognition of his legal status.* The ACRWC provides that no child shall be subjected to arbitrary or unlawful Interference with his privacy, family home or correspondence, (Art 10 of ACRWC).

Currently, the right to privacy is recognized in1995 FDRE Constitution of Ethiopia. states that, "Everyone has the right to Privacy." This right shall include the right not to be subjected to search of his home, person or property, or the seizure of any property under his personal possession (Art 26(1) of the FDRE constitution)".[3] During, search and seizure time have been dealt under the1961 Criminal Procedure Code of Ethiopia, Anti-Terrorism Proclamation no.652/2009, and under the Revised Anti-Corruption special procedure and rules of evidence proclamation no.434/2005.[4]

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4 [4] The criminal procedure code of Ethiopia , 1961,No 1,Neg Gaz .Art 33

A specific law which deals about the right to privacy, it has a set of fragmented rules in different legislations.[5] The right to privacy in the FDRE Constitution is not an absolute right. It may be limited by right of others and interests of the society. However, under sub Art.3 of Art, 26 of the FDRE Constitution, limiting the right to privacy has numerous objectives.[6]

North Mecha woreda is found in west Gojjam zone. Under the north Mecha woreda there is two police stations for the appraisal of the right of privacy of the law during search and seizure, regarding to which police stations is within in the urban and rural area of the woreda.

1.2 Statement of the problem

In globalization circumstances, crimes are becoming more sophisticated activities. In order to address these crimes properly, scientific police investigation must be held beside the right to privacy of an individual shall necessary be protected. At the time of search and seizure, the person suspected of crime may lose his right of privacy when the courts allow the investigating police officer to search and seize the person himself and his premises.

Bu infringements of the right to privacy without strict compliance with the requirements to limit the right protected under the supreme law of the land through search and seizure by investigating police officers are observed in practice in north Mecha woreda has practical gaps in case of .Entrance to the premises of the person even after the prescribed time for search and seizure under art 33(5) of Ethiopian criminal procedure code this means search and seizure beyond period of limitation , mistake on the identity of the suspected individual on another hand lack of select of the suspected person, conducting search of suspected persons by unlike genders sometimes search by the unlike sex, conducting repeated search by a single

[5] Ibid Art 9(4)

[6] The Constitution of The Empire of Ethiopia,pro.No.1/ 1955, Neg. Gaz, Art 25.
The Constitution of Peoples Democratic Republic of Ethiopia, Proc. No. 1/1987, Neg. Gaz.Art 30.

search warrant again and again; searching and seizing after the prescribed period of time are the common appraisal or practical problems or gaps.

Moreover the Cr.Pro. Code does not make clear about the search of vehicles. Art. 32(1) provides about search of persons and sub art. 2 the same provision about the premises. These substantive gaps create a difficulty for the appraisal of right to privacy in the during the time of search and seizure on vehicles and it leads to the court and the police in controversy and enables the police to abuse his power while conducting search. And the court lack of collaboration with in the investigator police.

Based on the aforementioned problems, the research paper would focus on the appraisal of the right to privacy during the time of search and seizure regarding the privacy right of suspected person. Following this, the researcher were assess the Appraisal of the right to privacy during the time of search and seizure of individual suspected persons. In addition to this, the researcher were also assess the role of the court and police officers whether they are conduct or not in protecting the right to privacy of suspected person from the appraisal of the right to privacy during the time of search and seizure.

1.3 Objective of the study

1.3.1 General Objective

The general objective of the research will to examine the appraisal of the right to privacy during the time of search and seizure in north Mecha woreda.

1.3.2. Specific Objective

- ✓ To show the conditions of violation of the right to privacy during the time search and seizure in practice
- ✓ To examine the roles of the police and the court in protecting and respecting of the of the right to privacy of the suspected person during the time of search and seizure,

- ✓ To determine the coordination of the police and court for protect the right to privacy during the time of search and seizure.
- ✓ To acknowledge the rights of arrested or suspected person or subjected search and seizure of person.

1.3. Research questions

1. What will be the roles of the polices and courts for protection and respecting of the right to privacy of the person who is suspended or arrested?
2. How will be the courts and polices coordinate each other regarding the appraisal of the right to privacy during search and seizure of suspected person?
3. What are the rights of the suspected or arrested person during the time of search and seizure?
4. What are the conditions of the violation of the right to privacy during the time of search and seizure?

1.4. Literature review

The appraisal to the right to privacy of a person is dealt under different international and national instruments and it is a fundamental right of human binges. The appraisal of the right to privacy restricted during the time of search and seizure so when the police officer perform search and seizure have to be carry by the procedure set by the law.

The researcher has analyzed appraisal of the right to privacy during the time of search and seizure in north Mecha woreda by using different international laws , regional laws and also national laws. So, some of the cases and author who tell or define the right to privacy in the context of search and seizure or right to privacy and search and seizure differently;

- Derartu Dereje described that “the constitutional guarantee of the right to privacy in case of search and seizure which affected and limit the right of privacy during the investigation”. Additionally she described that the criminal procedure code, anti-corruption proclamation, anti-terrorist proclamation which are inconsistent with constitution during search and seizure”.[7]

However she did not deal the all conditions of violation of the right to privacy in search and seizure time like; she did not describe lack of coordination between the court and investigator police, she did not show the repeated search in single warrant, and also she did not deal the role of police and court in the protection of the right to privacy. Whosoever my research deals about to this gap filling. This means I want to further deals about the appraisal of the right to privacy during the time of search and seizure in case of those gap.

- The other author described that on the same title to me indirectly on the enforcement of search and seizure on the tight to privacy about sudden search investigator violates the right to privacy of the suspected person and also described that there are abuse of power the investigator police during search and seizure violates the right to privacy and the investigator police use illegal search.[8]

The gap of the author did not show or deal the other conditions of the violation of the right to privacy during the time of search and seizure rather than abuse of power illegal search but on my research focused or further deal on mistakes of identifying the suspected person and unlike gender searches.

- Warden v.Heyden,[9] us supreme court declared that the position of the property interests majority controlled by the right of the government to search and seizure based on dishonor. The court also subjected that

[7] Constitutional protection of the right to privacy by Derartu Derege
[8] Enforcement of search and seizure by Tsedey Getahun
[9] 387 US 294

we have give recognition to that the principal object of the fourth amendment in USA constitution is the protecting the privacy of its citizen not the property and have also disregarded procedural barriers of all and property concept like vehicles.

- In M.P Sharma v. satish Chandra[10] in this case the power given that of search and seizure in any system of jurisprudence an overriding power of the state for the protection of social security and that power is necessarily regulated by law. When the constitution makes have thought fit not subject the conditions of limitation of the right to privacy.

Generally based on the gap of the above author and writers on my research do by including of different practical gaps of the appraisal of the right to privacy during the time of search and seizure or conditions of the violation of the right to privacy during investigation by investigator. Like repeated search by one search warrant, mistake of the identify the suspected person, unlike gender search, search by an expired search warrant, lack of coordination between police and court and also substantive gap of search vehicles which did not described or deals the above author limitation or gaps.

1.5 Significance of the Study

The right to privacy is one of the fundamental human rights. But, this right is being exploited today by many means during the time of Search and Seizure is the one. Thus, the significance of the research will to create an awareness for the persons suspected or arrested about their right to privacy as well to help them to know the scope and extent of their right to Privacy; To ensure or increase the coordination of the court and the investigator police; To advertise or give the awareness or knowledge the correct applicability of the right to privacy during the time of search and seizure; To introduce the role of court as well as police investigator; to develop the

[10] AIR 1954 SC 300

“know how” of the investigating police officers (especially the newly employed/authorized) about the existing law of search and seizure in relation to the right to privacy For the fulfillment of gaps of during the time of search of vehicles since there is no specific provision on this issue and its ways of search (search with or without warrant) since determining this issue has a role of protecting the right to privacy during the during the time of search and seizure. To encourage the right to privacy of the suspected or arrested person, To reduce the unlawful applicability of search and seizure regarding the right to privacy, To control the power of the investigator police of search and seizure to respect the right to privacy. Moreover, the study also would serve as a base and may call the attention of those who want to conduct further research in the field and as a source for academicals purposes.

1.6. Scope of the study

The study will limit in examining the applicability of the right to privacy during the time of search and seizure, in north Mecha woreda. The area of the study would limit to north Mecha woreda. Regarding the examination of the existing law, Ethiopian laws dealing with right to privacy and search and seizure would examine.

1.7. Limitation of the Study

The researcher faces for different challenges while title selection difficulties and conditional circumstances that means no peace because of civil war in my seating or my study area. In addition to this the researcher faced for lack of laptops and computers to accomplish at the demanded time.

1.8. Research Design

The research would carry out by using doctrinal research method to get comprehensive and detailed data from interviewers as far as the appraisal of the right to privacy during the time of search and seizure concerned. And also use qualitative research to get or for analyzing the rule of the

applicability of the right to privacy during the time of search and seizure in north Mecha woreda.

1.8.1. Methods of Data collection and Sources of Data

To conduct the research, the primary and secondary sources of data were use. The primary source of the research would gather through interviews with crime investigator police officers in Mecha woreda and the persons who are subjects of the right to privacy during the time of search and seizure. With regard to secondary data sources, were also use different studies, documents, reports, publications, discussion papers, conducted by individual researchers, and government organizations, books, documents form internet may apply for the applicability of the right to privacy during the time of search and seizure purpose.

