CHAPTER ONE: INTRODUCTION

1.1 Background of the study

The concept of ‘‘terrorism is emotive for legal experts making it excessively difficult to define it in legal terms. Although too many definitions have been forwarded by different scholars in the field from time to time but none of them, at least so far, have been able to formulate a precise legal definition which is inclusive of all the different perspectives that exist.’’[1] However, no one disputes the enormity of the threat posed by terrorism, especially since the events of 11 September 2001.

Terrorism has a direct impact on the enjoyment of a number of human rights, in particular the right to life, physical integrity, and security, Terrorist acts can destabilize governments, undermine civil society, jeopardize peace and security, and threaten social and economic development.[2] The destructive impact of terrorism on human right and security has been recognized at the highest level of the United Nations, notably by the Security Council. Thus, the international and regional legal instruments urge states to prevent the commission of a terrorist act through, criminalization inter-alia. This stems from the general duty of States to protect individuals under their jurisdiction against interference in the enjoyment of human rights. More specifically, this duty is recognized as part of States’ obligations to ensure respect for the right to life and the

[1] Zeleke seifu, Analysis Of Anti-Terrorism Proclamation No.652/2009 In Light The FDRE Constitution And Human Right Norms, LLB thesis, ST. Mary’s University College Faculty of Law , 2006, [Unpublished, available at Law library], p.3.
[2] Office of The United Nations High Commission For Human Right, Human Right And Counter Terrorism, The Peace And Security Section Of The Department Of Public Information , Geneva, 2007,P.7 [Here in after Office, Of The United Nations High Commission For Human Right]

right to security.[3] To that effect, a number of counter terrorism legislations has been issued by states so as to combat terrorism in general and prevent human right violations in particular.

While terrorism has negative impression on human rights and the functioning of society, so too can measures adopted by states to counter terrorism and the state have a duty to take effective counter terrorism measure.[4] Effective counter terrorism measures and protection of human rights are complementary and mutually reinforcing objectives, which must be pursued together as part of states duty to protect individuals' human rights including privacy. While counter-terrorist measures are essential for States to maintain national security and ensure safety for all individuals, these measures must not circumvent international law or violate human rights. During fighting terrorism states usually employ advanced and enhanced mode of investigation techniques which put human rights in to danger. Counter terrorism legislation provides a framework for making decisions about deploying and evaluating personal information on the basis of their effectiveness and associated risks to personal privacy detecting and countering terrorist actions before they occur inherently raise concerns that such efforts may damage a free, democratic society through well-intentioned steps intended to protect it.[5] However, these techniques are required to be in line with fundamental principle of

[3] Id,p.8
[4] A Hand Book of Criminal Justice Response, P. 35, Prepared by Terrorism Prevention Branch of UNODC, available at Www.Unodc.Org (visited On June 1, 2013). As Quoted By, Tilahun Yazie, Privacy Right Protection Mechanism In The Counter Terrorism Proses; The Ethiopian Case From Comparative Perspective, LLM Thesis Bahir Dar University, School Of Law,2014, [Unpublished available at Law Library], P.2.
[5] Committee On Technical And Privacy Dimension Of Information For Terrorism Prevention And Other Goals, Protecting Individual Privacy In The Struggle Against Terrorists, National Academic Press, Washington, D.C 2008, P. 27.

human right and freedom. Right of privacy is one of the bundles of rights which are violated since those special methods of investigation are applied.[6] What, therefore, is the proper rational balance which must be drawn between protection of the privacy of the citizens of a state on one hand and the security interest in invading the public's privacy on the other, which would allow the security authorities to identify those few who would exploit the right to privacy in order to plan and execute acts of terror.[7]

As many of the world states, Ethiopia has adopted a new anti-terrorism legislation called the anti-terrorism proclamation number 652/2009. Aimed at to protect peace and security of its citizen and above to undertake its international and regional obligation that the country has e entered.[8] However, different opposition groups, human rights activists, international human rights organization and other groups working on human rights and democracy begin to condemn as it is violating human rights in Ethiopia. Among them human rights watch has criticized the proclamation as provide an extremely broad and ambiguous definition of terrorism, infringement of freedom of speech and expression and expansion of the power of national intelligence to intercept or conduct surveillance on telephone, fax, radio, internet, electronic, postal and similar communication of a person suspected of terrorism and to entry any premise to install and intercept communication after

[6] Tilahun Yazie, Privacy Right Protection Mechanism In The Counter Terrorism Proses; The Ethiopian Case From Comparative Perspective, LLM Thesis Bahir Dar University, School of Law,2014, [Unpublished available at Law library], p.2.
[7] Professor Emanuel Gross, 'Terrorism-Protection of Human Rights: The Right to Privacy Verses the National Interest-The Proper Balance' Cornell International Law Journal, 2006, Vol. nn, No. 3, pp. 101-165, at p.103.[Here in after, Professor Emanuel, Terrorism-Protection of Human Rights]
[8] Anti-Terrorism Proclamation, 2009, Federal Negarit Gazzeta, Pro. No.652, 15th Year, No. 57, Paragraph 5 Of The Preamble [Here in after, Proc. No. 652/2009]

obtaining court warrant [9]which highly affects once right of privacy on the basis of the interest of public security.

1.2 Statement of the problem

National security concerns have long been challenges on human rights protection.[10] And it became obvious especially, at the present time to threaten human rights under the guise of national security. The Ethiopian anti-terrorism proclamation No 652/2009 is one of the legislation which highly condemned by different international and regional human right activists, journalists and opposition groups on the bases of its impact on human rights particularly on the right of privacy.

Some human right groups criticized the provisions of the anti-terrorism proclamation regarding privacy right especially in case of search and seizure for lack of judicial control and leads to unlimited power of the police to conduct property and bodily search solely on the belief that terrorist activity will be or has been committed.[11]

Article 14(1) 0f the proclamation identified that National Intelligence and Security Service up on gating court warrant, intercept or conduct surveillance on the telephone, fax, radio, internet, electronic, postal and other similar communication of person suspected of terrorism and enter into any premise in secret

[9] Human Rights Watch, An Analysis of Ethiopia's Draft Anti-Terrorism Law, June 2009, P. 4-7
[10] Wondwossen Demissie Kassa, 'the Scope of Definition of A Terrorist Act under Ethiopian Law: Appraisal of Its Compatibility with Regional and International Counterterrorism Instruments', Mizan Law Review, 2014, Vol. 8, No.2, Pp. 371-405, at P. 11.[Here in after, Wendwossen, the Scope of Definition of A Terrorist Act under Ethiopian Law]
[11]Wendwossen, the Scope of Definition of a Terrorist Act under Ethiopian Law, supra note, 10, p, 6.

to enforce the interception or install or remove instruments enabling the interception[12] which is highly threaten once right of privacy. When we read sub-article 2 of the above article it ordered that the information obtained through interception shall be kept in secret.[13] But article 23 of the anti-terrorism proclamation asserts that evidence acquired through the method prescribed under article 14 of the same proclamation is admissible without enquiring whether the evidence is obtained through violation of once right of privacy or not. The aforementioned dilemmas and problems motivate the researcher to explore the possible way of privacy protection mechanisms inter alia with counter terrorism measures in Ethiopia from different perspective.

1.3 Objective of the study

1.3.1 General objective

The overall objective of this research is to evaluate and explore the impacts of Ethiopian Anti- terrorism proclamation on privacy rights and it's compatibility from the FDRE constitution and international human right instruments.

1.3.1 Specific objective

In order to achieve the main objectives, the following specific objectives are addressed.

1. To identify and discuss the impact of Ethiopian Anti-Terrorism Law on the right of privacy.
2. Explore the way how the right of privacy is treated under the anti-terrorism proclamation of Ethiopia visa

[12] Proc. No. 652/2009, Super note 8.
[13] Id., sub art. 2 of article 14

Vis FDRE constitution and other international human instruments.

3. Examining the realm of Ethiopian law regarding judiciaries' role in balancing security and privacy right during counter terrorism.

1.4 Research questions

1.4.1 General question

Does the Ethiopian anti-terrorism law threatened privacy right guaranteed under FDRE constitution and other international and regional human right instruments.

1.4.2 Specific question

- What is the impact of Ethiopian Anti-terrorism Law on the right to privacy?
- Does the investigation mechanism provided in the proclamation goes to the extent of threaten the right to privacy protected under FDRE constitution and other human right instruments?
- What is the role of the judiciary in balancing safety and privacy rights of individuals during counter terrorism?
- Is there any remedies where by individuals whose right to privacy is threatened due to the mere suspicion of the national security authorities in cases where the investigation of authorities result (show) the innocent of the suspect?

1.5 Significance of the study

The final finding of this paper and the possible recommendations to be forwarded will be of great important for many stakeholders. For instance;-

- For the legislature and policy maker to reconsider on the loophole of the anti-terrorism law especially privacy right is concerned and insists the better protection mechanisms of this right.
- Academically it provides information as source to conduct some related research since the area is not further researched.
- The study will be valuable for the judiciary to their constitutionally mandated role in enforcing human right instruments the country has entered.
- It could be used by international and national human right defenders, activists and others in their efforts to promotion, protection and implementation of human rights in general and privacy right in particular.

1.6. Research methodology

For the purpose of this research doctrinal methodology is used. This methodology involves the critical assessment of different legal and non- legal instruments that includes books, journals articles, legal instruments, declarations, organizational reports, official documents and Internet sources are also utilized as a valuable resource. For pragmatic consideration case analysis will be done.

