



Commission of Inquiry into the Appointment of the Commissioner of the Fiji Independent Commission Against Corruption

REPORT

1 MAY 2025

ACKNOWLEDGEMENTS

The Commission of Inquiry into the Appointment of the Commissioner of the Fiji Independent Commission against Corruption acknowledges His Excellency, Ratu Naiqama Tawakecolati Lalabalavu, President and Commander in Chief of the Republic of Fiji, former President and Commander in Chief of the Republic of Fiji, Ratu Wiliame Katonivere [CF, MSD], and the Right Honourable Major General (rtd) Sitiveni Ligamamada Rabuka, Prime Minister and Minister for Foreign Affairs, for their leadership in establishing the Commission of Inquiry. Our heartfelt thanks go to the helpful staff of FICAC, and the Fiji Elections Office who have laboured under difficult and stressful circumstances. To all of those who have provided evidence, by way of affidavits and viva voce evidence before the Commission, thank you. Your role has been an important one in shedding light on the matters before the Commission.

Thank you also to the Commission's Secretariat, Ms. Miliame Raqisia, Ms. Seruwaia Vuyale, and Ms. Luisa Naituku, and to the judiciary, court staff and police officers at the Supreme Court Veiuto Complex who kindly accommodated the Commission.

Finally, the Commission of Inquiry acknowledges the professional and tireless efforts of Janet Mason *LLM, LLB, BSocSci*, Senior Legal Counsel, for going above and beyond in her appointment as Counsel Assisting the Commissioner in co-ordinating and managing the Commission's work and compiling this Report.



*sunlight
is the best
disinfectant*



COMMISSION OF INQUIRY

In the Commission of Inquiry issued under the Commissions of Inquiry Act 1946 to enquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission against Corruption (FICAC)

14 May 2025

His Excellency Ratu Naiqama Tawakecolati Lalabalavu
President of the Republic of Fiji
State House
P. O. Box 2513
Government Buildings
Suva

Right Honourable Prime Minister Major General (rtd) Sitiveni Rabuka
Prime Minister's Office
Parliament Buildings
Suva

Re: Letter of Transmittal

Dear His Excellency and Honourable Prime Minister,

1. In accordance with the Commission of Inquiry issued under your hand and the Public Seal of Fiji into the Appointment of the Commissioner of the Fiji Independent Commission Against Corruption ("FICAC"), dated 29 October 2024, I have made a full and careful inquiry with respect to whether the appointment process of Ms. Barbara Malimali as Commissioner of the FICAC was conducted with integrity, fairness and transparency, according to law, including but not limited to:
 - a. the manner by which she was appointed;
 - b. whether her appointment was in accordance with section 5 of the Fiji Independent Commission against Corruption Act 2007;
 - c. the individuals involved in the decision to appoint the Commissioner, and the extent and appropriateness of their involvement;
 - d. whether, and to what extent, there was any inappropriate involvement by any individuals in the appointment;
 - e. whether, and to what extent, any individuals used their public office to improperly influence the selection and appointment process; and
 - f. whether or not the process and appointment of the Commissioner was unlawfully or improperly influenced by vested interests, including current FICAC cases or investigations on high profile individuals, including Members of Parliament, Ministers and senior public servants.
2. It is with great pleasure that we present the final Report, which includes the recommendations in Chapter 8 of the Report.

3. The Commission has provided you with two copies of the Report, one version which is confidential and is just for you, and the other is the "Redacted Copy". In the Redacted Copy we have removed information comprising the legal opinions in relation to some of the pending FICAC cases, along with Chapter 7 which sets out what offences may have been committed. It is recommended that this information is redacted because there are parallel Police investigations which are occurring, or which may occur, and any unnecessary speculation could negatively affect those investigations.
4. The Commission hopes that all who read this Report understand that, while public officials and elected members of Parliament may come and go, the institutions of government should endure for an eternity, and as such should be treated with respect, honour and dignity, and treasured.
5. May God bless Fiji.

Sincerely,

A handwritten signature in blue ink, reading "Ashton-Lewis".

His Lordship Justice David. E Ashton-Lewis LLB/SC
Commissioner

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ABBREVIATIONS AND DEFINITIONS

Abbreviation	Definition
13 June Directive	Directive issued by ECF Commissioners to the SoE, Ms. Mataciwa on 13 June 2024 requiring her to inform the subject of a complaint about the complaint made against him or her, and to table all complaints the SoE receives with the ECF Commissioners before further action is taken, including referring the complaint to FICAC under s 18 of the Electoral Act.
ADC	Acting Deputy Commissioner of FICAC.
A-G	Attorney-General of Fiji.
AGM	Annual General Meeting.
Appointment Process	The entire process surrounding the appointment of Ms. Malimali to the position of FICAC Commissioner, beginning at the announcement by Hon. Turanga that there would be a new FICAC Commissioner, until the JSC had stopped having any role in Ms. Malimali's appointment, which was a few days after her appointment.
April 2 Malimali Letter	Letter from Ms. Malimali to the COC dated 2 April objecting to the process embarked upon by the COC to select the new SoE, and proposing that the new SoE position could be rotated amongst the three FEO applicants, one of which was Ms. Mataciwa, or, Mr. Graham Leung could be appointed SoE, and Ms. Mataciwa appointed the Deputy SoE.
CID	Criminal Investigation Division of the Fiji Police Force.
CJ	Chief Justice of Fiji.
CM	Chief Magistrate of Fiji.
COC	Constitutional Offices Commission.
CoI	Commission of Inquiry established under the CoI Act.
CoI Act	Commissions of Inquiry Act 1946.
Complaint One	The first FICAC complaint lodged by Ms. Alexandra Forwood against Ms. Malimali, dated 8 April 2024, in relation to the April 2 Malimali Letter being an abuse of office.
Complaint Two	The second FICAC complaint lodged by Ms. Forwood, dated 29 August 2024, alleging that Ms. Malimali had obtained and released Ms. Forwood's private voter information to Hon. Tabuya.
Constitution	Constitution of Fiji 2013.
CR	Chief Registrar of Fiji.

Crimes Act	Crimes Act 2009.
CSO	FICAC Commission Standing Orders.
DPP	Director of Public Prosecutions.
ECF	Electoral Commission of Fiji.
ECU	Economic Crime Unit, FICAC.
Electoral Act	Electoral Act 2014.
First Ad	The first advertisement calling for applications for the position of FICAC Commissioner, dated 15 June 2024.
First KC Opinion	Opinion from Professor Philip Joseph KC, dated 14 February 2025.
First Malimali Allegation	An alleged abuse of office charge whereby Ms. Malimali and the other ECF Commissioners had endorsed a resolution to adopt an unlawful process of handling election related complaints, namely, the 13 June Directive.
FEO	Fijian Elections Office.
FICAC	Fiji Independent Commission Against Corruption.
FICAC Act	Fiji Independent Commission Against Corruption Act 2007.
FICAC Malimali Investigation	FICAC Investigation into Ms. Malimali.
FLS	Fiji Law Society.
ILSC	Independent Legal Services Commission.
ITA	Income Tax Act 2015 Fiji.
JSC	Judicial Services Commission.
KC	Kings Counsel.
LoOP	Leader of the Opposition.
LPU	Legal Practitioners Unit.
Malimali Rescue Party	The group of 4 lawyers that attended FICAC offices on 5 September 2024 with CR.
MPs	Members of Parliament.
MSM	Main Stream Media.
NFP	National Federation Party.
PC	Practicing Certificate.
NZLS	New Zealand Law Society.
ODPP	Office of the Director of Public Prosecutions.

PM	Prime Minister of Fiji.
PP Act	Political Parties (Regulation, Conduct, Funding and Disclosures) Act 2013.
President	His Excellency, the President of Fiji.
PS	Permanent Secretary.
Saumi Transcript	Transcript of Meeting between FICAC officials and the Malimali Rescue Party recorded by Mr. Saumi after the arrest of Ms. Malimali on 5 September 2024.
Second Ad	The second advertisement calling for applications for the FICAC Commissioner position, dated 13 July 2024.
Second KC Opinion	Opinion from Professor Philip Joseph KC, dated 25 February 2025.
Second Malimali Allegation	An allegation against Ms. Malimali that she had falsified the April 2 Malimali Letter, in that it was dishonestly formulated without the knowledge and consent of the other ECF Commissioners.
SDO	Stop Departure Order issued under s 13(1)(e) of the FICAC Act.
S-G	Solicitor-General of Fiji.
SM	Social Media.
SoE	Supervisor of Elections.
SoI	Statement of Issues.
SoE Referrals	Referrals made to FICAC from the SoE, Ms. Mataiciwa under s 18 of the Electoral Act.
Third Malimali Allegation	An allegation against Ms. Malimali that she had unlawfully accessed the voter registration information of Ms. Forwood and had passed it on to Hon. Tabuya.
ToRs	Terms of Reference.
Tuvalu Issue	The issue which arose in Tuvalu when Ms. Malimali had an inappropriate encounter with a Judge in the middle of a High Court hearing at which she was co-counsel. That encounter then formed the basis of the High Court decision being successfully appealed and Ms. Malimali's application for a PC to practice in Tuvalu being rejected.
UN Corruption Convention	United Nations Convention Against Corruption 2004.



EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

1. The CoI has exposed a damning and systemic failure of integrity at the highest levels of Fiji's governance and justice systems. The appointment of Ms. Malimali as Commissioner of FICAC was not only legally invalid, it was ethically reprehensible, and procedurally corrupted. The evidence before the CoI demonstrates that the Appointment Process was politically manipulated, and deliberately rushed in order to install a compromised individual into a position of immense power.
2. The FICAC Appointment Process was littered with professional negligence, unlawful conduct, and the wilful concealment of critical facts. Senior officials, including the CJ, the S-G, the CR, and the A-G, either actively enabled, or passively permitted, a miscarriage of justice by pushing forward the appointment of Ms. Malimali who was under active FICAC investigation for abuse of office. It should have been bindingly obvious to any sensible person that in no way, shape or form, should a person with an active investigation for abuse of office should be appointed to head an anti-corruption Commission. The process violated principles of transparency and fairness. It was also found to be illegal. The legal foundation for the appointment of the FICAC Commissioner, s 5 of the FICAC Act, was found to be unconstitutional, rendering Ms. Malimali's appointment null and void.
3. Ms. Malimali herself failed repeatedly to disclose serious matters affecting her suitability, including a history of misconduct that led to her being barred from practice in Tuvalu, and a pattern of deception through seven consecutive false Statutory Declarations in her applications for a Fiji PC. Once in office, she abused her power, and shut down cases involving political allies.
4. The post-appointment conduct of Ms. Malimali, the CR, the CJ, Mr. Clarke, Mr. Bale, Mr. Tuifagalele, and Ms. Vaurasi was egregious. FICAC officials who acted lawfully in arresting Ms. Malimali were intimidated, threatened, and ultimately prevented from continuing with their work on Ms. Malimali's case. The CJ unlawfully intervened to block the laying of charges, while senior legal figures harassed and intimidated FICAC investigators to derail due process. The ODPP's involvement in handling Ms. Malimali's case, despite clear conflicts of interest, was an alarming breach of prosecutorial impartiality.
5. The CoI concludes, unequivocally, that the appointment of Ms. Malimali as FICAC Commissioner was orchestrated to protect political actors and senior public officials, and to derail corruption investigations. This was not merely a failure of procedure. It was an indictment of an entire governance culture that prioritises loyalty, secrecy, and political convenience over legality, ethics, and public trust.

6. A comprehensive conclusion along with a set of 17 recommendations is set out at Chapter Eight of this Report.
7. The Government of Fiji must act decisively. If it is serious about fighting corruption, it must start by cleaning out those who have worked in the shadows to seize control of FICAC, and hold to account those who have corrupted its very foundation. Anything less would be a betrayal of the people of Fiji, and a mockery of justice.





CHAPTER 1

Issues and Process

CHAPTER 1: ISSUES AND PROCESS

1.1: Introduction

1. The appointment of Ms. Malimali, as FICAC Commissioner, shortly followed by her arrest on her first day in office led to extensive media coverage on both SM and MSM. This coverage led to the PM requesting the establishment of a CoI to investigate the circumstances of the Appointment Process.
2. On 29 October 2024, the President, acting on the advice of the PM, appointed His Lordship Justice Ashton-Lewis, a Supreme Court Judge in Fiji, from Australia, as the sole Commissioner, and Ms. Janet Mason, Senior Barrister from New Zealand, as Counsel Assisting the CoI.
3. This Chapter sets out the procedural matters pertaining to the CoI. The CoI's primary task was to assess whether the Appointment Process by which Ms. Malimali was appointed as FICAC Commissioner was conducted with integrity, fairness, transparency, and according to law, and to determine whether external influences, or vested interests played a role.
4. The issues were contained in the ToRs which accompanied the appointment of the Commissioner, and Counsel Assisting. More specific issues were then devised by the CoI and set out in an SoI, which was made available to every witness.
5. This Chapter will discuss the procedural steps taken in the establishment of the CoI and the process used by the CoI in relation to gathering its evidence, and conducting the hearing, including the obstacles which were encountered. It is divided into the following sub-sections:
 - 1.2: Terms of Reference;
 - 1.3: Statement of Issues;
 - 1.4: Powers of the Commission;
 - 1.5: Inquiry Procedure;
 - 1.6: Objections;
 - 1.7: Standard of Proof for Civil Proceedings; and
 - 1.8: Conclusion.

1.2: Terms of Reference

6. The ToRs under which the CoI was established and appointed are set out in full below:

**COMMISSION OF INQUIRY INTO THE APPOINTMENT OF THE
COMMISSIONER OF THE FIJI INDEPENDENT COMMISSION AGAINST
CORRUPTION**

By His Excellency, Ratu Wiliame Maivalili Katonivere [*CF, MSD*], President and Commander in Chief of the Republic of Fiji.

Whereas questions have arisen as to the process and integrity of the appointment of the current Commissioner of the Fiji Independent Commission Against Corruption on 5 September 2024

And whereas the Cabinet has decided in the interests of transparency and good governance and to restore confidence in the institutions of government, to recommend to His Excellency the appointment of a Commission of Inquiry to fully inquire into the circumstances and processes leading to the recent appointment of the current Commissioner of the Fiji Independent Commission Against Corruption

And whereas I am of the opinion that such an inquiry is for the public welfare and to restore public faith in the institutions of government.

Now therefore in the exercise of the powers vested in me under section 2 of the Commission of Inquiries Act.

I do issue this Commission of Inquiry under my hand and the Public Seal of Fiji, and I hereby appoint:

THE RIGHT HONOURABLE

JUSTICE DAVID. E ASHTON-LEWIS. LL.B. SC.

To be the sole Commissioner

And I do hereby appoint:

MISS JANET MASON

As Counsel to assist the Commission

Terms of Reference

The Commission of Inquiry will consider and determine whether the appointment process of Miss Barbara Malimali as Commissioner of the Fiji Independent Commission against Corruption (FICAC) was conducted with integrity, fairness and transparency, according to law.

It will also review and consider whether there were improper or unlawful influences in the process leading to the appointment of the Commissioner of the Fiji Independent Commission against Corruption.

The Terms of Reference of the Commission are to:

Inquire into the full circumstances and processes leading to the appointment of Miss Barbara Malimali as FICAC Commissioner, including but not limited to:

- (a) The manner and process by which she was appointed.
- (b) Whether her appointment was in accordance with section 5 of the Fiji Independent Commission against Corruption Act 2007.
- (c) The individuals involved in the decision to appoint the Commissioner, and the extent and appropriateness of their involvement.
- (d) Whether, and to what extent, there was any inappropriate involvement by any individuals in the appointment.

- (e) Whether, and to what extent, any individuals used their public office to improperly influence the selection and appointment process; and
- (f) Whether or not the process and the appointment of the Commissioner was unlawfully or improperly influenced by vested interests, including current FICAC cases or investigations on high profile individuals, including Members of Parliament, Ministers and senior public servants.

And in order to better enable the Commissioner to carry these presents into effect, the Commissioner is hereby authorised and empowered to make and conduct any enquiry or investigations under these presents in such manner and at such time and place as he thinks expedient with power to adjourn from time to time and place to place as he thinks fit and so that these presents shall continue to force and any such inquiry may at any time and place be resumed although not regularly adjourned from time to time or from place to place.

And the commissioner is hereby strictly charged and directed that he shall not at any time publicly or otherwise disclose save to His Excellency and President in pursuance of these presents or by His Excellency's directions the contents of any report so made or to be made by the Commissioner or any evidence or information obtained by the Commissioner in the exercise of the powers hereby conferred upon the Commissioner except such evidence or information as is received the course of a sitting open to the public.

I hereby further direct that the provisions of the Commission of Inquiry Act including the powers to summon and subpoena witnesses shall apply to the proceedings of the Commission where appropriate.

And I do further ordain that you have the liberty to report any proceedings and findings under this Commission from time to time if you judge it expedient to do so.

And using all diligence you are required to report to His Excellency the President in writing under your hand no later than the 31st day of January 2025 your findings and opinions on the matters aforesaid together with such recommendations as you may think fit to make in respect thereof.

And I further direct that a copy of the said report of the Commission be made available to the Prime Minister of Fiji.

In witness whereof I have caused this Commission to be issued and the Seal of the Republic of Fiji to be affixed at Suva this 29th day of October 2024.

Ratu Wiliame Maivalili Katonivere

CF, MSD

PRESIDENT OF THE REPUBLIC OF FIJI

AND COMMANDER IN CHIEF

1.3: Statement of Issues

7. At the outset of the Inquiry, the CoI drafted and circulated an SoI.
8. The purpose of the SoI was to expand on the ToRs and break down each element into “issues”, thus making it easier for all parties to clearly see, and therefore be able to respond to what the issues were. The SoI was provided to each witness who was invited to provide an affidavit to the CoI.

9. The SoI sets out the issues as follows:
- a. Was the appointment process of Ms. Barbara Malimali to the position of Commissioner of the Fiji Independent Commission Against Corruption (FICAC) conducted with integrity, fairness and transparency, according to the law? In particular
 - i. What was the manner and process by which Ms. Malimali was appointed;
 - ii. Was Ms. Malimali's appointment in accordance with section 5 of the FICAC Act 2007;
 - iii. Who were the individuals involved in the decision to appoint Ms. Malimali and if so, were the actions of those involved appropriate;
 - iv. What was Ms. Malimali being investigated for at the time, and how did that investigation arise;
 - v. Were the processes followed by the Supervisor of Elections Ms. Mataciwa, in referring matters under section 18 of the Electoral Act 2014 to FICAC for investigation appropriate, and/or, lawful; and
 - vi. Was it appropriate or lawful to appoint Ms. Malimali to the role of Commissioner whilst she was still under investigation for an abuse of office allegation?
 - b. Were there inappropriate or unlawful influences and bias in the processes leading to and surrounding the appointment of Ms. Malimali? In particular;
 - i. Was there any inappropriate involvement by any individual(s) in the appointment of Ms. Malimali;
 - ii. Did any individual(s) use their public office to improperly influence the selection and appointment of Ms. Malimali; and
 - iii. Did the active investigations into high profile individuals by Ms. Mataciwa including Members of Parliament, Ministers, and senior public servants, in any way influence the process and appointment of Ms. Malimali?

1.4: Powers of the Commission

10. The duty of the Commissioner, as set out in s 5 of the CoI Act, is to undertake a "full, faithful and impartial inquiry in accordance with the terms of the Commission, and to report the result of the inquiry to the President."
11. Rules for the conduct and management of the proceedings are at the complete discretion of the Commissioner.¹ The Inquiry is investigative, not adjudicative.

¹ CoI Act, Section 18.

12. Under s 9 of the CoI Act, the Commissioner has the following powers:
- a. to issue summonses to witnesses in the form prescribed in the Schedule, and to call for the production of books, plans and documents, and to examine the witnesses and parties concerned on oath;
 - b. to admit any evidence whether written or oral and whether or not such evidence would be admissible in civil or criminal proceedings;
 - c. to admit or exclude the press from any meeting of the Commissioners;
 - d. to exclude any person if necessary to do so in order to ensure the due conduct of the inquiry or to preserve order;
 - e. to enter upon any land for the purposes of obtaining any information which may be of assistance to the Commissioners.
13. Generally, in relation to CoI proceedings, the principle of open justice is an important one, and proceedings are undertaken in public. However, the CoI hearing was conducted “in camera” as the CoI was concerned to protect the integrity of any police investigations, some of which were occurring contemporaneously with the CoI hearing. The ToRs required the CoI to consider and determine, inter alia, the lawfulness of the Appointment Process. Some of the CoI’s investigations that related to unlawful activities, were examining the same issues as Police investigations. Consequently, it would be easy for MSM and SM commentators to misconstrue and misreport the evidence. Nevertheless, due to the very high element of public interest, Counsel Assisting reported daily to the media in relation to procedural issues that arose during the course of the hearing.

1.5: Inquiry Procedure

14. The procedure for the Inquiry, determined by the Commissioner, was as follows:
- a. witnesses were identified and “meet and greet” meetings were held between the Commissioner, Counsel Assisting and the witness, and his or her Counsel, if any. At these meetings, the CoI process, and the key issues were explained;
 - b. each witness was sent an initial letter explaining what the CoI was about, advising of the process to be followed, and enclosing a copy of the SoI. As an example, the letter sent to the PM dated 13 November 2024, is attached as **Annex A**.
 - c. an affidavit addressing the issues in the SoI relevant to that particular witness was requested;
 - d. further information was requested from some witnesses;
 - e. a hearing was held, beginning on 6 January 2024, and ending on 3 March 2025;
 - f. prior to the hearing, a second letter, attaching a summons, a copy of the opening statement of the Commissioner, and an indicative

timetable, was sent to each witness. As an example, the letter sent to the PM, dated 2 January 2025, is set out at **Annex B**.

