



ABOUT THE GNI PRINCIPLES ISSUES MEDIA
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PROVISION OF REAL-TIME LAWFUL INTERCEPTION ASSISTANCE

TELECOMMUNICATIONS PROMULGATION 2008

Under s.73(2) of the Telecommunications Promulgation 2008, mobile network operators must give officers and authorities of the government such help as is reasonably necessary for the purposes of enforcing criminal law and enforcing laws imposing pecuniary penalties, protecting public revenue and safeguarding national security. S.73(3) further states that mobile network operators will not be liable for an action or other proceedings for damages, if such act was committed in good faith (in accordance with s.73(2)). The provisions of s.73(4) also provide identical indemnities to any director, officer, employee or agent of the mobile network operator.

In Fiji, there appear to be no specific laws that grant government law enforcement agencies the authority to have direct access into a mobile network operator's network without the operational control or oversight of the mobile network operator.

DISCLOSURE OF COMMUNICATIONS DATA

TELECOMMUNICATIONS PROMULGATION 2008

Government agencies and law enforcement authorities may possess the legal powers under s.73 (2) of the Telecommunications Promulgation 2008 (Promulgation) to compel mobile network operators to disclose metadata.

COMPULSORY REGISTRATION OF CUSTOMERS FOR TELEPHONE SERVICES DECREE 2010

The Compulsory Registration of Customers for Telephone Services Decree 2010 requires all providers of public mobile and fixed line telephone communications services (including any mobile virtual network operators) to obtain (and possibly retain for the period of 6 years) customer information.

Under s. 13 (1) of the Compulsory Registration of Customers for Telephone Services Decree 2010, a magistrate or justice of the peace (on reasonable suspicion or inquiry) may issue a warrant authorising a police officer to obtain customer registration details connected to one or more telephone numbers if the magistrate or justice of the peace thinks such information is necessary for investigations relating to prank calls to national emergency telephone numbers and also for investigations under the Crimes Decree 2009 relating to treason, offences against the government, offences against public order, offences against international order, offences against the person and threat of injury to a person employed in the public service.

CRIMINAL PROCEDURE DECREE 2009

S.98(1) of the Criminal Procedure Decree 2009 permits a magistrate or justice of the peace (where proved in fact or on reasonable suspicion) to authorise a police officer or other person named in a search warrant to search any building, ship, carriage, box, receptacle or place named or described in a warrant. S. 98(2) permits the officer or any other person named in the warrant to seize the item and take it to the court issuing the warrant or some other court to be dealt with by the relevant law. In such instances the warrants may require the seizure of all electronic devices and any storage devices if such items are used or are reasonably believed to have been used in the commission of an offence.



FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION



The Fiji Independent Commission Against Corruption Promulgation 2007 establishes the Fiji Independent Commission Against Corruption which is the body primarily responsible for investigating and prosecuting corruption in government and the public sector.

Under s. 10B of the Fiji Independent Commission Against Corruption Promulgation 2007, a magistrate who is satisfied on information on oath that in any premises or place where there is evidence of a commission of an offence the officer assisting the magistrate may enter upon and search the place or premises and seize any items which the officer believes may contain evidence of any offence.

NATIONAL SECURITY AND EMERGENCY POWERS

Except as already outlined in this report, the government does not have any other legal authority to invoke special powers in relation to access to a mobile network operator's customer data and/or network on the grounds of national security.

If a state of emergency is declared by the President under the Emergency Powers Act 1998, the President may on advice of the Cabinet make regulations affecting access to communications and/or networks.

Fiji has enacted a new Constitution in 2013. Under s.154 of the Constitution it is the Prime Minister, on advice of the Commissioner of Police and Commander of the Fiji Military Forces, who can declare a State of Emergency. The Constitution provisions therefore impliedly repeal the Emergency Powers Act.

OVERSIGHT OF THE USE OF THESE POWERS

If a mobile network operator is required to provide assistance under the Telecommunications Promulgation 2008, it does on the basis that it neither profits from, nor bears the costs of, giving that help. Assistance is provided subject to terms and conditions agreed by the mobile network operator and the government; if no agreement is reached, these will be determined by an arbitrator appointed by the Telecommunications Authority of Fiji under s 74 of the Promulgation.

This information was originally published in the Legal Annexe to the Vodafone Group Law Enforcement Disclosure Report in June of 2014. Please note that information on censorship-related powers for Fiji was not included in the 2015 update to the Legal Annexe, given that in July 2014 Vodafone sold its shareholding in Vodafone Fiji and the latter is now an independent business operation.

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