1.7 Literature review

As far as the impact of counterterrorism proclamation on privacy concerned, indigenous writer i.e. Tilahun Yaze and Salahadin Tofik

1.8 Limitation of the study

The first limitation in the performance of this thesis is time. Since the researcher conducts the study together with his regular class program including exit exam thus, it is so difficult to see cases in detail. The second limitation is the reluctance of administrative body of federal ledeta court. They are not cooperative enough to hand over the dead cases the researcher required to examine.

1.9 Scope of the study

Generally, the research will focus only on the protection of right to privacy during counterterrorism. It does not deal with the impacts of anti-terrorism laws on fundamental human rights other than the right to privacy. Since discussing all human rights-Anti-Terrorism Law nexus is so difficult, the scope of the study will be limited to the protection of right to privacy during counter terrorism under the Ethiopian anti-terrorism law.

1.10 Organization of the research

The first chapter of the study gives a general background, describes the research problem; provides justifications for why the study had to be carried out and why it is significant; and explains the method used as well as limitations of the study.

The second chapter deals with the historical, conceptual and theoretical analysis of privacy right, terrorism and counter terrorism in general.

Chapter three of the research introduces to the reader with the critical analysis of right to privacy and its implication under international human right instruments and in the FDRE constitution as well as the danger privacy right has faced during counter terrorism proses. And also discusses that privacy rights protection process and anti-terrorism measures.

The forth and the final chapter forwards concluding remarks and recommendations.

CHAPTER TWO: THE CONCEPT OF TERRORISM, COUNTER TERRORISM AND RIGHT TO PRIVACY

2.1 Historical over view of terrorism

Terrorism is not a new phenomenon in human experience. Documented groups like the Zealots of Palestine in opposition to Roman rule and the Sicarii date as far back as the first century in the Common Era.[14] Like their contemporary successors they had a mix of religious and political motives and sought to ignite a general revolt among the masses against the established authorities. The Medieval Assassins, who operated from the 11th to the 13th century, provide an early example of state-sponsored terrorism as well as an early example of a culture of martyrdom among terrorists.[15]

[14] "Protecting Individual Privacy In The Struggling Against Terrorism: Framework for Assessment" at http://nap.edu/catalog /12452.html [last accessed November 5, 2016].
[15] Ibid.

Generally speaking, terrorist groups and individuals tended to mix religious and political motives from remote past up to know. Now day, terrorist activity can be found throughout the world. Especially after the September 11 suicide attacks against the World Trade Center and the Pentagon and the attempted attack that resulted in the plane crash in Pennsylvania has witnessed in the recent past. As a consequence of those and other different attacks initiated the world community to take different anti-terrorism measures.

Anti-terrorism measures was first addressed at the international level in 1937, when the League of Nations prepared the Convention for the Prevention and Punishment of Terrorism[16]. Since then, the international community has engaged in resolute and swift action in taking measures to condemn terrorism. The U.N. has adopted thirteen resolutions since the 1960s relating to terrorism, eleven of which emerged prior to the September 11, 2001 attacks.[17]With the passage of General Assembly resolution 60/288 in 2006, member States agreed to cooperate in the global effort to eradicate terrorism, while ensuring that measures taken comply with the rule of law and human rights.[18]The Security Council has also committed to this sentiment as demonstrated in resolutions 1373 (2001), 1456 (2003), 1566 (2004), and 1624 (2005). These actions acknowledge that “effective counter-

[16] United Nations Office on Drugs and Crime. “Global Action Against Terrorism,” available at: http://www.unodc.org/unodc/en/terrorism/global-action-against-terrorism.htm/

[17] Javier Rupérez, The U.N.’s Fight against Terrorism: Five Years After 9/11, ARI 83/2006 September 6.2015, available at http://www.un.org/terrorism/ruperez-article.html [last accessed September 25, 2016].

[18] Office of the United Nations High Commissioner for Human Rights, “Human Rights, Terrorism and Counterterrorism,” Fact Sheet No. 32, p. 20, available at: http://www.ohchr.org/Documents/Publications/Factsheet32ENpdf [last accessed September 6, 2016]

terrorism measures and the protection of human rights are not conflicting goals, but rather complementary and mutually reinforcing ones."[19]

2.1.1. Concept and definition of terrorism

Defining terrorism has been attempted by many scholars, international and regional institutions and different states for a long period of time. However they try to provide commonly agreed definition, their attempt was not successful. Since, arriving at a consensual definition of the phenomenon of terrorism has been a particularly difficult undertaking.

"Some definitions are either too specific or too vague, concentrating on some essential "terrorist" aspect of the actions, strategies, or types of non-state organizations that engage in terrorism."[20] Even though, the International community has established mechanisms to address the issues related to terrorism, including the creation of the Counter-Terrorism Committee (CTC) and the Counter-Terrorism Executive Directorate (CTED), the international community has been unable to agree on a universal definition of terrorism. The lack of a universal definition of terrorism represents a serious limitation on States' ability to combat and prevent terrorism. Failing to adopt universal definition "prevents the United Nations from exerting its moral authority and from sending an unequivocal message that terrorism is never an acceptable tactic, even for the most defensible of causes."[21]

[19] Id. at 21
[20] Human Rights Advocates, Counter-terrorism and the protection of human rights, Human
Rights Council: 13th Session, Agenda Item 3: Countering Terrorism, p. 4.
[21] Ibid.

The lack of a definition also results in the creation of State counterterrorism measures outside the realm of international law.[22] Human rights are implicated in the lack of a universal definition of terrorism. Without a universal definition of terrorism, States may create broad, overreaching definitions and inadvertently criminalize activity outside the realm of terrorism. States may also intentionally create a broad definition and use this broad power to suppress oppositional movements or unpopular groups under the guise of combating terrorism. People may be prosecuted for the legitimate exercise of protected human rights due to vague and unclear domestic definitions of terrorism.[23]

As solution to the difficulty in defining terrorism may the international community be focus on preventing and/or punishing conduct that is of a genuinely terrorist nature. The international community, although unable to agree yet on a definition of terrorism, has agreed that certain acts constitute terrorist offences.[24]

On this basis, the UN Security Council, in its resolution 1566 (2004), uses three cumulative criteria to characterize terrorism: (I) intent; (ii) purpose; and (iii) specific conduct, consisting of the following:[25]

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[22] Cristina Siserman, A Global Perspective On The Protection Of Privacy And Related Human Rights In Countering The Use Of Internet For Terrorist Purposes, Masaryk University Journal Of Law And Technology Vol. 7:2, pp.401-422, at P. 419. [Here in after, Cristina]

[23] Ms. Navanethem Pillay to the Counter-Terrorism Committee of the Security Council, New York, p. 7.

[24] Negotiations Within The UN Continue On A Draft Comprehensive Convention On Terrorism, Which Would Include A Definition Of Terrorism. The Proceedings of the Ad Hoc Committee Established By General Assembly Resolution 51/210, Http://Www.Un.Org/Law/Terrorism. [Last accessed October 25, 2016]

[25] Security Council Resolution 1566, 2004, at http: //www.un.org/ga/search/view_doc. This resolution is not legally binding. [Last accessed October 25,2016]

i. Criminal acts, including against civilians, committed with the intent of causing death or serious bodily injury, or the taking of hostages;
ii. Regardless of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, with the purpose of provoking a state of terror in the general public or in a group of individuals or particular individuals, intimidating a population or compelling a government or an international organization to carry out or to abstain from carrying out any act; and
iii. Which constitute offences within the scope of, and as defined in, the international conventions and protocols relating to terrorism.

The cumulative approach applied in resolution 1566 to define terrorism was supported by the first UN Special Rapporteur on the promotion and protection of human rights while countering terrorism.[26] There is also noted that definitions contained in national legislation relating to terrorism could legitimately include other conducts in combination with the first two criteria of intent and purpose identified by resolution 1566 Without an internationally agreed upon definition, States are free to create various and unclear definitions with no guidance from the U.N. regarding the proper scope of the definition. Although, there has been work toward an international definition of terrorism, problems remain pervasive. The United Nations defines the terrorist acts in generic and non-binding terms, as follows:

[26] Martin Scheinin, "Ten areas of best practices in countering terrorism", Report Of The UN Special Rapporteur On The Promotion And Protection Of Human Rights And Fundamental Freedoms While Countering Terrorism, UN General Assembly, Sixteenth Session of the Human Rights Council, 22 December 2010, Doc. A/HRC/16/51.

> [C]riminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.[27]

Furthermore, there are fundamental disagreements among States as to a universal definition of terrorism. Some members urge the inclusion of State use of force against civilians in the definition. Other delegations have suggested including forms of "State terrorism" in the definition.[28] However, State force against civilians is already addressed in a number of international instruments, including the Geneva Convention, the U.N. Charter, and the Rome Statute for the International Criminal Court.[29] Inclusion of State force against civilians is not necessary in a definition of terrorism.

Other States insist that the definition avoid criminalizing self-determination. These States want to protect "the right of a people to resist foreign occupation."[30] But this argument is irrelevant to defining terrorism since there is "[n]othing in the fact of occupation that justifies the targeting and killing of civilians."[31] One possible compromise to these disagreements is excluding the word "comprehensive" from the definition of terrorism.[32] This compromise may be a necessary first step in creating a flexible definition and acquiring universal agreement. The disagreement

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[27] The UN General Assembly Resolution 49/60 (adopted on December 9, 1994), titled "Measures to Eliminate International Terrorism," contains a provision describing terrorism

[28] Informal summary prepared by the Chairman on the exchange of views in plenary meeting and on the results of the informal consultations, A/AC.252/2009/L.1/Add.1, Annex 1, Draft Report, para. 6.

[29] Id, para.158.

[30] Id, p. 29.

[31] Id, para.160.