- g.** witnesses were sent the affidavits of those witnesses who had provided evidence contradicting them, and given an opportunity to question the witness, and file reply evidence;
- h.** most witnesses were heard in “open” sessions which involved other counsel;
- i.** some witnesses were heard in “closed” sessions, which only involved the witness and his or her Counsel, if any, and the Commissioner and Counsel Assisting;
- j.** Ms. Malimali, Ms. Puleiwai, and Ms. Forwood were sent all affidavits, had an opportunity to file reply evidence, and be present to hear and question all witnesses in the “open” sessions;
- k.** Counsel for the PM and the S-G were permitted to remain in a watching brief capacity for all of the “open” sessions;
- l.** witnesses were generally able to file reply evidence;
- m.** witnesses were able to attend parts of the hearing which affected the evidence they had provided and were entitled to question witnesses; and
- n.** any interlocutory matters related to the proceedings were able to be raised either directly, or through Counsel Assisting, and after considering submissions, interlocutory issues requiring resolution were determined by the Commissioner.

- 15.** The initial letter made clear that CoI’s are conducted in an inquisitorial or investigatory manner, and not in an adversarial manner. Further procedural issues were set out by the Commissioner as follows:

- a.** natural justice and procedural fairness would be adhered to;
- b.** the CoI was independent from all arms of government;
- c.** the normal rules of evidence would not apply;
- d.** all witnesses were entitled to be represented by a barrister or solicitor at the whole of the Inquiry;
- e.** once the CoI was in receipt of all of the information, and all the affidavit evidence it has requested, those documents would be examined and a determination made about which witnesses would be called for questioning at the oral Inquiry. Not all witnesses would need to be called for questioning;
- f.** the oral Inquiry would be conducted at an appropriate time, in private;
- g.** at the oral Inquiry, Counsel Assisting, and His Lordship would question the witnesses, after which Counsel for a particular witness, if there was one, would be permitted to re-examine his or her witness;
- h.** Counsel for a particular witness would not be permitted to question any of the other witnesses. Their sole function would be to represent their client;

- i. any affidavit evidence which contradicted the affidavit evidence of another witness would be provided to the deponent of the contradicted evidence, and that deponent will be entitled to submit reply evidence; and
 - j. His Lordship reserved the right to issue further procedural directions should the need to do so arise.
16. All of the efforts, including the “meet and greet” meetings, and the Initial Letter, were undertaken in order to ensure that all witnesses were treated fairly, were fully aware of the CoI process, and understood exactly what was expected of them.
17. The CoI heard oral evidence from 35 witnesses. A total of 40 affidavits, along with several thousand pages of additional documents were received by the CoI. A summary of each witness’s evidence is attached as **Annex J**.

1.6: Objections

18. There were several attempts to undermine the integrity of the CoI, or to thwart its work. The next few sections will describe the obstacles and objections encountered by the CoI.

1.6.1: *Late Gazettal*

19. The establishment of the CoI was not gazetted until 10 January 2025.
20. Counsel for Ms. Malimali, Ms. Waqanika, submitted that because the establishment of the CoI had been gazetted late, then the CoI lacked legitimacy. Ms. Waqanika submitted that the Gazette Notice could not be applied retrospectively to when the CoI started.²
21. Section 2(3) of the CoI Act states that:
- Every Commission issued under this Act shall be published in the Gazette.
22. Section 2(3) does not require the gazette notice to be published prior to the CoI commencing, or prior to the CoI hearing convening. As a result of the late gazettal, there were no adverse consequences to any party, as all witnesses were contacted and invited to meet personally with the CoI, and at that meeting were advised of the CoI process, including that they had a right to engage Counsel. The hearing was “in camera” and so there was no need to notify the public of the hearings.
23. Counsel Assisting submitted that nothing in the CoI Act stipulated exactly when the CoI should be gazetted.³ When the matter was raised orally at the CoI hearing, Counsel Assisting also submitted that interlocutory matters should be

² Transcript, Day 7, Session 2 - Ms. Waqanika at 2.

³ Ibid.

raised via written submissions in Memoranda, which include fulsome analysis and the authorities relied upon, to avoid wasting valuable hearing time. What had been occurring was matters were being raised by Counsel attending, in an off the cuff ad hoc manner, resulting in poorly thought through submissions being made, sometimes taking up lengthy sessions. His Lordship agreed with Counsel Assisting's submissions and issued a direction to this effect.

24. Subsequently, no Memorandum was filed by Ms. Waqanika. Consequently, the issue of the "late gazettal" was never progressed by Ms. Waqanika, nor any other party. The CoI can only conclude that once Ms. Waqanika reflected on the submissions of Counsel Assisting, she accepted that the late gazettal did not invalidate the CoI nor its work.

1.6.2: *Scope Challenges*

25. Ms. Waqanika, Counsel for Ms. Malimali, and Mr. Singh, Counsel for Mr. Wylie Clarke⁴ made submissions to the effect that by enquiring into events which occurred post the appointment of Ms. Malimali, the CoI was going outside of the scope set out in the ToRs.⁵
26. Counsel Assisting, in response, submitted that in terms of the fullness of the Inquiry, and ascertaining whether there was undue influence and vested interests at play, as required in the ToRs, examination of the conduct of persons post Ms. Malimali's appointment was crucial.⁶ What followed was a request by Mr. Singh that the CoI provide written clarification as to the scope of the Inquiry.⁷
27. Counsel Assisting filed a Memorandum, dated 27 January 2025, a copy of which is attached as **Annex C**. The contents of the Memorandum are repeated below:

2. On the morning of 13 January 2025 an issue was raised verbally by Mr. Singh, Counsel for Mr. Wylie Clarke and Ms. Vaurasi, and supported by Ms. Waqanika, Counsel for Ms. Malimali, that the actions of Ms. Malimali after her appointment as FICAC Commissioner, which took effect on 5 September 2024 are outside the scope of the ToR.
3. A copy of the ToR provided to the Commission is attached as Annex A. The substantive parts of the ToR were included in the Opening Statement of His Lordship ("the Opening Statement"), a copy of which is attached as Annex B. A copy of the Opening Statement was enclosed in the correspondence to each witness, which also attached the summons requiring them to attend the hearing, and which was sent out prior to the beginning of the hearing on 6 January 2025.
4. In addition, at the outset of this Inquiry, when each witness was initially informed of the CoI, a Statement of Issues ("SoI"), a copy of which is attached as Annex C, was provided to each witness. The purpose of the SoI was to provide a framework setting out the substantive issues to be enquired into. The Opening Statement and the SoI are both consistent with the ToR.

⁴ Transcript Day 5, Session 5 – Mr. Singh and Ms. Waqanika at 3.

⁵ Transcript Day 7, Session 1 – Mr. Singh and Ms. Waqanika at 14 - 15 and 17.

⁶ Ibid., Counsel Assisting at 17.

⁷ Ibid., Mr. Singh at 30.

5. The CoI is guided by the Commissions of Inquiry Act 1946 (“CoI Act”). Under s 5, the Commission’s task is expressed as making a “full, faithful and impartial inquiry in accordance with the terms of the Commission and to report the result of the inquiry to the President accordingly”. Section 8 of the CoI Act stipulates that the Commissioner may make such rules for the conduct and management of the proceedings as he may think fit. Finally, under s 9(b) the Commissioner has the power to admit any evidence, whether written or oral and whether or not such evidence would be admissible in civil or criminal proceedings.
 6. It is submitted that it was well within the discretion accorded to the Commissioner under s 8 to regulate the proceedings as he sees fit, to issue the SoI and the Opening Statement. Both the ToR and SoI refer to inappropriate and unlawful influences in relation to Ms. Malimali’s appointment. As I had submitted in court on 13 January when this matter was raised, in order to fully explore whether there were inappropriate and unlawful influences in Ms. Malimali’s appointment process, it is necessary to examine her conduct post appointment. That conduct will give the CoI some insight into whether the allegations of influence, whether political or otherwise, are borne out.
 7. Consequently, it is my considered submission that the conduct of Ms. Malimali, and other witnesses, subsequent to her appointment falls squarely within the scope of the ToR.
 8. On a related matter, the Honourable Attorney-General Mr. Graham Leung provided a statement which he read out at the end of his testimony stating, inter alia, that the scope and ToR of the CoI is specific and narrow, and encourages the Col to “ground itself on the ToR and nothing else – not to be distracted by the noise and the politics which are outside the scope of the ToR”. A copy of that statement is attached as Annex D”.
 9. With the greatest of respect, I disagree. As set out above, s 5 of the CoI Act requires a full, faithful and impartial inquiry, not a specific and narrow inquiry. The ToR themselves are not “specific and narrow”. They are wide, requiring an “in-depth account and analysis to determine whether or not there were outside influences”, and stating that the investigation be of “the full circumstances of appointment of Ms. Barbara Malimali... including, but not limited to..... whether or not the process and choice of the candidate was influenced by vested interests, such as cases and investigations currently underway at FICAC on prominent individuals, including Hon. Members of Parliament, Hon. Ministers, and Senior Public Servants...”;
 10. The Col has always faithfully adhered to the ToR, and has undertaken its work with a firm eye on the constitutional and statutory legal framework from which spring the legal obligations and responsibilities of MPs, Ministers, and Senior Public Servants.
 11. The Hon A-G has been present at not more than two days out of the four hearing weeks undertaken thus far, and unfortunately appears to have formed a view of the work of the Col, based on inaccurate, and highly questionable second hand information, which is far removed from the reality of what is actually taking place in the hearings.⁸
- 28.** In addition, the ToRs require the CoI to consider and determine conduct involved in the “Appointment Process.” Ordinarily, the role of the JSC, once an appointment is made on the basis of their recommendation, is *functus officio*, that is, at an end. However, in this situation, the JSC involved itself in post

⁸ Memorandum of Counsel Assisting, dated 27 January 2025.

appointment matters, including, in securing the release of Ms. Malimali after her arrest, and the forced resignation of Ms. Puleiwai. Consequently, the CoI has viewed the “Appointment Process” as including all post appointment events that the JSC had involved itself in.

1.6.3: *Undermining of Counsel Assisting*

29. Immediately prior to the hearing of Mr. Clarke’s evidence on 20 January 2025, Mr. Parshotam, who was Co-Counsel with Mr. Singh for Mr. Clarke, along with a Ms. Rakai, appearing for the FLS, made an application to the effect that, as Ms. Mason had been found guilty of misconduct in relation to a case against her taken by the NZLS, she should not have been appointed as Counsel Assisting.⁹
30. The application by Ms. Malimali and Mr. Clarke was dismissed by the Commissioner, who concluded that Ms. Mason was properly qualified, and was entitled to proceed as Counsel Assisting.¹⁰
31. The CoI Act did not require Ms. Mason to hold a Fiji PC. Section 5A(1) of that Act states that:

The President may appoint any person admitted, or qualified to be admitted, as a barrister and solicitor in Fiji as counsel to assist the Commissioners. However, out of an abundance of caution, Ms. Mason had applied for a Fiji PC.
32. In Fiji, it is not the FLS who supervise and oversee the issuing of PCs. This is the function of the LPU. The LPU had issued Ms. Mason a PC to practice in Fiji. Ms. Mason also had a valid PC to practice in New Zealand. She is a senior member of the New Zealand bar, and has her own firm based in Wellington, which employs 12 lawyers. Upon being queried by His Lordship, it transpired that the FLS had not even bothered to approach the LPU to enquire about the status of Ms. Mason’s PC. They had instead, astonishingly, relied upon an SM report.
33. The Commissioner was and remains deeply disturbed at this representation by the FLS. Ms. Mason had been appointed by the President. There is no requirement for the President to obtain the approval of the FLS prior to appointing Counsel Assisting. There is no bar to the President appointing a lawyer with an adverse disciplinary finding against him or her. Ms. Mason had filed an appeal against the adverse finding. The appointment of Ms. Mason was purely a matter for the appointor, in this case, the President. The sheer arrogance of the FLS and Mr. Clarke, in attempting to usurp the powers of the President, was and remains staggering to the Commissioner,
34. On that same day, Mr. Clarke, purportedly on behalf of the FLS released, a press statement which read as follows:

⁹ Transcript Day 12, session 2, see generally 3-15.

¹⁰ Ibid., Justice Ashton-Lewis at 15.

21 January 2025

FOR IMMEDIATE RELEASE

FIJI SOCIETY REPLY TO MS JANET MASON

1. The Fiji Law Society did not intend to publicise its concerns regarding Mrs. Mason's continued participation in the Commission of Inquiry into Ms. Barbara Malimali's appointment as Commissioner of FICAC ("COI") because of a directive that all of the matters discussed are "in camera" and not to be disclosed to the public. However, now that Mrs. Mason, as counsel assisting the COI, has elected to go public and give her version of what transpired, the Society wishes to clarify its position.
2. The Society did not and does not seek Mrs. Mason's "removal" from the COI.
3. It is a matter of public record that there is currently a finding of misconduct by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal against her. Mrs. Mason has indicated that she has appealed that decision and it is her right to do so.
4. The Chief Registrar has serious concerns regarding Mrs. Mason's application for a Fiji practicing certificate and she has made serious allegations of a criminal nature against the Legal Practitioners Unit in relation to that application. It is her right to do this also.
5. The Society is of the view that Mrs. Mason should step aside while these matters remain unresolved. This is because Mrs. Mason's continued involvement as Counsel Assisting the COI undermines confidence in the COI.
6. The COI is inquiring into the legality and propriety of Ms. Malimali's appointment as Commissioner of FICAC. An essential element of the inquiry therefore is holding public officials and others to account for their decisions and to a high standard of integrity, propriety and professionalism.
7. Confidence in the COI's ability to undertake that process requires both the Commissioner and Mrs. Mason's integrity, propriety and professionalism to be beyond reproach. The Society has utmost confidence in the Commissioner in this regard. However, the finding of misconduct against Mrs. Mason and unresolved issues regarding her application for a Fiji practicing certificate undermines that confidence in the COI.
8. It is of also concern that there is a possibility Mrs. Mason may be unsuccessful in her appeal against the New Zealand Lawyers and Conveyancers Disciplinary Tribunal's finding of misconduct. That risks negatively impacting the COI.
9. The cost of the COI is borne by the taxpayers of Fiji and the work the COI is undertaking is of great public importance. For this reason, confidence in Mrs. Mason and, by extension, the COI is of paramount importance and should not be undermined by these legitimate concerns.
10. The Society also believes the COI must complete its inquiry. The taxpayers of Fiji have already incurred cost for the work the COI has done thus far and that should not be wasted.¹¹

¹¹ Fiji Law Society "Fiji Society Reply to Ms. Janet Mason" (Press Release, 21 January 2025).

35. The “unresolved issues” regarding Ms. Mason’s application for a Fiji PC referred to in the press statement had come about as the result of a letter to Ms. Mason from the CR, Mr. Bainivalu, dated 16 January 2025, which stated:

Dear Ms. Mason,

Re: Enquiry and request for preliminary explanation

Reference is made to the above and to the attached letter from the Commissioner FICAC, Ms. Barbara Malimali.

The letter from Ms. Malimali raises certain concerns regarding your non-disclosure or lack of disclosure in relation to disciplinary proceedings that were initiated against you by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal on which, I kindly request for a preliminary explanation from you.

...

I further note from your most recent application for a Practicing Certificate that you have completely omitted to mention about the status of this disciplinary matter. Such omission may amount to a failure to disclose material facts in obtaining a Practicing Certificate here in Fiji.

On the above premise and given the fact that you are currently counsel assisting the Commission of Inquiry, it is in the public interest that you provide an explanation for the material non-disclosure and the status of the disciplinary proceedings in New Zealand.

I therefore ask, that you provide a response within five (5) days upon receipt of this letter.

Yours faithfully,
Tomas Bainivalu

Chief Registrar, Judicial Department¹²

36. Ms. Malimali had written to the CR, as head of the LPU, on FICAC letterhead, querying whether Ms. Mason had declared the NZLS finding on her PC application. In addition, the 16 January letter from Mr. Bainivalu had been leaked, presumably by someone at the LPU, to a journalist who had been critical of the CoI. The letter was then published on the internet in an attempt to discredit Ms. Mason and thereby also discredit the CoI.
37. However, the accusation that Ms. Mason had “completely omitted to mention about[sic] the status of this disciplinary matter” was false. In early January 2025, Ms. Mason’s firm’s Practice Manager had submitted a partially completed application for a PC on her behalf, to the LPU. It was partially completed because the Practice Manager did not have the relevant information, and the incomplete fields had to be completed by Ms. Mason. It had however, been sent to the LPU so they could proceed with the processing pending their receipt of the completed PC application. Ms. Mason also needed to complete a Statutory Declaration stating that all of the information in the PC application was true and correct. She had been quite busy that day, so later in the day she had handwritten

¹² Letter to Counsel Assisting Regarding Fiji Practicing Certificate from Chief Registrar, dated 16 January 2025.

in the remaining fields in the PC application and, had signed the Statutory Declaration. Ms. Mason had disclosed the NZLS issues. She then asked the Secretary of the CoI to email the completed PC application to the LPU. This completed PC application, with the Statutory Declaration attached, comprised Ms. Mason's application form.

38. The CR later advised that someone at the LPU had taken the Statutory Declaration page from the completed PC application, and had placed it with the incomplete application. If intentional, then this act could constitute the criminal offence of a forgery.
39. Ms. Mason immediately reported the matter to the CID who started an investigation into how Ms. Mason's PC application came to be tampered with. At best it was a mistake, at worst, it was a falsification of documents, an offence under s160(1) of the Crimes Act.
40. There is also the issue of who exactly from the LPU leaked the letter to a media outlet critical of the CoI, and a reporter who then appeared in all of his writings of the CoI to be quite critical and undermining of the CoI. If there is a case of persons acting together to undermine the CoI, then there is a much more serious conspiracy issue.
41. So in actual fact, contrary to the statement made in the Press Release issued by Mr. Clarke, there were no "unresolved issues regarding her application for a Fiji Practising Certificate." The only "unresolved issue" was exactly how Ms. Mason's PC application came to be tampered with and falsified at the LPU office, and then leaked to an undermining media person, a matter still currently under investigation by the CID.
42. The Commissioner finds Mr. Clarke's attempt to undermine the CoI by attempting to impugn the integrity of Counsel Assisting, unethical, unprofessional and bordering on an attempt to obstruct or pervert the course of justice. Ms. Mason has appealed the finding of the NZLS, and she is entitled to be free from underhanded attacks against her personally and professionally. She has a PC in both Fiji and New Zealand. There is no legal barrier to Ms. Mason being appointed as Counsel Assisting.
43. Ms. Mason was appointed by the President, on the advice of the PM, and that is where the matter should have been left. For Mr. Clarke, purportedly on behalf of the FLS, to publicly undermine the decision of the President where no illegality was at play is disgraceful. She is an excellent barrister and has been immensely helpful in the work of the CoI. Mr. Clarke was from the outset, one of the individuals implicated in the CoI's investigation and he ought to have had enough good sense to realise that he should have refrained from interfering with the work of the CoI, seeing as he was conflicted. He had a clear interest in shutting the CoI down.

44. The CoI operates independently, in accordance only with the appointment conditions issued by the President, as established by the CoI Act. The independence of the CoI is fundamental to ensuring that it is able to undertake its work without external influences. As such, the CoI is not required to act on the “advice” or direction of external parties, such as the FLS, but rather to follow its ToRs as outlined throughout the Act. This autonomy allows the CoI to perform its duties with impartiality, ensuring that its findings and conclusions are based solely on the information and evidence obtained during the Inquiry.

1.6.4: *Discrimination Issues*

45. There were moments during the CoI hearing when Ms. Malimali inappropriately, unprofessionally, and in breach of s 26 of the Constitution which guarantees freedom from discrimination, raised the issue of the nationality of Counsel Assisting. In objecting to a line of questioning involving the decision of Tuvalu’s Legal Practitioners Committee that Ms. Malimali was not of a fit and proper character to practice in Tuvalu, Ms. Malimali stated:

Ms. Malimali: I feel like I’m on trial and I feel that I’ve been unfairly treated from the beginning, and it constitutes so, and its hard for me to sit here and listen to somebody from another country, come into my country

Justice Ashton-Lewis: Now hold on Ms. Malimali.

Ms. Malimali: As an indigenous person to offend me and insult me.¹³

46. The Commissioner intervened and asserted the relevance to the Inquiry of the integrity of Ms. Malimali’s appointment and the necessity of addressing all issues relevant to it as set out in the ToRs.¹⁴ Ms. Malimali was reminded of the procedural rules and the importance of maintaining order during the proceedings.
47. Counsel Assisting also addressed the court, emphasizing the importance of maintaining proper courtroom etiquette and leaving personal attributes such as ethnicity, gender, and nationality outside the courtroom.¹⁵ Justice Lewis supported this sentiment, reiterating that all participants, regardless of their background, were entitled to be heard and respected within the legal framework of the Inquiry:

Justice Ashton Lewis: I want to bring to all of our attention, no, no, please sit down Ms. Malimali. I want to bring to everyone’s attention, every person is equal before the law and has a right to equal protection. You all know that. A person must not be unfairly discriminated against, directly or indirectly, on the grounds of actual or supposed personal characteristics or circumstances including race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual

¹³ Transcript Day 13, session 1 – Ms. Malimali at 28-31.

¹⁴ Ibid., Ms. Malimali at 28.

¹⁵ Ibid., Ms. Malimali at 30.

orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, a conscience, marital status or opinions or beliefs except to the extent that those opinions or beliefs involve harm to others or diminution of the rights of others or on any other ground prohibited by this Constitution. Now I think we all need to know and we do know, we have Indian descent humans in this room. We have iTaukei and the one I can't hide because I'm right up in your face on this Bench is this Kaivalagi fella. And so this is a multi-ethnic, multi-racial society. So can we please remember that, and I'm not singling you out, Ms. Malimali, so please understand this, because we all need to be reminded, we all have rights, even I, I'm not a Fiji citizen, yet this gives me rights. That if a Fiji citizen discriminated against me, I could have Mr. Singh act for me and bring a matter. So I think, you know, we all must remember and respect, and I'm sure you will do, this is a multi-ethnic society, a multi-racial society.