1.8.2. Sampling techniques

The subject groups of the study were two police stations which are found in north Mecha woreda Merawi town, community police officers, court, and prisoners at Merawi town that would subject to search and seizure regarding to the applicability of the right to privacy whose investigation were commence by Merawi police officers. The persons for whom interviews held were select in the form of random purposive sampling and persons who are subject of “search and Seizure” was identify as per the information of the respective officers.

1.8.3. Method of Data Analysis

The data was obtain through the aforementioned methods of data collection were organized in line with the objectives of the research and based on the interpretation of the data. Data that was gain in the doctrinal way through different books articles generally by secondary source by down load and by reading books process and also interviewing informants were analyze by using qualitative data analysis procedures that involve breaking down the information to achieve the objective of the study.

1.9. Organization of the Paper

The research paper were organize in to five chapters

Chapter One: the first chapter was deal about the general introduction of the study, thus apart from the background of the study, the chapter deals with the statement of the problem, the general and specific objective of the study, limitation of the study, methodology of the study and the central question of the research.

Chapter Two: this chapter was deals with review of related literature on the applicability of the right to privacy during the time of search and seizure from different secondary sources of the study.

Chapter Three: may be deals about search and seizure and under Ethiopian legal system.

Chapter Four: may deals with the finding of the applicability of the right to privacy during the time of search and seizure

Chapter Five: the last chapter were deal about the final conclusion of the study and the general recommendation of the study to all concerned bodies at all levels.

CHAPTER TWO

The applicability of the Right to privacy

2.1. Definition of the Right to Privacy

Privacy is the most difficult to define. "*Of all human rights in the international catalogue, privacy is perhaps the most difficult to define and circumscribe*,"[11]According to R.Post, the difficulty in defining privacy lies in it being a value to complex, so entangled in competing and contradictory dimensions, so engorged with various and distinct meanings.[12]" In 1890s

[11] Michael James, Privacy and Human Rights: An International and Comparative Study. (1994), UNESCO Publishing, p. 1

[12] Post R. Three Concepts of Privacy, George Town Law Journal, Vol. 89, (2001), p. 2087

Louise Brandeis articulated the concept of privacy that it is individuals right "*to be left alone*".[13]

On the other hand, the Black's Law dictionary defines privacy that, it is "*a condition or a state of being free from public attention to intrusion in to or interference with ones act or decision. And further it defines Right of privacy as the right to personal autonomy or the right of a person and the persons property to be free from unwanted public scrutiny or exposure"*[14] and Merriam Webster dictionary defines the right to privacy that the right to privacy means "*Right of the person to be free from intrusion into or publicity concerning matters of a personal nature"*[15] and in the year 2000 Jeffry Rosen has found three concepts of Privacy. These are, privacy as knowledge, privacy as a dignity, and privacy as freedom.[16]

In short, the right to privacy is persons right to keep a surrounding domain including body, name, property, identity and secrets. Because the right to privacy is our right to keep a domain around us, which includes all those things that are part of us, such as our body, property, thoughts, feelings, and identity. The right to privacy gives us to choose which parts in this domain can be accessed by others, and to control the extent, manner, and timing of the use of those parts we choose to disclose.[17]

2.2. Nature and Scope of the Right to Privacy

The Right to privacy is applicable to all human beings. But these human beings may be reasonably restricted in order to prevent the commission of crime and disturbance of the public. And when there is a conflict between two aspects of rights, that is, the individual right and the public right, the latter should be given priority and thus the personal right to privacy may be

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13 Samuel D. Warren and Louis Brandeis, The Right to Privacy, Harvard Law Review, (1980), p. 193-220

14 Bryan A.Garner(ed.), Black's law dictionary, 9th edition,(2009).

15 Merriam Webster Law dictionary, 11th edition,(1996).

16 Rosen J. The Unwanted Gaze; The Destruction of Privacy in America, Random house, 2000, p. 8

17 On Year, Privacy in the Digital Environment, (2005), Haifa Center of Law and technology, p. 1-12

limited in some circumstances and this exception shall in line with the principles of the constitution and other specific laws .[18]

According to international human right instruments, the right to privacy also extends to the family of the person, home, correspondence and honor and reputation of the person. As per the FDRE constitution, everyone has the right not to be subjected to searches of his home, person or property… inviolability of notes and correspondence and communications.[19]

Regarding the privacy the person and of his family, Art.12 of the UDHR, Art.17 of ICCPR, Art. 14 of United Nations Convention on Migrant Workers, Art.16 of CRC, and Art.10 of the African charter on the right and welfare of child extends the protection of privacy right to the family.

In general, as per all the above listed international human rights instruments, the right to privacy everything surrounding the person. And this right seem the basis for other rights to exist for example the right to freedom, expression, religion and etc.

2.3. The applicability of the Right to Privacy under International, Regional and National Legal Instruments

The right to privacy has been long recognized by the international community. A review of the basic international conventions of international human rights reveals that privacy is mentioned in most of them. In addition to being addressed in the most important international and regional human rights treaties, some aspect of the right to privacy is incorporated into almost every constitution in the world, and into the general laws and jurisprudence of those countries without written constitutions. Countries that have no written constitutions extend privacy protections through their other legal norms such as procedural rules, evidentiary codes, and statutory protections.

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[18] The FDRE constitution, supra note at 3.Art 26(3).

[19] Ibid, Art.26(1&2)

2.3.1. The applicability of the Right to Privacy under International Legal instruments

A. Universal Declaration of Human Rights

Art. 12 of the UDHR states that, *"no one shall be subjected to arbitrary interference with his privacy, home, or correspondence, nor to attacks on his honor and reputation…"*[20]. The phrase "***Arbitrary interference"*** refers to Search and Seizure which is unreasonably conducted on the home, premises and correspondences of the person. This connotes that, the persons privacy which shall include his home, communications, and correspondence must not be made subjected to search and seizure. According to this provision, search and seizure may be held on a person unless it is arbitrary.

B. International Covenant on Civil and Political Rights

Art. 17 of the ICCPR deals about search and seizure and it is the direct copy of Art. 12 of the UDHR.[21]Both the international laws which deals with search and seizure do not clearly provide that search should be conducted by search warrant. However, it can be understood from the phrase "***arbitrary interference."*** Accordingly if search and seizure is being conducted without search warrant, it becomes arbitrary. Thus, the ICCPR and UDHR impliedly provides for the requirement of Search warrant.

C. United Nations Convention on Migrant Workers

As the UN Convention on migrant workers under Art 14 provides that *"No migrant worker or member of his family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, correspondence or other communications, or to unlawful attacks on his or her reputation. Each migrant worker and member of his or her family shall have the right to protection of the law against such interferences or attacks."* Like that of the UDHR and ICCPR, this convention also affords the right to privacy for

[20] UDHR, supra note at 1, Art. 12
[21] ICCPR supra note at 2, Art. 17

migrant workers. But, it is not only for the protection of migrant workers, it extends the protection to their family.

D. United Nations Convention on the Right of Child

Privacy right of children's is also recognized under the UNCRC, in which children's are protected from any arbitrary interference on their privacy. Accordingly the convention recognizes the privacy right of child. It states that *"No child shall be subjected to arbitrary or unlawful interference with his/her privacy, family, or correspondence, nor to unlawful attacks on his/her honor and reputation"* and also it states that *"The child has the right to the protection of the law against such interference or attacks"*[22]

2.3.2. The applicability of Right to Privacy under Regional Legal Instruments

The protection of the right to privacy is incorporated in regional legal instruments in addition to that of global instruments. As far as regional legal instruments concerned, African, European, and Inter- American legal instruments which have related to the right to privacy are discussed below.

A. African Human Right System

i. African charter on human and peoples right (Banjul Charter 1981)

African Charter on Human and Peoples' Rights does not explicitly say anything about the right to privacy, However, even though it does not say explicitly, some aspect of privacy is impliedly enshrined in it when the Charter stipulates *"Every individual shall have the right to respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel and inhuman or degrading punishment and treatment shall be prohibited."*[23]

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[22]Convention on the rights of the child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November, 1989 entry in to force 2 September 1990, Art 16(1& 2).

In Africa, there is little development towards privacy laws despite the fact that almost all African countries have ratified the ICCPR. The possible reason may relate to the lack of technological advancements, political and cultural differences.

ii. African Charter on the Right and Welfare of Child

The ACRWC Art10 provides that no child shall be subjected to arbitrary or unlawful Interference with his privacy, family home or correspondence, or to the attacks up on his honor or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to protection of the law against such interference, attacks.

B. European Human Right System

The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms has also enshrined the right to privacy in different formulation and content as European, comp aired to the above discussed human rights instruments. Article 8 of this Convention reads: *"Everyone has the right to respect for his private life and family life, his home and his correspondence. There shall be no interference by a public authority" with the exercise of this right except as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health of morals, or for the protection of the rights and freedoms of others.*

Like the Covenant on Civil and Political Rights, this article protects four different interests (private and family life, home and correspondence) which embrace a variety of matters, some of which are connected one another,

[23] African charter on human and people's rights, adopted in Nairobi June 27 1981, entered in to force in October 21 1986, Art. 5.

some of which overlap with others.[24]The first paragraph defines protected right, the second lays down the condition upon which a state might legitimately interfere with the enjoyment of the right. In other words, the European Convention expressly stipulates the competing interests protected and limitations. So far we have seen how the right to privacy is incorporated in the international and regional human rights instruments. Like most human rights, the right to privacy is not an absolute one. It has its own limitations.

c. **Inter-American Human Right System**

In the Inter-American human rights system, the right to privacy has been embodied in the 1948 the American Declaration of the Rights and Duties of Man. Article 11 of this Convention envisages:

> *Everyone has the right to have his honor respected and his dignity recognized. (2)No one may be the subject of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.(3)Everyone has the right to protection of the law against such interference or attacks.*

The American Convention on Human Rights sets out the right to privacy in similar terms (save sub article 1) to the International Covenant on Civil and Political Rights.