[32] Id, para. 35.

among States presents significant and unnecessary barriers creating a universal definition of terrorism.[33] However, there has been movement toward a definition. From all definition given to terrorism relatively the acceptable one is the Acharya describe it:

> …For some, terrorism is an offense, and for others, it is an activity assigned by God; for some, it is a distinctive act of maintaining power pride, and for others, it is a justified action against oppression; for some, it is an attack on the peace and security and for others, it is a quest for identity.[34]

In addition to this effort, The European Union sees as terrorism acts those that aim at:

- seriously intimidating a population;
- unduly compelling a government or international organization to perform or abstain from performing any act;
- Seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.[35]

These objectives can be achieved through various illegal activities. They range from attacks on a person's life to cutting vital services to society, and respective threats; they include hijackings, kidnappings and other forms of criminal activity. According to the EU definition, terrorism is not a

[33] The United Nation Committee on Counter-Terrorism FES Briefing Paper, p.10.
[34] Reuven Young, 'Defining Terrorism: The Evolution of Terrorism as A Legal Concept in International Law and Its Influence on Definitions in Domestic Legislation', Boston College International and Comparative Law Review 2006, Volume 29, No. 3, P. 655. [Here in after Reuven, Defining Terrorism]
[35]Council Framework Decision of 13 June 2002 on Combating Terrorism. – Official Journal of the European Communities, 22.6.2002, L164/3–7.

particular ideology or movement, but rather a method or tactic for achieving various goals.[36]

2.2. Right to Privacy: meaning and conceptual analysis of right to privacy

At all times, in every society, the individual desires to maintain a certain amount of distance from the rest of society; the cultural relativism of societies influencing societies' character.[37] Notwithstanding, or perhaps because privacy is such a deeply rooted value in human culture, the vast literature in this field teaches us that it is one of those concepts which everyone understands but which cannot be defined in an objective and descriptive way that clearly expresses the scope of its application.[38] In fact, over the years numerous efforts have been made to define the term. The most important and influential definitions may generally be placed in one of three categories:[39] first, privacy is defined with the aid of the concept of moral rights and claims. Thus, for example, it is described as the right of the individual to be left alone,[40] as a claim to freedom to decide in what circumstances and to what extent information about the person will be divulged to others[41] and as a consequence the person's

[36] EU Terrorism Situation and Trend Report 2007. Hague: Europol, 2007, p. 9
[37] For an extensive anthropological review, see A. Westin, Privacy and Freedom, 5th Ed. 1968.
[38] Ibid.
[39] F.D. Schoeman, 'Privacy: Philosophical Dimensions of the Literature in Philosophical Dimensions of Privacy: An Anthology 2-4, 1984. (Hereinafter "Philosophical Dimensions").
[40] Samuel D. Warren and Louis D. Brandeis, 'The Right to Privacy', Harvard Law Review, 1890, Vol. 4, No. 5, pp. 193-220, at p. 213. [Here in after Samuel, Louis right to privacy]
[41] Ibid.

right to live part of his life far away from the prying eyes of the public.[42]

Second, privacy is defined in terms of control. Among other things, it is described as the individual's control over the dissemination of information about himself,[43] his control over the quantity and quality of the information concerning himself which is made known to others,[44] his control over his body, his place of residence, his identity and information about himself[45] and his control over the extent of the public's knowledge of his private affairs.[46]

Third, privacy is defined in terms of accessibility. Thus, for example, it is described as that which prevents the unwanted access of the public to the individual on three levels: the level of secrecy (access of the public to information concerning the individual), the level of segregation (access of the public to the body and premises of the individual) and the level of anonymity (physical—as opposed to mental—attention of the public to the individual).[47]It is surprisingly difficult to give a straightforward definition of the concept of privacy. Despite innumerable attempts by contemporary philosophers and jurists to formulate a definition, the concept has remained elusive. One can discover no consensus in either the legal or the philosophical literature.[48]

According to Arthur Schafer there must be three criteria of adequacy for a successful definition privacy. The first and the most

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[42] Philosophical Dimensions, supra note 39, p. 27.
[43] D. Mclean, Privacy and Its Invasion, 1995, Quoting Robert Ellis Smith's Definition.
[44] Philosophical Dimensions, supra note p. 210.
[45] Ibid.
[46] H. Gross, Privacy and Autonomy, in Privacy 169 J.R. Pennock and J.W. Chapman eds., 1971.
[47] Ruth Gavison, 'Privacy and the Limits of Law', Yale Law Journal, 1980, Vol. 89, No. 3, pp. 421-471, at p. 423. [Here in after Ruth Gavison, Privacy and the Limits of Law]
[48] Ibid.

important criterion of adequacy for any definition is that the definition should "fit" the data. The data in this case would consist of our shared intuitions of when privacy is or is not gained or lost, respected or violated.

A proposed definition could fail this test of adequacy either by being too narrow, that is, by excluding cases which we would agree should be included; or by being too broad, that is, by including cases which we would agree should be excluded. As we shall see, however, people's intuitions about the relevant data are themselves far from clear, and frequently conflict. Fortunately, there is a core of cases about which there would be universal, or near universal, agreement, as well as a periphery of disputed and disputable cases.

A second criterion by which to test the adequacy of any proposed definition of privacy is that it should not arbitrarily close issues of substance. By formulating an overly-powerful definition one can foreclose, linguistically, the legitimate discussion of significant and controversial issues. To illustrate: it would be a desideratum for any proposed definition of "privacy" that it left open the issue of whether privacy is a good thing either in general or in any particular situation. A definition which prejudged whether privacy is desirable, or how desirable it is in relation to other competing interests would, on this count, be less than satisfactory. Suppose that someone were to claim that privacy is not always desirable, or that it is much overvalued in our society, and we agree that this claim makes sense (whether or not it is correct). If our definition of privacy ascribed a positive value to it, anyone who denied that privacy is desirable would have contradicted himself.

Finally, in formulating a definition of privacy one ought to seek the simplest possible set of necessary and sufficient conditions. There has been great confusion, both within and without the law, concerning the nature of the interest which the right to privacy is designed to protect. It may turn out that no simple set of defining characteristics can be discovered, in which case we would have to settle for overlapping and criss-crossing similarities, or for a mere list of the different interests involve. According to Arthur Schafer there has to appreciate the aforementioned three criteria to articulate successful definition of privacy.

Let us turn now to a consideration of various proposed definitions of privacy. Of the many attempts to define privacy, perhaps the most succinct and familiar is that of Judge Cooley, who defines it as "the right to be let alone".!! This definition was adopted in a somewhat expanded form by the 1967 Nordic Conference on the Right to Privacy. The right to privacy, according to the Nordic Conference, is "the right to be let alone to live one's life with the minimum degree of interference." Unlike Judge Cooley Alan Westin, for example, defines privacy as “the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others.”[49] In addition to that Charles Fried defines privacy as “the control we have over information about ourselves.”[50] As discussed above different scholars in different time has tried to define the concept of privacy in different perspective unfortunately, none of

[49] Arthur Schafer, ‘Privacy: A Philosophical Overview’ online Available at: https://umanitoba.ca/faculties/arts/departments/philosophy/ethics/media/privacy_a_philosophical_ove view.[Here in after Arthur Schafer, ‘Privacy: A Philosophical Overview],[last accessed Nov 21, 2016]

[50] Ibid.

them can came up with the certainly cover all, or virtually all, of the cases agreed to fall within the ambit of privacy.

But one undeniable fact is, no one question the importance of privacy. Because Privacy is a human right and an element of various legal traditions, which may restrain both government and private party action that threatens the privacy of individual. Privacy is a fundamental human right recognized in the UN Declaration of Human Rights, the International Covenant on Civil and Political Rights and under other international, regional treaties and national legislations. Privacy strengthens human dignity and other key values such as freedom of association and freedom of speech. It has become one of the most important human rights issues of the modern age. However mostly national security issues like terrorism are challenged for the promotion and protection of this right.

2.2.1. Value of the right to privacy

Philosophical literature has given slight attention to the problem of privacy as such; the framework of reference within which privacy has so recently and widely become a matter of controversy is a distinctly contemporary one. “What has not been discussed, or at least made clear, is why privacy is commonly considered a right or a value to be protected by the law. There is no historical consensus, in philosophy, politics, or law, that it is such a right. Few philosophers would argue that privacy is a "natural" right or that the intrinsic nature of privacy establishes it as a legal right.”[51]

The ideal of privacy is clearly one of the fundamental values of current society. Specially, Western societies place a high value

[51] Glenn Negley, ‘Philosophical Views on the Value of Privacy’, Available at: http://scholarship.law.duke.edu/lcp/vol31/iss2/6. [Here in after Glenn Negley, Philosophical Views on the Value of Privacy],[last accessed Oct 20, 2016]

upon the right to privacy. It is protected by both moral and legal norms. Serious violations are often punished with fines and imprisonment as well as with public disapprobation. It is not, however, regarded as an absolute value. Like other prima facie rights, the right to privacy can be overridden by other values. Nevertheless, the high value which we place (or claim to place) upon privacy is reflected by our general insistence that claims to privacy should be overridden only where there exists some very strong countervailing justification. The onus of proof, in other words, rests with those who would violate privacy rather than with those who would defend it.[52]

The case for assigning a high value to privacy is in part (and some would insist in large part) a utilitarian one. People have a number of interests which may be seriously harmed by invasions of their privacy. When an individual’s telephone is tapped, bedroom "bugged," or mail opened, the information acquired might be used to harm the person in various ways: to intimidate or blackmail, to facilitate the theft of property, to embarrass the person socially, or to ruin his or her career. Even if the individual's conduct has been entirely "normal" and legitimate, the observation of his or her private affairs by an intruder, or their unwanted disclosure to the public, can be a source of considerable mental distress. Privacy can have great utility for groups as well as individuals. The internal affairs of ideological protest movements, businesses, unions, and a variety of other groups and movements all require a kind of nutritive privacy to protect their organizational life. Unless individuals and groups have wide scope to formulate and test their ideas without intrusive surveillance by governments, the police, or the general public, an essential precondition for effective