In Australia, I come from a country with 129 different cultures. We all get on reasonably well. We could do better, but we have 881,000 people in Australia who belong to a very special group. They are the indigenous inhabitants of that continent. A continent the size of the United States. The Australian Government, in its registry, there's 881,000 Aboriginal and Torres Strait Island people in Australia. Indigeneity is taken from full blood up to one twenty-fourth. There are Aboriginal people studying at university and not paying anything, and they have whiter skin than I've got. But they satisfy these criteria. Now, since 1972, there has been \$1,512,000,000 spent on 881,000 people. Of that 881,000, 272,000 are full-blood Aboriginal. The rest are part. As a young barrister, I did a lot of Aboriginal Legal Aid. I saw discrimination. I saw racism. I saw ugly things. But the thing that always worked was that the majority of the people are not racist, are not concerned about what colour skin you've got, what language you speak. If I cut your hand, Mr Singh, your blood is as red as mine. And so, just can I ask you in this issue, please remember the Bill of Rights and remember that which I read out to you. You'll find it in section 26.¹⁶

48. There was another occasion where Ms. Waqanika, acting for Ms. Malimali raised the issue of the nationality of both Counsel Assisting and the Commissioner. A letter of complaint had been written by Ms. Waqanika, on behalf of Ms. Malimali, to the President, copied to the Chair of the JSC, the PM, and the A-G, dated 25 January 2025, alleging inter alia, that the CoI was being run like a criminal trial. In that letter, she stated:

25. We also got the sense that the Commissioner was patronising, and we felt uncomfortable and we called on other lawyers, who were available to attend and be with us in the Commission of Inquiry as we felt that there was safety in numbers. We are Indigenous Fijians in our country and to be patronised by 2 foreigners in our

¹⁶ Transcript, Day 13, Session 2 – Justice Ashton-Lewis at 1-2.

country is galling, especially as we had to work with Sri Lankan Magistrates and Judges for the 16 years of the Bainimarama-Khaiyum regime.

49. Once again, Ms. Waqanika, on behalf of Ms. Malimali, resorted to using both her, and her client's indigeneity as a reason why she should not face legal scrutiny. The nationality of Counsel Assisting and the Commissioner were used as a means to attempt to discredit and undermine the CoI and its work.
50. If Ms. Malimali and Ms. Waqanika were concerned about the scope of the Inquiry or the natural justice rights of Ms. Malimali, they ought to have taken the matter to Court, and sought a Declaration to the effect that the CoI Inquiry was out of scope of the ToRs. This was not, however, pursued.

1.6.5: *Instant Dismissal of Mr. Saumi*

51. On 24 January 2024, Ms. Malimali summarily dismissed Mr. Saumi, the FICAC Manager of Investigations, as a result of a complaint filed by Mr. Nemani Tuifagalele. Mr. Saumi had recorded a meeting that had occurred at FICAC, at which Mr. Tuifagalele, Mr. Amani Bale, Mr. Clarke, and Ms. Laurel Vaurasi, all senior lawyers from Suva, along with the CR, had attended with the sole purpose of pressuring FICAC officials clear so as to secure Ms. Malimali's release. The copy of that recording along with a transcript was provided to the CoI as part of Mr. Saumi's evidence. Mr. Tuifagalele complained both about the fact that Mr. Saumi recorded the conversation *and* that he had provided it to the CoI.
52. Mr. Saumi was then summarily dismissed by Ms. Malimali, as set out in a letter to him from Ms. Malimali dated 24 January 2025. The letter states the following:

2. I have now considered your response which you sent by email to me. I do not accept your statement that the presence of the complainant (Mr. Nemani Tuifagalele) at the Commission "*seemed*" unlawful. Indeed, you have provided no basis for your belief as to why the complainant's presence was unlawful. I also disagree with you that it is a "*unusual practice*" at the Commission to conduct "*normal covert operation*." It is apparent from your response that you recorded the conversation on your own volition without any prior approval. Such conduct on your part to record conversations of visitors to the Commission without their knowledge or consent is not only unlawful, but it also exposes the Commission to potential claim for compensation for breach of fundamental human rights. Such conduct poses a serious risk of bringing the Commission into disrepute and undermining the authority of the Commission.

3. Having considered the complaint and your response to the complaint, I find that you have acted in clear breach of the FICAC Code of Conduct on integrity, non-disclosure and confidentiality. Such behaviour on your part also amounts to gross misconduct under the CSO, General Instructions 8.7.2a and 8.7.3b.

4. I find that summary dismissal is warranted effective immediately. Therefore, in accordance with Paragraph 8.7.1 of the CSO, General Instructions, you are hereby summarily dismissed on the grounds of misconduct and your employment with FICAC is hereby terminated with immediate effect.¹⁷

¹⁷ Summary Dismissal Letter dated 24 January 2025 to Kuliniasi Saumi from Barbara Malimali.

53. Prior to the above letter from Ms. Malimali, His Lordship had already issued a decision that the recording undertaken by Mr. Saumi was not illegal. As a result, the CoI requested that the JSC suspend Ms. Malimali, because Ms. Malimali had interfered with a prime witness. A copy of the letter to the JSC dated 30 January 2025 is attached as **Annex D**. The end result was that the JSC did not suspend Ms. Malimali because of their view that they purportedly did not have the power to do so. The CoI then sought and obtained the advice of a distinguished New Zealand KC and academic, Professor Phillip Joseph, who confirmed the views of the CoI, namely that not only did the JSC have the power to suspend Ms. Malimali, but the PM was also able to do so. A copy the CoI request for advice dated 9 February 2025 is attached as **Annex E**. A copy of Professor Joseph's opinion dated 14 February 2025 is attached as **Annex F**.
54. The instant dismissal of Mr. Saumi was reported to the CID as a potential breach of s 194(j) or (k) of the Crimes Act.

1.7: Standard of Proof for Civil Proceedings

55. Commission of Inquiry proceedings are investigatory, not adjudicative. The CoI is able to admit evidence, whether written or oral, and whether or not that evidence would be admissible in civil or criminal proceedings. The Commissioner is therefore able to admit hearsay evidence. His Lordship is also able to adjourn and recommence hearings as he sees fit. The standard of proof, as with all other civil proceedings is the balance of probabilities.
56. The balance of probabilities standard requires the decision-maker to determine which version of events is more likely to be true based on the evidence presented. The standard operates on the basis that where there are competing explanations or scenarios if one side's evidence carries a greater weight, even by the smallest margin, it should prevail. This is pivotal for the CoI in evaluating the competing evidence concerning the Appointment Process and any allegations of external influences that may have shaped the process.
57. Despite the flexibility, the application of the balance of probabilities standard may be limited by the seriousness of the allegations. In *Re Erebus Royal Commission*, the Privy Council held that the more serious the proposition, the stronger and more compelling the evidence must be to meet the balance of probabilities standard.¹⁸ The *Re Erebus* test is similar to the test in *Briginshaw v Briginshaw*, a landmark Australian case which established that the standard of proof required in civil cases where serious allegations are made, is higher than the ordinary standard in civil cases.¹⁹ Given the gravity of the Inquiry into potential political or unlawful influences in relation to the Appointment Process pertaining to Ms. Malimali, the CoI has carefully scrutinized the evidence to ensure that its findings are well supported and credible, even when accepting

¹⁸ *Re Erebus Royal Commission; Air New Zealand Ltd v Mahon* [1983] NZLR 662 at 666.

¹⁹ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

evidence that may not ordinarily meet the strict standards of evidence in general civil proceedings.

58. The ability for the CoI to consider hearsay evidence allows the CoI to explore a wider array of information that could be crucial in exploring the extent of the Appointment Process in its entirety. However, this flexibility does not diminish the need for the evidence to be robust enough to meet the balance of probabilities standard.
59. The CoI is not a criminal court. It cannot make any pronouncements on the criminal guilt or otherwise of any person whose conduct has been scrutinised by the CoI. Section 2 of the CoI Act provides that no evidence taken under the CoI Act shall be admissible against any person in any civil or criminal proceeding whatsoever.
60. This report makes comments on the lawfulness of some of the acts and omissions of various persons involved because that is required under the ToRs. Potential offences are merely identified. It will be up to the relevant law enforcement authorities to conduct their own investigation, and gather their own evidence in relation to the identified possible offences.

1.8: Conclusion

61. The Inquiry into the Appointment Process of the FICAC Commissioner has been carried out with a focus on determining the integrity, fairness, transparency, and lawfulness of the process. The ToRs provided a clear framework for assessing the legality and appropriateness of the appointment, ensuring that the Inquiry remained focused on whether the Appointment Process adhered to the relevant laws, particularly section 5 of the FICAC Act 2007. The CoI has sought to identify any undue influences, improper involvement by individuals, or conflicts of interest that may have affected the Appointment Process.
62. Throughout the investigation, the SoI provided guidance on key areas of concern, including the Appointment Process, the individuals involved, and whether there were any external pressures or biases influencing the selection of Ms. Malimali. This comprehensive Inquiry aimed to ensure that all actions taken during the Appointment Process complied with principles of good governance and legal standards and that no individual misused their position to interfere with the process.
63. The Commissioner has gone to great lengths to ensure that natural justice has prevailed. Ms. Malimali, Ms. Puleiwai, and Ms. Forwood were given every opportunity to put questions to witnesses, both in writing and in person. They were also able to file reply evidence and attend the entirety of the witness sessions, with the exception of a few “closed sessions.”
64. The CoI met with several obstacles along the way, including objections related to the scope of the Inquiry, the late gazettal, efforts to undermine the integrity of

the CoI by casting aspersions against Counsel Assisting, discriminatory attacks against His Lordship and Counsel Assisting, intimating that, as foreigners, they had no right to question Ms. Malimali, an i'Taukei, and sadly, the instant dismissal of Mr. Saumi, the FICAC Manager of Investigations who was an excellent witness, providing valuable information for the CoI.

65. Despite the many challenges, His Lordship and Counsel Assisting have diligently and faithfully continued in an effort to fulfil the duties bestowed upon them by the President in this appointment.



CHAPTER 2

Background Summary

CHAPTER 2: BACKGROUND SUMMARY

1. This Chapter will set out a summary of the key events relevant to the circumstances pertaining to the Appointment Process, in chronological order.
2. On 7 July 2023, Ms. Malimali was appointed to the position of Interim Chair of the ECF.¹
3. On 31 October 2023, Ms. Ana Mataiciwa, the then Acting SoE, referred a complaint lodged at the FEO against Hon. Charan Singh, Minister for Sugar, to FICAC. Under s 18 of the Electoral Act, the SoE is able to refer complaints to FICAC if the SoE, or the ECF, become aware at any time of the probable commission of an election-related offence.
4. On 20 November 2023, Ms. Puleiwai's three-year term as Acting Deputy Commissioner of FICAC began.² She had been shouldered to take up the position by the current CJ, Justice Salesi Temo. Ms. Puleiwai replaced Mr. Rashmi Aslam. Mr. Aslam was reported to have been appointed FICAC Commissioner with effect from 18 April 2022.³ He resigned on 1 September 2023.⁴ Ms. Puleiwai had been Senior State Counsel with FICAC from late 2014 to 2019, before being promoted to Principal State Counsel and Manager of the Legal Division at FICAC, until April 2021, when she resigned and took up a position as a senior government lawyer at the ODPP in Nauru.
5. On 7 December 2024, a COC Selection Panel Report recommended Ms. Mataiciwa for the substantive position of SoE. The COC Selection Panel had shortlisted and interviewed four candidates.
6. On 4 January 2024, S-G Green sent a letter to the ECF Commissioners enclosing the COC Selection Panel Report recommending Ms. Mataiciwa as the successful applicant for the SoE position.⁵
7. On 11 January 2024, Ms. Malimali, as ECF Interim Chair, wrote to the COC complaining about the COC process, saying that the ECF should have been more involved in the COC Selection Panel process, given that under s 7 of the

¹The Fiji Times news article dated 8 July 2023 "COC appoints Malimali – Prominent lawyer act as temporary chairwoman of Electoral Commission" < [COC appoints Malimali | Prominent lawyer act as temporary chairwoman of Electoral Commission - The Fiji Times](#)>.

²Fiji Live news article dated 5 December 2023 "Puleiwai is FICAC's Acting Deputy Commissioner" < [Puleiwai is FICAC's Acting Deputy Commissioner](#)>.

³The Fiji Times news article dated 23 April 2022 "Aslam appointed as FICAC Commissioner" < [Aslam appointed as FICAC commissioner - The Fiji Times](#)>.

⁴Fiji Village news article dated 5 September 2023 "FICAC Commissioner Rashmi Aslam resigns" < [FICAC Commissioner Rashmi Aslam resigns](#)>.

⁵Affidavit of Ropate Green, dated 23 December 2024, at Annex 1: Reply Letter from Ms. Malimali discussing the COC Selection Panel report to S-G Green.

Electoral Act, the SoE acts as the Secretary to the ECF.⁶ In this letter, the ECF Commissioners repeatedly stated that the recruitment process for a new SoE was seriously flawed, and lacked credibility, and recommended that the COC readvertise the position, and begin the process again with the active involvement of the ECF.⁷

8. On 2 February 2024, Ms. Malimali sent a follow up letter to the COC requesting an update to her 11 January 2024 letter.⁸
9. On 12 February 2024, Hon. Turaga was the Chief Guest at the FICAC Induction Training. On that day, Ms. Puleiwai states that Hon. Turaga informed those FICAC officers who were present that he would be bringing in a new FICAC Commissioner to lead FICAC.⁹
10. On 15 February 2024, several SoE Referrals were made by Ms. Mataiciwa to FICAC for the following people:
 - a. Aiyaz Sayed-Khaiyum;
 - b. Frank Bainimarama; and
 - c. H.E Ratu Kotonivere.
11. On 19 March 2024, Ms. Mataiciwa referred a complaint about Deputy PM Hon. Biman Prasad to FICAC. Hon. Prasad had reportedly expressed surprise that the SoE had not presented the allegations to him first for his “answers”.
12. On 20 March 2024, an SoE Referral was made in relation to Mr. Usaia Waqatairewa.
13. On 28 March 2024, Ms. Malimali sent a further follow up letter to the COC requesting an update to both her 11 January and 2 February 2024 letters.¹⁰
14. On 2 April 2024, Ms. Malimali wrote again to the COC, in her capacity as Chair of the ECF, purportedly on behalf of the ECF Commissioners, suggesting several options for the SoE position, all of which would have resulted in Ms. Mataiciwa not being appointed as SoE. The COC is chaired by the PM and members included the then A-G Hon. Siromi Turaga, Mr. Jon Apted, Ms. Cema Bolabola, the LoOP Hon. Inia Seruiratu, and Ms. Tupou Draunidalo.¹¹

⁶ Affidavit of Jon Apted Affidavit dated 13 December 2024, Annex JA-1 to 3: Letters dated 21 December 2023 from Ms. Malimali to the Chair of COC following up on the process of approvals of the SoE.

⁷ Ibid., Annex JA-3: Letter dated 11 January 2024 from Ms. Malimali to the Chair of COC recommending the readvertisement of the SoE position.

⁸ Letter dated 2 February 2024 from Ms. Malimali to the Chair of the COC following up on the letter sent 11 January, Annex SLR5 of Sitiveni Rabuka Affidavit dated 28 December 2024.

⁹ *Urgent Request for Further Information* Response from Ms. Puleiwai dated 11 April 2025 to CoI Questions in Writing dated 9 April 2025.

¹⁰ Affidavit of Ropate Green, dated 23 December 2024, at Annex 3; Letter dated 28 March 2024 from Ms. Malimali to the Chair of the COC following up on the letter sent 11 January, Annex SLR6 of Sitiveni Rabuka Affidavit dated 28 December 2024.

¹¹ Ibid., Annex 1; Letter dated 2 April 2024 from Ms. Malimali to the Chair of the COC following up on the letter sent 11 January, Annex SLR6 of Sitiveni Rabuka Affidavit dated 28 December 2024.

15. On 2 April, at an ECF meeting the ECF Commissioners and Ms. Mataiciwa had a robust discussion about the SoE Referrals. The ECF Commissioners wanted to see all of the complaints the subject of the SoE Referrals before Ms. Mataiciwa sent them to FICAC, but Ms. Mataiciwa stated that this was against the law. If she thought a complaint constituted a probable election related offence, she had to refer it to FICAC, immediately.
16. On 3 April 2024, a text was sent by Mr. Jokhan, an ECF Commissioner, to Ms. Forwood, a SM blogger, stating that he had not seen the Malimali 2 April Letter which Ms. Malimali sent to the COC. On 3 April 2024, the Malimali 2 April Letter was leaked and reproduced online by SM. Mr. Jokhan also texted Ms. Forwood informing her that the Malimali 2 April Letter had been sent to the COC without the permission of the other ECF Commissioners.
17. On 3 April 2024, Ms. Malimali is asked by the other ECF Commissioners to send them a copy of the Malimali 2 April Letter. None of them had seen it. Ms. Malimali did not respond until 7 April 2024.
18. On 5 April 2024, SoE Referrals were made for the following persons:
 - a. Lynda Tabuya;
 - b. Manoa Kamikamica; and
 - c. Siromi Turanga.
19. On 8 April 2024, at 7:07 pm, Ms. Forwood lodged a complaint with FICAC against Ms. Malimali for abuse of office pertaining to the Malimali 2 April Letter, which alleged that Ms. Malimali had no authority to send that Letter as it had not been discussed with the other ECF Commissioners, and no resolution had been passed allowing it.¹²
20. On 10 May 2024, Ms. Mataiciwa is appointed SoE. This follows her appointment as the Acting SoE, a role held since January 27, 2023.¹³
21. On 14 May 2024, SoE Referrals were made for the following persons:
 - a. Josaia Gonewai;
 - b. Tanya Waqanika;
 - c. Viliame Takawayia;
 - d. Hon. Aseri Radrodoro;
 - e. Hon. Ifereimi Vasu;
 - f. Hon. Semi Koroilavesau;
 - g. Hon. Faiyaz Siddiq Koya; and

¹² Affidavit of Alexandra Forwood, 4 December 2024 – Annex 11: Letter of Complaint – Ms. Malimali EC Chairperson email sent from Ms. Forwood.

¹³ Press Release: Ana Saliavalu Mataiciwa confirmed as the SoE dated 10 May 2024 < [Ana Saliavalu Mataiciwa confirmed as the SoE | Fijian Elections Office](#)>.

- h.** Semesi Karavaki.¹⁴
- 22.** On 24 May 2024, Ms. Mataciwa released a Press Release publicising the SoE Referrals pertaining to the Fiji First appointment of its Party Leader, and the Hon. Lynda Tabuya, additionally referencing the cases of Hon. Charan Jeath Singh, Aiyaz Sayed-Khaiyum, Frank Bainimarama, H.E Ratu Kotonivere, Usaia Waqatairewa, Hon. Manoa Kamikamica, Hon. Siromi Turanga, Josaia Gonewai, Tanya Waqanika, Viliame Takawaya, Hon. Aseri Radrodro, Hon. Ifereimi Vasu, Hon. Semi Koroilavesau, Hon. Faiyaz Siddiq Koya, and Semesi Karavaki.¹⁵
- 23.** On 13 June 2024, the ECF issued the following directive to Ms. Mataciwa:
- a.** The SoE in her capacity as SoE or Registrar of Political Parties when dealing with complaints, is to inform the relevant person of the complaint that has been made against them; and
 - b.** The SoE should table all complaints she receives with the ECF before any further action is taken, including reporting a person to FICAC.¹⁶
- 24.** On 15 June 2024 the First Ad for the position of FICAC Commissioner was published. The closing date for applications was 28 June 2024.¹⁷
- 25.** On 18 June 2024, Ms. Forwood lodges a separate complaint with FICAC against Ms. Malimali for abuse of office for allegedly releasing private information about Ms. Forwood to Hon. Tabuya.¹⁸
- 26.** By 28 June 2024, fifteen applications were received for the position of FICAC Commissioner from:
- a.** Ms. Seini Puamau;
 - b.** Mr. Eliesa Burenivalu Tuiloma;
 - c.** Mr. Sevuloni R. Valenitabua;
 - d.** Ms. Francis Puleiwai;
 - e.** Ms. Ana Rokomokoti;
 - f.** Ms. Sarafina Marama Tamanisaqa;
 - g.** Mr. Eroni Maopa;
 - h.** Mr. Simione Valenitabua;
 - i.** Mr. Anirudh Singh;
 - j.** Mr. Abhay Singh;
 - k.** Mr. Tevita T. Muloilagi;
 - l.** Mr. Malcolm Maitava;
 - m.** Ms. Joytika Jattan;
 - n.** Ms. Kolora Naliva-Celua; and

¹⁴ Press Release of Ms. Ana Mataciwa, dated 24 May 2024 < [SoE refers probable commission of electoral breaches to FICAC | Fijian Elections Office](#)>

¹⁵ Ibid.

¹⁶ 13 June 2024 Directive to Ms. Mataciwa, issued by Ms. Malimali.

¹⁷ Affidavit of Tomasi Bainivalu dated 31 December 2024 at [5].

¹⁸ Affidavit of Alexandra Victoria Forwood dated 4 December 2024 at Annex 11 – Letter of complaint to FICAC against Hon. Tabuya.