2.4. Right to Privacy under National Laws

2.4.1. applicability of the Right to Privacy under USA Legal System

The Fourth Amendment of the United States Constitution provides as follows:

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[24] DJ Harris, MO 'Boyle and C War brick, Law of the European Convention on Human Rights, Butterworth, London, (1995), P.302.

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, particularly describing the place to be searched, the person or things to be seized".

The Fourth Amendment does not only deal with the seizure of possessions but with persons as well. Another important requirement of the constitution is that searches must be reasonable and further that a warrant can only be issued upon probable cause.

2.4.2. applicability of the right to privacy under South African legal system

Section 14 of the privacy clause in the Constitution South Africa clearly grants the right to privacy as a fundamental human right of an individual. The provision reads;

(a) Their person or home searched;(b) Their property searched;(c) Their possessions seized; or

(d) The privacy of their communications infringed.

The constitution provides the above section general right to privacy, together with a direct guarantee of a right to privacy with regard to home life, private communications and the prohibition of unlawful entry and search The general right to privacy extends to those aspects of a "person's life in regard to which a legitimate expectation of privacy can be harbored. This requires that a person must have a subjective expectation of privacy that society accepts as objectively reasonable. Persons cannot legitimately complain about violation of privacy if they explicitly or implicitly consented to waive their rights in this regard.

2.4.3. The Right to Privacy under Ethiopian Legal Frameworks

For the protection and recognition of the right to privacy is Ethiopian is not an exception and she incorporates in different documents such as under the FDRE constitution, ATP,RACSPP.

A. The Constitution of Federal Democratic Republic of Ethiopia

Even though Ethiopia does not have a specific law which deals about the right to privacy, it has a set of fragmented rules in different legislations. In Ethiopia, the right to privacy is recognized by the 1931 Constitution. This right has also been incorporated under the revised Constitution of 1955.[25] As well, the 1987 Constitution of Dergue also has guaranteed all Ethiopians the right to inviolability of their persons and home along with secrecy of correspondences.[26]In respect of privacy, the FDRE constitution guarantees explicitly to an individual person *the right not to be subjected to searches of his home, person or property, or the seizure of any property under his personal possession, and this right is given to individuals in inviolability manner of his notes and correspondence including postal letters and communications in general*[27]

Article 26 the constitution and article 17 of the ICCPR are different in their wording in sense that the former prohibits searches of one's home, person or property, and seizure of one's property whereas the latter prohibits the unlawful or arbitrary interference with private life, home, family and correspondence, in which unlawful or arbitrary interference is broader than unlawful or arbitrary searches and seizures. Unlike the ICCPR and UDHR, the constitution has extended privacy protection to property under one's personal possession; it is silent about protection of family though. Nonetheless, it is still possible to argue the element.

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[25] The Constitution of The Empire of Ethiopia,pro.No.1/ 1955, Neg. Gaz, Art 25.
[26] The Constitution of Peoples Democratic Republic of Ethiopia, Proc. No. 1/1987, Neg. Gaz.Art 30.
[27] The FDRE constitution ,supra note at….Art 26.

The right to privacy in the FDRE Constitution is not an absolute right. It may be limited by right of others and interests of the society.[28] However the mere benefit of others and general welfare should not be enough to justify an infringement as limitation of the right.[29] However, under sub Art.3 of Art, 26 of the FDRE Constitution, limiting the right to privacy has numerous objectives. These includes: national security, public peace, the prevention of crimes, the protection of health, public morality and that of the right and freedom of others. For the purpose of this, there are preconditions which should be mandatory to restrict privacy right. These are; the specific law requirement, the purpose of the specific law that allows the restriction and the existence of compelling circumstances that calls for the restriction of privacy.[30]

According to Knife Michael and Alebachew, privacy protection under the FDRE Constitution is not limited to the prohibitions of searches of one's home, person or property, seizure of one's property, and interceptions of one's correspondence, but rather includes the prohibition of unlawful or arbitrary interference with any of the protected interests.[31] But, the question here is that at the time of conducting search and seizure, practically, investigating police officers may not consider the lawfulness of their action. Simply, they base on the part of constitution that prohibition of unlawful or arbitrary interference.

B. The Criminal Procedure Code of Ethiopia, the Anti-Terrorism proclamation and the Revised Anti-Corruption special procedure proclamation of Ethiopia.

Art. 26(3) of the FDRE constitution states that *"…No restriction may be placed on the enjoyment of these rights except in compelling circumstances*

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28 Alebachew B. Enyew, supra note at 39, p. 31

29 RakebMessele, Enforcement of Human Rights in Ethiopia, Addis Ababa, (2002), p. 13

30 WondwossenDemissie Kassa, Ethiopian Criminal Procedure, Addis Ababa University, (2012), p. 137

31 Knife Michael Yilma and Alebachew Birhanu, safeguards of the Right to Privacy in Ethiopia: A Critique of Laws and Practices, Journal of Ethiopian Law, Vol. 28, No.1, 2013 p. 117

and in accordance with specific laws whose purpose shall be the safeguarding of national security or public peace, the preventions of crimes or the protection of health, public morality or the rights and freedoms of others." Therefore, the criminal procedure code, anti-terrorism proclamation and the revised anti-corruption special procedure proclamation are specific laws which are designed to safeguard the national security or public peace, prevention of crimes, public morality or the rights and freedoms of others.

Accordingly, Art. 32 and 33 of the cr. Pro. Code provides a procedures for search and seizure as a limitation for the right to privacy. Also according to the preamble of the ATP the proclamation is proclaimed in order to protect the right of the people to live in peace, freedom, and security from the threat of terrorism. Based on this, art. 16 to 18 of the ATP deals with the procedures how the right to privacy is limited through search and seizure.

When we come to RACSPP, Art. 46 states about how interception and correspondence be held. Art. 46(1) states that "*where it is necessary for the investigation of corruption offence, head of the appropriate organ may order the interception of correspondence by telephone, telecommunications and electronic devises as well as by postal letters.*" Thus, up on the order of the appropriate organ the privacy of a person could be limited through interception of correspondences.

In general, criminal procedure code of Ethiopia, the Anti-corruption and Special procedure proclamation and the Anti-Terrorism proclamation impose a limitation on the right to privacy. Specially, since the enactment of the Anti-terrorism proclamation, there were a rumor of that it violates the right to freedom and privacy of citizens. International and national human rights bodies express their worries that the Anti-terrorism proclamation could seriously impact the right to privacy. They believed that the police has a broad desecration of Search without Warrant.[32] Especially, the ATP allows

[32] Human Rights Watch,2010,AL,2012 and Human Rights Commission, 2013

sudden search which is carried out mostly without search warrant and the same proclamation respectively which permits the maximum period of remand not to exceed four months[33].

CHAPTER THREE

3.0 Search and Seizure and Under Ethiopian Legal System

The privacy of man's home, security and integrity of his person and property have long been recognized as a basic human right enjoying both impressive history and a firm footing in most constitutional documents and international documents.[34]

Definitions and General Rules of Search and Seizure

3.1.1. Search Defined

Search can be defined as investigatory technique that can be used at any time, before or after the arrest of a suspect. It can be taken as a process conducted by the investigating police officers against the premises of the suspect/arrested persons in order to find an evidence which prove the commission of the crime. And seizure is the taking by law enforcement officers of potential.

The department of criminal justice training also defined search as an officer who examines another person's premises, person, or property for the purpose of discovering contraband (such as stolen property) or other evidence for use in a criminal prosecution has conducted a "search". A search involves prying into hidden places in order to discover something concealed evidence in a criminal case.[35]

Therefore, it can be conclude that search and seizure is the procedure which is used by the police who suspects that a crime has been committed and do a search of person's property and seize any relevant evidences which may prove the commission of the alleged crime.

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[33] ATP Pro. No.652/2009,Negarit Gaz.Art 16&18.

[34] Procedural Dimensions , Law and Methods, NEW ELEGANTS Printers,(2007), p. 340

[35] John w. Bizzak, Search and Seizure Casebook*, Department of Criminal Justice training* 2014, P. 1.

3.1.2. Seizure Defined

Seizure refers to the actual possession of a thing obtained through search. An officer who takes into to be used as evidence. Custody a person (e.g., arrests that person) or property (e.g., removes a concealed deadly weapon from a suspect) seizes that person or property. The seizure may be temporary or permanent – the nature of the seizure will determine what circumstances must exist to authorize the seizure.[36]

3.1.3. General rules on search and seizure

As a general rule, courts require a law enforcement officer to obtain a search warrant "*whenever practicable*" that is so long as the officer has a reasonable opportunity to do so. In determining whether a search without a warrant is "*reasonable*," courts will consider as one factor whether the officer had enough time to get a warrant. Many various decisions in USA make it clear that courts highly prefer searches conducted with a warrant. They are often reluctant to reverse the judge issuing the warrant unless the evidence clearly shows the warrant to be invalid. Consequently, the officer should always obtain a search warrant unless special or emergency circumstances make it unreasonable.[37]

3.1.4. Types of Searches

3.1.4.1. Anticipatory search

An anticipatory search warrant is upon affidavit showing probable cause (evidence will be found) that at some future time (but not presently) certain evidence of crime will be located at a specified place[38]. There are two prerequisites to a probable cause determination for a conditioned anticipatory warrant: If the triggering condition occurs there is a fair probability that contraband or evidence of a crime will be found in a particular place ;and there is a probable cause to believe the triggering condition will occur.