[52] Ibid.

democratic society will be destroyed.[53] Thus, In order to adjudicate a claim involving privacy, one must weigh the value of privacy generally, and the seriousness of its violation in tile particular case, and balance these against the competing values involved. Continuous adjustments will have to be made, and the balance between privacy and The range of values which may be invoked to justify surveillance and intrusion is extensive, and includes, for example, the values of crime prevention, protection of public safety and order economic and administrative efficiency, and freedom of expression. These are not insignificant values. The free dissemination of news and information is of particular importance to society, and when it clashes with the individual's right to privacy, privacy claims will frequently have to be overridden. Nevertheless, a balance must be struck in each case. It is to be hoped that careful decision-making procedures will ensure that the true value of privacy is not lost sight of or diminished in the process.[54]

2.3 The impact of counter- terrorism on privacy right

Human rights are universal values and legal guarantees that protect individuals and groups against action and omissions primarily by state agents that interfere with fundamental freedoms. Entitlements and human dignity. The general rule of human right involves respect for protection and fulfillment of civil, cultural, economic, political and social rights, as well as the right to development.[55] Unfortunately, Terrorism came to be a serious challenge on the enjoyment of a number of human rights, in

[53] Arthur Schafer, Privacy: A Philosophical Overview, supra note, 49, p. 17.
[54] Arthur Schafer, Privacy: A Philosophical Overview, supra note, 49, p.21.

particular the right to life, liberty and physical integrity, Terrorist acts can destabilize governments, undermine civil society, jeopardize peace and security, and threaten social and economic development, and may especially negatively affect certain groups. In addition all of these have a direct impact on the enjoyment of fundamental human rights.[56]

Besides that, Terrorism aims at the very destruction of human rights, democracy and the rule of law. It attacks the values that lie at the heart of the Charter of the United Nations and other international instruments: respect for human rights; the rule of law; rules governing armed conflict and the protection of civilians; tolerance among peoples and nations; and the peaceful resolution of conflict.[57] The destructive impact of terrorism on human rights and security has been recognized at the highest level of the United Nations; notably by the Security Council, the General Assembly, and the former Commission on Human Rights and the new Human Rights Council.[58] Specifically, Member States have set out that terrorism:

- Threatens the dignity and security of human beings everywhere, endangers or takes innocent lives, creates an environment that destroys the freedom from fear of the people, jeopardizes fundamental freedoms, and aims at the destruction of human rights;

[55]Office Of The United Nation High Commissions High Commissioner For Human Rights: Human Rights, Terrorism And Counter Terrorism, Fact Sheet No.32
[56] Id p 6.
[57] Id p 7.
[58] Security Council resolutions 1373 (2001) and 1377 (2001); General Assembly resolutions 48/122, 49/185, 50/186, 52/133, 56/160 and 58/174, as well as its Declaration on Measures to Eliminate International Terrorism (resolution 49/60); Commission on Human Rights resolutions 2001/37 and 2004/44, Human Rights Council resolution 6/28 and its recent resolution on the protection of human rights and fundamental freedoms while countering terrorism.

- Has an adverse effect on the establishment of the rule of law, undermines pluralistic civil society, aims at the destruction of the democratic bases of society, and destabilizes legitimately constituted Governments;
- Has links with transnational organized crime, drug trafficking, money-laundering and trafficking in arms, as well as illegal transfers of nuclear, chemical and biological materials, and is linked to the consequent commission of serious crimes such as murder, extortion, kidnapping, assault, hostage-taking and robbery;
- Has adverse consequences for the economic and social development of States, jeopardizes friendly relations among States, and has a pernicious impact on relations of cooperation among States, including cooperation for development; and
- Threatens the territorial integrity and security of States, constitutes a grave violation of the purpose and principles of the United Nations, is a threat to international peace and security, and must be suppressed as an essential element for the maintenance of international peace and security.

In summary terrorism aims at the very destruction of human rights democracy and the rule of law. It attacks the values that lie at the heart of the Charter of the United Nations and other international instruments.

2.4 The right to privacy and national security

As the concepts of privacy and national security are difficult to define, there is an inherent risk that they will be perceived on an

intuitive non-rational level which will undermine the ability to conduct a pertinent discussion of the proper balance which should be drawn between these values in the event of a clash.[59] The concept of 'national security,' like the concept 'privacy,' is amorphous and devoid of precise analytical meaning. Its scope of application is not limited solely to situations in which the state defends itself against an illegal domestic or foreign threat of force to its institutions or to the people present within its borders, even though this is the heart of the concept. Rather, it embraces a range of situations which influence the ability of the regime to effectively pursue the collective welfare of the nation.[60]

It is obvious that, national security is a public resource, the justifications for which are readily understood, as there is no more essential collective-national goal than preserving national security, safeguarding the lives of the citizens and ensuring public order. Security is an essential condition for achieving these objectives, and without it no significance can be attached to human rights and the other individual and collective interests.[61] Thus, the national security interest delineates the scope of the legal protection of national security, and embraces the security aspects for which justification is found on national security grounds. Accordingly, national security will enable proportional violation of human rights for the sake of those human rights and in order to ensure their continued preservation. But this violation only became real when the three part cumulative tests (legality, legitimate purpose and

[59] "Privacy versus national security clarifying the Trade-off" available at: www.idtrail.org/files/ID%20Trail%20Book/9780195372472_kerr_07. [last accessed Nov 25 2016]
[60] Professor Emanuel, Terrorism-Protection of Human Rights, supra note, 7 p. 104.
[61] Ibid

proportionality requirements) are fulfilled and the burden falls on states to justify them.

To that effect, It is witnessed that, most of the time in state legislation for the purpose of national security and law enforcement may impose a limitation on privacy right, in compliance with human rights law, can be both necessary and effective means towards such objectives. However, some states have adopted an overly-restrictive interpretation of the right to privacy, while acing upon an overly broad interpretation of the legitimate scope of national security.

It is true that, states have an international responsibility for the protection of society and its citizens from threat; on the other hand they must respect human rights, including the rights of suspects, When the level of crime is perceived to threaten the order public, there may be pressure to take repressive measures at the expense of human rights including right to privacy.[62]

The decision to conduct surveillance activities must be based on balancing the interference with the right to privacy with the legitimate public interests which the authorities aim to protect. It was agreed that an independent judiciary is the best body to scrutinize surveillance applications and determine whether such a justification can be accepted. It was noted that transparency of the court's decision (e.g. how many cases, purpose) was essential. Concern was raised with regard to surveillance powers being used for purposes that are not considered justifiable, such as pursuing economic interests and gaining trade advantages.

[62] "Balancing security and liberty within the European human rights framework. A critical reading of the Court's case law in the light of surveillance and criminal law enforcement strategies after 9/11" available at: https://www.utrechtlawreview.org/articles/abstract/10.18352/ulr.4/. [last accessed Nov 20,2016]

CHAPTER THREE: PROTECTION OF RIGHT TO PRIVACY UNDER INTERNATIONAL, REGIONAL AND NATIONAL HUMAN RIGHT LEGAL INSTRUMENTS

3.1 Protection of right to privacy under international legal framework

Human rights, as they are now commonly understood, emerged from the creation of the United Nations. In the aftermath of World War II, governments committed themselves to establishing the UN with the primary goal of promoting international peace and preventing conflict. Human rights were held to be key to achieving those aims. The preamble to the Charter of the United Nations asserts that the main objectives of the organization are, among other things, to:

> *...[S]ave succeeding generations from the scourge of war [... and] reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.*[63]

Almost immediately, the UN established a Commission on Human Rights, which was charged with the task of submitting proposals on an International Bill of Rights. The Draft declaration was adopted by the General Assembly in 1948 and came to be known as the Universal Declaration of Human Rights (UDHR)[64]. This instrument has had a profound impact on the development of regional and global standards for the protection of human rights and right to privacy in particular.

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[63] United nation Charter, 1945, reprinted in universal law publishing company, Human rights in international law, 3rd ed., New Delhi, India,2009, pp. 11-55. [Here in after UN Charter], Para, 1 of its preamble.

[64] Universal declaration of Human rights, 1948, reprinted in universal law publishing company, Human rights in international law, 3rd ed., New Delhi, India, 2009, pp. 71-100.[Here in after UDHR]

AS alluded earlier, Privacy is a fundamental human right that has been defined as the presumption that individuals should have an area of autonomous development, interaction and liberty, a "private sphere" with or without interaction with others and free from State intervention and free from excessive unsolicited intervention by other uninvited individuals.[65] This right has evolved along two different paths. The major Universal human rights instruments have focused on the negative dimension of the right to privacy, prohibiting any arbitrary interference with a person's privacy, family, home or correspondence.[66] For instance, Article 12 of UDHR provides that *[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attack upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attack.* In addition to that the basic document which has incorporate the details of civil and political rights of individuals and duties attached to the state called ICCPR echoes in article 17 of the document the same idea with the same meaning as reflected its mother document UDHR. It's read as *[n]o one shall be subjected to an arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation, and that everyone has the right to the protection of the law against such interference or attacks* with subject to a few exception.