- o. Mr. Biu Matavou Kama.**¹⁹
- 27.** On 28 June 2024, the then Minister of Fisheries, Hon. Ravu was charged by FICAC for abuse of office pertaining to allegations that Hon. Ravu interfered arbitrarily in the lawful processes of the Ministry of Fisheries. As a result, he had to forfeit his Cabinet position and became a backbencher in Parliament.²⁰
- 28.** On 10 July 2024, the JSC at their monthly meeting, decided to re-advertise the position of FICAC Commissioner. Justice Temo wanted someone with proven litigation skills and a really good prosecutor.²¹
- 29.** On 10 July 2024, the JSC established a Selection Panel to review the applications, and shortlist and interview the candidates. The JSC Selection Panel comprised Justice Temo, the S-G Mr. Ropate Green, and the Acting Chief Magistrate Mr. Josaia Waqaivolavola. The timing of when each member joined the panel appears to have varied.²² The JSC Selection Panel was given all the applications, CVs and relevant qualifications to consider.²³
- 30.** On 13 July 2024, the application for FICAC Commissioner was re-advertised. A further eight applications were received prior to the closing date of 26 July 2024.²⁴
- 31.** On 14 July 2024 FICAC notified the SoE that five cases referred to FICAC by the SoE had been closed. These were:
- a.** Fiji First Party False Declarations against Fiji First Australia Association Incorporated, Aiyaz Sayed-Khaiyum, and Tito Bainimarama;
 - b.** a case against Sayed-Khaiyum and Mohamed Saneem for alleged corruption as well as a conflict of interest;
 - c.** Arif Ali donating \$10,000 to Fiji First Party while being a public servant;
 - d.** further complaints against Sayed-Khaiyum, President Ratu Wiliame Katonivere, and Chan Jeeth Singh were also dismissed;
 - e.** another complaint against Sayed-Khaiyum on failing to declare overseas travel; and
 - f.** a complaint against Bainimarama for submitting false declarations of income, assets and liabilities for the years 2014 to 2019 and 2022.
- 32.** On 5 August 2024, Hon. Kamikamica approached Hon. Ravu about the status of his case, and allegedly said that Ms. Malimali would soon be appointed the

¹⁹ Affidavit of Tomasi Bainivalu, dated 31 December 2024 at [5], and at Exhibit TB3.

²⁰ Affidavit of Hon. Kalaveti Ravu, dated 13 December 2024 at [3]. Note that the case against Hon. Ravu was unsuccessful.

²¹ JSC Meeting discussion regarding the readvertisement of the FICAC Commissioner role, located as Annex 1 in the Sworn Affidavit of Filimone Jitoko dated 8 January 2025.

²² Affidavit of Filimone Jitoko, dated 8 January 2025 at [11].

²³ Transcript, Day 16, Session 1 – Mr. Bainivalu at 18.

²⁴ Affidavit of Tomasi Bainivalu, dated 31 December 2024 at [6].

new Commissioner, and Hon. Kamikamica would talk to Ms. Malimali about closing Hon. Ravu's case.²⁵

33. On 16 August 2024, the CR was notified that he would be served with a FICAC search warrant in relation to a complaint filed by Ms. Forwood on 27 March 2024. There was no further investigation into the complaint against the CR because of the CR's response to the search warrant.²⁶
34. On 20 and 21 August 2024, the JSC Selection Panel shortlisted six applicants and interviewed four of the shortlisted applicants. Mr. Waqaivolavola was a close associate of Ms. Malimali, and did not declare a conflict of interest, nor recuse himself.
35. On 23 August 2024, Ms. Malimali was notified that she was the successful applicant for the role of FICAC Commissioner.²⁷
36. On 24 August 2024, Hon. Ravu, through his lawyer wrote to FICAC in relation to the charge of abuse of office brought against him.²⁸
37. On 27 August 2024, the JSC Selection Panel completed their report recommending Ms. Malimali be appointed as the new Commissioner of FICAC.²⁹
38. On 28 August 2024, the JSC Selection Panel Report was circulated to all members of the JSC by a "flying minute" seeking their approval of the recommendation.³⁰
39. On 29 August 2024, Ms. Forwood emailed Ms. Puleiwai to follow up on her complaints filed against Ms. Malimali.³¹
40. On 29 August 2024 at 2:33 pm, Ms. Puleiwai sent an email to Ms. Catherine Rodan, Executive Officer in the FICAC Legal Department, requesting an update on the status of Ms. Forwood's complaint against Ms. Malimali.³²
41. On 29 August 2024, at 2:52 pm, Ms. Bokini-Ratu informed Ms. Puleiwai that the file was with her and she would allocate the file to a State Counsel for an urgent legal opinion.³³ Due to the number of files sitting with Ms. Bokini-Ratu

²⁵ Transcript, Day 25, Session 2 – Hon. Ravu at 19.

²⁶ Transcript, Day 20, Session 2 – Ms. Puleiwai at 7.

²⁷ Transcript, Day 23, Session 2 – Ms. Malimali at 70.

²⁸ Affidavit of Kalaveti Vodo Ravu, dated 13 December 2024 at Annex A; letter Hon. Ravu's counsel sent to FICAC in relation to the investigation against him.

²⁹ Affidavit of Filimone Jitoko, dated 8 January 2025, Annex 3 - The JSC Selection Panel Recommendation Report dated 27 August 2024.

³⁰ Ibid., [14].

³¹ Affidavit of Kuliniasi Saumi, 3 January 2025, at Annex KVS – 5: Email from Ms. Forwood following up on her complaint against Ms. Malimali.

³² Ibid.

³³ Affidavit of Adi Laite Bokini-Ratu dated 12 December 2024 at Annex LBR – 2: Email chain from Ms. Puleiwai following up on the status of the complaints.

at the time, the complaints from Ms. Forwood had been inadvertently overlooked, and not immediately allocated to a State Counsel in early April.³⁴

42. On 29 August 2024, purportedly by a majority vote of three JSC members, the recommendation to appoint Ms. Malimali as FICAC Commissioner was accepted.³⁵
43. On 30 August 2024, Ms. Mausio, the FICAC Principal State Counsel, issued an internal memorandum to Ms. Bokini-Ratu, the FICAC Legal Manager, concluding that, in relation to Ms. Forwood's complaints, there was a prima facie case against Ms. Malimali warranting further investigation.³⁶
44. On 30 August 2024, Ms. Puleiwai responded to Ms. Forwood informing her that the complaints against Ms. Malimali were under investigation.³⁷
45. On 30 August 2024, Ms. Puleiwai found out that Ms. Malimali had been selected as the preferred candidate for the position of FICAC Commissioner.
46. On 30 August 2024, Ms. Puleiwai sent a letter to the President regarding the pending investigation against Ms. Malimali. The letter also brought to the President's attention the process conducted by the JSC in interviewing and shortlisting candidates.³⁸
47. On 1 September 2024, Ms. Puleiwai had a discussion with the PM requesting intervention to allow FICAC one week to complete the investigation into Ms. Malimali, and to hold off on the appointment of Ms. Malimali until the investigation was complete.³⁹
48. On 2 September 2024, FICAC obtained a search warrant to obtain COC documents from the Office of the S-G for the period from 1 January 2024 to 2 September 2024, and a search warrant to obtain documents from the ECF.⁴⁰
49. On 2 September at 1:27 pm, Mr. Saumi called A-G Leung to advise him that FICAC Investigators would be executing a search warrant in relation to documents from the COC offices. A-G Leung said that he was in Parliament and directed Mr. Saumi to liaise directly with the S-G.⁴¹

³⁴ Ibid., [12].

³⁵ Affidavit of Filimone Jitoko, dated 8 January 2025 at [18]; Annex 4 – JSC Email chain approving the recommendation to appoint Ms. Malimali as FICAC Commissioner.

³⁶ Affidavit of Kuliniasi Saumi, 3 January 2025, Annexure KVS-6: FICAC Internal Memorandum to Adi Laite Bokini-Ratu, 30 August 2024.

³⁷ Ibid., Annex KVS – 5: Email response from Ms. Puleiwai to Ms. Forwood in relation to her follow up regarding the status of the complaints filed.

³⁸ Affidavit of Francis Leba Puleiwai, dated 10 December 2024 at Annexure FP-3.

³⁹ Ibid., [45].

⁴⁰ Affidavit of Kuliniasi Saumi, 3 January 2025 at [22].

⁴¹ Ibid., [20]-[21].

50. On 2 September 2024 at 3:57 pm, Mr. Saumi emailed the search warrant to S-G Green notifying him of the intention to execute the search warrant.⁴²
51. On 2 September 2024, A-G Leung received a written consultation request from the CJ stating that Ms. Malimali was the chosen person for the FICAC Commissioner position. Under s 5(1) of the FICAC Act, the FICAC Commissioner shall be appointed by the President on the recommendation of the JSC, following consultation by the JSC with the A-G.
52. On 2 September 2024, the A-G called Ms. Puleiwai in which a brief telephone call ensued. Ms. Puleiwai confirmed that there was an active FICAC complaint against Ms. Malimali for abuse of office. Ms. Puleiwai stated that she informed the A-G that the team were looking at completing the investigation and charging Ms. Malimali if there is any charge against her.⁴³ Out of caution, the A-G then called and advised the CJ to hold off on the appointment. No written briefing was provided by the A-G to the CJ. The CJ took this advice and held off the appointment of Ms. Malimali.⁴⁴
53. On 3 September 2024 at 8:12 am, Mr. Saumi called S-G Green, who agreed to meet with Mr. Saumi to discuss the execution of the search warrant.⁴⁵
54. On 3 September 2024 at 10 am, S-G Green's Secretary called Mr. Saumi in relation to the search warrant to inform him that S-G Green was unavailable.⁴⁶
55. On 3 September 2024 at 1 pm, FICAC successfully executed the search warrant at the ECF Offices.⁴⁷ The search focused on gathering documents relating to Ms. Malimali's involvement in the 13 June Directive issued to Ms. Mataiciwa.⁴⁸
56. On 3 September 2024 at 4.49 pm, Ms. Malimali sent an email to Ms. Puleiwai complaining about the search warrant being executed at the ECF offices. In that email, she discussed the Malimali FICAC Investigation. The CR was copied into this email.⁴⁹
57. On 3 September 2024, Dr. Atu Emberson-Bain sent the A-G a copy of a letter which the ECF Commissioners had written to the JSC complaining about the FICAC search warrant, and defending Ms. Malimali's actions as the ECF Chairperson.⁵⁰

⁴² Ibid., Annex KVS-9: Email sent to S-G Green containing the search warrant FICAC intended to execute.

⁴³ Affidavit of Francis Puleiwai, dated 10 December 2024 at [48].

⁴⁴ Ibid., [19].

⁴⁵ Affidavit of Kuliniyasi Saumi, dated 3 January 2025 at [25]-[27].

⁴⁶ Ibid.

⁴⁷ Ibid., [18]-[19].

⁴⁸ Affidavit of Sefania Tudonu, at [9.6].

⁴⁹ Affidavit of Francis Leba Puleiwai dated 10 December 2024 at Annexure FP-4.

⁵⁰ Affidavit of Graham Leung dated 11 December 2024, Annex C1: Letter to A-G from the ECF Commissioners following the execution of the FICAC Search Warrant dated 3 September 2024.

58. On 3 September 2024, the A-G contacted the CJ to say that he saw no reason why the appointment should not proceed.⁵¹ The A-G explained to the CJ that when “faced with the views of five prominent citizens whose credibility I did not doubt, against those of a well-known anti-government blogger Alexandra Forwood, I preferred to rely on the endorsement of the Electoral Commissioners.”⁵² The A-G further explained that there was no rational basis upon which he could object or delay the JSC decision to recommend the appointment of Ms. Malimali as the new FICAC Commissioner.⁵³
59. On 3 September 2024 at 10:51 pm, the ECF Commissioners lodged a complaint with the JSC about the FICAC search warrant.⁵⁴ The Commissioners all met privately to prepare and send the complaints letter to the Chairperson of the JSC through the CR. This was sent at 10.51 pm with the acknowledgement email from the CR being received at 11:25 pm.⁵⁵ The letter expressed concern that the search warrant was executed on the basis of what the Commissioners had believed to be a “vexatious complaint of no merit, in particular an allegation by Ms. Forwood of abuse of office.”⁵⁶
60. On the evening of 3 September 2024, the JSC Secretary informed all JSC members that a meeting would be scheduled for 2:30 pm on 4 September 2024 to discuss the recommendations of the JSC Selection Panel.
61. Early on the morning of 4 September 2024, the JSC cancelled the meeting to discuss the JSC Selection Panel recommendation of Ms. Malimali being appointed FICAC Commissioner, which had been scheduled for 2:30 pm that day.
62. On the morning of 4 September 2024, the CR requested to meet with the then President to deliver the JSC recommendation to appoint Ms. Malimali as the FICAC Commissioner.⁵⁷ The President asked the CR whether the JSC had considered the letter from Ms. Puleiwai dated 30 August 2024 outlining the allegations against Ms. Malimali.⁵⁸ The President stated that the CR responded by stating that the JSC were aware of the allegations, but there was nothing to be worried about as the appointment of Ms. Malimali was carried out “with due diligence.”⁵⁹
63. On the morning of 4 September 2024, Ms. Malimali was appointed FICAC Commissioner by the President, effective 5 September 2024.

⁵¹ Affidavit of Graham Leung, at [20].

⁵² Ibid., [21].

⁵³ Ibid.

⁵⁴ Affidavit of Graham Leung dated 11 December 2024, Annex C1: Letter to A-G from the ECF Commissioners following the execution of the FICAC Search Warrant dated 3 September 2024.

⁵⁵ Affidavit of Atu Emberson-Bain dated 22 January 2025, at [82].

⁵⁶ Ibid., [83c].

⁵⁷ Affidavit of Ratu Wiliame Maivalili Katonivere dated 13 December 2024, at [9(d)].

⁵⁸ Ibid., [9h].

⁵⁹ Ibid., [9g]-[9i].

64. On 4 September 2024, CR Bainivalu contacted Ms. Lorraine Fesaitu, FICAC Manager Administration to inform her that he would be bringing the new FICAC Commissioner, Ms. Malimali, to the FICAC offices later that afternoon.⁶⁰
65. On 4 September 2024, at 3:30 pm, Ms. Malimali is taken to FICAC offices by the CR and introduced to FICAC senior management staff. At the meeting, one of the staff members, Mr. Alifereti Wakanivesi, states that he does not want to work for a suspect, and that he will resign. The FICAC Manager Investigations, Mr. Saumi, agreed.⁶¹
66. On the evening of 4 September 2024, the SoE Ms. Mataiciwa, the ECF Secretary Mr. Tudonu, and the FEO Acting Legal Officer Mr. Rahul Chand were requested to attend FICAC offices. That evening, they all provided signed written statements to FICAC relevant to the FICAC Malimali Investigation into the abuse of office complaint against Ms. Malimali.⁶²
67. On 5 September 2024 at 8 am, Ms. Puleiwai, on the basis of advice from the FICAC Manager Investigations, Mr. Saumi, and the FICAC Manager Legal, Ms. Bokini-Ratu, approves the recommendation to conduct a caution interview with Ms. Malimali, and arrest her if she does not have an adequate defence.⁶³
68. On 5 September, FICAC was also ready to conduct a caution interview with Hon. Prasad, and arrest him if he did not have an adequate defence.
69. On 5 September 2024 at 8:28 am, Mr. Saumi instructed Mr. Wakanivesi, Mr. Jone Cama, and Ms. Milika Cakacaka, all FICAC Investigators, to visit Ms. Malimali at her office to effect the arrest on her and to conduct the caution interview.⁶⁴
70. On 5 September 2024 at 8:50 am, Mr. Saumi arrested Ms. Malimali. Ms. Malimali was advised by Mr. Saumi that FICAC was intending to conduct a caution interview with her.⁶⁵ Upon being informed of this, Ms. Malimali confronted Mr. Saumi, alleging an act of insubordination to a superior. All procedures of arrest were applied by Mr. Saumi at this point.⁶⁶ Mr. Saumi advised Ms. Malimali that she had a right to call her lawyer.
71. Ms. Malimali then called Mr. Clarke, directing him to call the CR “and everybody”.⁶⁷ Ms. Malimali is then taken to the interview room on the ground

⁶⁰ Affidavit of Francis Puleiwai, dated 10 December 2024 at [56].

⁶¹ Affidavit of Aliferi Wakanivesi dated 12 December 2024 at [11v].

⁶² FICAC Statements of Sefania Tudonu, Rahul Avinash Chand, and Ana Mataiciwa, signed 4 September 2024.

⁶³ Affidavit of Kulinasi Saumi dated 3 January 2025, Annex KVS-13 dated 5 September 2024: Email response from Ms. Puleiwai to Mr. Saumi approving the recommendation.

⁶⁴ Affidavit of Alifereti Winston Wakanivesi dated 12 December 2024 at [17].

⁶⁵ Affidavit of Kulinasi Saumi, dated 3 January 2025 at [35].

⁶⁶ Ibid.

⁶⁷ Ibid., [36].

floor of the FICAC headquarters to await the arrival of Mr. Clarke, under the guard of two female investigators.⁶⁸

72. At 9:30 am, Mr. Clarke arrived at FICAC. He subsequently told Mr. Saumi that he would like to await the arrival of the CR before the caution interview is conducted.⁶⁹
73. At 10 am, the CR arrived at FICAC. Mr. Saumi informed Ms. Puleiwai that the CR, Mr. Clarke, Ms. Vaurasi, Mr. Bale, and Mr. Tuifagalele wanted to meet her to discuss the current situation with Ms. Malimali.⁷⁰
74. The CR stated that he was attending as the Secretary of the JSC. Of the remaining members of the Malimali Rescue Party, who were all lawyers, none of them were acting for Ms. Malimali.⁷¹ The Malimali Rescue Party aired their concerns in relation to Ms. Malimali's arrest. Ms. Puleiwai responded stating that she was doing her duty as the ADC of FICAC by upholding the rule of law.⁷²
75. The CR stated that the CJ had advised all Court Registrars across Fiji not to accept any charges from FICAC filed by anyone other than Ms. Malimali.⁷³
76. Mr. Tuifagalele, a senior lawyer present at the meeting at FICAC, repeatedly stated that he was not leaving the FICAC Headquarters until Ms. Malimali was released.⁷⁴
77. Mr. Clarke asked FICAC to be very careful with their actions in investigating Ms. Malimali as he did not think that the matter was that simple. He further stated that the only reason he was there was because he was concerned with the situation as it undermined confidence in the justice system.
78. Mr. Clarke stated that the solution to the dilemma was for the file to be handed to the Police to continue investigating the allegations moving forward. Mr. Saumi stated that due to the allegations being election related matters, FICAC could not hand the file over to the Police as it was FICAC that dealt with election related matters.
79. At the meeting, the four senior lawyers in attendance accused the FICAC officers of breaching the rule of law and of breaking the law. The CR shouted at Ms. Puleiwai "who are you", and Mr. Bale told them they were committing

⁶⁸ Ibid., [37].

⁶⁹ Ibid., [38].

⁷⁰ Ibid., [40].

⁷¹ Affidavit of Francis Puleiwai, dated 10 December 2024 at [92].

⁷² Ibid.

⁷³ Ibid., [96]-[97].

⁷⁴ Ibid., [97].

“career suicide”. The CR and the senior lawyers were of the view that Ms. Puleiwai and the FICAC officers had no legal authority to arrest Ms. Malimali.⁷⁵

80. On 5 September 2024 at 2 pm, as a result of bullying, intimidation and threats from the Malimali Rescue Party, FICAC released Ms. Malimali.
81. On 5 September 2024, at 2:40 pm, following her release, Ms. Malimali contacted Ms. Bokini-Ratu to direct her that no charges were to be laid against any suspect without Ms. Malimali’s express approval.⁷⁶ FICAC policy was that charges were signed by the lawyer in carriage of the files, following approval by the Commissioner or Deputy Commissioner. Ms. Bokini emailed the directive to all FICAC staff.⁷⁷
82. On 5 September, following receipt of Ms. Bokini-Ratu’s email, Ms. Puleiwai informed the CR that she needed to meet with the JSC following confirmation that Ms. Malimali was intending on returning to the FICAC Headquarters on 6 September 2024, irrespective of the ongoing investigation against her.⁷⁸
83. On 5 September at 4 pm, the JSC called an urgent meeting to discuss Ms. Malimali’s arrest. In their view, ss 7(1) and 10(1) of the FICAC Act had been breached. Their view was that the Deputy Commissioner FICAC could not assume the powers of the Commissioner if the Commissioner was physically present at FICAC Headquarters. Furthermore, they were of the view that no officer of FICAC could arrest a suspect without a warrant, and without the authority of the Commissioner.
84. On 5 September at 4:30 pm, Ms. Puleiwai arrived at the courthouse which was the JSC Meeting venue. The CR met Ms. Puleiwai in the corridor of the courthouse. Ms. Puleiwai informed the CR that she was merely doing what she thought was right.⁷⁹ Ms. Puleiwai was then escorted into the CJ’s meeting room where three of the JSC members were seated. One member attended via AVL. The members in attendance were Justice Temo, Justice Jitoko, Mr. Green, the CR, Vani Catanasiga via AVL, and Ms. Zarina Bi, the Deputy Secretary of the JSC, as notetaker.⁸⁰
85. Justice Temo stated that the JSC members had discussed the matter privately and decided that Ms. Puleiwai would not be able to work with Ms. Malimali. They put forward two options for Ms. Puleiwai to choose from. These were:
 - a. Option One: Be charged with one count of insubordination as well as two counts of usurping the powers of Commissioner in which Ms.

⁷⁵ Affidavit of Kuliniyasi Saumi, dated 3 January 2025, at Annex KVS-14: Transcript of meeting discussion relating to the release of Ms. Malimali on 5 September 2025.

⁷⁶ Affidavit of Francis Leba Puleiwai, dated 10 December 2024 at [101].

⁷⁷ *Ibid.*, [103].

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, [105].