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36 Ibid.
37 Ibid, P. 8.
38 BLACK'S LAW DICTIONARY 1379(8th ed.2004).

3.1.4.2. Administrative search

Administrative search safety inspections of dwellings by government officials, unlike police searches, are conducted to correct hazardous conditions rather than to secure evidence[39].The right of privacy of the house holder must give way, even in the absence of a search warrant ,to the interests in preserving a safe urban environment. In this search, there is no strict procedure as that required in a criminal case rather it follows flexible test based on the condition of the particular area or dwelling[40].

3.1.5. Search and Seizures under Ethiopian Legal Frameworks

3.1.5.1 Search and Seizures with Warrant

Article 26 of the FDRE Constitution is silent as to whether the search must be conducted with prior court authorization {search with a warrant) or without prior court authorization (search without a court warrant). Nor does Article 17 of the ICCPR provide for a specific type of search. Both the Constitution and the Covenant left this matter to the law-making body. Thus, the legislature promulgated laws on search and seizure which provide for both types of searches and set out necessary preconditions for each.

3.1.5.2. Requirements to conduct Search and Seizure

As far as requirements of search and seizure concerned, ICCPR expressly prohibits arbitrary or unlawful interference with a person's privacy and similarly the second sub article also states that the right to privacy shall be protected by law[41].

When we come to Ethiopia, the FDRE Constitution under Art.26(3) provides three conditions that must be fulfilled for the restriction of privacy not to be arbitrary or unlawful; the first condition is existence of a specific law that authorizes the restriction. The second condition is related to the purpose of the specific law that authorizes the restriction of privacy: the law should

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39 Encyclopedia of the American constitution..Encyclopedia.com. 3 Dec. 2017< http://www.encyclopedia.com >.

40 Ibid

41 ICCPR Art17(1 &2)

serve one or more of three purposes - the safeguarding of national security or public peace, the prevention of crimes, or the protection of health, public morality, or the rights and freedoms of others. The third requirement is the existence of a compelling circumstance that calls for the restriction of privacy.[42]

A. **The Specific Law Requirement**: For a right to be restricted, both the Constitution and the ICCPR require that a clear provision of law authorize the restriction. the enjoyment of the right to privacy is to be limited only on the basis of laws which are in existence at the time the restriction is to be made and the Public officials also have a duty to make sure that whether laws are exist or not to restrict the right to privacy. And if there is a law, the government organs expected to follow those laws where there is a need to restrict a person's privacy. As far as prevention and investigation of crimes concerned, three laws (the Criminal Procedure Code, the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation, and the Anti-Terrorism Proclamation) are currently provided for restriction of right to privacy[43].
B. **Purpose of the Law:** By the mere fact of the existence of a law authorizing restriction of privacy is not sufficient and advisable, rather the search must have the purpose of safeguarding of national security or public peace, the prevention of crimes, or the protection of health, public morality, or the rights and freedoms of others and to achieve the whole purposes which are listed under Art 26(3) of the FDRE constitution[44].
C. **Compelling Circumstances:** In addition to the specific law and purpose of law requirements to restrict the right to privacy, the circumstances also shall be obliged or enforced to apply such restriction. Even if there is a law that allows search, the search is to be

42 Wondwossen Demissie supra note at.. p.137
43 Ibid
44 Ibid P.138.

conducted only where there are compelling reasons that call for the search and restriction of privacy should be taken as a last resort[45].

3.2. Applicability of Search and Seizure could be conducted

To conduct the procedure of search and seizure, there situations at what point and in what circumstances should be taken such procedures. Basically, reasonable suspicion and probable cause for the intended purpose of search and seizure has to be taken in to consideration before the enforcement of the procedure**.**

3.2.1. Reasonable Suspicion

Search can be conducted either on the arrested person or on the premises of suspected person.[46] This search may be conducted with search warrant or without search warrant. The court can issue search warrant if and only if the court is satisfied that the purpose of justice or of any inquiry, trial or other proceedings under the cr. Pro. Code will be served by the issuance of search warrant. In such a case, unless the court issues search warrant, the police cannot conduct search and seize any evidence. Regarding this issue, the cr.pro.code mentioned that "*no arrested person shall be searched except where it is reasonably suspected that he has about his person any articles which may be material as evidence in respect of the offence with which he is accused or suspected to have committed*"[47].On this issue wondwossen says that, this kind of search is a search incidental to arrest.[48]

As per Art. 32(2,b) of the cr. Pro. Code, the police may search premises without search warrant where an information is given to him that there is a reasonable cause for suspecting that articles which may be material as evidence in respect of the offence committed. Based on this Article it can be said that search and seizure shall be conducted when there is a reasonable suspicion that an officer holds a belief that is reasonable under the totality

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45 Ibid

46 Criminal procedure Code of Ethiopia, Supra note at 4, Art. 33.

47 Ibid Art 32(1)

48 WondwossenDemissie, Supra note 47, p. 159

of the circumstances that exist at the time and place the police officer acts. The ATP also follows the same fashion as to that of Art. 32 of the cr. Pro. Code. Because Art. 17 of the ATP requires the police to request search warrant where he has reasonable grounds to believe that a terrorist act has been or is likely to be committed.

3.2.2. Probable cause

Search may require probable cause which is the minimum amount of information necessary to cause probable a person to believe that a crime has been or is being committed by a person who is about to be arrested or suspected.[49]Probable cause is a fluid concept turning on the assessment of probabilities in particular factual contexts-not readily or even usefully reduced, to a nest set of legal rules.[50]

3.3. The time allowed for search

A search warrant may be issued at any time prior to or during a criminal proceeding. This contrasts with arrests which may be ordered only when there is a reason to believe that someone has committed a crime, which would arise only after at least a preliminary investigation. The phrase “the production of the articles... is essential to the inquiry now being made (or about to be made) into the said offence (or suspected offence)...” in the Form prescribed in the Third Schedule clearly shows that the search can be made at any time during a criminal proceeding or prior to its commencement. But searches shall be conducted only between the hours of 6 A.M and 6 P.M unless otherwise expressly ordered by court as a rule[51].

A warrant for interception and surveillance under Article 14 of the Anti-Terrorism Proclamation is to be issued even before the terrorist act is committed, because the purpose of the warrant is to prevent the commission of the act. Similarly, as provided in article 17(3) of the Proclamation, a

[49]SimenehKiross. Ethiopian Criminal Procedure: Principles, Rules and Practice , (2001), unpublished, p. 12

[50] ILLINOS V. GATES, 462 U.S. 213, 103, S.ct, 23177, 73 L.Ed.2d 527 (1983)

[51] Cr.pr.code Art.33(5)

warrant for covert search may be issued by the court to prevent a terrorized.

According to the cr.pro.code, search warrant is to be issued for once for definite period. Which allows the police officer to conduct search and seize what is needed as an evidence from 6am to 6pm.[52](i.e., for only 12 hours.) However, unlike the cr. Pro. Code, the ATP specifies the maximum duration during which the warrant becomes valid. The duration is for 30 days[53]. Besides to this, for the purpose of interception under the RACSPP, the duration of the interception may not exceed four months.[54]

Therefore, the scope of search under the cr. Pro. Code have to be conducted only once. However, under the ATP and RACSPP, search may be conducted repeatedly in order to prevent the terrorist act and the corrupt behavior of persons.

3.4. The procedures after search

After the procedure of search and seizure is conducted, when it achieves its objective in general it serves as an evidence for the investigation if the crime is already committed and if it is to prevent the commission of crime to avert that situation. And when any property is seized which is required for the trial it preserved in a safe place until handed over to the court as an exhibit[55].In addition to this if any property that is not required for the criminal investigation purpose may be returned to the person who is a possessor or real owner[56].

3.5. Search and Seizure Without Warrant

The procedure of Search and seizure is not always expected to be with a search warrant rather there are exceptional circumstances which justify the

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52 Criminal procedure Code of Ethiopia, Supra note at 4, Art. 33(5)

53 ATP Art.18(2)(b)

54 The Revised Anti-Corruption Special Procedure and Rules of Evidence, Pro.No.434/2005, Neg. Gaz.Art.46(3).

55 Criminal procedure art32(1)

56 Ibid Art.33(3)

procedure to implement search and seizure on persons, premises, and interceptions of correspondence and letters without court authorization.

Unlike a search with a warrant, the Cr, Pro. Code authorizes a search without a warrant only where there is good cause to believe that a crime has been committed. Article 32(1) of the Code contemplates search incidental to lawful arrest and, a person can be arrested only when there is reason to believe that he has committed a crime. The Cri.pro. Code, which authorizes a search without a warrant, contemplates a situation where "an offender is followed in hot pursuit" and there is no double that the person being followed in hot pursuit committed a crime[57]. As per Article 32(2) (b)the search without warrant can be conducted in related to an offence that has been reported by formal complaint, and third parties have given information to the police suggesting that evidence relevant to prove the commission of the reported offence is found in the location to be searched In addition to this , Unlike searches pursuant to the Criminal Procedure Code, which are intended to collect evidence to be used at trial, the Anti-Terrorism Proclamation, in its Article 16, authorizes a police officer to conduct a sudden search to prevent commission of a terrorist act - but not to collect evidence for use at trial but even if there is difference somehow, the performance of search is conducted without search warrant uniformly.