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[65] Lord Lester, D. Pannick , Human Rights Law and Practice, 6th ed., London, Butterworth,
2004, para. 4. 82. [Here in after Lord Lester , Human Rights Law and Practice]

[66] See the Universal Declaration on Human Rights (art. 12); the International Covenant on Civil and Political Rights (ICCPR, art. 17); the International Convention on the Protection of All Migrant Workers and Members of Their Families (art. 14); and the Convention on the Rights of the Child (art. 16).

As understood from the above provision article 17 imposes on States parties an obligation to respect (not to interfere), and an obligation to protect. In this regard, the Human Rights Committee, in its General Comment No. 16, specified that the right to privacy must be guaranteed against all arbitrary or unlawful interferences and attacks, whether they emanate from state authorities or from natural person or legal person.[67] Therefore, the nature of State obligation towards the right to privacy under article 17 is both positive and negative kind.[68]

The covenant also permits States parties to limit and restrict the exercise of some of rights it proclaims for the purpose of public safety, order, health, or morals or the fundamental rights and freedoms of others.[69] The Convention on the Rights of the Child (CRC) also assert that "A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents….. And no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation."[70]

The General Assembly resolution 68/167 also recalls, international human rights law provides the universal framework against which

[67] Kinfe Micheal Yilma, Alebachew Birhanu, 'Safeguards of Right to Privacy in Ethiopia: A Critique of Laws and Practices', Journal of Ethiopian Law, Vol. 26, No. 1, pp. 91-152, at p.12. [here in after Kinfe and Alebachew, Safeguards of Right to Privacy in Ethiopia]
[68] ibid
[69] Thomas, Dinah *et al*, International Human Rights In A Nutshell, West Publishing Company, New York, 2002, p. 60. [Here in after, Thomas *et al*, international human right]
[70] Convention on the Right of Child, 1990, reprinted in Universal Law Publishing Company. Human Rights in International Law, 3rd ed., New Delhi, India, 2009, pp. 117-135. [Here in after CRC Convention] Article 10 and 16.

any interference in individual privacy rights must be assessed. While the right to privacy is not absolute, any limitation to it must: be provided by law (meaning the law must be sufficiently accessible, clear and precise so that an individual may look to the law and ascertain who is authorized to conduct data surveillance and under what circumstances); be necessary for reaching a legitimate aim; and be proportionate (meaning the surveillance activity must be in proportion to the aim and the least intrusive option available). Moreover the limitation placed on the right (for example for the purposes of protecting national security or the right to life of others) must be shown to have some chance of achieving that goal.

There is a burden on the authorities that sought to limit the right to show that the limitation is really connected to the legitimate aim. Furthermore, any limitation to the right to privacy must not render the essence of the right meaningless and must be consistent with other human rights, including the prohibition on discrimination. Where the limitation does not meet these criteria the limitation is unlawful and the interference with the right to privacy is arbitrary. According to CCPR the right to privacy is normally a right that should be claimed against everyone. For example, the right is “guaranteed against all such interferences and attacks [against at least privacy, home, or correspondence] whether they emanate from state authorities or from natural or legal persons.[71]

Accordingly, under international human rights law the right to privacy is not an absolute right. Once an individual is being formally investigated or screened by a security agency, personal

[71] Thomas et al, international human right, supra note 68, p 160.

information is shared among security agencies for reasons of legitimate purpose and the right to privacy is almost automatically affected. These are situations where States have a legitimate power to limit the right to privacy.

3.2. Legal protection of right to privacy under regional human right documents

3.2.1 European legal frame work for the protection of the right to privacy

The European system for the protection of human rights is a major component and raison d'etre of the council of Europe, a regional intergovernmental organization created in 1949 by ten western European nations committed to the preservation of individual freedom and democracy.[72]

The council's human rights system began with the adoption of convention for the protection of human rights and fundamental freedom on November 4, 1950 and it came into force on September 3, 1953, upon ratification by eight of the fourteen signatory States guaranteeing some core civil and political rights and creating monitoring institutions.

The factors which led the United Nation to concern itself with the protection of human right had a similar effect in Europe. Right to privacy is one of rights that guaranteed by the convention in the auspices of human right in general. As clearly indicated under art 8 of the convention designated as follows

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*

[72] Thomas et al, international human right, P. 254.

2. There shall be no interference by a public authority with the exercise of this right except such as is 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 or morals, or for the protection of the rights and freedoms of others.[73]

According to article 8 of the European human right convention interference with the right to respect for private and family life is permissible only when such interference is: in accordance with law, necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.[74] Although the requirements for provision by law and the legitimate aims have not normally given rise to problems in regard to attempts to deal with terrorism, the requirement that the infringement be "necessary" has frequently given rise to such difficulties.

3.2.1.1 Principles of personal data protection under the region

In the European legal system which has enjoyed one of the most protective system with respect to personal data protection, which is based on the council of European convention 108, EU instruments and case law of the European court of human right (ECtHR) and of the court of justice of European union, has

[73] European Convention on Human Rights, 1953, reprinted in universal law publishing company, Human rights in international law, 3rd ed., New Delhi, India, 2009, pp. 309-323. [Here in after EU charter]
[74] See Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Restructuring the Control Machinery Established Thereby, May 11, 1994, Eur. T.S. No. 155, art. 8(2).

developed different principles in which any interference would be investigated through these principles.

Now on wards, the researcher try to see in birds eye view some of those principles and the mechanism used in to protect personal data protection.

A, The principles of purpose specification and limitation

This principles denotes that, processing of personal data is illegal unless the purpose of processing must have been specified and made manifests by the controller before the processing of data starts and the subsequent use limited to the fulfilment of those purposes or such others as are not incompatible with those purposes and as are specified on each occasion of change of purpose. Every new purpose for processing data must have its own particular legal basis and cannot rely on the fact that the data were initially acquired or processed for another legitimate purpose. In turn, legitimate processing is limited to its initially specified purpose and any new purpose of processing will require a separate new legal basis. Disclosure of data to third parties will have to be considered especially carefully, as disclosure will usually constitute a new purpose and therefore require a legal basis, distinct from the one for collecting the data.[75] The principle stands to protect personal data of individuals from privacy interference through by making two cumulative requirements

- The purpose of data processing by any third party has to clearly specified its purpose

[75] eropean

- Manifestation must be made by the controller before processing is starts and this responsibilities will carried out by appropriate supervisor authorities either by declaration or by notification.

B, Fair and law full processing principle

The principle of fair processing primarily govern the relationship between the controller and the data subject. According to this principle the controllers has a duty to inform data subjects before processing their data, at least about the purpose of processing and about the identity and address of the controller and also provide right to the data subjects to access their data wherever they are processed.[76] The principle clearly prohibits secret and covert processing of personal data unless specifically permitted by law. The main purpose of this principles is to protect the interests of the individuals whose personal data is being processed. They apply to everything you do with personal data, except where you are entitled to an exemption.

C, The limited retention of data principle

The principle of limited retention encapsulate that, retain personal data no longer than is necessary for the purpose you obtained it for. This principle prohibit kept the collection of data whose purpose has served. In other word, when data is collected for specific purpose, the data must therefore be erased when those purposes have been served.[77] To make simpler, according to this principle, Assuming that you have a good reason for processing the personal data in question, it is obvious that discarding that data too soon would be likely to disadvantage your business and, quite possibly, to inconvenience the people the information is about as well. However, keeping personal data for too long may cause a number of problems to the data subject.

D the principle of data quality and proportionality

Data quality refer that the 'personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected or further processed, accurate and, where necessary, kept up to date.[78] According to this principle, it would

[76] ibid
[77] eropean
[78] tilahun

impose a duty upon data controller to observe the relevance, adequacy and accuracy of the personal data of data subjects. The scope of the proportionality principle, it requires that measures adopted should not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives, and where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.[79]

3.2.2 Inter-American legal frame work for the protection of the right to privacy

Organization of American system is a regional inter-governmental organization of all 35 sovereign states of the Americas to promote and protects human rights in general.[80] The Inter American human right systems has two distinct legal sources: one has evolved from the charter of the OAS, the other is based on the American convention on human right.[81] The American convention on human rights, otherwise known as the 'pact of san José', was drafted at San José conference and signed on 22 November 1969. It entered in to force on 18 July 1978, on the deposit of the eleventh instrument of ratification, and has now been widely accepted.[82]

The American convention on human rights, like the European convention did, extends recognition and protection for the right to privacy with a few exception. Article 11 of the convention read as follows

1. Everyone has the right to have his honor respected and his dignity recognized.

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[79] ibid
[80] Thomas et al, international human right, supra note 68, p 256.
[81] Ibid
[82] A. H. Robertson, J.G. Merrills, Human Rights In the World An Introduction to the Study of the International Protection of Human Rights 4th ed., Manchester University Press, UK, 2005, p. 197. [Here in after A. H. Robertson, Human Rights In the World]

2. No one may be the object 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 every one has the right to the protection of the law against such interference and attack.