⁸⁰ *Ibid.*

Puleiwai had seven days to respond before the JSC decided what to do next; or

- b. Option Two: Resign, effective immediately, with a one-month payout.⁸¹

86. Ms. Puleiwai took Option Two, ultimately confirming that she could not work with Ms. Malimali as a suspect, because she would be undermining the rule of law that needed to be protected.⁸²
87. Justice Jitoko asked Ms. Puleiwai why had she written to the President instead of the JSC regarding the issue of Ms. Malimali. Ms. Puleiwai stated that under her job description, her reporting authority was to the President.⁸³
88. Ms. Puleiwai informed the JSC that the President's office had acknowledged her letter on 2 September 2024, but no further information was given until the CR had contacted FICAC on 4 September 2024.⁸⁴
89. The JSC then asked Ms. Puleiwai to type her resignation letter at the Personal Assistant's office and submit it to Justice Temo after finishing.⁸⁵ After completing this, Ms. Puleiwai left the JSC to return to FICAC to collect her belongings which she had already packed up.⁸⁶
90. On 6 September 2024, Ms. Malimali was back in the FICAC office.
91. On 6 September 2024, the A-G released a press statement dated 5 September 2024 which essentially stated that the A-G was concerned over the arrest of Ms. Malimali, by the ADC. The A-G emphasized that Ms. Malimali's appointment was legally and constitutionally valid and must be respected. He questioned the motives and timing of Ms. Puleiwai's actions, particularly given her prior unsuccessful candidacy for the Commissioner role and the lack of a completed investigation. The A-G warned against misuse of legal powers for personal or political agendas, highlighted public concern about reputational damage through unproven allegations, and called for public officials to uphold the rule of law. He suggested the government may need to urgently reform existing laws governing FICAC.⁸⁷
92. On 7 September 2024, Ms. Puleiwai departed Fiji for Australia.⁸⁸
93. On 7 September 2024, Ms. Puleiwai was publicly accused of acting improperly by Justice Temo, who released a press statement stating that the fact that Ms. Malimali's arrest and detention had been co-ordinated by Ms. Puleiwai, an

⁸¹ Ibid., [107].

⁸² Ibid., [108].

⁸³ Ibid.

⁸⁴ Ibid., [110].

⁸⁵ Ibid., [112].

⁸⁶ Ibid., [113].

⁸⁷ Press Statement from the Office of the A-G on 6 September 2024, "Public Officials Must Uphold Law, Says Attorney-General Following FICAC Commissioner Arrest" dated 5 September 2024.

⁸⁸ Affidavit of Francis Leba Puleiwai, dated 10 December 2024 at [112]-[114].

unsuccessful candidate for the Commissioner's post, "makes the whole allegation suspect".⁸⁹

94. On 11 September 2024, Ms. Malimali issues an SDO against Ms. Puleiwai.⁹⁰
95. At 5:12 pm, on 11 September 2024, Mr. Saumi writes an email to Ms. Malimali, pointing out that an SDO is only issued for people who have an active ongoing FICAC investigation.⁹¹ At that time, no complaint had been received against Ms. Puleiwai, nor was any directive to investigate given. Mr. Saumi stated that the issuing of the SDO was unlawful.⁹² No response was received from Ms. Malimali to this email.
96. On 11 September 2024, Ms. Malimali, in her capacity as FICAC Commissioner, lodged a Police complaint against Ms. Puleiwai, alleging an abuse of office re Ms. Puleiwai usurping the powers of the Commissioner while acting in that position by arresting and detaining Malimali at FICAC headquarters on her first day of work.⁹³
97. On 18 September 2024, Ms. Malimali queries whether her file had been transferred to the Acting DPP, Ms. Nancy Tikoisuva, for further assessment.⁹⁴ Both the Acting DPP Ms. Tikoisuva, and the Deputy DPP Mr. Rabuku, are friends of Ms. Malimali. Ms. Malimali does not mention the transfer of the file to the Police, as had been suggested by Mr. Clarke at the 5 September 2025 meeting between FICAC officials and the Malimali Rescue Party.
98. On 25 September 2024, Ms. Malimali filed a complaint with the CID against Mr. Saumi for assault on the basis that he had touched her shoulder when he arrested her, as is normal procedure in Fiji.⁹⁵
99. On 25 September 2024, Ms. Malimali filed a complaint with the CID against Ms. Mataciwa, Mr. Dawai, ECF Manager Legal, Mr. Chand, Legal Officer, and Mr. Drodrolagi, Community and International Engagement Coordinator, for aiding and abetting in her arrest.⁹⁶
100. On 28 September 2024, Ms. Puleiwai is interviewed by ABC Australia, during which she revealed what had happened to her. Ms. Puleiwai is quoted as saying in the ABC interview: "One of the things that came out from the Chief Registrar, I found it to be shocking and it is quite right an abuse in terms of what he said

⁸⁹ Fiji Live News "Puleiwai had to immediately resign: JSC" <[Puleiwai had to immediately resign: JSC](#)> (7 September 2024).

⁹⁰ Affidavit of Kuliniasi Saumi dated 3 January 2025 at [51].

⁹¹ Ibid., [50].

⁹² Ibid., [52] and KVS-18: Service of SDO of Former ADC Puleiwai to the Director of Immigration email sent from Mr. Saumi to Ms. Malimali.

⁹³ Affidavit of Juki Chew, dated 4 December 2024, at [7].

⁹⁴ Affidavit of Kuliniasi Saumi dated 3 January 2025 at [42]-[43].

⁹⁵ Letter of Complaint to the Acting Commissioner of Police, Annex BM14 located in Sworn Affidavit of Barbara Malimali dated 27 November 2024.

⁹⁶ Ibid., Annex BM7: Letter of complaint against Ms. Mataciwa and her team to the ECF Commissioners dated 25 September 2024.

“The Acting Chief Justice had stated this and he wanted me to tell you that the Registry will not accept any charges that are filed by FICAC”. I said “that is your jurisdiction, what we will do, we will have the interview, we will have her charged and have the charges filed in court. That is up to the court. Whether to accept it or not. And he mentioned it twice and the second time he came back after answering a phone call... he came back a second time and then with a bit of a tone... he said: The Acting Chief Justice has said what is Francis doing?, what is she doing?, what is she trying to achieve? Tell her that none of the registry in Fiji will accept the charges that is to be filed or signed by her ... That would be a direct interference in the work we are doing.”

- 101.** On 8 October 2024 at 3:35 pm, Ms. Malimali sent an email to Mr. Saumi, Mr. Wakanivesi, Ms. Bokini-Ratu, and several others, informing them that she wanted to calculate how much had been spent on all of Ms. Forwood’s complaints, and that she did not see why taxpayer dollars should be spent on assessing the complaints of a non-resident, non-taxpayer.⁹⁷
- 102.** On 8 October 2024 at 7:19 pm, Mr. Saumi responded to Ms. Malimali’s email outlining his concerns that there is no provision within the FICAC Act that allows that the complaints of non-taxpayers or non-residents can be cast aside.⁹⁸
- 103.** On 8 October 2024 at 8:42 pm, Ms. Malimali responds stating that the challenge FICAC faces with Ms. Forwood’s complaints is that there is no complainant statement.⁹⁹
- 104.** On 14 October 2024, Ms. Malimali instructs FICAC officials to stop all work on Ms. Forwood’s complaints.¹⁰⁰ Many of these complaints are against MPs, including Hon. Prasad, Hon. Tabuya, Hon. Kamikamica and Hon. Turaga, three of whom are friends of Ms. Malimali.
- 105.** On 25 November 2024, Hon. Kamikamica again asked Hon. Ravu about his case during a Caucus meeting. Hon. Ravu told Hon. Kamikamica that his lawyer had written FICAC a letter. Hon. Kamikamica then allegedly requested a copy of the letter from Hon. Ravu, so that he could “follow up” with Ms. Malimali.¹⁰¹
- 106.** On 24 December 2024, Ms. Malimali informs Mr. Saumi via text message that she needs to have a “big one charged... to shut the critics up!” Mr. Saumi responded to this text by stating that “Madam the investigation and legal assessment for Hon. Biman is done. Recommend that we proceed with next week. That will shut all the critics against you.” Following Mr. Saumi’s response, Ms. Malimali stated that she was “after people who abused funds

⁹⁷ Affidavit of Aliferi Wakanivesi dated 12 December 2024 at Annex AW – 17; Email chain with Ms., Malimali relating to the directive to stop all work on Ms. Forwood’s complaints.

⁹⁸ Supplementary Affidavit of Adi Laite Nariu Baleisuva Bokini-Ratu, dated 25 February 2025 at Annexure LBR-2.

⁹⁹ Ibid.

¹⁰⁰ Affidavit of Aliferi Wakanivesi dated 12 December 2024 at Annex AW – 17; Email chain with Ms. Malimali relating to the directive to stop all work on Ms. Forwood’s complaints.

¹⁰¹ Affidavit of Hon. Kalaveti Ravu, dated 13 December 2024 at [14].

NOT the elections ones!” Mr. Saumi interpreted this text message as a directive that Ms. Malimali would not proceed with charging Hon. Prasad, nor any of the other election related alleged offences.¹⁰²

107. On 6 January 2025, the CoI hearings began.
108. On 24 January 2025, Mr. Saumi was summarily dismissed from his position as Manager Investigations for FICAC by Ms. Malimali for recording the 5 September meeting with the Malimali Rescue Party, and providing that information to the CoI on 3 January 2025.¹⁰³
109. On 29 January 2025, the JSC responded saying they had no powers to suspend Ms. Malimali.
110. On 6 February 2025, the CoI, for the third time, requested that the JSC immediately suspend Ms. Malimali to prevent any potential interference in judicial proceedings and to safeguard witness evidence.¹⁰⁴
111. On 9 February 2025 the CoI made a request to Professor Philip Joseph KC for a Legal Opinion on the power of the JSC to suspend Ms. Malimali. In the First KC Opinion, Professor Joseph confirmed the views of the CoI, namely that not only did the JSC have the power to suspend Ms. Malimali, but the PM was also able to do so. The JSC had requested Ms. Malimali take a leave of absence of three weeks.
112. On 19 February 2025, Mr. Lisiate Fotofili was appointed the Acting Deputy Commissioner.¹⁰⁵
113. On 3 March 2025, the CoI hearings concluded.
114. On 24 April 2025, FICAC closed the file which related to Hon. Prasad and released a press statement saying they would not be prosecuting him.¹⁰⁶

¹⁰² Exhibit Eight – Text messages between Mr. Saumi and Ms. Malimali dated 24 December 2024.

¹⁰³ Lavenia Lativerata “Malimali Declines to Comment on FICAC Dismissal and Suspension Calls” <[Malimali Declines to Comment on FICAC Dismissal and Suspension Calls – Mai Tv](#)> (6 February 2025, MaiTv).

¹⁰⁴ Lavenia Lativerata “Malimali Declines to Comment on FICAC Dismissal and Suspension Calls” <[Malimali Declines to Comment on FICAC Dismissal and Suspension Calls – Mai Tv](#)> (6 February 2025, MaiTv).

¹⁰⁵ The Fiji Times <[FICAC Commissioner Barbara Malimali takes leave - The Fiji Times](#)> (19 February 2025, the Fiji Times).

¹⁰⁶ FICAC “FICAC Closes Complaint Against Honourable Deputy Prime Minister Dr. Biman Prasad” (press release, 24 April 2025) <<https://www.ficac.org.fj/pr412025.html>>





CHAPTER 3

FICAC - History, Principles and Future

CHAPTER 3: FICAC – HISTORY, PRINCIPLES AND FUTURE

3.1: Introduction

1. This Chapter traces the institutional development of FICAC with a focus on its mandate, operational structure, leadership philosophy, and evolving political context. The CoI has also heard and analysed testimony from individuals who have been historically involved with FICAC, in particular the long-serving former Deputy Commissioner Mr. George Langman. Vital context is provided in order to understand the intended role and operations of FICAC, against which the conduct of those individuals in the Appointment Process in this case may be judged.
2. This Chapter is divided into the following sub-sections:
 - 3.2: Legal Foundations;
 - 3.3: Independent Prosecutions;
 - 3.4: Leadership;
 - 3.5: Political Interference and ‘Weaponisation’;
 - 3.6: Future of FICAC;
 - 3.7: Who Should Appoint?;
 - 3.8: FICAC Cases Involving Ministers and Officials Involved in the Appointment Process; and
 - 3.9: Conclusion.

3.2: Legal Foundations

3. FICAC was established in 2007 through the FICAC Act, and began operations in April 2007. FICAC was established as the country’s first separate law enforcement agency to investigate and prosecute public sector corruption, as well as educate society on understanding and reporting corruption. It was established not long after the military coup of 5 December 2006, perpetrated by Frank Banimarama, who then elevated himself to the position of Prime Minister on 5 January 2007.
4. Since the FICAC Act was passed, there have been a number of amendments made with the latest version of the Act being amended by the Fiji Independent Commission Against Corruption (Amendment) Act 2019 (No 5 of 2019), which commenced on 24 May 2019.

5. FICAC's mission is to promote integrity, transparency, and accountability to attain zero tolerance for corruption in order to set foundations for good governance that ensures sustainable development, benefitting all citizens of Fiji.¹
6. The FICAC Act establishes the legal framework for FICAC, and outlines FICAC's formation, powers, functions, and responsibilities.
7. Generally speaking, FICAC's powers and functions relate to investigating allegations or suspicions of corrupt practices, prosecuting corruption offences, either independently or in collaboration with the DPP, educating the public about the dangers of corruption, and preventing corruption through the reform of systems and procedures in government and public institutions.
8. Section 2A of the FICAC Act was initially introduced through the FICAC (Amendment) Promulgation No. 28 of 2007, dated 14 September 2007. This new section outlined the offences to which the Act applied, including offences under the Prevention of Bribery Promulgation, corrupt conduct related to elections, blackmail by a prescribed officer, perverting or obstructing the course of justice, perjury, and offences under the Penal Code.
9. The FICAC (Amendment) Decree No. 22 of 2010 amended s 2A to replace references to the Penal Code with references to the Crimes Decree 2009. This amendment ensured that FICAC's jurisdiction encompassed the relevant offences under the new legal framework. Subsequently, the Crimes Decree 2009 was renamed the Crimes Act 2009, and FICAC's jurisdiction continued to include all offences under the Crimes Act.
10. Further amendments, such as the Fiji Independent Commission Against Corruption (Amendment) Act 2016, expanded FICAC's jurisdiction. Clause 3 of this Act amended Section 2A by deleting paragraph (da) and inserting a new paragraph (l), allowing FICAC to prosecute any offence which empowered the Commissioner to do so under any written law. This broadened FICAC's prosecutorial powers beyond the specific offences listed previously.
11. These legislative changes have progressively broadened FICAC's jurisdiction, enabling it to both investigate and prosecute almost all of the offences in Fiji, making it, arguably, the most powerful law enforcement entity in the nation.
12. FICAC is led by a Commissioner, and/or, a Deputy Commissioner, who have the power to appoint their officers.² Throughout FICAC's history, it has been led by either a Commissioner, or a Deputy Commissioner, but not both at the same time. The powers of the Commissioner and the Deputy-Commissioner under the FICAC Act are exactly the same.

¹ Fiji Independent Commission Against Corruption, Mission and Vision – accessed on 14 April 2025, <https://ficac.org.fj/Corporate.html>.

² Fiji Independent Commission Against Corruption Act 2007, s3.

13. Mr. Langman gave evidence before the CoI that when FICAC was initially established by way of military decree, an Acting Deputy Commissioner, Mr. Esala Teleni, was appointed for approximately one or two months in January 2007, before Mr. Langman was appointed Deputy Commissioner in approximately March or April 2007. He remained in this position until March 2019. Under examination from Counsel Assisting as to why the government did not appoint a Commissioner once the FICAC Act came into force, and only appointed Mr. Langman as a Deputy Commissioner, Mr. Langman stated that he “wouldn’t have an idea of the reason behind it”.³
14. Under s 5 of the FICAC Act, both the Commissioner and Deputy-Commissioner are appointed by the President on the recommendation of the JSC, following consultation between the JSC and the A-G, “on such terms and conditions as determined by the President”, as advised by the JSC following consultation with the A-G.⁴ Whilst this is the position with respect to the appointment of a Commissioner or Deputy Commissioner under the FICAC Act, as discussed in this Report at Chapter Five, it is the opinion of the CoI that the provisions relating to the appointments of the Commissioner and Deputy Commissioner, namely ss 5 and 6 are *ultra vires* s 82 of the Constitution, and are therefore unlawful. Despite this being the view of the CoI, this Report continues to assess the Appointment Process in accordance with s 5 of the FICAC Act as it was the process followed by the JSC and the A-G, and the ToRs required this assessment.
15. The consultation with the A-G required under s 5 was never intended to be merely perfunctory or amount to a right of veto. It afforded the A-G some influence in the Appointment Process. Although the FICAC Act does not define the extent of this consultation, in practice it has meant that the A-G’s views may, at times, alter who is recommended by the JSC.
16. The A-G, Mr. Leung, stated in his oral evidence the following with respect to the consultation that the JSC had with him:

Mr. Leung:

...it says the panellists for the selection process were the Honorable Acting Chief Justice, now Chief Justice Temo, Salesi Temo. The Solicitor General, Ropate Green Lomavatu, and the Acting Chief Magistrate, Josaia Waqaivolavola. So the bottom left of the page in the box says consulted. So I received the physical piece of paper in my office. It would have been on or about the 2nd of September. And when I saw that the names of the three persons on that page and I became aware. I'm not sure when, that by virtue of law, the President of the Court of Appeal is also a member of the JSC, that is the Judicial Services Commission. At the material time, His Lordship, Justice Filimone Jitoko, was then President. I was satisfied that having gone through those four persons whose combined legal experience would have exceeded 100 years in total. I was satisfied that it had

³ Transcript, Day 26, Session 2 – Mr. Langman at 2.

⁴ Fiji Independent Commission Against Corruption Act 2007, ss5-6.

gone through a due diligence process and there was nothing before me at the time to prevent me or hinder me from agreeing to what essentially was a recommendation. And in terms of the Law and the Constitution, the Judicial Services Commission is obliged no more than to consult me. They do not need my approval.⁵

17. The duties of the Commissioner, and/or, the Deputy Commissioner are set out at s 12 of the FICAC Act, as follows:

It shall be the duty of the Commissioner, through the Deputy Commissioner and/or through his officers to –

- a.** receive and consider complaints alleging corrupt practices and investigate such of those complaints as he considers practicable;
- b.** investigate the suspected or alleged occurrence of an offence to which this Promulgation applies.
- c.** investigate any conduct of a prescribed officer which, in the opinion of the Commissioner is connected with or conducive to corrupt practices and to report thereon to the President;
- d.** examine the practices and procedures of Government departments and public bodies, in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedures which, in the opinion of the Commissioner, may be conducive to corrupt practices;
- e.** instruct, advise and assist any person, on the latter's request, on ways in which corrupt practices may be eliminated by such person;
- f.** advise heads of Government departments or of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such departments or public bodies which the Commissioner thinks necessary to reduce the likelihood of the occurrence of corrupt practices; and
- g.** educate the public against the evils of corruption; and
- h.** enlist and foster public support in combating corruption.

18. One of the remarkable powers which FICAC can wield is a specific power to issue SDOs on citizens without having to obtain a Court order. Section 13 (1)(e) in the FICAC Act states:

...

For the purpose of the performance of his or her functions under this Act the Commissioner through the Deputy Commissioner and/or through his or her officers, may –

...

- e.** prohibit any person against whom an investigation in respect of an offence to which this Act applies has commenced, from leaving the jurisdiction of the Republic of Fiji for a period of up to 30 days and may give the necessary instructions in writing to the Director of Immigration to enforce the order, provided that the power under this paragraph must only be

⁵ Transcript, Day 10, Session 1 – Mr. Leung at 9.

exercised by the Commissioner and a copy of the order must be served on the suspect or at his or her last known residential address within 24 hours of the issuance of the order.⁶

19. In addition, FICAC officers appointed by the Commissioner are given the power to arrest without warrant, for indictable offences that fall within the scope of the Act.⁷
20. The FICAC Act provides for FICAC to issue and execute search warrants, as follows:

Without prejudice to section 17(1) of the Prevention of Bribery Promulgation, if a Magistrate is satisfied by information on oath that there is reason to believe that there is in any premises or place anything which is or contains evidence of the commission of an offence to which this Act applies, he or she may by warrant directed to any officer authorise such officer, and any other officers assisting him or her, to enter and search such premises or place and seize such evidence.⁸

21. The FICAC Act was in existence prior to the passage of the Constitution, which came into effect on 7 September 2013. Provision was made in the new Constitution providing for the role of FICAC. FICAC's existence is therefore protected by the Constitution, and it could only be abolished or replaced through an amendment to the Constitution.⁹
22. The independence of FICAC is enshrined in the Constitution, as set out in the following s 115(6) which states:

In the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law.

23. Section 115(14) protects FICAC from political interference by the way of Executive Government starving it of funds:

Parliament shall ensure that adequate funding and resources are made available to the Commission, to enable it to independently and effectively exercise its powers and perform its functions and duties.

24. The intent in the Constitution is clear. FICAC's independence must be preserved so that it is able to hold even the highest officeholders accountable under the law, and it should not be obstructed by anyone, including politicians, in order to protect individuals from that accountability.
25. A further point to note is that in relation to the appointment of a Commissioner, and/or, Deputy Commissioner, the Constitution merely requires that they are

⁶ Fiji Independent Commission Against Corruption Act 2007, s 13.1.

⁷ Ibid., s10.1.

⁸ Ibid., s10B.

⁹ Constitution of the Republic of Fiji 2013, s 115(1).

“appointed by law”.¹⁰ A change to the appointment process, such as no longer having the JSC entrusted with this responsibility, would not require an amendment to the Constitution. Amendments can simply be made to ss 5 and 6 of the FICAC Act by way of a simple majority of Parliament passing the amendment.