A. Search Incident to Lawful Arrest

Search incident to a lawful arrest, commonly known as search incident to arrest (SITA) is a legal principle that allows police to perform a warrantless search of an arrested person, and the area within the arrestee's immediate control, in the interest of officer safety, the prevention of escape, and the destruction of evidence[58].

As it is referred under the Cr. Pro. Code. Searches incident to lawful arrest can be taken to search body of the suspected. "*No arrested person shall be searched*

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57 Ibid Art 32(2)(a)

58 Wondwossen Demissie supra note at,..p.154.

except where it is reasonably suspected that he has about his person any articles which may be material as evidence in respect of the offence with which he is accused or is suspected to have committed."[59]

A court warrant is issued only for a search of premises. Where the conditions required by law to search a person are fulfilled there is no need to secure a court warrant. The police officer can conduct the search in his own discretion, however, three conditions must be present to effect a lawful search of person. First, the person to be searched should first be lawfully arrested for the arrest and subsequent search of the person to be lawful, the officer must have reason to believe that the person to be searched has committed an arrest able crime. Second, the arrested person must reasonably be suspected to have articles about his person. Third, these articles must be of a nature to serve as material evidence of the offence the arrestee is suspected to have committed.

B. Search with consent

Warrantless searches are searches that conducted based upon consent. No warrant or probable cause is required to perform a search if a person with the proper authority consents to a search. A consent search requires the individual, whose person or property is being searched to freely and voluntarily, granting the officer permission to perform the search. However, where consent is obtained through "deception" on the part of government personnel, the search may be determined to be an unreasonable search. In addition, the prosecution in any trial using the search results as evidence is required to prove that the consent was voluntary and not a result of coercion as the general concept of Art 19(5) of the FDRE constitution and Art31(1) of the cr.pro.code.

C. Stop and Frisk

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[59] Cr.pro.code At.32(2)

A frisk is a search of a person for the purpose of locating weapons. It is usually limited to a pat down of the person's outer clothing. It is allowed for the sole purpose of the protection of the officer and other persons at the scene. During a frisk, if the officer feels something hard that could reasonably be, or contain, a weapon, he may reach inside the clothing and seize the object. Plus, if the officer feels an object that his sense of touch immediately tells him is contraband (something that is illegal for the person to possess, such as drugs), then he may seize it. Frisk is usually conducted in a temporary seizure of a person, by a law enforcement officer, to investigate the officer's suspicion that the person is involved in criminal activity. Reasonable suspicion is needed and it is more than a mere hunch, but less than probable cause as the the general sprite of the Cr.pro.code[60]. The officer should have specific items of evidence that make it reasonable for him to be suspicious.

D. Exigent Circumstances

In the criminal procedure context, exigent circumstance means an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect, or destruction of evidence. Exigency may be determined by degree of urgency involved, amount of time needed to get a search warrant, whether evidence is about to be removed or destroyed, danger at the site, knowledge of the suspect that police are on the trail, and/or ready destructibility of the evidence[61].

When there is a need to act quickly, the police officer may conduct a search of the premises without a warrant. According to Article 32(2) (b) of the Code, the search without warrant must be justified, by the existence of a pressing emergency and the need to take prompt action. In addition, several conditions must be satisfied. First, the commission of the offence must have been reported (by accusation or complaint) to a police officer in accordance

[60] Cr.pro.code Art32(2)(b)
[61] Wondwossen Dmissie,supra note at..pp149-150.

with Article 14 of the Cr. Pro. Code. Second, the offence must be punishable with more than three years imprisonment. The reported offence must be so grave that there is a possibility for the accused, if convicted, to be punished with more than three years imprisonment. This requirement is fulfilled where the ceiling of the punishment prescribed for the offence exceeds three years. Third, an investigating police officer must have received information from informants that articles which may be used in evidence are likely to be found in a certain place. The officer may not rely on his own personal knowledge to conduct the search without a warrant even where other conditions requirements are fulfilled. Fourth, the information should be circumstantial and from a credible source so that there is reasonable cause for suspecting that articles which may be used in evidence are found in a certain place[62].

The officer must be in a position where effecting the seizure after obtaining a search warrant is impracticable. To search without a warrant to be justified under Article 32(2) (b), the officer must be faced with the choice of risking the immediate destruction or removal of evidence or entering the premises and conducting a search[63].

E. Administrative Search and Investigation

Administrative search safety inspections of dwellings by government officials, unlike police searches, are conducted to correct hazardous conditions rather than to secure evidence.

In explaining “compelling circumstances” under Article 26(3) of the FDRE Constitution in the context of a criminal investigation, the document prepared to explain the draft provisions of the FDRE Constitution states that the term presupposes that crime has been committed. The term does not contemplate use of a search to prove the crime. Although the Constitutional provision lacks clarity, “compelling circumstances” seems to include

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62 Ibid p.150

63 **Ibid**

administrative searches that may be needed in the event of an epidemic or a civil war, but does not seem Conclude searches made for the purpose of criminal investigation[64].

3.6. Other issues on search and seizures

A. Plain view doctrine

The 'Plain View' Doctrines is related doctrines state that a situation which may be generally seen by the public, e.g., an open field viewed from a public road, is not covered by the protection of an individual's privacy under the Fourth Amendment. This means that if an event or situation can be observed from an area normally open to the public, an inspector need have neither consent nor a warrant in order for his/her observations to be legally valid. This obviously opens up a new set of questions about what criteria defines what is normally open to the public[65].

The plain view doctrine is the rule that a law enforcement officer may make a search and seizure without obtaining a search warrant if evidence of criminal activity or the product of a crime can be seen without entry or search or found in plain view during a lawful observation. For the plain view doctrine to apply for discoveries, the following three tests should be fulfilled[66]:

1. the officer to be lawfully present at the place where the evidence can be plainly viewed,
2. the officer to have a lawful right of access to the object, and
3. The incriminating character of the object to be “immediately apparent.”

B. Abandoned Property Doctrine

A person may lose an expectation of privacy either by discarding the property in a place where others would have access to it or by disclaiming

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64 Ibid,p.144
65 John bizzack supra note at 61.
66 Ibid.

ownership of the object. Such situations would include when a person discards their trash, in the area where trash is commonly picked up, or when they abandon an item of property (such as a purse) where others would have ready access to the item. It also includes when ownership of an item is denied by a person under suspicion, although it is found in close proximity to their location[67]. This is indirectly incorporated in the FDRE constitution under Art.26(3) and Art 32(2)(b) when reasonable cause is happening and other conditions are fulfilled to apply such kinds of search.

C. Open field doctrine

An officer may search “open fields” without a warrant, without probable cause, despite notices or other efforts showing an expectation of privacy and despite the fact that the search may constitute a technical trespass. An "open field" is any land not included in the cartilage and does not describe the actual condition of the land. The land may in fact be considered an open field, but may also have buildings on it, be wooded or be otherwise used. A person's “premises” is his home, a reasonable area for yard space (whether fenced or not) and the nearby buildings used in connection with the home. Outside the premises is the "open fields" and that land may be searched by an officer. The principle of open field doctrine in Ethiopia context there is no a clear provision rather than premises; but the latter is in principle conducted with search warrant as per Art33(2) cr.pro.code. Here it can be understand that since even premises have an exception to search without warrant it is obvious that open field can be searched without warrant since it is out of premises.

D. Border Search Exception Doctrine

The **border search exception** is a doctrine that allows searches and seizures at international borders and their functional equivalent without a

[67] John bizzack supra note at 61.

warrant or probable cause. This doctrine is not only the expectation of privacy less at the border than in the interior, rather it is to balance between the interests of the Government and the privacy right of the individual. It is also justified in the context of the FDRE Art.26(3) for the purpose of safeguarding of national security, public peace, prevention of crimes or the protection of health and others.

3.7. Constitutional Limits on the Seizures of items found in Search and seizure

3.7.1. Specificity Requirement

Search and seizure can be classified into two types - general and specific - depending on how much discretion is given to the police officer to conduct the search and seize materials. General search warrants give the discretion to the police officer to determine the locations to be searched and the items to be seized. However, the law does not provide limits on the search once the warrant is secured. The police search wherever they suspect evidence to be hidden and seize whatever they consider to be evidence. Where a general search warrant is issued, there is no significant purpose to be served by involving the court, as it is the police officer who actually decides the places/areas *to* be searched and items to be seized whereas specific search and seizure is the reverse of general.

Accordingly, the criminal procedure code adopts the specific search and seizure to protect the constitutional right to privacy of Art (26)(3).The Cr. Pro. Code also clearly provided the specificity requirement and which states that "*Every search warrant issued shall specify the property to be searched for and seized and no investigating police officer or member of the police may seize any property other than that specified in such warrant*[68]*.*

The content of the search warrant, as prescribed in the Third Schedule of the Code (referenced in Article 32(2) of the Cr. Pro. Code), clearly shows that both the premises to be searched and the items to be seized should be

[68] Cr.pro.code Art.33(2)

described as precisely as possible. Article 33(2) of the Code and the form make clear that judicial search orders must be given in writing and must be specific. However, there is no clear guideline on how *"specific*" a search warrant should be in describing places to be searched and things to be seized. The warrant should describe both the premises to be searched and the thing to be seized in such a manner that there is no room for the police officer to decide what is to be searched or seized. The warrant should be so clear and specific as to what is to be searched and seized that the officer simply executes it[69].