The American Convention on Human Rights (save sub article 1) sets out the right to privacy in similar terms to the International Covenant on Civil and Political Rights. Article 11 of the American Convention prohibits all arbitrary or abusive interference in the private life of individuals, the privacy of their families, their home or their correspondence.[83]

3.2.3 African legal frame work for the protection of the right to privacy

The advances which lead to establishment of regional organizations in Europe and America have also produced results in Africa.[84] The African charter on human and peoples' rights (ACHPR) sometimes referred as the "Banjul charter" was adopted in 1981 and entered in to force on October 21, 1986. It established a system for the protection and promotion of human rights.[85] Even if the charter contains several provisions dealt with the protection and promotion of human rights, it omits mention of several rights which assumed importance in the European and inter-American system, including the right to privacy.[86] Writers[87] argue that even if

[83] Kinfe and Alebachew, Safeguards of Right to Privacy in Ethiopia, supra note, 67 p. 12.
[84] A. H. Robertson, Human Rights in the World, supra note 76, p. 242.
[85] Thomas et al, international human right, supra note 68, p. 327.
[86] Ibid
[87] Kinfe Micheal Yilma, Alebachew Birhanu, in their article 'Safeguards of Right to Privacy in Ethiopia: A Critique of Laws and Practices', argue that even if the

the convention failed to recognize the right to privacy in explicit manner, some aspect of privacy is impliedly enshrined in it. They continued by asserting that art 5 of the convention which read as follows *"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."* guarantees the respect of dignity of human beings and freedom from all forms of exploitation and degradation, including torture. The respect one's dignity and the freedom from torture carry protection to one's autonomy, physical and moral integrity. Since a private life of a person includes, among others, his autonomy, physical and moral integrity. And hence, such aspect of privacy can be inferred from the African Charter. Furthermore there are other conventions in the region which explicitly recognizes privacy rights. African Convention on the Rights and Welfare of Child (ACRWC)[88] is one of them, in which the right to privacy is expressly protect. By stating that '[n]o child shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to the attacks upon his honor or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children.'

Therefore, one may be argue that, African legal regime concerning the right to privacy less appreciable than other regional legal

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charter failed to directly incorporate privacy right in a single provision but this does not tell us its denial of such right rather we can infer the protection of this right through other provisions.

[88] Africa Charter on the Right and Welfare of the Child, 1990, reprinted in universal law publishing company, Human rights in international law, 3rd ed., New Delhi, India, 2009, pp. 617-632. [Here in after Africa charter]

regimes. Since the regime has to come in existence after a number of different legal regime was created.

3.2.4 Legal protection of right to privacy under national instruments

The right to privacy is one of the human rights that are stipulated in the Ethiopian constitution. Under article 26 of the FDRE[89] constitution clearly postulated as follows

1. Everyone has the right to privacy. This right shall include the right not to be subjected to searches of his home, person or property, or the seizure of any property under his personal possession.

2. Everyone has the right to the inviolability of his notes and correspondence including postal letter, and communications made by means of telephone, telecommunications and electronic devices.

3. Public officials shall respect and protect these rights. No restrictions may be placed on the enjoyment of such rights except in compelling circumstances and in accordance with specific laws whose purposes shall be 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.

In principle, as illustrated under sub article 1 of article 26, "everyone has the right to privacy and not to be subjected to search of his home, person or seizure of any property under his personal possession". In addition to this, sub article 2 of Article 26 further provides the right to the inviolability of notes, postal letters

[89] Proclamation No. 1/1995, Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta, 1st year,No.1,Addis Abeba,21 August 1995, adopted on 8 December 1994, entry in to force 21 August 1995 (Here in after FDRE constitution).

and communications made by means of telephone telecommunications and electronic devices. The right to privacy is not however absolute. Sub 3 of Article 26 puts a limitation clause to the right to privacy for other competing and compelling interests. Limitation to the right to privacy is allowed only when three important elements are satisfied together: (1) there must be compelling circumstances; (2) restriction must be in accordance with specific laws; and (3) there must be legitimate aims. Therefore, the inquiries whether there is a compelling circumstance to restrict the right, the restriction is based on specific law, and restriction is made for one of the purposes set out in sub article 3 are important tests to assess the justifiability of any limitation to the right to privacy.[90]

Besides to this provision, as per article 9(4) of the FDRE constitution, all international agreement ratified by Ethiopia are an integral part of the law of the land. Standing from this article what prescribed under the UDHR, ICCPR and other international human right instrument which Ethiopia is part and parcel is considered as part of the law of the land. Again article 13(2) of the FDRE constitution also strength the above idea in better way: The fundamental right and freedoms specified in this charter shall be interpreted in a manner conforming to the principle of the Universal Declaration of Human Rights (UDHR), International Covenants on Human and Peoples Right (ICCPR) and other international instruments adopted by Ethiopia. So when the chapter three of the constitution interpreted in the way confirm with those instruments, impliedly the protection of right to privacy was protected in the standard of the international instruments.

[90] Kinfe and Alebachew, Safeguards of Right to Privacy in Ethiopia, supra note, 67 p. 17.

Concerning the right to privacy in the national level, constitution is not the only document in the Ethiopian's legal regime. The Ethiopian civil code[91] on article 27 also stipulates that *"The photograph or the image of a person may not be exhibited in a public place nor reproduced nor offered for sale without the consent of such person".* In connection with this, Article 28 of the Ethiopian civil code provides an exception. The content of this article has different interpretations because of its generalization of the definition.

Article (28) *"The consent of the person concerned shall not be required where the reproduction of his image is justified by the notoriety of such person or by the public office which he occupied or by the requirements of justice or of the police or by a scientific cultural or didactic interest or where the reproduction of the image is made in connection with facts, events or ceremonies of public interest or which have taken place in public."* The code further provides specific personality rights some of which have clear privacy undertones. The privacy safeguards guaranteed within the umbrella of rights of personality recognized under the code are the following: right not to be searched in one's person; inviolability of domicile and inviolability of correspondences.

3.3 The scope of legal protection and limitation of right to privacy

As pointed out earlier, the right to privacy, has guaranteed in Article 12 of the Universal Declaration of Human Rights and many other provisions - including Article 17 of the International Covenant on Civil and Political Rights (ICCPR), and Article 16 of the Convention in the Rights of the Child. Guaranteeing right to

[91] Civil code of empire of Ethiopia, 1960, Negarit Gazeta, extra ordinary issue, proclamation no. 165, 19th year, no. 2. [Herein after the civil code].

privacy is also a manifestation of democratic societies.[92] Its inclusion in such a variety of provisions demonstrates its significance in relation to the protection of a broad array of other fundamental human rights.[93]

Almost all of these instruments have a tendency to guarantee an individuals from arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation. Furthermore these instrument imposes an obligations on the state parties not only (not interfere) but also promotion and protection of this rights. Thus, all state parties in the instrument have an international duties to respect and protect privacy rights of their citizen. Since the right to privacy is not absolute right, like other prima facie rights, the right to privacy can be overridden by other values. These interference only became real when the three part cumulative tests (legality, legitimate purpose and proportionality requirements) are fulfilled and the burden falls on states to justify them.

The International Principles on the Application of Human Rights to Communications Surveillance (called 13 principles), which set a framework for the application of international human rights law to communications surveillance in the digital age tries to define the cumulative tests in which right to privacy may limited. According to the 13 Principle, Legality requires that any restriction on right to privacy be specifically authorized by law. Given the important role of the right to privacy a surveillance law must authorize government access to communications and personal information only under the most exceptional circumstances as defined by legislation. When national security is claimed as the reason for interference, the law must clearly specify the criteria to be used to determine when such interference is legitimate.

Legitimate aim is concerned the 13 principle stated that, it is necessary that any interference be conducted only “to achieve a legitimate aim that corresponds to a predominantly important legal interest that is necessary in a democratic society.” Article 30 of the American Convention similarly establishes that the restrictions on

[92] Kinfe and Alebachew, Safeguards of Right to Privacy in Ethiopia, supra note, 67, p. 5.
[93] ibid

the rights recognized therein "may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established." Moreover, Article 32.2 of that document establishes that: The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic societies. The requirement of proportionality obliges a State, at a minimum, to establish the following to a Competent Judicial Authority, prior to conducting any privacy interference for the purposes of enforcing law, protecting national security, or gathering intelligence: The Principle of Proportionality requires weighing the legal right that serves as the legitimate aim against the restriction of the affected right. According to this Principle, there must be a proportionate relationship between the appropriateness and the scope of privacy interference and the interest of the fundamental freedoms of those affected, even in the cases that go beyond the collection of information (for instance, in the information exchange of state organisms.) furthermore, The Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism explains the Principle of Proportionality in connection with the rights to privacy and honor (provided for in Article 17 of the International Covenant on Civil and Political Rights), stating that such principle stipulates that the restriction must be "the least disturbing tool for the achievement of the desired outcome and must be proportionate in relation to the interest it tries to protect."[94] It is therefore important to understand the extent to which a State may lawfully limit this right, recognizing that the State must also continue to take active steps to protect individual privacy.

3.4 The challenge: impact of counter-terrorism measure on privacy

State counter-terrorism measures affect numerous fundamental rights. According to human rights promoters, they include the right to life (through targeted killings), liberty interests (through

[94] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/13/37, paragraph 17 and 18.

arbitrary detention), racial and ethnic profiling, freedom of speech and association, as well as the right to privacy.[95] According to Culnan, privacy can only exist when the usage, release and circulation of personal information can be controlled.[96] Inversely, according to Lim, invasions of privacy occur when individuals cannot maintain a substantial degree of control over their personal information and its usage.[97] Specially, now days, States by setting aside their international duties, have been providing their security intelligence services with powers of extensive data surveillance, including wiretapping and the use of tracking devices. Even some States have significantly extended these surveillance powers in recent years.[98] Interference with privacy also arises in the security screening and searching of persons. Such measures related to security infrastructure involve the use of technologies, which in turn involve the recording, collection, storing and sharing of information. Such measures as the circulation of secret watch lists, data sharing agreements and the creation of profiles on travelers may have a serious impact on the right to privacy.[99] All of these practices involve the collection of information about a suspected person. Moreover, they therefore limit the privacy of such persons,

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[95] Human Rights Advocates, Counter-terrorism and the protection of human rights, Human Rights Council: 13th Session, Agenda Item 3: Countering Terrorism, p. 6.

[96] CRISTINA SISERMAN, A Global Perspective On The Protection Of Privacy And Related Human Rights In Countering The Use Of Internet For Terrorist Purposes, Masaryk University Journal of Law and Technology Vol. 7:2 PP 401-422,P 412.