26. However, there is a problem, and that is contained in s 115 (12) of the Constitution. It provides that the remuneration of the Commissioner and the Deputy Commissioner will be determined by way of a recommendation from the JSC to the President, after the JSC has consulted with the A-G. Consequently, because the Constitution specifies the JSC in relation to the remuneration of the Commissioner and Deputy Commissioner, then we have the absurd situation whereby Parliament may choose to amend the FICAC Act to make provision for some other entity to recommend the appointment of the FICAC Commissioner and Deputy Commissioner, but the JSC will still be responsible for the Commissioner and Deputy Commissioner’s remuneration. As this provision is in the Constitution it cannot be amended except by way of the Constitution itself being amended.
27. Finally, s 115 (7) of the Constitution explicitly states that:

In exercising its powers and performing its functions and duties, the Commission shall be guided by the standards established under the United Nations Convention Against Corruption.
28. Fiji has been a party to the UN Corruption Convention since it ratified it on 14 May 2008. The UN Corruption Convention has therefore been incorporated into Fiji’s domestic legislation, and its standards must inform FICAC’s exercise of its powers, the performance of its duties, and the manner in which provisions of the FICAC Act are interpreted.
29. The UN Corruption Convention advocates for the establishment and support of bodies such as FICAC, through Article 6:
 1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:
 - (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies; and
 - (b) Increasing and disseminating knowledge about the prevention of corruption.
 2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary

¹⁰ Ibid., s 115(2).

material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

30. The UN Corruption Convention does not explicitly define corruption, but in the context of public sector corruption, it set out the types of acts that should be offences under the laws of signatory States. The offences are set out below:

- a.** bribery of national public officials (Article 15);
- b.** bribery of foreign public officials and officials of public international organizations (Article 16);
- c.** embezzlement, misappropriation or other diversion of property by a public official (Article 17);
- d.** trading in influence (Article 18);
- e.** abuse of functions (Article 19); and
- f.** illicit enrichment (Article 20).¹¹

31. Specific measures for codes of conduct for public officials are set out in Article 8 which states:

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.
2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.
3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.
4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.
5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

¹¹ United Nations Convention Against Corruption 2004, Articles 15-20.

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

32. Under Article 2, “public official” shall mean the following:

- i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority;
- ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;
- iii) any other person defined as a “public official” in the domestic law of a State Party.

However, for the purpose of some specific measures contained in chapter II of this Convention, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.¹²

- 33.** The intention of the UN Corruption Convention is not just to combat the damage caused by acts of corruption that benefit private sector partners, but to prevent the abuse and erosion of public trust when high-ranking office-holders and elected officials benefit through the abuse of their powers. This principle is also integrated into domestic law through the existence of the abuse of office offence under s 139 of the Crimes Act.¹³

3.3: Independent Prosecutions

- 34.** A particularly relevant Article of the UN Corruption Convention is the requirement for the State to maximize the effectiveness of prosecution provisions for the purpose of deterring corruption activities, set out as follows:

Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.¹⁴

- 35.** The UN Corruption Convention contains protection for witnesses and whistleblowers against corruption, set out as follows:

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent

¹² Ibid., Article 2.

¹³ Crimes Act 2009, s139

¹⁴ United Nations Convention Against Corruption 2004, Article 30.3.

authorities any facts concerning offences established in accordance with this Convention.¹⁵

36. An additional area that will be of ongoing interest is the requirement to ensure co-operation between national authorities in aid of anti-corruption efforts, set out as follows:

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

- (a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or
- (b) Providing, upon request, to the latter authorities all necessary information.¹⁶

37. Mr. Langman gave evidence that FICAC was modelled closely on Hong Kong's Independent Commission Against Corruption, so much so that "if you look at the wording of the FICAC Act, there's a lot of similarities in it. A lot of similarities, basically word by word".¹⁷

38. As Mr. Langman described, the key difference with the Independent Commission Against Corruption in Hong Kong is that FICAC has its own prosecution arm. Mr. Langman made the following comments on the reasoning behind this choice:

Mr. Langman: I wouldn't have any idea what was behind the Attorney General's idea at that time, but probably done for hastening up the process.

...

Mr. Langman: And I think with a number of corruption cases coming up, it will create another further backlog. So they wanted to hasten up the process by we having our own prosecution body in-house.¹⁸

39. A theme that emerged through the work of the CoI was that senior officials within FICAC and the JSC did not consistently recognise the importance of prosecuting political corruption. Chief Justice Temo testified that FICAC had been overly focused on prosecuting MPs for corruption, whilst other offenders were siphoning off much greater sums of money. He stated his view as follows:

¹⁵ Ibid., Article 33.

¹⁶ Ibid., Article 38.

¹⁷ Transcript, Day 26, Session 2 – Mr. Langman at 3.

¹⁸ Ibid., 4.

Chief Justice Temo: When I look at the scenario in Fiji, and all our forces, we were fighting small battles.

Justice Ashton-Lewis: Yeah.

Chief Justice Temo: You know, they were concentrating on the MPs who stole only \$28,000. Yet they're not directing on the ones who are stealing millions of dollars. They're laughing over to the bank. But I'm very happy that our system is concentrating on the small timers.

*Justice Ashton-Lewis: Yes, and that's frustrating.*¹⁹

40. In her application for the position of FICAC Commissioner, Ms. Malimali made a similar claim. She wrote that “With FICAC seemingly prosecuting cases with low dollar value and low level officers, one has to wonder what the millions of dollars of taxpayer funds are going into. FICAC seems to engage more in awareness rather than the proper investigation and prosecution of real cases of corruption”.²⁰
41. Ms. Malimali’s comments beg the question of what cases are “real cases of corruption” and what are not.
42. Corruption comes in many shapes and forms, and it can have serious consequences for societies, economies, and individuals. Whether it is bribery, embezzlement, nepotism, extortion, kickbacks, money laundering, fraud, or conflicts of interest, corruption undermines the rule of law, democracy, and economic development. It erodes public trust, distorts competition, and misallocates resources, resulting in the unfair distribution of benefits and disadvantages.²¹
43. The association between corruption and societal hierarchy has long been recognised, with many claiming corruption to be a hierarchical phenomenon.²² This is based on the belief that individuals perceive status hierarchies as relatively easily to change with various opportunities for upward mobility, leading to an increase in group members’ competitive behaviours toward each other in order to move up the hierarchical ladder and acquire higher hierarchical status.²³
44. At the top of the hierarchy, power, related to one’s control over valued resources, is proposed to impact individuals psychologically, such that they

¹⁹ Transcript, Day 15, Session 1 – CJ Temo at 28.

²⁰ Affidavit of Barbara Malimali, dated 27 November 2024, annex BM 11: ‘Re: Application for the Position of Commissioner FICAC’ letter from Barbara Malimali to Secretary of the Judicial Services Commission, dated 26 July 2024.

²¹ Morten Koch Andersen *Corruption Comes in Many Forms*. Raoul Wallenberg Institute.

²² Bac, M. (1996) *Corruption, Supervision, and the Structure of Hierarchies*. Journal of Law, Economics, and Organization, 12(2), 277–298.

²³ Hays, N. A., & Bendersky, C. (2015) *Not all Inequality is Created Equal: Effects of status versus power hierarchies on competition for upward mobility*. Journal of Personality and Social Psychology, 108(6), 867–882.

think and act in ways that lead to the acquisition and retention of power.²⁴ As such, in a hierarchical system where there are many levels to differentiate individuals, both tendency types could lead to corrupt behaviour, with higher power leading to opportunistic behaviour and lower power leading to competitive behaviour.²⁵

45. The UN Corruption Convention states in Article 8 (5):

Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets, and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

46. The Statement by Ana Mataiciwa,²⁶ the SoE, given to FICAC, refers to a number of Ministers in the current government who have had complaints lodged against them in relation to false or non-declarations, including:

- a. Hon. Biman Prasad;
- b. Hon. Lynda Tabuya;
- c. Hon. Manoa Kamikamica; and
- d. Hon. Siromi Turaga.

47. The type of corruption allegedly exhibited by the MPs when they fail to accurately disclose their financial information falls under declarative corruption, a form of *conflict of interest* and *non-compliance* with financial transparency obligations. This particular category of corruption involves the failure to accurately report assets, interests, or financial ties, which may ultimately conceal improper benefits or influence. The fact that multiple MPs are implicated suggests systemic problems, rather than isolated misconduct, raising concerns about both personal accountability and institutional oversight mechanisms.

48. The observed pattern of non-disclosure and false declarations also illustrates how corruption may operate within a hierarchical framework. Those at the top of the political hierarchy, entrusted with power and public resources, may be more inclined to exploit their positions to retain or enhance their status. This reinforces the concept of corruption as stratified, where the nature and motivations behind corrupt behaviour differ depending on one's position within the hierarchy, ranging from opportunistic concealment at the top to competitive manipulation at lower levels. This dynamic highlights the

²⁴ Magee, J. C., & Galinsky, A. D. (2008). *The Self-reinforcing Nature of Social Hierarchy: Origins and Consequences of Power and Status*. IACM 21st Annual Conference Paper.

²⁵ Al-Saggaf, Y., Burmeister, O., & Weckert, J. (2015). *Reasons behind unethical behaviour in the Australian ICT workplace: An empirical investigation*. Journal of Information, Communication and Ethics in Society, 13(3/4), 235–255.

²⁶ Recorded Statement of Ana Mataiciwa, recorded by FICAC for the purposes of the FICAC Malimali Investigation, dated 4 September 2024.

importance of tailored anti-corruption measures that recognize and respond to the different incentives across the hierarchy.

49. In this context, Article 8(5) of the UN Corruption Convention becomes particularly significant. It directly addresses the issue of declarative corruption by requiring public officials to disclose any activity or interest that might give rise to conflicts with their official duties. This provision is designed to promote transparency, deter illicit enrichment, and foster a culture of accountability. The complaints against several Fijian Ministers, if borne out, indicate a failure to adhere to these principles, underscoring the need for stronger enforcement of disclosure regulations and adherence to international anti-corruption standards.
50. The effectiveness of conventions such as the UN Corruption Convention ultimately depends on domestic commitment to their implementation and enforcement, making it imperative for Fiji to strengthen mechanisms that detect, deter, and penalise breaches of public trust. The disclosure requirements for MPs are set out in the PP Act. If Fiji is serious about eradicating corruption then, in line with the requirements in Article 30.3 of the UN Corruption Convention, it needs to maximise its prosecution efforts in relation to breaches of the PP Act.
51. The selective handling of investigations to minimise the importance of MPs correctly disclosing their financial information defies the requirement for FICAC to ensure that it holds all offenders accountable regardless of who they are. Any differentiation between which cases are and are not “real cases of corruption”, runs afoul of the standards in the UN Corruption Convention.

3.4: Leadership

52. FICAC has not traditionally been led by lawyers, nor has there been a requirement for either the Commissioner, or the Deputy Commissioner to hold legal qualifications.
53. Adi Laite Bokini-Ratu, the Manager Legal at FICAC testified, that in accordance with the Independent Commission Against Corruption model in Hong Kong, there is no requirement for the Commissioner to hold a law degree because the Commissioner sits as the head, but then the Director Operations runs the actual investigations.²⁷
54. Mr. Langman opined that the Commissioner positions needed candidates with the best operational skills:

Mr. Langman:	A leader that needs to run FICAC has to be a leader that can lead with integrity.
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²⁷ Transcript, Day 11, Session 2 – Ms. Bokini-Ratu at 19-20.

Ms. Mason: Yes.

Mr. Langman: And that leader has to have an operational background, logistics, budget, finance, sorry, finance and budget.

Justice Ashton-Lewis: *So more of a businessman, really, than a lawyer.*

Mr. Langman: Like a business model.²⁸

55. That said, Mr. Langman suggested that an optimal combination for the future leadership of FICAC would be for the Deputy Commissioner to be in charge of FICAC's legal functions, and for the Commissioner to be the operational head of FICAC:

Justice Ashton-Lewis: *CEO of a large corporation, budgeting, finance and that. If you have a lawyer as Deputy Commissioner, do you need the Commissioner to be a lawyer?*

Mr. Langman: Not really, Sir.

Justice Ashton-Lewis: *No. And that also can stop interference. The Commissioner runs the place and the Deputy Commissioner is the one who runs the major function of it, which is a legal function.*

Mr. Langman: That is correct, Sir. That's my understanding as well, that the Deputy Commissioner runs the operations and if he's got a legal background, it helps.²⁹

56. Mr. Langman suggested that his operational skills had enhanced the effectiveness of FICAC during his tenure. He described a case in which FICAC had conducted covert operations investigating a meeting between Mr. Faiz Khan, a senior Fijian lawyer, and a visiting Chinese businessman.
57. The meeting was successfully covertly recorded by the FICAC Investigators. Mr. Langman remembered that the then A-G, Mr. Khaiyum was informed by Mr. Khan that the meeting occurred and there were no FICAC officers present. Mr. Langman said that it appeared that the then A-G did not understand this operational work, and explained this as follows:

Mr. Langman: So the former A-G calls me up and says, did you understand my instructions? I said, yes, Sir, I did. What happened? There was none of your men around that area. So did you understand my instructions? I said, Sir, I will send you the transcript of the conversation, including the audio recording. So I sent him the transcript and the video recording and the audio recording and he never got back to me. Here we have two lawyers who failed to understand covert operations to detect bribery or corruption cases.³⁰

²⁸ Transcript, Day 26, Session 2 – Mr. Langman at 5.

²⁹ Ibid.

³⁰ Ibid., 6-7.

58. Ever since Mr. Langman left FICAC, the JSC’s recommendations to the President in terms of a new Commissioner or Deputy Commissioner has always involved a lawyer. However, there is nothing in the FICAC Act, nor the Constitution stating that the Commissioner and Deputy Commissioner of FICAC should be a lawyer.

3.5: Political Interference and ‘Weaponisation’

59. Throughout the Inquiry, the CoI heard about the “weaponisation” of FICAC, a term used to refer to the manner in which FICAC was used by the previous regime to target political foes. Above at paragraph 57, Mr. Langman recounted a covert operation in which the former A-G, Mr. Khaiyum had involved himself. Obviously, the requirement under the Constitution that FICAC be independent was on this occasion breached. Anecdotally, there were many more occasions recounted to the CoI involving such improper and illegal political interferences.
60. Mr. Langman stated that he ultimately left his long-standing position of Deputy Commissioner in 2019 due to political interference in a bribery case under investigation by FICAC, stating:

Mr. Langman: Well, to be honest, I had a bit of a disagreement with Khaiyum regarding a case involving the CEO of the Fiji Revenue and Customs Agency. We were investigating that case against him personally. He demanded, Khaiyum demanded a full report of the investigation against the CEO. I refused. Because I know if I give him the report, if one or two pages go missing, the case is gone. So what he did, I think he tapped directly to my Manager Legal, Aslam. They must have spoken about some issues and I knew that my time was coming to an end. There were rumours that he was going to kick me out so I would rather resign and leave honourably than being discharged dishonourably. So that's the reason why I put in my resignation.³¹

61. There was a prevailing view that, under the previous Fiji First regime, FICAC was weaponised against political opponents of the regime. Mr. Langman went on to state:

Mr. Langman: Ever since the change of leadership from Aslam and onwards, it has been weaponized because of, I think, FICAC loses its integrity once politicians become involved in the affairs of FICAC.³²

62. Sadly, the “weaponisation” of FICAC did not go out with the last regime. Control of FICAC continues to be seen by some as a significant prize, which once won, can be used, to both target one’s political foes, and to help one’s political allies, by removing any FICAC cases and investigations.

³¹ Ibid., 8.

³² Ibid., 11.

63. Unlike the Fiji Police who retain only an investigatory function, with the exception of minor offences, and unlike the DPP, who only have prosecutorial, and not investigative functions, FICAC’s power is complete and concentrated in the one organisation. It has the full powers to investigate and to prosecute:
- a. all offences under the FICAC Act;
 - b. all offences under the Prevention of Bribery Act 2007;
 - c. any offences of corrupt or illegal conduct pertaining to any election;
 - d. any offence of blackmail committed by any public servant;
 - e. perverting or obstructing the course of justice;
 - f. perjury;
 - g. any offences under the Penal Code, Crimes Act or the Cybercrime Act 2021;
 - h. conspiracy to defraud;
 - i. conspiracy to commit any of the offences mentioned above;
 - j. any attempts to commit an offence referred to above or aiding, abetting, inciting, counselling or procuring any of those offences; and
 - k. any offence which the Commission may prosecute under any other law.³³
64. On the morning of 5 September 2024, after Ms. Malimali was arrested, five individuals, including Mr. Wylie Clarke, the President of the FLS, the CR Mr. Bainivalu, Mr. Bale, Mr. Tuifagalele and Ms. Vausari, all senior lawyers, all arrived at FICAC offices for the sole reason of pressuring FICAC officials to release Ms. Malimali. They ended up being successful.³⁴
65. Of particular note and concern is that one of those that arrived at FICAC to bully, intimidate and harass FICAC officials into releasing Ms. Malimali, namely the CR, had a vested interest in Ms. Malimali being released from arrest and allowed to carry on her duties as the newly appointed Commissioner of FICAC.
66. At the time that Ms. Malimali took up office at FICAC on 5 September 2024, there was an active FICAC investigation, into the CR, Mr. Bainivalu.
67. There was also evidence before the CoI that Hon. Kamikamica, who himself has open cases, had been making representations to Hon. Ravu, who was being prosecuted by FICAC, saying that Hon. Kamikamica could approach Ms. Malimali to withdraw that case against Hon. Ravu. Hon. Kamikamica is a friend of Ms. Malimali.

³³ Section 2A, FICAC Act.

³⁴ Transcript, Day 6, Session 2 – Mr. Saumi at 7.

68. Obviously, in this environment, whereby FICAC has been used for political ends for over 15 years, it is imperative that government considers what it can do to minimise such opportunities for interferences.

3.6: Future of FICAC

69. Governance changes to FICAC were discussed by Mr. Langman and the CoI. Firstly, Mr. Langman provided the following argument in favour of strengthening the President's oversight of FICAC's operations:

Ms. Mason: And are there any things that you, that you were looking back on your time, that you would change that may lead to less political interference?

Mr. Langman: It would have been better because when I first started, I had good support from the office of the President. Because I actually fired some people, I fired some lawyers, they would complain, lots of complaints to the President's Office, and the President's Office would take my views, and they fully support my decision. So, I think if there was to strengthen the position of the Commissioner of FICAC, I feel the office of the President should get involved in it.³⁵

70. The idea is, that the President, as an apolitical figure, would be able to mitigate against interferences from political leaders, or the bureaucracy. Any such changes would have to be by way of amendment to the Constitution.

71. An additional point raised was that the power to appoint Commissioners to FICAC should be moved from the JSC to the COC. Ms. Mason put the proposition to Mr. Langman as follows:

Ms. Mason: Now, the other thing is, do you think that the appointing body, or the body that recommends the appointment to the President, should rather be the COC rather than the JSC? Because the JSC deals with judges and magistrates, and the judiciary, and this position is not part of the judiciary.

Mr. Langman: I agree. It would have been better if it was COC.³⁶

72. Whilst no witness directly proposed the COC as an alternative, the cumulative evidence suggests that the JSC is not fit for this function under its current model. The COC's broader remit and bipartisan membership support a legal reassessment of appointing powers.

73. According to Mr. Langman, it was Mr. Khaiyum, as the A-G who had ensured when drafting the FICAC Act that it was the JSC who appointed the leadership of FICAC.

³⁵ Transcript, Day 26, Session 2 – Mr. Langman at 9.

³⁶ Ibid.

74. Mr. Langman said that he had not supported the JSC overseeing FICAC, because it increased the risks of conflicts of interest. He stated the following:

Mr. Langman: She (Mr.s Nazat Shameem) came to my office and said, you know what, we have not included the appointment of the head of FICAC under JSC. Simply because, come a time, if you have to investigate any members of JSC, there is no conflict of interest. The very thing is happening right now.

Ms. Mason: Right. So, she said it should not be.

Mr. Langman: It should not be but the appointment body should not be part of JSC.³⁷

75. The CoI is facing this exact problem at the moment. This Report is critical of the Justice Temo, amongst others. Consequently, it faces the risk of a judicial review, which would mean the matters reported upon could eventually make their way back to the judiciary to be determined. How likely is it that judges hearing the case will be critical of their head, the CJ? Will they support their own? It is more likely than not that they will.
76. The events during, and following, the FICAC Malimali Investigation, as set out in subsequent chapters of this Report, provide a good example of the dangers of the JSC being involved in the Appointment Process, especially where a member of the JSC is conflicted. The CoI therefore considers that a full understanding of the events considered in this report will be important in order to inform policy-makers as to which entity should have the power to appoint the FICAC Commissioner and Deputy Commissioner.

3.7: Who Should Appoint?

77. Alternative appointment processes can be further analysed by looking at how other countries appoint the heads of their anti-corruption bodies.
78. In New Zealand, the Serious Fraud Office is the principal agency responsible for investigating and prosecuting serious or complex fraud, including bribery and corruption.³⁸ The Director of the Serious Fraud Office is chosen through a four step appointment process. The first step is a recruitment process with the role being advertised and applications being received. A Selection Panel is then convened comprising senior officials such as the Deputy Public Service Commissioner, Solicitor-General, Police Commissioner and other relevant officials.³⁹ The Selection Panel then recommends a preferred candidate to the Deputy Public Service Commissioner, who then forwards the recommendation to Cabinet. Upon Cabinet's approval, the Governor-General in Council formally appoints the candidate for a fixed term.

³⁷ Ibid., 10.

³⁸ Serious Fraud Office, What we do, accessed on 16 April 2025 <https://www.sfo.govt.nz/>.

³⁹ Aide-Memoire, Chief Executive Appointment: Director Serious Fraud Office, dated 11 February 2022.