Article 14 of the Anti-Terrorism Proclamation requires the National Intelligence and Security Service(NISS) to obtain a court warrant for any searches/interceptions it conducts, but does not state how specific the warrant should be. While warrants foe interceptions authorized under the Anti-Corruption Special Procedure and Rules of Evidence Proclamation must specify the link to be intercepted and the duration of the interception, Article 14 of the Anti-Terrorism Proclamation includes no such requirement.[70]

CHAPTER FOUR

The effect of applicability of the right to privacy during the time of search and seizure in north Mecha woreda merawi town

4.1. Introduction

As the researcher had been mentioned under chapter two, naturally human beings need to have an autonomy or control over their humanity, dignity and their confidential life. This has been recognized as a fundamental human right to privacy. But the legitimate limitation is existed when there is aground of limitations are prescribed by the law; when limitation is necessary and to attain a specific purposes.

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69 Ibid

70 Ibid Art 14

In this chapter, the researcher tries to analyze existing or using laws or procedures to protect the appraisal of the right to privacy during the time of search and seizure the in the target area of the study. In north Mecha woreda there are two police stations (one in the town and the another one is in rural area). The finding of the study is based on the outcome of the information gathered from individual interviewers police officers and judges), community polices, dwellers in north Mecha woreda.

4.2. The effect of the applicability of the right to privacy during the time of Search and Seizure

Everyone is entitled to the right to privacy both under international global legal instruments and under regional legal instruments and national laws of Ethiopia. Accordingly, everyone is free from arbitrary interference of his home, person, property and inviolability of notes and correspondences. Person suspected/arrested are also under the ambit the above legal protections and they have the right to liberty and privacy. This all legal instruments committed to the protection of the right to privacy oblige the law enforcement bodies to give a due regard to their protection and to respect the right of the persons entitled as such. Therefore, in no case, even during search may be these rights violated.

The FDRE constitution and Cr. Pro. Code, provides the right to everyone not to be searched and their property seized. However due to various applicability and substantive gaps it is common to observe in practice that the right of suspected persons are violated. For instance, under the supreme law of the land and under our criminal procedure code police officers has the obligation to respect the right to privacy of an individual, unless there exist legitimate grounds for the limitation this right. But during an interview the key informants of the study revealed that there are various situations that the right to privacy of an individual suspected are violated without reasonable ground. On this regard Kahlew Ayana revealed that;

> *"…most of the time we have not foreseen that much the protection of the right to privacy of a person searched , especially when there are accusations or reports related with serious crimes and in urgent reports our aim is to seek what we needs as an evidence at the place of the crime."*[71]

It should be noted that, search and seizure by themselves are not the cause to the violation of the appraisal of the right to privacy of an individual this means according by the laws or procedure search and seizure do not limit or restrict the privacy right unless improper way. Since any forms of search and seizure which is conducted in accordance with the legitimate limitation of the right to privacy are legal and uncontested. However, in a developing countries like Ethiopia the right to privacy is violated and during the time of search and seizure for the mere ground that the law enforcement bodies, especially due to police officers lack of adequate legal awareness or even they are well aware about the procedure their non-observance of the existing legal protection and human right of and individual resulted to unreasonable violations of the right to privacy. Similarly, the key informants of the study reported that most polices in the target area of the study are not familiar with the substantive and procedural laws of the country. Accordingly, police officer Haymanot Zelalem reported that;

> *"…in general I can conclude that most of does not have adequate knowledge about the substantive and procedural laws of Ethiopia regarding the right to privacy. Thus, lack of adequate knowledge's of police officers coupled with the focus of mainly in gathering the evidences resulted in violations of privacy rights…"*[72]

Therefore, though everyone is entitled to protect the right to privacy to be free from arbitrary interference of his home, person, property, inviolability of notes and correspondences, from the above information's it can be

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71 Interview with Kahlew Ayana, Community police officer, July 15/2023.

72 Interview with Police officer Haymanot Zelalem, crime investigator, July15/ 2023.

deduced that the right to privacy is easily affected by the conduct of search and seizure. Since most of the time police officers focused on achieving the aims of their investigations rather than the right to privacy of an individual. Moreover, the lack of adequate knowledge by police officers on the substantive and procedural protections of the right to privacy resulted in violation of the right to privacy of the suspected individual.

4.3. The Protection of the Right to Privacy during the time of search and seizure: Practical applicability in north Mecha woreda

As the researcher repetitively discussed under the previous sections persons suspected and who are subject to search and seizure are entitled to the protection of their property, premises, notes and correspondences from any unreasonable interference by third parties. But the practical applicability of the exiting legal regimes of Ethiopia, and particularly in north Mecha woreda in Amhara region there is not the same as the protection accorded under the legal documents, i.e. the protection of the right to privacy and search and seizure are two different ideas and mostly they are not complementary with each other. Under this subsection the researcher identified the major applicability challenges or problems regarding to the protection of the right to privacy and the effect of the applicability of the right to privacy during the time of search and seizure.

4.3.1. Conducting search on Mere Information

According to Art.23 of the cr. Pro. Code, most of the time the police begins the investigation up on accusation or complaint which are stipulated under Art. 11 to 18 of the cr. Pro. Code. That is, as per Art. 23 of the Cr.pro. code, police may conduct search up on the information he may receive. Actually the police has a responsibility to prevent the commission of crime that is against the public morality and of any illegal activity that disturb the peace and order of the inhabitants of Ethiopia. According to Art. 32(2) (b) of the cr. Pro. Code also police officers may conduct search with search warrant when the information is given to the police that there is a reasonable cause for suspecting that articles which may be material as evidence in respect of

offense and when he has a good ground for believing that by reason of the delay in obtaining search warrant such articles likely to be removed.

However the finding of the study revealed that there are occasions that police officers conducts search and seizure based on mere reports and information without taking in to consideration that may violate the applicability of the right to privacy an individual and reasonableness of their decision to search and seizure the premises of an individual suspected.

On this regard inspector Solomon Negus reported that;

> *"….in accordance with the procedural requirement of our criminal procedure code in order to conduct search up on mere information and seize what is needed, the police must ascertain and be sure as what relationship does the informant have with the said offender. Because, sometimes, the informant may be vengeful to harm that person. However in practice there are various occasions that we may enter in to the premises of the suspected individual while we receive information that depicts the commission of serious crimes.*

As it can be inferred from the above information the right to privacy of an individual is violated without a reasonable ground by law enforcement bodies up on the mere allegations of the accusers. Inspector Melaku Kebede also added that;

> *"….it is difficult to conclude that the practical applicability of the law of search and seizure is in accordance with the procedural requirement provided under our criminal procedure code. In fact, most of the time we tried to maintain the procedural requirements as much as possible in practice. But there are circumstances that lead as to conclude that procedural requirements are not always necessary. For instance, on crimes related to act of terror*

Therefore from the above information it can be deduced that; despite the fact that the law prescribe a procedural requirements to conduct search and seizure up on the reasonable suspicion, the practice revealed different, in which there are situations that police officers may violate the right to privacy of the suspected individual due to the failure of police officers to check the truthfulness of the information's reported by the accusers.

4.3.2. Searching and seizing other than what specified in the search warrant

As per Art.33 (2) of the cr. Pro. Code and Art. 18(2) of the ATP clearly shows that the warrant must specify the place (address) where search be conducted, property to be searched and seized, and the name of the person to be searched. Sub art. 2 of Art. 33 of the code also states that *"no police officer may search and seize property other than that specified in the search warrant."* In this sense, it is clear that searching and seizing other than what specified in the search warrant is strictly prohibited. But the finding of the study indicated that on the practice the procedural requirements of the law are not observed by the police officers in the target area of the study.

Regarding this inspector Girum Tesfa reported that;

> *"….even if the law prohibits searching and seizing any property by the police officer or any member of the police other than specified in search warrant; to tell the truth it is not enforced as the law says and we take whatever the thing against the clear provision. Since if we are returned in to the court to issue a new warrant on the property that we observed in the premises of the suspected individual we may lost it that object as a result of the suspected individual may hide that property or destroyed it as long as we leave his premises to request a new warrant from the court…."*[73]

[73] Interview with inspector Girum Tesfa, supra note at 5.

As the researcher found that from the above expressions the enforcement organs particularly polices and police officers are doing their conducts against the spirit of Art. 33(3) of the cr. pro. Code and it seriously affects the right to privacy in the target area of the study. Therefore, from the above information it can be deduced that, police officers seizes the thing that is not specified in the warrant against the provision in one hand and abusing the independent persons as a witness for not specified objects to affect the suspected persons right to privacy.

4.3.3. Issuance of Search Warrant again for the investigation of an offence against the person

According to Art.26 of the FDRE constitution, Art.33 of the cr. Pro. Code and Art. 18 of the ATPS, search warrant can be issued only once for the investigation of the one and the same offence on one offender. However the period in which the warrant becomes valid is different. The finding of the study clearly revealed that police officers requested the court to issue the search warrant even for one investigation and against the same suspected individual more than two times. The key informants of the study reason for the occurrence of this practical problem in two dimensions. (1) Due to the negligence and irresponsibility of the police officers and (2) due to the negligence of the court to proof and take into consideration all relevant information's regarding to the necessity of search warrant.

On this regard police Dagim Teshome reported that;

> *"…there is an occasion to apply and issue search warrant against the same offender though for that cause of repetition is either the negligence or incompetence of police members to perform timely whatever activity as far as search concerned. Thus, it resulted because of the police officers problem of irresponsibility,*

negligence and incompetency the innocent suspected person's right to privacy is endangered and affected…"[74]

It should be noted that, neither of criminal procedure rules of Ethiopia clearly provide for the issuance of search warrant more than once against the same offender. Even the FDRE constitution and the Cr, Pro. Code does not provide as such. Thus, this practice of the police is transgressing the right to privacy of the person. Because as per Art. 32 of the Cr. Pro. Code, search warrant is issued only for the commencement of search once since search and seizure is an exception for the right to privacy and it should be interpreted in strict manner.