[97] Ibid

[98] Office, of the United Nations High Commission for Human Right, supra note, 2, p. 45.

[99] Art. 17 of the International Covenant on Civil and Political Rights states that "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation" and that "Everyone has the right to the protection of the law against such interference or attacks".

as well as raising questions about how the collected information are to be protected.[100]

As pointed out earlier, right to privacy is not absolute right but, this does not mean that States enjoy an unlimited discretion to interfere with privacy, since any limitation on rights must be necessary to achieve legitimate purposes and be proportionate to those purposes. Regard must also be had to the obligation of States to protect against the arbitrary exercise of such authorizations.[101] Besides to that, even if interferences is made for legitimate purpose and proportional to those purpose, the obtained information and data must be protected against unlawful or arbitrary access, disclosure or use. Although jurisprudence on this duty is scarce, the Human Rights Committee, in its general comment No 16 (1988), has explained that States must take effective measures to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the International Covenant on Civil and Political Rights. Effective protection should include the ability of every individual to ascertain in an intelligible form, whether and, if so, what personal data are stored in automatic data files, and for what purposes, with a corresponding right to request rectification or elimination of incorrect data.[102] Unfortunately, most of the time, states has enacting a number of counter terrorism legislations in which privacy right has put in danger.

[100] Office, of the United Nations High Commission for Human Right, p. 45.
[101] Ibid.
[102] Ibid.

CHAPTER FOUR: ETHIOPIAN ANTI-TERRORISM LAWS AND ITS IMPLICATION TOWARDS RIGHT TO PRIVACY

As discussed elsewhere, Terrorism is one of the ultimate challenge we have faced in the process of protection, promotion and the enjoyment of a number of human rights, in particular the right to life, physical integrity, and security. Furthermore, Terrorist acts can destabilize governments, undermine civil society, jeopardize peace and security, and threaten social and economic development. Different measures has been taken by different responsible organs including governments to control the evil effects of terrorism. From recent year on wards, as we are one of the sub set of the world, our government has possibly been participating in Anti-terrorism measures. Remain other thing, Anti-terrorism proclamation number 652/2009 and Proclamation No. 780/2013 on Prevention and Suppression of Money Laundering and Financing of Terrorism are some of recent phenomenon in which the legislature has tried of their best to came up with the possible solutions of the problem which the society at large has faced. Since the law makers are a human being mistake is inevitable. Accordingly, in different part of the society including from the domestic and outside have challenged and questioned the legality of the Proclamation. Thus, in the forgoing topic the researcher will discuss some of the drawback of the proclamations towards right to privacy is concerned. Specifically method of collection and investigation of personal information by National Intelligence and Security Service. We will analysis the mechanisms stated by the proclamation about collection, processing and presenting of personal information and respective consequences towards privacy

right. And the power of the court in determining such evidence is concerned. Lastly, our discussion goes to analysis of the provision of proclamation 780/2003 in line with the principle of European data protection law.

4.1 Information collection and investigation methods incorporated in the Anti-terrorism proclamation No 652 and their implication

Anti-terrorism Proclamation No 652 utilizes different investigation mechanisms with the aim of achieving the vary objective of adequately fighting terrorism and to maintain peace and order of the society. According to Article 14 of the Proclamation, with the authorization of the courts grants for the National Intelligence and Security Service to intercept or conduct surveillance on the telephone, fax, radio, internet, electronics, postal, and similar communication, to inter any premise in secret and install or remove instruments enabling the interception. As Tillahun Yaze argue that, the court authorization most likely though not precise enough.[103] Since the provisions says only [u]p on court authorization, and not make clear with courts power, whether it rejects if find unnecessary or not. In addition to that, the provision does not talk about procedural issues i.e. whether it has to be in written form or oral by telephone (as used in covert search), and it is not clear how long duration of time the courts authorization intact. Unless properly managed these issues from the outset, once privacy right might be in danger by the arbitrary decision of National Intelligence and security Service.

When came to the substantive issue of the above provision, surveillance or interception by its nature denigrate privacy even it be lawful or not. Oxford English Dictionary defines surveillance as ‘close observation, especially of a suspected spy or a criminal.’ As can be grasped from the definition, Surveillance, then, is something typically used against people who a reengaged in illegal activities. But, perhaps surveillance itself is at its most effective when it is carried out covertly and because it can involve serious

[103] Tilahun Yazie, Privacy Right Protection Mechanism In The Counter Terrorism Proses; The Ethiopian Case From Comparative Perspective, LLM Thesis Bahir Dar University, School of Law,2014, [Unpublished available at Law library], p.71.

breaches of privacy. The very act of surveillance also has the connotation of being underhand.[104] Accordingly, the legislature better to articulate other forms of investigation tools before resorting to massive surveillance. Salahadin Twofik, also has to say [d]ue to its intrusive nature, it is suggested the use by law enforcement bodies of electronic surveillance should not be an investigative tool of first resort, instead its use should be considered when other less intrusive means have proven ineffective or when there is no reasonable alternative to obtain crucial information or evidence.[105] If the situation has obliged, it is inevitable to set up stringent criteria to employ act of surveillance in the investigation process instead of the mere authorization of the court which in turn cause a serious threat to privacy.

The other investigation method embodied in the Proclamation is sudden and covert search. Article 16 of the Proclamation permits for a police officer to conduct sudden search on vehicle and pedestrian in the area where the police officer has “reasonable suspicion” that terrorist act may be committed and deems it necessary to make it. The conduct will have effect only with the permission of the Director General of the Federal Police or a person delegated by him. This provision seems to degrade right to liberty of a person because of two reason. First, the executive organ of Director General of the Federal Police makes it the organ that give it’s bless for sudden search without judicial oversight and it would certifies the police and other security services almost unlimited power to conduct body searches, and search or seize property based solely on the belief that terrorist activity “will be” or has been committed. The second one is, the law is not clear whether the police officer’s “reasonable suspicion” will subjects to further examination by the authorization organ or not.

Article 17 of the anti-terrorism proclamation seem like to well-articulated and procedurally arranged along with Article 18 of the Anti-terrorism proclamation. As stated by Article 17 of the anti-terrorism proclamation the police after obtaining written warrant from courts, in urgent cases by telephone can conduct covert or secret search against a home of a person. A police may request the warrant where he has reasonable ground to believe that:

[104] Justice freedom
[105] Salah 73

1) *a terrorist act has been or is likely to be committed; or*
2) *a resident or possessor of a house to be searched has made preparations or plans to commit a terrorist act; and*
3) *covert search is essential to prevent or to take action against a terrorist act or suspected terrorist activity.*

Pursuant to Article 18 of Anti-terrorism proclamation the court will provide the warrant on the basis of the information present to it by the applicant after taking *the nature or gravity of the terrorist act or the suspected terrorist act; and the extent to which the measures to be taken in accordance with the warrant would assist to prevent the act of terrorism or arrest the suspect* in to consideration. Furthermore, the provision unlike other provision of the Anti-terrorism Proclamation we have discussed some point earlier, stipulates content of the warrant and the time how long the issued warrant is remain active.

The last point, which deserve mentioning, is Article 23 of the Anti-terrorism Proclamation which stated as follows.

Article 23 of the Anti-Terrorism Proclamation provides that: Without prejudice to the admissibility of evidences to be presented in accordance with the Criminal Procedure Code and other relevant legislations, the following shall be admissible in court for terrorism cases:
1. Intelligence report prepared in relation to terrorism, even if the report does not disclose the source or the method it was gathered;
2. Hearsay or indirect evidences;
3. Digital or electronic evidences;
4. Evidences gathered through interception or surveillance or information obtained through interception conducted by foreign law enforcement bodies; and
5. Confession of a suspect of terrorism in writing, voice recording, video cassette or recorded in any mechanical or electronic device.

Article 23(1) allows nondisclosure of source and methods of collection of intelligence reports which may include information obtained by undercover operation. And also the provision makes intelligence report admissible evidence even if it does not disclose the source and methods of gathering. It is a clear exclusion of judicial checking mechanism. In fact, even if the evidence is admissible, still the court has to determine the credibility or the weight of evidence before deciding on the final merit of the case. It is observed a clear contradiction of constitutional rule that

excludes evidences obtained under coercion. One may say that, constitutional guarantee not to use torture or other illegal acts that affect once privacy to obtain evidences could be at stake unless, (NISS) obliged to disclose the source and method the evidence is obtained and the judiciary adopt checking mechanism to determine the credibility of such evidence.

The power of the court to request the (NISS) to disclose the information collected through surveillance is concerned, there is a case between public prosecutor and Abdurazak Akemel Hassen, in criminal file No 130885 at the federal high court, the defendant in his statement of defense requested the court to order the (NISS) to disclose voice record obtained through telephone interception for the purpose to determine whether it is the voice's of the real defendant or not. Up on the request of the defendant the court has ordered the (NISS) to bring the detail of such voice record before court of law. The NISS in its Witten statement responded that, Article 14 sub of Anti-terrorism Proclamation clearly commands such evidences shall be kept in secret, in addition to that, Article 23 sub 1 of the same proclamation does not require to disclose the source and method the evidence was gathered. Bases on the above provision the NISS replied to the court as they cannot brought it before court of law. The court has accepted and the proceeding has continued.

From the aforementioned case, we can observe misapplication of the provision by the NISS and court's approval. Even though, Article 14 sub of Anti-terrorism Proclamation required to keep secret information obtained through interception but it should not be against the defendant interest because the law maker seems to articulate this sub provision to protect the defendant interest whose privacy obstructed through interception. While, the court's decision to accept the rejection by NISS and allow proceeding of the case is in line with Article 23 sub 1 of Anti-terrorism Proclamation but may a great injustice be occurred, if the court pass a verdict against the defendant based on the evidence its credibility is in question.