- 79.** Notably, no senior members of the judiciary are involved in the appointment of the Serious Fraud Office Director. This separation avoids any perception of judicial bias or conflict, particularly where cases in relation to judicial officers investigated by the Serious Fraud Office may come before the courts for adjudication.
- 80.** Australia does not have a single national anti-corruption body, but rather multiple agencies at both federal and state levels. The most relevant comparator is the National Anti-Corruption Commission, established in 2023.⁴⁰ Under s 241 of the National Anti-Corruption Commission Act 2022, the Commissioner of the National Anti-Corruption Commission is appointed by the Governor-General, acting on the advice of the Prime Minister, following consultation with a multi-party parliamentary oversight committee. The legislation mandates a transparent and merit-based process involving political and parliamentary checks and balances. Again, no senior members of the judiciary are involved in the selection process.
- 81.** In New South Wales, the Independent Commission Against Corruption operates under a similar structure. The NSW Independent Commission Against Corruption Commissioner is appointed by the Governor, with input from a Joint Parliamentary Committee but without any input from the judiciary. The powers of the Joint Parliamentary Committee are set out below:
- a.** the Minister is to refer a proposal to appoint a person as a Commissioner or Inspector to the Joint Committee and the Committee is empowered to veto the proposed appointment. The Minister may withdraw a referral at any time;
 - b.** the Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter;
 - c.** the Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it;
 - d.** a referral or notification is to be in writing.⁴¹
- 82.** Like Australia, the United Kingdom does not have a single national anti-corruption body but rather multiple agencies. However, again the most relevant comparator is the Serious Fraud Office. The Serious Fraud Office Director is appointed by the Attorney-General with input from the Prime Minister and is an appointment for a fixed term.⁴² While the specific composition of the

⁴⁰ The NACC was established is an agency that was created under the National Anti-Corruption Commission Act 2022.

⁴¹ Independent Commission Against Corruption Act 1988, s64A

⁴² Criminal Justice Act 1987 (UK), s 1.

interview panel is not fully disclosed, the process adheres to Civil Service Guidelines and is overseen by a Civil Service Commissioner to ensure fairness and transparency.⁴³

83. Similarly, when looking at the United States of America, like England, and Australia, it does not have one body that acts as the anti-corruption agency, but has multiple agencies such as the Department of Justice, Federal Bureau of Investigation, Securities and Exchange Commission, Department of State, and Office of Government Ethics that act as the anti-corruption law enforcement bodies. However, what is similar again, is the selection process of the most relevant comparator, the Federal Bureau of Investigation. The Federal Bureau of Investigation Director is appointed by Presidential Nomination. The candidate then appears before the Senate Judiciary Committee for a public confirmation hearing, after which the full senate votes on the candidate, where a simple majority of 51 senators is required for confirmation.⁴⁴
84. Lastly, when looking at Singapore, a country which uses a model similar to FICAC and Independent Commission against Corruption in Hong Kong, where there is one responsible body to combat corruption, the selection process begins with the Prime Minister recommending a candidate for the position of the Director of the Corrupt Practices Investigation Bureau. The President of Singapore, acting in his or her discretion, must concur with the Prime Minister's advice to formalise the appointment. This step ensures a system of checks and balances at the highest levels of government.⁴⁵
85. These jurisdictions share a common feature. The judiciary has no role whatsoever in the appointment of the head of their anti-corruption organisations.
86. A number of them involve Parliamentary Committees, which are multi-party bipartisan bodies, thus reducing the risk of "political" appointments made solely by members of the government of the day. In Fiji, the COC constitutes members from both sides of the House and therefore would be consistent with those countries which have selected a bipartisan approach.
87. It is clear that the manner in which FICAC heads are currently appointed in Fiji is at odds with what happens in other modern democracies. This is a glaring and fundamental problem which has its roots in Fiji's Constitution.

⁴³ Statement by Victoria Prentis, Attorney General dated 5 July 2023, Statement UIN HCWS915, dated accessed 23 April 2025 <https://questions-statements.parliament.uk/written-statements/detail/2023-07-05/hcws915>.

⁴⁴ 28 U.S. Code § 532 - Director of the Federal Bureau of Investigation. See also "FBI Director: Appointment and Tenure" (PDF). [Congressional Research Service](#). Date accessed 23 April 2025.

⁴⁵ Prime Minister's Office, dated 7 August 2024. Appointment of Director Corrupt Practices Investigation Bureau (Aug 2024). Date accessed 23 April 2025 <https://www.pmo.gov.sg/Newsroom/Appointment-of-Director-Corrupt-Practices-Investigation-Bureau>.

88. Under Fiji's Constitution, the Courts and Judicial Officers, are, in accordance the doctrine of the separation of powers, meant to be independent of the legislative and executive branches of government.⁴⁶ However, the role of the JSC in the Appointment Process of the FICAC Commissioner and Deputy Commissioner is contrary to the requirement for the judiciary to be independent. The work of the CoI has shown that the involvement of the CJ in the Appointment Process has compromised the independence of the judiciary. The appointment of the head of FICAC was always at risk of becoming politicised. It is therefore highly inappropriate for two senior members of the Judiciary to be involved in that Appointment Process. It has placed the CJ in the invidious position of descending into the political fray.
89. In this regard, the Constitution itself is internally inconsistent, and structurally and fundamentally flawed. On the one hand, it purports to operate on the basis of the doctrine of the separation of powers. On the other hand, bestowing upon the JSC the role of appointing the heads of FICAC, is giving it a function which should more properly sit with the Executive, and/or, Legislative branches.

3.8: FICAC Cases Involving Ministers and Officials Involved in the Appointment Process

90. This section will provide a summary of the FICAC cases of the MPs and senior officials who were involved in the Appointment Process, these persons being:
- a. Hon. Biman Prasad;
 - b. Hon. Manoa Kamikamica;
 - c. Ropate Green;
 - d. Hon. Siromi Turaga;
 - e. Hon. Lynda Tabuya; and
 - f. CR Tomasi Bainivalu.

3.8.1: Biman Prasad

91. On 15 March 2024, a complaint, FEP41/24, was referred to FICAC from the SoE in relation to the allegation that Hon. Prasad had submitted a false declaration of his income, assets, and liabilities for the years 2014, 2022 and 2023.
92. In order to sustain a charge, FICAC needed to prove that a person, who is an office holder in a registered political party, did not provide to the Registrar an accurate statement containing information as set out in s 24 of the PP Act for themselves and their spouse, and children, including any directorships that the person and their spouse holds in a corporation or other organisation in Fiji or abroad.

⁴⁶ Constitution of the Republic of Fiji s 97 (2).

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100. Those documents were subsequently obtained, and a further legal opinion received. Hon. Prasad was to have been charged on 5 September 2024, but this was stopped by Ms. Malimali.
101. As noted in Chapter Six, upon assuming office, Ms. Malimali closed this file.

3.8.2: *Manoa Kamikamica*

102. Hon Kamikamica's FICAC complaints were referred to in the Supplementary Affidavit of Ms. Bokini-Ratu as follows:
 8. **THAT** to my knowledge, FICAC received 3 complaints against the Hon. Mr. Manoa Kamikamica in 2024.
 9. **THAT**, as per paragraph 8, Ms. Alexandra Forwood was the complainant in all 3 complaints. The first of Ms. Forwood's three complaints was referred to FICAC by the Fijian Elections Office (FEO) and alleged that Mr. Kamikamica had failed to declare certain income from the year 2023. The complaint was received by FICAC on 5 April 2024 and was given case ID 00074/2024/SU. This complaint was assessed and recommended for closure.
 10. **THAT** the second complaint against Hon. Kamikamica was lodged by Ms. Forwood on 3 June 2024. This complaint was in relation to an Abuse of Office allegation in relation to the Fiji Bus Operators Association increase in bus fares in Fiji. This complaint was given case ID 99139/2024/SU and is undergoing investigation.
 11. **THAT** the third complaint against Hon. Kamikamica was lodged by Ms. Forwood on 22 July 2024 and was in relation to an allegation that Hon. Kamikamica had committed abuse of office and corruption related offences pertaining to conflicts of interest. This complaint was assessed and recommended for closure.
 12. **THAT** to my knowledge, Ms. Malimali has not directly involved herself in these files.⁴⁷

3.8.3: *Ropate Green/ Siromi Turaga*

103. On 27 March 2024, Ms. Forwood lodged a complaint with FICAC, against the S-G Mr. Green and Hon. Turaga as A-G, on the grounds of fraud and abuse of office.⁴⁸
104. Ms. Forwood claimed that Mr. Green did not hold a valid PC at the time of his appointment as S-G in February 2023. She claimed that this therefore made Mr. Turaga's appointment of Mr. Green illegal. She submitted as evidence that Mr. Green's PC expired in February 2023.⁴⁹

⁴⁷ Supplementary Affidavit of Adi Laite Bokini-Ratu dated 25 February 2025 at [8] – [12].

⁴⁸ Letter of Complaint from Alexandra Forward about Solicitor General Ropate-Green Lomavatu and Attorney-General Siromi Turaga, dated 27 March 2024, sourced from FICAC file.

⁴⁹ Ibid.

105. On 1 May 2024, FICAC officials completed a legal opinion.⁵⁰
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110. Nothing further has been done with this file.

3.8.4: Siromi Turaga

111. On 5 April 2024, a complaint by Ms. Forwood against Hon. Turaga, the former A-G, was referred to FICAC from the FEO. The complaint was two-fold. Firstly, it contained an allegation of a false declaration in contravention of the PP Act. Secondly, it alleged that Hon. Turaga did not have a valid PC sometime prior to his appointment, nor a valid PC during the time of his appointment, and thus Hon. Turaga's appointment as A-G was illegal.
112. It was alleged with respect to the first allegation, that Mr. Turaga failed to declare \$6,000 he paid to the People's Alliance Party for campaign fees in the last election and failed to declare the addresses of five donors in 2022 in contravention of s 21 (3) and s 24 of the PP Act.
113. FICAC found that the complaint lacked the supporting evidence required to substantiate these allegations and determined that it would be premature to make an assessment in the absence of any evidence. FICAC made a recommendation that, given the allegation of failing to make declarations

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under the PP Act falls within FICAC's jurisdiction, a preliminary inquiry was to be undertaken to obtain the declarations of Hon. Turaga for further assessment.

114. FICAC, upon its investigations, found that Hon. Turaga held a valid PC for the term March 2022 - February 2023. It also found that he did not have a valid PC for the term March 2021 to February 2022 but that he did have a valid PC from March 2022 until his appointment as A-G in December 2022. At the time the legal opinion was drafted on 1 May 2024, Hon. Turaga did not hold a valid PC.
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118. On 27 March 2024, Ms. Forwood made another complaint about S-G Green for fraud, and that complaint also included an abuse of office allegation against Hon. Turaga. Details of this complaint are set out in the preceding section.

3.8.5: Lynda Tabuya

119. On 23 May 2024 Ms. Forwood made a complaint to the SoE alleging that Hon. Tabuya did not declare her husband's shares in the company Furivai Pte Ltd.⁵⁴
120. This complaint was forwarded to FICAC by Ms. Mataiciwa and registered with the case ID 00132/2024/SU. An initial legal opinion was done by REDACTED
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⁵⁴ FICAC Legal Opinion dated 30 May 2024 Concerning an Investigation into Ms. Tabrya at 1.1-1.2.

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122. The investigation was subsequently carried out.⁵⁷
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124. The minute recorded a summary of the preliminary evidence collected, including that Mr. Semaan was a director of thirteen companies, including Furivai Pte Ltd, but that Mr. Semaan and Hon. Tabuya were divorced on 19 December 2016 by way of Mr. Semaan's application for dissolution of marriage.⁵⁹
125. Accordingly, the investigation team found there was no requirement for Ms. Tabuya to disclose Mr. Semaan's directorship of Furivai Pte Limited and a recommendation was made that the file be submitted for closure.⁶⁰
126. Since then, further information has surfaced demonstrating that Hon. Tabuya is still in an intimate relationship with Mr. Semaan, and the marriage dissolution could be a sham, to avoid financial disclosures. This matter is highly relevant to FICAC's work because Mr. Semaan allegedly is the part-owner of a construction company, Pacific Building Solutions, that receives millions of dollars of government contracts. It is unclear whether, in bidding for those contracts, Pacific Building Solutions disclosed Mr. Semaan's relationship with Hon. Tabuya.

3.8.6: *Tomasi Bainivalu*

127. On 27 March 2024, Ms. Forwood filed a complaint against CR Bainivalu containing several allegations.⁶¹ The allegations are as follows:
- a. the first allegation was that CR Bainivalu allegedly colluded with Justice Temo, S-G Green and Hon. Turaga in the "unlawful appointment" of CR Bainivalu to the position of CR; and

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⁵⁷ FICAC Minute Sheet FEP 94/24 Concerning an Investigation into Ms. Tabuya.

⁵⁸ REDACTED

⁵⁹ Ibid., [3]-[6].

⁶⁰ Ibid., [4], [7].

⁶¹ Reply Affidavit of Kuliniasi Saumi dated 25 February 2025 at [2].

- b. the second allegation against CR Bainivalu was for abuse of office whilst holding the position of Resident Magistrate. CR Bainivalu was alleged to have dismissed the case of a close relative.⁶²

128. The letter of complaint was registered by FICAC as Case ID No. 0056/2024/SU. Upon receipt of the complaint, an assessment was carried out and a legal opinion was drafted on 10 April 2024, subsequently being sent to Ms. Puleiwai on 11 April 2024.⁶³

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130. The case was then assigned to the [REDACTED REDACTED] to provide a briefing of the complaint against the CR.⁶⁵ Ms. Puleiwai is then said to have communicated with CR Bainivalu surrounding the matter.⁶⁶

131. The recommendation from REDACTED was to begin investigating the complaints against CR Bainivalu. Mr. Saumi describes the next few events as follows:

9. The investigation has commenced and preliminary works and information collation was carried out by the Investigation Team in carriage of the case. On Thursday 08th of August 2024, a Search warrant was prepared and submitted for approval to be executed on Friday 9th of August 2024 at the Office of the Chief Registrar. *Annexed hereto and marked KVS – 6 is a copy of email dated 08/08/24 and Search Warrant dated 09 August 2024.*

⁶² Ibid., [3], [5].

⁶³ Ibid., [6].

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⁶⁵ Reply Affidavit of Kulniasa Saumi dated 25 February 2025 at [16].

⁶⁶ Ibid., [17].

10. In consideration of possible interference since SW will first be taken to Court Registry before securing a Resident Magistrate to sign, I had a consultation with our Professional Standard Officer (PSO) – Mr. Mosese Matanisiga to hold signing and execution of SW and first to go through Judicial Services Commission Secretariat to secure an appointment with Chief Justice. The PSO directed the Investigation Team to first secure an appointment with the Chief Justice.
11. On Monday 12th August 2024 the Investigation Team communicated with the Deputy Registrar (DR) Mr. Ravendra and happen to meet the DR and through that meeting they were advised go and see Ms. Zareena Bi who is the Assistant Secretary of the Judicial Service Commission.
12. After meeting Ms. Zareena Bi, the Investigation Team was advised that she will need to seek the approval of the Chief Justice first before we can meet with him. The Investigation Team returned to the office and awaiting result of CJ's approval from Ms. Zareena Bi.
13. On Tuesday morning 13th August 2024, I received a viber message from Ms. Puleiwai enquiring whether we are investigating the Judicial Services Commission. She informed me that the DR had called her stating that two ladies went to see CR the day before. *Annexed hereto and marked "KVS – 7" is a copy of Viber Print out dated 13/08/24.*
14. I confirm that I then called Ms. Puleiwai and explain to her that we are not investigating the JSC but instead investigating the Chief Registrar – Mr. Bainivalu. I further explained to her about our approach that we want to make an appointment to Chief Justice to first notify him our investigation against CR.
15. I also explain Ms. Puleiwai that Team Leader Vasiti and the Investigation Officer Victoria actually went to DR's to their enquiry and tried to secure an appointment with the Chief Justice. Ms. Puleiwai then requested for a brief on the details of the Complaint.
16. I then directed the late Chief Investigator Siraz Ali to provide me a brief on the Complaint against the Chief Registrar. Mr. Ali forward me a brief through an email titled **"Complaints against Chief Registrar Mr. Tomasi Bainivalu"** I then forward the same brief to Ms. Puleiwai. *Annexed hereto and marked "KVS – 8" is a copy of email.*
17. I was later informed by Ms. Puleiwai that they had exchanged messages with Mr. Bainivalu on the issue about his Complaint but I'm not privy to the content of the communication.
18. The investigators were advised to await the outcome of Ms. Puleiwai's communication with Mr. Bainivalu including confirmation of availability of the Chief Justice. There was no other communication received from Ms. Zareena Bi. This contributed to the non-execution of the Search Warrant.
19. The Search Warrant was not executed at all until the appointment of Barbara Malimali as the Commissioner of FICAC.
20. In conclusion, I wish to state that as per my earlier affidavit, during the first weeks of Malimali's appointment she once directed us through an email that no resources will be used in all the Complaint reported by Ms. Forwood.

21. I confirm that I did advise Ms. Malimali that FICAC is mandated to receive all complaints and investigate complaints that falls under the description stipulated under Section 2A of FICAC Act.
 22. I also confirm that Ms. Malimali did not issue any other instruction to formally withdraw her earlier instruction that no resources will be used in all Complaints reported by Ms. Forwood.⁶⁷
- 132.** As a result of the instruction from Ms. Malimali that no resources were to be used in any complaints reported by Ms. Forwood, this investigation was not progressed.⁶⁸
- 3.9: Conclusion**
- 133.** FICAC was established soon after the illegal overthrow of the democratically elected Qarase government in a 2006 coup d’etat. The perpetrator of that act was Frank Bainimarama who went on to rule Fiji for a further 16 years. One of his mantras during the period leading up to the coup was that he would rid the country of the corruption supposedly rampant within the Qarase government. Consequently, the establishment of FICAC became intertwined with that illicit ruse of Mr. Bainimarama that there were “real” and genuine reasons to overthrow the democratically elected government.
- 134.** The illegality which gave birth to the Fiji First regime continued to permeate its operations, and its institutions throughout its 16 long years. Little wonder that FICAC is still seen a valuable tool to silence one’s opponents. The findings and analysis in this Report show that that attitude and conduct that was a key aspect of the Fiji First regime has continued to infect the new coalition government. The CoI has found that the “weaponizing” of FICAC is still occurring. To move away from this, the CoI is recommending substantive changes to the way in which the FICAC Commissioner and Deputy Commissioner are appointed.
- 135.** Testimonies before the CoI, particularly those of former Deputy Commissioner George Langman and other senior stakeholders, illustrate a pattern of blurred lines between political authority and institutional autonomy. While the FICAC Act and subsequent amendments sought to expand its jurisdiction and codify its prosecutorial powers, the appointment processes, lack of procedural safeguards, and operational leadership have undermined its credibility. The use of FICAC as a political weapon, whether to shield allies or target opponents, has further deepened public distrust and compromised its legitimacy.
- 136.** The leadership vacuum and politicisation of key appointments, most, notably the appointment of Ms. Malimali, underscore how FICAC’s independence has been eroded. Concerns regarding the JSC’s role in appointing the

⁶⁷ Ibid., [7] – [22].

⁶⁸ Ibid., [22].

Commissioner, and the conflicts of interest embedded within that process, highlight the need for urgent legal and structural reforms. Comparative models from New Zealand, Australia, the US, Singapore and the UK demonstrate that anti-corruption agencies function best when leadership is appointed through bipartisanship, and politically accountable and transparent processes, without any role whatsoever for senior members of the judiciary.

137. The CoI also heard credible concerns that some actors may have viewed the appointment of Ms. Malimali to the position of FICAC Commissioner as a strategy to obstruct ongoing investigations and shield politically exposed persons. These developments run counter to the agency's constitutional mandate and the spirit of the UN Corruption Convention, which calls for impartiality, transparency, and a clear separation from political interference.
138. In New Zealand, Australia, the UK, the USA, Singapore, and Hong Kong the judiciary has no role whatsoever in the appointment of the head of their anti-corruption organisations.
139. In a few of the jurisdictions, multi-party bipartisan bodies are involved in the appointment process. In Fiji, the COC constitutes members from both sides of the House, and therefore would be consistent with those countries which have selected a bipartisan approach.
140. The CoI is recommending that the PM, with the concurrence of the COC, recommends to the President the appointment of the Commissioner and Deputy Commissioner of FICAC.
141. FICAC is unusual compared to the other law enforcement agencies in Fiji, the DPP and the Police, because it has both investigative and prosecutorial powers. The DPP only has prosecutorial powers, and the Police, apart from the power to prosecute minor offences, has only investigatory powers.
142. Given these very wide powers it is extraordinary that FICAC does not appear to have detailed reporting functions. The CoI Report will recommend that the FICAC Act be reviewed so that FICAC's powers can be streamlined to focus on corruption offences, and to ensure there is some oversight in relation to its policies and the prioritisation of cases, without of course, intruding into its independence.
143. The future of FICAC must be reimagined. Key reforms should include transferring appointment powers from the JSC to an alternative body, such as the COC, reinforcing operational independence, and embedding rigorous safeguards against political manipulation.
144. This Chapter has also highlighted the importance in fighting corruption, of MP's declarations on income, assets and liabilities. Whilst incorrect disclosures may seem like a technical and minor matter, this sort of declarative corruption is common in cases where non-disclosure is undertaken so MPs can conceal improper benefits or influence. To think that MP's failures to

accurately declare income, assets and liabilities do not constitute “real cases of corruption” is to completely misunderstand what anti-corruption regimes are all about. Recommendations will be made in relation to FICAC arranging for regular education and awareness workshops for all MPs.

- 145.** Ultimately, FICAC’s effectiveness hinges on public confidence. To restore that confidence, the Government must prioritise legislative and structural changes that realign FICAC with the values and principles espoused in the UN Corruption Convention.
- 146.** If the current government is serious about anti-corruption measures then it really needs a new broom to sweep FICAC clean.