This shows that the practice of the police and even the court is against the constitutional right to privacy of the person and it doesn't consider the existing law of search and seizure in the cr. Pro. Code. Therefore; the researcher found that even if there is no a law which allows issuance of search warrant again against the same offender; there is a practice of issuance of search warrant and application for search warrant and again and again against the same offender which is also against the provision of the cr. Pro. Code and other procedural laws which provided to implement and to give life for the substantive laws.

4.3.4. Search and seizure after the prescribed period of time to conduct search and seizure

As stated in Art. 33(5) of the cr. Pro. Code, in principle, the warrant is valid for 12 hours and as per Art. 18 of the ATP, the period may extend to 120 days. Even though, the law prescribe the length of the validity of one search warrant, police officers in the target area of the study violated the right to privacy of an individual suspected by conducting search and seizure after the prescribed time under the criminal procedure code of Ethiopia. similarly

[74] Interview with police Dagim Teshome, July. 13/2023.

the key informants of the study revealed that, in case where they receive accusations or reports that require urgent responses by the police officers or crimes related to person as well as in case of robbery they enter in to the premises of individual suspected without regarding his or her privacy right. On this regard chief inspector Temesgen Kebede reported that;

> *"…we are not always strictly follows the procedures of search and seizure in practice, but it does not mean we are always conduct search and seizure in contravention with the criminal procedure code of Ethiopia. So in case where there are accusations that requires urgent police responses, especially accusations that are related to crimes committed after 12 P.M local time and if such crimes are grave we directly enter into the premises of the individual suspected without taking in to consideration the legitimate right of the individual privacy…"*[75]

The researcher has also interviewed with person who are arrested in merawi police station due to attempted homicide and robbery and there was the subject of search and seizure and particularly among the Tariku Mekuria who was arrested by attempt of homicide crime and he said that;

> *"…at the time when the police officers suspected me for the attempt of homicide against my friend they directly entered to my premises without due regard to the time prescribed to conduct search and seizure. Since they search the entire parts of my home at 5:00 P.M. but at that time they did not get anything in my home except me. I am arrested and on the attempt homicide due to the witness testimonies. Thus, the search conducted by the police officers at that time is illegal and even violated my constitutionally granted right of privacy…"*[76]

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[75] Interview with Inspector Temesgen Kebede, Supra note at 9.

[76] Interview with Tariku Mekuria ,arrested of merawi policearrest,july.20/2023.

Therefore, from the above information it can be deduced that police officers violated the right to privacy of an individual's through conducting search and seizure after the prescribed period of time to conduct the procedure of search and seizure.

4.3.5. Conducting Repeated Search by One search warrant

As per Art.33 (5) of the cr. Pro. Code, search warrant is issued only for 12 hours unless the court permits the police additional time. Even though the court has a discretion to order additional time, the code does say nothing whether the court can permit the search to be conducted repeatedly by one search warrant. According to this the researcher interviewed with adjudge Netsanet Girma whether it can be conducting repeated search by one search warrant or not and according to this interview she said that;

"…, the court issues search warrant only for 12 hours and it cannot allow repeated search by one warrant. In a sense since search and seizure is exception and it needs strict interpretation it can be conclude that searching repeatedly with the same warrant by police seems against such rule…"[77]*.In addition to this she said that, even though the warrant is issued against more than one persons, the warrant must be duplicated in the number of persons subjected to search but it does not mean conducting repeated search by one search warrant is legal if a police officer conducts as such since it is against the principle of limitation of their discretion power and abuses the purpose of the law that gives the power to court if police officers searched as such…"*[78]*.*

As the researcher can understand from the interview of the judge conducting repeated search by one search warrant is prohibited. And in this position if the criminal procedure code does not provide a clear provision that allows conducting repeated search, it seems the law intentionally omitted that for a better protection of privacy right

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77 Interview with , judge Netsanet Girma first instant court, Merawi criminal bench,june.22/2023.

78 Ibid

As it is explained by the police officer, the researcher can understand and found that the conduct of police officers is against the right of suspected persons privacy .Because even if the suspected person is suspected for his commission of crime and there was an issuance of warrant but the police officer uses the warrant more than once and even it was used for the next day in addition to the formal written day without court authorization and that affects the suspected right of privacy.

The other issue which shall be raised here is whether repeated search can be conducted during the remand. According to Art. 59 of the cr. Pro. Code the court may remand the suspect for the accomplishment of the investigation. Regarding this issue Netsanet Girma said that;

"…the police may do whatever thing which deems necessary during remand for the accomplishment of the investigation but to search again during the time of remand the court authorization is needed to respect the privacy of suspected person."

The act of the police officer is against the law. Because we do have no law which allows repeated search during the period of remand. Even Art.59(2) provides that "*where the police investigation is not completed the investigating police officer may apply for a remand for sufficient time to enable the investigation to be completed."* And the court may grant remand for not more than fourteen days as per Art. 59(3). Here, neither Art. 59 nor Art. 33 clearly permits the police to conduct repeated search during remand by one warrant. Thus, the police officers are violating the law and as well the privacy right of the persons.

Generally, there is no provision of the cr. Pro. Code which allows repeated search during the demand. The researchers found that, the practice of the police is contrary to the spirit of Art. 59 and 32 and 33 of the cr. Pro. Code and it is the violate of the right to privacy during the time of search and seizure.

4.3.6. Conducting search by unlike gender

Art. 32(1) of the cr. Pro. code provides that “no arrested person shall be searched except where it is reasonably suspected that he is about his person any articles which he is accused or suspected to have committed; search shall be made by the person of the same sex as arrested person”. As it is clearly stipulated from the above provision searching of suspected person is expected by a person who have the same sex. But the researcher has been interviewed with police officer Yared Zeleke and he said that;

“…when we want to search a suspected person who may have articles which may be material as evidence we do not bother about the suspected gender status rather than immediately searching his/her body. He added that, mostly such kinds of conduct are applied on suspected women by and through men police officers.”[79]

Accordingly, the researcher found that even though the law has the implication that search to be conducted by the same sex since searched by opposite sex in one or another way may affect the privacy right of suspected persons. For instance a women may not want to be searched by men because of by fearing discrimination in the social oriented society but in this situation when the women is searched by men that affects the women’s privacy right and it is the effect of the applicability of the right to privacy during search and seizure in north Mecha woreda

Accordingly, the researcher also found that a problem of shortage of female investigating police officers and which leads for search of persons by the persons having no the same sex. That is, female offenders are searched by male police officers and it affects the right to privacy of suspected women in the targeted area of the study.

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[79] Interview with police Yared Zeleke, Assistant inspector of crime investigator, July.20/2023.

4.3.7. Search of Vehicles

The provisions of the cr.Pro.Code does not makes clear about the search of vehicles. Art. 32 sub Art (1) provides about search of persons and sub art. 2 about the premises. Even, Art. 33(2) is not clear whether the term 'property' which should be specified in the warrant shall include 'vehicles'.

The term "property" under Article 26(1) the FDRE constitution refers to different things that can be owned, including vehicles. Because an individual's privacy interest in his vehicle is recognized under Article 26(1) of the FDRE constitution, his vehicle may not be searched except on the basis of specific laws envisaged under Art. 26(3) of the constitution. None of the provisions of the law of search and seizure authorizes search of vehicles.

In Ethiopia, it is only the ATP which allows search of vehicles expressly.[80]However, regarding search of vehicles, the researcher was interviewed with judge Netsanet Girma whether vehicles can be searched or not and with or without warrant. Based on the interview she said that;

"… Search of vehicles is possible and this search must be by the search warrant. She also strengths by saying according to the law, vehicles should be considered as property and the court shall issue search warrant for the search of vehicles unless the crime has the nature of terrorism…"[81].

According to the information that is gathered from the interview of court of judge vehicle can be search with court warrant unless it is related with terrorism.

Many times majority of the police officers search vehicles without warrant which their act is against the Art.26 of the FDRE constitution and Art. 32 and 33 of the cr. Pro. Code of Ethiopia.(i.e., their act violates the right to privacy of the person).

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80 The Anti-terrorism proclamation, Pro. No.652/2009,Negarit Gazeta, Art. 16.

81 Interview with Netsanet Girma, Supra note at 161.

Therefore, from the above information it can be deduced that, even if the law is not clearly prohibited them from searching, the court believes search of vehicles to be with search warrant but the police officers search without search warrant even if there is no act of terrorism during the time of search of the vehicle and this also shows lack of collaboration between two organs and the privacy right of the suspected is under the risk of such violations. In general, the researcher found two problems. The first problem is that, the court says search warrant is needed for search of vehicles and the police conduct search of vehicles without search warrant. Thus, the police and the court lacks collaboration, regarding search in which in this lack of coordination grossly leads to the violation of human rights (especially the right of privacy). And the second is that, the vagueness of the law of search and seizure under the cr. Pro. Code regarding search of vehicles leads to the court and the police in controversy and enables the police to abuse his power while conducting search. And finally the police is violating the rules of search and seizure and the right to privacy in contrary to Art. 26 of the constitution by conducting search of vehicles without search warrants.