4.2 Anti-terrorism Proclamation No780/2003 in relation with data protection mechanism

Personal data of individuals has obviously been collected by governmental and non-governmental organization and individuals for which to attain the object they stands for. The personal data of an individual collected may contain political, social, economic and religious belief of such individual against the whole community. Thus, anyone who made such information under his possession might be used in determent of the data subjects. Despite the fact that, collecting of an individual's personal data is unavoidable phenomenon, especially now day, respective controlling mechanism quite necessary to prevent and control unlawful interference and its harsh consequence on once private life. Accordingly, European legal system which has considered as one of the most protective system with respect to personal data protection develops different principles through which the data controller shall be observed when they collect such data. This sub section is devoted to analysis of some of the provision of Proclamation No 780/2003 Vis a vise with those principles.

Article 13 (1) of Proclamation No 780/2003 provides to the center[106] to collect, receive, store, survey, analyze and disseminate information concerning suspected money laundering and financing of terrorism. According to this provision the center would seems free to collect personal data of individuals without prior superior authorization which assigned to issues such warrant after determining the collection of such data is in accordance with the law, pursues a legitimate purpose and is necessary in a democratic society in order to achieve the legitimate purpose. Doing so, will ascertained the lawfulness of the method utilized to obtain the required information by the center. The provision has nothing mentioned about how the center should collect personal data of individuals whose privacy right is protected under the constitution, up to what extent the data collection carried out in addition no obligation has imposed on the center as to the collection data concerned i.e. to be transparent and do not do anything unlawful with the data in line with the principle of law full and fair processing in order to protect the interests of the individuals

[106] 'Center' according to Proclamation No 780/2003 means the Financial Intelligence center established by the council of ministers regulation No 171/2009.

whose personal data is being processed. Thus, to limit the power of the center in collecting personal data in accordance with legitimate privacy interference and to protect the possible unlawful interference by the center, the introduction of lawful and fair processing principles is choice less thing. Again, this provision neither prohibited the center to store the collected information under their control for unspecified time limit. It is against the limited retention principle. According to this principle retain personal data is only permitted no longer than is necessary for the purpose obtained it for. Because, the data may face a risk of inaccurate, out dated and irrelevant to the purpose the data is collected for. Furthermore, Using of such data even for the same purpose which the data priory collected for could be cumbersome for the data subjects. Thus, the center should not allowed to retain individual's data for unlimited period of time. Through time goes might be subject to abuse by the center and causes on an individual not to lead secured private life.

Article 25 of Proclamation No780/2003 authorize to the investigation authority, with the judiciary authorization, may conduct surveillance of correspondences and any communication including video recording, access and monitor bank accounts, access to computer and network systems for the purpose of investigation. In this provision even though, the court has authorized to issue warrant up on the request of the authority but it is not clear whether the court has the power to check the request in accordance with the principle of lawful and fair process and if got it unqualified rejected it or not. According to the principle when the court issue the warrant the following point would take in to consideration i.e. have legitimate grounds for collecting and using the personal data, make sure not use the data in ways that have unjustified adverse effects on the individuals concerned and make sure do not do anything unlawful with the data. In addition to that, the court has to determine the warrant request in striking the balance between individual interest and public welfare even though, it does not properly addressed by the proclamation.

In relation to data quality principle, Proclamation No780/2003 nothing imposed on the authority as to extent of personal data processed, its adequacy, relevancy and even not prohibited excessive data collection in relation to the purposes for which they are collected or further processed. Reasonable fear of arbitrary

and extensive data process by the authority can be occurred, unless we have shaped them in their each and every activity which affect individual's privacy through the principle. The principle obliges the authority to collect data only relevance to the purpose they wants to achieve, carefully consider any challenges to the accuracy of information, and consider whether it is necessary to update the information, in order to be kept the individuals data which is collected by the authority in safe.

Lastly, the Proclamations neither properly empowered the court to supervise and control individual privacy interference and investigate the legitimacy of it nor established independent supervisory authority that oversee all aspects of security service regulations, collection, administration and supervise those who conduct surveillances and individuals data collection. Furthermore, the Proclamation has failed to regulate the issue concerning the possible available remedy of those persons whose right to privacy violated in arbitrary way.

4.3 CONCLUSION

Terrorism has been a prevalence phenomenon for the world community from the remote past up to know. Its elusive nature has still been a challenge for the scholars to formulate a precise and unique definition. Even though, the International community has established mechanisms to address the issues related to terrorism, including the creation of the Counter-Terrorism Committee and the Counter-Terrorism Executive Directorate, they has been unable to agree on a universal definition of terrorism. As solution to the difficulty in defining terrorism may the international community be focus on preventing and punishing conduct that is of a genuinely terrorist nature. While terrorism has negative impression on human rights and the functioning of society, so too can measures adopted by states to counter terrorism and the state have an international duty to take effective counter terrorism measure. During fighting terrorism states usually employ advanced and enhanced mode of investigation techniques which put human rights in to danger. Counter terrorism legislation provides a framework for making decisions about deploying and evaluating personal information on the basis of their effectiveness and associated risks to personal privacy detecting and countering terrorist actions before they occur inherently raise concerns that

such efforts may damage a free, democratic society through well-intentioned steps intended to protect it. Among human rights that endangered by state counter terrorism measure is right to privacy. Defining the term privacy has been a very challenging task for different scholars. Different scholars has tried to define the term privacy in different aspects i.e. Judge Thomas Cooley and the Brandies brothers define privacy as a right to be left alone. Adam More and Alan Westin define privacy in terms of the right to control of access to one's information. For William Parent, privacy is the condition of not having undocumented personal knowledge about one possessed by others. Pound and Freund define privacy in terms of an extension of personality or personhood. As to the legal basis of right to privacy is concerned, the international and regional human right document i.e. Article 12 of UDHR, 17 and 23 of ICCPR, article 10 and 16 of CRC, article 8 and 12 of ECHR, article 11 of ACHR are some of them in protecting the right to privacy. Almost all of these instruments have a tendency to guarantee an individuals from arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honor and reputation. Furthermore these instrument imposes an obligations on the state parties not only (not interfere) but also promotion and protection of this rights. Thus, all state parties in the instrument have an international duties to respect and protect privacy rights of their citizen. Since the right to privacy is not absolute right, like other prima facie rights, the right to privacy can be overridden by other values. These interference only became real when the three part cumulative tests (legality, legitimate purpose and proportionality requirements) are fulfilled and the burden falls on states to justify them.

Article 26 of FDRE constitution grants right to privacy of individuals against interference more detail and expressive manner. Furthermore, Article 27 of civil code also seems intend to protect parts of once private life. Since right to privacy is not absolute right, like other international human right document did, Article 26(3) of the provision states the ground that right to privacy might be limited. Among them national security is one. The term of 'national security,' like the concept 'privacy,' is amorphous and devoid of precise analytical meaning. Its scope of application is not limited solely to situations in which the state defends itself against

an illegal domestic or foreign threat of force to its institutions or to the people present within its borders, even though this is the heart of the concept. Rather, it embraces a range of situations which influence the ability of the regime to effectively pursue the collective welfare of the nation. Terrorism is a threat to national security and measures aimed to counter the terrorist threats and acts may affect the right to privacy. Many states in the world including Ethiopia enact laws that aim to prevent and suppress acts of terrorism. Many of these laws introduce special and enhanced modes of investigative techniques which is different from the normal ways of investigation mechanisms. The Ethiopian Anti-terrorism Proclamation No 652/2009 and Proclamation No 780/2003 on prevention and suppression of money laundering and financing of terrorism are some of the Anti-terrorism legislation has enacted by the law maker in the near past. They have predominantly deals about interception, surveillance, secret and sudden search, information sharing, duty of reporting transactions and records of citizens and other measures; all of which are blamed to affect privacy of citizens unless properly regulated. The 2009 Ethiopian Anti-Terrorism Proclamation provides government legal cover to impair the protection and promotion of human rights. It empowers police with unlimited power of arrest, search and seizure. It grants the police to make arrest without warrant, as long as the police reasonably suspects that a person is committing or has committed terrorist act. Some of them has still been the predominant causes of violations of individual's privacy right.

4.4 RECOMMENDATION

Based on the forgoing discussion and findings the writer would like to recommend the following points.

The legislature should enact laws which incorporates personal data principles to ensure protect right to privacy especially regarding data protection during counter terrorism measures taken by those responsible agencies including

- There should be rigorous procedure in place with regard to the examination, use and storage of the data obtained. The use of data collected through telecommunication surveillance or other forms of undercover investigations should be strictly limited to the purpose of investigating serious crimes. Surveillance activities should be authorized by a judge, set

out strict limits on its duration, as well as rules on the disclosure and destruction of surveillance data, and provide for ex post remedies to all individuals concerned.

- should establish bodies that are fully independent from the executive and the security services to oversee all aspects of security service regulations, policies, operations, data collection and administration, and ensure that their systems for the oversight of security services comply with human rights requirements.

- There should be a mechanism whereby all victims of privacy interference should be rapidly afforded assistance, including the right to support, adequate care, and compensation.

Those subjected to surveillance or other counter-terrorism measures should be given a chance to exercise their right to an effective remedy in order to contest the validity of the measures applied to them, as well as decisions on the use and storage of data concerning them.

In order to efficiently fight terrorism, but also to ensure democracy and the respect for privacy, need to adopt clear standards for the collection, storage, use, analysis, disclosure and sharing of personal data for anti-terrorism purposes.