4.4. The role of the police officers and the court in protecting the right to privacy

4.4.1. The Role of the Court

Courts are the watchdog of human rights and liberties of the people. The judiciaries are the defenders of individual's right. Such role of the judiciary is important as it prevents the individual's right to privacy from being violated .an individual also need not until harm is done to him. If he had sufficient reasons to believe that attempts would be made to violate his privacy rights he could approach the courts for protection. Then the courts would issue order prohibiting such attempts until the rights of suspected persons were determined. Therefore the courts are the protectors of the fundamental human rights including the right to privacy.

In FDRE constitution as per Art.9 (1),13(1&2),and Art.26(3) provides an obligation to the judiciaries and enforcement organs to protect and respect and obey the constitution and the general human rights and particularly the right to privacy of suspected persons. Whereas when it is evaluate in the current role of the court with the protection of the right to privacy in relation to search and seizure concerned it is difficult to say the court is fully interpreted laws by giving strong protection of right to privacy. As far as this concerned the researcher was held an interview with Netsanet Girma she is adjudge of first instant court of merawi criminal bench and she said that;

"…actually we have an obligation to deal detail before we issue the search warrant but sometimes in different grounds for instance in the situation of work over load, negligently by receiving mere information from the informants ,the search warrant may be given to the police officers and by such warrant the suspected right to privacy may be endangered. .."[82].

Therefore, from the above mentioned information it can be deduced that, even though courts are somehow protected; and highly expected for the protection of human rights in general and the right to privacy in particular, there are practical problems and they have contribution with the police officers for the violation of individuals the right to privacy.

4.4.2. The Role of Police

Police are primarily responsible for the maintenance of public order prevention and detention of crimes in the state. It also protects the life, liberty, property of the people including privacy. The police also enforce the criminal law, maintain law and order, investigating crime, executing all orders and warrants lawfully issued to the police officer by any competent authority. In general police officers are executive branches who established to enforce the substantive rights and procedural laws in general and the procedure of search and seizure in particular for this research purpose in

[82] Interview with Netsanet Girma supra note at 161.

north Mecha woreda. These organs also has constitutional obligation to respect and enforce the constitution in general and human rights which are incorporated the constitution and international and regional human right instruments ratified by Ethiopia since they are an integral part and parcel of the law of the land as per Article of 9(4) and 13(2) and they have also a duty to respect and enforce the human rights as per Article9(2) , Art.13(1) and 26(3).Having this in mind, now it is better what is going on by police officers in the target area of the study.

Even though the above principles provided, the researcher was interviewed with a police officers, arrested persons, inhabitants, community polices, and the researcher found that searching and seizing beyond the prescribed period of time which is limited by the court, conducting repeated search by a single court warrant again and again on the same offence and against the same offender, searching and seizing other than specified in the search warrant, and sometimes excessive use of power which is beyond the necessary to conduct search and seizure, and lack of legal awareness on substantive and procedural laws when they conduct search and seizure since it makes violation on the right to privacy, and the absence of notifying the subject of searched person and the rationale behind of the overall conducting the search and seizure of the premises as far as possible in their knowledge; are the major roles which takes a lion share for the violation of the right to privacy.

4.4.3. The Coordination between Police and Courts to Protect the Right to Privacy

In both government organs there is an obligation to protect and respect the constitutional guaranteed human rights especially the effect of the right to privacy during the time of search and seizure. But ,even though courts are the watchdog of individual human rights from the violation and unreasonable interference in the privacy right of individuals by and through any government organs especially police officers and police members in

one hand; and though police officers are expected to enforce the substantive rights which are protected under global, regional and national laws and procedural rights of individuals, there are lack of cooperation between these organs to achieve the goal of such protection of the right to privacy during the time of search and seizure in north Mecha woreda.

In the target area of the study, the researcher held interviews with court of judge, police officers, dwellers and arrested persons to evaluate whether courts and police officers are made cooperation or not for a better protection of privacy right during the time of search and seizure. Accordingly it shows even though courts and police officers expected to perform their task hand to hand in cooperative manner; they lack such cooperation for a better protection of the right to privacy in north Mecha woreda.

Chapter five

Conclusion and recommendations

5.1. Conclusion

Regarding to my finding the role of court and police, courts are the watchdog of human rights and liberties of the people. The judiciaries are the defenders of individual's right. Such role of the judiciary is important as it prevents the individual's right to privacy from being violated .an individual also need not until harm is done to him. If he had sufficient reasons to believe that attempts would be made to violate his privacy rights he could approach the courts for protection. Then the courts would issue order prohibiting such attempts until the rights of suspected persons were determined. However the courts were not take responsibility or role and violate of the fundamental human rights including the right to privacy in north Mecha woreda.

Additionally police are primarily responsible for the maintenance of public order prevention and detention of crimes in the state. It also protects the life, liberty, property of the people including the right of privacy. The police also enforce the criminal law, maintain law and order, investigating crime, executing all orders and warrants lawfully issued to the police officer by any competent authority. In general police officers are executive branches who established to enforce the substantive rights and procedural laws in general but there were violate procedure of search and seizure in particular for this research purpose in north Mecha woreda.

In case of the expectation of Cooperation between Police officers and Courts to Protect the right to privacy, and government organs have an obligation to protect and respect the right to privacy from the during the time of search and seizure, the researcher found that when police officers conduct search and seizure there are practical problems and in this situation courts lack controlling and evaluating such organs in one hand and doing of favorable condition by cooperating with police organs on the other hand are not much effectively existed in north Mecha woreda.

According to the right of the suspected /arrested person the protections against during the time of search and seizure, an individual must have a reasonable expectation of privacy in the place or thing being searched. And also has different rights when search and seizure performed. Protect from illegal search and seizure, the right to against abuse of power of the investigator, the right to oppose search and seizure without warrant are some rights of the suspended person. However these rights are restricted or violated by some conditions during the time of search and seizure in my target area of study.

Though the criminal procedure law does not allow issuance of Search Warrant again for the investigation of an offence against the same suspected person, the researcher found that the practice of issuance of

search and application for search warrant again and again against the same offender which is also against the provision of the cr. Pro. Code and other procedural laws which provided to implement and to give life for the substantive laws and basically it violates the individual right to privacy and it makes them uncertain on such right.

The other finding is the practical applicable of search and seizure after the prescribed period of time to conduct search and seizure. Even though, the law prescribe the length of the validity of one search warrant, police officers in the target area of the study violated the right to privacy of an individual suspected by conducting search and seizure after the prescribed time which is stipulated under the criminal procedure code of Ethiopia. Even though the criminal procedure law sets the time of search and seizure to be conducted between the hours of 6 A.M and 6 P.M, but the police officers of north Mecha woreda conducts search and seizure beyond the scope of such time and the suspected criminal's privacy is affected because of lack of protection which is sated by law.

As far as Conducting repeated Search by One search warrant concerned, search warrant is issued only for 12 hours unless the court permits the police additional time. Even though the court has discretion to order additional time, the code does say nothing whether the court can permit the search to be conducted repeatedly by one search warrant. But here is as the researcher is found that even if the suspected person is suspected for his commission or omission of crime and there are police officers who uses the warrant more than once and even it was used for the next day in addition to the formal written day without court authorization and that affects the suspected right of privacy because of its repetition by disregarding the procedural rules and the constitution of specific law requirements.

Even though the criminal procedure code stipulates searching of suspected person is expected to be search by a person who have the same sex by

taking into consideration of a privacy of individuals to keep their reasonable expectation, but the reality in the area of the study is not respected and women suspected persons are searched by men police officers and women's are unsatisfied and they feel the violation of their privacy as the law considers.

Even if the provisions of the criminal procedure code does not makes clear about the search of vehicles and even if the law is not clearly prohibited them from searching, the court believes search of vehicles to be with search warrant unless the condition is related terrorism and other grave issues but the police officers search without search warrant even if there is no act of terrorism during the time of search of the vehicle and this also shows the privacy right of the suspected is under the risk of searching of their vehicles and since individuals have their own secret privacy in the vehicle, if it is searched without court authorization as they want it violates the right to privacy.

Therefore, even though courts are somehow protected the right to privacy; and highly expected for the protection of human rights in general and the right to privacy in particular, there are practical problems and even they have contribution with the police officers for the violation of individuals right to privacy.

Even though the police officers have constitutional and procedural duties to respect and protect the right to privacy, the researcher found that because of lack of awareness and even though some police officers also know what the law says but they are reluctant to respect for the right to privacy rather they focused only on their desire

5.2. Recommendations

As clearly shown throughout this paper ,the of the appraisal of the right to privacy during the time of search and seizure is a process of criminal

investigation. That means the investigating police officers are responsible organs to conduct search and seize to achieve what they need. However, as per the steady of the research there are many problems on the enforcement of search and seizure that affects the right to privacy which are found in the targeted area of the study. Accordingly, the following recommendations are posed by the researcher.

- The investigating police officers should be equipped with the better knowledge of human rights especially the right to privacy. For this purpose, the north Mecha woreda court shall give an extensive training for the investigating police officers in order to improve the legal knowledge of the officers especially about the laws of search and seizure.
- The court also shall create awareness for the dwellers regarding their human rights in general and their right to privacy in particular since one of the mission of the court is to render community service like that of training.
- The north Mecha woreda courts shall give more emphasis at the time of issuance of search warrant whether the report is mere information or has weights that justified for issuance of search.
- The police officers and the court shall do in collaboration in order to respect and protect the right to privacy of persons during search and seizure.
- The north Mecha woreda police Commission shall appoint additional female investigating police officers in order to avoid the search of person with a person having no same sex for a better protection of the right to privacy.
- The north Mecha woreda court and police commission shall establish mechanisms and technics for protecting the appraisal of the right to privacy during the time of search and seizure.

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