CHAPTER 4

Malimali Investigation

CHAPTER 4: MALIMALI INVESTIGATION

4.1: Introduction

1. This Chapter examines the FICAC Malimali Investigation, focusing on events between the first complaint filed on 8 April 2024 and the decision to arrest Ms. Malimali for a caution interview on 5 September 2024. The CoI is tasked with determining whether the appointment of Ms. Malimali was conducted with integrity, fairness and transparency, according to law.
2. As outlined in the Executive Summary, two separate narratives developed in relation to Ms. Malimali's arrest. One was that Ms. Puleiwai, the Acting Deputy Commissioner, who had applied for the position of FICAC Commissioner, was unhappy about not being selected, and hence the FICAC Malimali Investigation was biased and driven out of ill will. The other narrative was that the FICAC Malimali Investigation was conducted fairly and consistently with FICAC practices and policies.
3. This Chapter examines the FICAC Malimali Investigation in detail to determine whether or not it was carried out legally, fairly and consistently with FICAC policies and practices. It is important to note at the outset that the CoI is not a criminal court and cannot make any findings on the substantive criminal case against Ms. Malimali. The CoI, in this Chapter, is restricted to examining the process followed in the FICAC Malimali Investigation. The sections in this Chapter are as follows:

- 6.2 Complaints Against Ms. Malimali;
- 6.3 Ms. Forwood as a Complainant;
- 6.4 Assessment of Allegations;
- 6.5 FICAC Procedure re Malimali Investigation;
- 6.6 Was the Malimali Investigation Rushed?; and
- 6.7 Conclusion.

4.2: Complaints Against Ms. Malimali

4. The FICAC Malimali Investigation emanated from two complaints lodged by Ms. Alexandra Forwood. The first complaint, dated 8 April 2024, was submitted as a letter to the Hon. PM in his capacity as Chair of the COC. That letter stated:

Sir Sitiveni Rabuka,
Prime Minister of Fiji,
COC Chairman,
Suva Fiji.

8th April 2024.

Dear Sir,

Re: Barbara Malimali – Abuse of Office Complaint – Election Commission.

I am writing this letter because I will not have a clear conscience otherwise knowing that a highly professional civil servant is being targeted for just doing her job.

As you are aware I exposed the EC letter publicly whereby I felt and witnessed wrong being done towards Ms. Mataiciwa and I felt obligated to do what I can as what she is going through is wrong.

In saying this, I am an associate of the Electoral Commission Member **Mr. Reginald Jokhan** and we converse randomly about various topics. That he admitted to me that **Barbara Malimali** had written the letter to COC which was delivered on the 2nd of April (Tuesday) by hand and email.

Mr. Jokhan admitted to me via message that other members were not aware of the contents of the letter and had no knowledge in the demands to remove Ms. Mataiciwa from her position in the letter dated the 2nd of April 2024.

He expressed he and his colleagues are shameful for what has happened to Ms. Mataiciwa and I had suggested that they write formally to you to tell the truth because it is the right thing to do.

It is on this basis, I submit the messages between myself and Mr. Jokhan and I trust that you will hear from the other members of Election Commission in relation to this matter which has caused a public outcry (**Attached as exhibit 1- Messenger Conversation Mr. Reginald Jokhan and I- below**).

I trust that should you need any further information, you shall contact me directly, nonetheless I will be submitting a formal complaint to FICAC regarding Ms. Barbara Malimali for abuse of office as it is the right thing to do.

Yours sincerely,

Alexandra Forwood (Nee BOTT),
Sydney, NSW, Australia.

Copies: Speaker of Parliament- Ratu Sir Naiqama Lalabalavu
President of Fiji – Ratu Williams Kotonivere
Fiji Labour Party Leader- Mr. Mahendra Chaudhary
Unity Leader- Mr. Save Narube
FICAC- DEPUTY COMMISSIONER- Ms. Francis Puleiwai
Various Media Outlets

5. Complaint One involved a letter which Ms. Malimali had sent the COC dated 2 April 2024, which allegedly had not been signed nor approved by any of the other ECF Commissioners, but which was purported to have been sent on behalf of all the ECF Commissioners, and which essentially objected to the COC's chosen applicant for the position of SoE, Ms. Ana Mataiciwa.

6. The second complaint, dated 29 August 2024, alleged that Ms. Malimali had released Ms. Forwood's personal information to the then Minister for Women's Affairs, Hon. Lynda Tabuya. That email from Ms. Forwood stated:

Bula Ms. Pulewai,

I hope you are well and safe. I understand that I lodged a complaint against Ms. Malimali in April for abuse of office in relation to the attempted removal of the former Acting Supervisor from her role upon which she abused office and instructed that she is removed.

I had subsequently lodged a complaint against Ms. Malimali for Misbehaviour with COC on the 8th of July. I am now lodging that complaint with your office for abuse of office as she released my personal information to a Minister is currently under investigation and that I have also lodged a complaint with the Fiji Elections Office regarding the same.

I am kindly requesting your acknowledgement Email and also requesting an update on the complaint I lodged against Ms. Malimali in April this year??

If you could also treat my email below as a formal complaint on Ms. Malimali??

With regards,

Alexandra Forwood.¹

7. The email which was attached, which Ms. Forwood had requested also be considered a formal complaint, was originally sent on 8 July 2024 to the COC and copied in various other email addresses including, A-G Leung, and several media outlets. The email was as follows:

Bula Ropate,

As COC Secretary I am lodging a complaint against Barabra Malimali for releasing my personal information To Lynda Tabuya.

I have submitted a complaint to the Office of Fiji Elections pertaining to this issue.

Kindly requesting your acknowledgement.

With regards,

Alexandra Forwood.²

8. In addition, Ms. Forwood had written to Ms. Mataiciwa on 29 August 2024 as follows:

¹ Affidavit of Kuliniasi Saumi, 3 January 2025, Annexure KVS-5 – Email sent by Ms. Forwood to Ms. Puleiwai dated 29 August 2024.

² Ibid.

Dear Ms. Mataiciwa,

Re: Letter of Complaint- Breach of my privacy under the Laws of Fiji.

I am writing this letter of complaint as I firmly believe that your office is responsible for releasing my personal information pertaining to my voting status to the **Minister of Women and Poverty Alleviation Ms. Lynda Tabuya**. I state that due to the fact that I had sent Ms. Tabuya a series of questions pertaining to her soliciting funds from a foreign Government for a private Fundraiser within her family in her Village (**Attached as exhibit 1- Email to Lynda Tabuya**). I had received her messages to her family on their family village page whereby she states that I am not a registered voter or tax payer (**Attached as exhibit 2- Message from Lynda Tabuya to her family**). I assert that Ms. Tabuya wouldn't have known my voting and tax status unless she had contacted your office to obtain such information and as such in doing so abused office. I would also like it noted that my personal information cannot be released to a third party for personal intent which is what Ms. Tabuya has been given and that information would have come from your office.

I am demanding an investigation into this matter and I would appreciate your cooperation in this matter. I have also written to the Prime Minister of Fiji Mr. Sitiveni Rabuka with reference to Ms. Tabuya soliciting funds from a Foreign Government for a family fundraising. (**Attached as exhibit 3- Letter of Complaint to the Prime of Minister**).

Should you require any further information, please do not hesitate to contact me directly.

Yours sincerely,
Alexandra Forwood (Nee BOTT),
Sydney, NSW, Australia.

9. These two complaints then formed the basis for the three allegations which were investigated:
 - a. the First Malimali Allegation related to an alleged case of abuse of office whereby Ms. Malimali, along with other ECF Commissioners had endorsed a resolution to adopt an unlawful process of handling election related complaints;³
 - b. the Second Malimali Allegation was that an ECF letter dated 2 April 2024 written to the Secretary of the COC was falsified in that it was dishonestly formulated by Ms. Malimali without the knowledge and consent of the other ECF Commissioners; and
 - c. the Third Malimali Allegation related to an unlawful use of the National Register of Voter Information whereby Ms. Malimali had requested the voter status of Ms. Forwood, which ended up being released to the Minister for Women, Hon. Lynda Tabuya⁴

³ Annexure 6 of Sworn Affidavit of Alexandra Forwood dated 11 December 2024 – Letter of Complaint to SoE Mataiciwa.

⁴ Ibid.

4.3: Ms. Forwood as a Complainant

10. Several witnesses spoke disparagingly about Ms. Forwood stating that she was a “serial complainer”, and an anti-government blogger. Ms. Forwood is a Fiji citizen who lives in Australia. Issues were raised as to whether FICAC should have even investigated her complaints. The argument was that someone who lives overseas could not provide a signed statement, which could be a significant factor if the complaint was malicious, and/or, vexatious, resulting in a waste of public funds. As Ms. Forwood lives overseas, there would be no ability to prosecute her for providing false information and wasting public funds.
11. Mr. John Rabuku, the Assistant DPP, gave evidence that Ms. Forwood had a reputation as a serial complainer, but that her complaints would still be considered, albeit they may need to be reformatted for Fiji Police purposes:

Ms. Mason: Right. Okay. Okay. And then at the end here, paragraph 9, and it's also set out earlier, there's been an issue in this commission where some people have said, oh, you shouldn't have proceeded with a complaint unless you had a formal statement by the complainant, and FICAC have said, well, yes, that's probably a good thing to do, but we don't require that. So why would you want a formal statement from Ms. Forwood?

Mr. Rabuku: Because this is the experience that I've always known about ever since. When I came out of law school in 1998, my first job was the DPP's office, and I ran the whole of Vanua Levu at some stage, so I always knew formal statements were recorded because it commits the witness to the particular complaint and followed with all the other statements that the police want to gather. They would go as far as the caution interview and sometimes even to the charge, and so to me it was important that we get a formal statement in as far as the complaint was concerned because it also contains a proviso that you could get into trouble with the police if you provide false information. So it was always... I've never analysed a file in my procedural experience at the DPP's office where no formal statements were given.

Ms. Mason: From the complainant?

Mr. Rabuku: From the complainant, yes.

Justice Ashton-Lewis: *What do you mean by formal statement?*

Mr. Rabuku: It's usually on a police statement.

Justice Ashton-Lewis: *Yes. It would be on that title which I saw regularly. But if it wasn't that, if it was just someone said, I saw John Rabuku around the corner stabbing someone, now naturally the police would say, you must commit that to writing.*

Mr. Rabuku: Yes.

Justice Ashton-Lewis: *So they go away and they write up just something on themselves. That's sufficient evidentially. There doesn't need to be a formal statement. It certainly is helpful, and it should be done to help you. And I noticed something else. At paragraph 8, you say that the DPP relies on complete investigations. Now, I take it that's at the end where you might have had police come and say, look, we'll show you this. Is this enough to charge for attempted robbery or murder? Or whatever. And you would look at it and say, no, you will need to get more evidence. I take it you did that, and you'd say that they'd bring something to you. And then you say a complete investigation from Fiji police force in order to commence prosecution. That's dead right. And so you will have interim periods where you're saying you must get more. And they come, they've got more. You then look at it and say, right, we'll lay an indictment.*

Mr. Rabuku: Yes, that is one position, Sir. And the other position is this that sometimes charges are laid anyway.

Justice Ashton-Lewis: *Pardon?*

Mr. Rabuku: Sometimes charges are laid anyway.

Justice Ashton-Lewis: *Yes. Yes.*

Mr. Rabuku: And then when we reanalyse the matter, or if we speak to the witnesses through witness conferencing, then we realise that a particular piece of evidence is still missing. Then we still ask for further investigations.

Justice Ashton-Lewis: *Yes.*

Mr. Rabuku: But I think this matter, you see, just to cut to the chase quickly on this matter, this matter was a sensitive matter, in as far as I was concerned. I mean, they appointed the Commissioner for FICAC, and now there's an investigation.

Justice Ashton-Lewis: *Yes.*

Mr. Rabuku: So it was in, I think it was in the interest of the DPP's office that full investigations be conducted.

Justice Ashton-Lewis: *Yes.*

Mr. Rabuku: Because the truth is, I'm Barbara's friend, and Ms. Kotoisuva is Barbara's friend. We all come from the same year out of law school, we're right about the same year. Yes, so I didn't want a back and forth of the file.

Justice Ashton-Lewis: *No, that's right.*

Mr. Rabuku: And that's why I specifically laid out what the police are supposed to do.

Justice Ashton-Lewis: *Yes, and that's helpful.*

Mr. Rabuku: Yes.

Justice Ashton-Lewis: *What you've done, and when you come to nine, that's really well set out.*

Mr. Rabuku: Yes.

Justice Ashton-Lewis: *They took it, but we kept hearing about, oh, this Forwood woman, she's a serial complainer, we don't pay much attention. And I had reason to say a couple of times as late as yesterday, you want to be careful with that attitude. You might get someone who's writing every day and you're getting sick of her, you just might miss something that is right.*

Mr. Rabuku: Yes, I think that's absolutely correct. You know, I would be lying to say that I don't get annoyed with Alex Forwood because she's complained about me too. But I think what was important about this was this, it just needed her to convert her email or whatever into the police statement, because it doesn't need a police officer to record it.

Justice Ashton-Lewis: *No.*

Mr. Rabuku: You just transcribe onto it and send it back. It's as simple as that.

Ms. Mason: Or an affidavit or something.

Mr. Rabuku: Yes.⁵

12. Mr. Bainivalu gave evidence that he had blocked Ms. Forwood from emailing him some time in 2022:

Ms. Mason: Mr. Chief Registrar, when did you block her address? Can you recall?

Mr. Bainivalu: I think at my early stage sitting on this seat as the Chief Registrar. I did that with so much respect to everyone. This is my personal view on it. I just don't want, because I had so much on my table as I was sharing with you, Mrs Mason, before we proceed this morning. So I just don't want to disturb, because it's an independence of our Institution. And me, judiciary is my baby. I started as a court officer, you know that, My Lord. And 35 years on this Judicial Department, I just feel this is an opportunity for me as a Chief Registrar of Fiji. It was my dream for the last 30 plus years. So that's how I see it. I just don't want to be disturbed by other things, but to focus on what I do every day. I don't know, I'm not only a JSC Secretary. I'm a CR and look after 1,000 plus staff with 30 plus Magistrates and 20 plus Judges. I look after Legal Aid Assets Commission. I look after Legal

⁵ Transcript, Day 31, Session 5 – Mr. Rabuku at 10-13.

Practitioners Unit where more than 1,000 lawyers around Fiji. There's so much on my table. I love my job, but such things, I just block myself from it. I don't go social media. I don't have a Facebook either, or Instagram for that matter. So maybe other, I'm ready to take whatever questions they put to me from Alexandra Forwood, but I did not receive this.

Ms. Mason: So, 2022 sometime.

Mr. Bainivalu: Yes, that's correct.⁶

13. According to Mr. Bainivalu, he had blocked Ms. Forwood several years prior to the events in question, around 2022.⁷
14. The S-G, Mr. Green also gave evidence that he deemed complaints made by Ms. Forwood to be vexatious:

In response to paragraphs 19, 20 and 23 of Ms. Forwood's affidavit, I note that the letter dated 15 April 2024 was addressed to the Prime Minister as COC chair. This same correspondence was forwarded to so many others. Ms. Forwood is known for consistently harassing several officials with vexatious allegations every so often. In fact, and I reiterate, to my knowledge, there was no correspondence received by me as Secretary to the COC from Ms. Malimali, requesting the removal of Ms. Mataiciwa from her position as SOE.⁸

15. Ms. Malimali, once she took up the post of FICAC Commissioner, directed that complaints made by Ms. Forwood should effectively be ignored. On 8 October 2024 at 3:35 pm Ms. Malimali sent an email to Mr. Saumi, Mr. Wakanivesi, Ms. Bokini-Ratu and copied in Mr. Dean, Ms. Qionibaravi, Ms. Fesaitu, and Ms. Lomaivuna that stated the following:

Lady and Gents,

I've done a quick analysis of the FEO files that have been closed.

For all of these cases, the genesis of the complaints lies with a Ms. Alexandra Forwood.

Ms. Forwood lives in Australia. She does not live here and does not pay VAT here.

Whether she pays Income Tax here is unknown but given that she has not resided here in a number of years it is highly unlikely that she does.

Her complaints cause the SOE to refer the complaints to FICAC in a very public manner. These referrals were made public before and I think in most of them, the "suspects" did not know beforehand that there was an investigation. They found out through the SOE's announcements.

⁶ Transcript, Day 16, Session 1 – CR Bainivalu at 28-29.

⁷ Ibid.

⁸ Reply Affidavit of Mr. Ropate Green Lomavatu to Affidavit of Alexandra Victoria Forwood, dated 23 January 2025 at [9].

A non-taxpayer has complained and the resources of the taxpayers of Fiji have been used to investigate these complaints. Some of her complaints are so farfetched, that they should not have even reached FICAC.

For these 7 files, I would like to know how much it cost FOR EACH FILE in terms of time used by the investigator, the time and money used to do the searches, to interview people and to write reports. For example, if an investigator spent 100 hours on a file, I would like to know what it cost so it would be 100 hours x whatever their hourly rate is.

I want to know how much it cost us in fuel and time for a driver to drive the investigator to a certain location – that means that even the hourly rate of the driver will have to be calculated.

Mr. Dean – we spoke briefly a few weeks ago. I want to know how much it costs to complete a particular file!

ALL of these cases were classified as COMPLEX. However, at least 3 of them were not. Hon. Tabuya is divorced so there was nothing to that case. For the allowances, if someone had quickly looked at Exempt Income in the ITA and its successors, they would have figured it out very quickly.

I am not sure how many FEO files are left with us. I saw Hon Dr Prasad's file briefly a couple of weeks ago and I have asked Miri to find it for me.

Ms. Forwood continues to make allegations on SM that I have closed Dr Prasad's file. She continues to email me daily about these cases and so does Dr Victor Lal. I don't read their emails but I find it distressing that these folks continually make accusations against me.

Can I have the costings of these individual investigation files please?

These costings will direct my decisions on where to go next and how best to allocate our resources.

Vinaka.

Kind regards

Barbara Malimali⁹

16. On 8 October 2024 at 7:19 pm, Mr. Saumi responded to this email as follows:

COM

Madam, you have a valid point and I agree with your consideration of quantifying the actual investigation work done, the number of hours, the resources being utilized and associated cost that may come with it.

⁹ Affidavit of Alifereti Winston Wakanivesi, dated 12 December 2024, Annex AW – 17: Email chain between Mr. Saumi and Ms. Malimali regarding the direction of stopping investigation into all Ms. Forwood's complaints.

However, a concern that I wish to bring to your attention is that we need to consider that we do not have any provision in the FICAC Act 2007 that guides is or gives is the authority to categorize the type of Complainant into a Tax Payer or a Non-Tax Payer. The FICAC Act (Section 12) only authorize us that

- a. We have a duty to **receive and consider** complaints of alleged corrupt practice
- b. We have a duty to investigate the suspected or alleged occurrence of an offence stipulated in Section 2A of the FICAC Act

Alexandra Forwood is just a front person that we see making allegation of various individuals and lodging official complaint. There are people behind her that are providing her the information. Those people, are the very people who are amongst us. We do not know them and they are the ones who are supplying her the information and allegations to report. The same group of people will be looking at FICAC on what action it took when it receives the complaint. I have noted from some of the Alex correspondence that she makes follow up on some of her previous complaint. This shows that she is keeping a good record of all the Complaints she had lodged.

Alexandra Forwood may fall under the category of **WHISTLEBLOWERS**. This category of complainant is defined in the CSO (Section 1.1 Investigators Manual) as those people who disclose information, they reasonably believe is evidence of a violation of any law, rule, regulation or mismanagement, a gross waste of funds, an abuse of authority or a substantial or specific danger to public health or safety. The whistleblower system is crucial for anti-corruption detection and enforcement.

If we consider NOT to receive or investigate her complain on the basis that she is not a Tax Payer, or whatever genuine reasons we may think of, it is recommended that carefully consider the decision we make. Come a time that we may answerable to the people for an act of OMISSION.

We can be accused of turning a blind eye on a fiduciary role that we are mandated to perform.

Madam we noted that you have analyzed those 7 x Closure File. These were official complaints received for those 7 Files and based on the legal assessment done on the complaint a recommendation was made to the former ADC that investigation needs to be conducted. I had received a formal directive from the ADC under Section 12 (a) & (b) to conduct investigation. We have conducted the investigation.

Recently there are questions now from the people on SM and mainstream media on how those cases were closed. FICAC have grounds to show to the people why have recommended the case to be closed. The point I wish to put across here Madam is that we have a lawful system in place, we have complied to the system and when question comes the system itself protected us.

Madam with due respect, I stand to be corrected. We understand that as the Head of this institution you have the discretionary power, and whatever you direct will be complied with. However, we appreciate if also allow us to raise our concerns to your office, and we have proper dialogue before we come together on a consensus for a way forward for the benefit of this institution.

For your information the remaining FEO files we have, I recommend that we schedule Team presentation to you to update you on the status of each file and we decide together on the way forward.

Submitted for your kind consideration and have a blessed evening Madam.

Kuliniasi Saumi¹⁰

17. On 8 October 2024 at 8:42 pm Ms. Malimali responded to Mr. Saumi as follows:

I hear you.

I wish those behind Ms. Forwood would stop being cowards and show their faces.

The challenge for us should we take any of these cases to court is WHO is going to be the complainant who comes forward to give evidence?

In relation to the 7 cases, they proved to be false claims. The allegations were false and people like HE The President were publicly dragged through the mud.

If Ms. Forwood had made an actual statement in relation to the 7 cases, we would probably be prosecuting her now for giving us false information... BUT we cannot as she did not make a statement nor is she in the country.

I would still like a monetary value places on the investigation of each of those cases.

Thank you for giving me your views and I expect you to keep giving me your views. I don't mind if any of you disagree with me. It's healthy and it means that all our cases are properly ventilated in-house.

We shall talk more about these cases.

Kind regards

Barbara Malimali¹¹

18. On 14 October 2024 Mr. Saumi sent Ms. Malimali an email as follows:

COM

Good Afternoon Madam

As we are approaching end of the 1st Quarter (August – October 2024), I wish update your office on the scope of work carried out by our Investigators in the Central/Eastern. We have targeted to complete a total of **26 x Case**. However after my briefing with the CI's this morning, request have been submitted that a total of 8 x Cases is to spillover to the 2nd Quarter due genuine reasons submitted, The 8 x Case are highlighted in yellow in the attached list.

Four (4) x cases highlighted in green have been completed and submitted (2 x Charged Case FEP 142/20 & FEP 41/24 and 2 x Closure Cases). The remaining 14 x Cases will completed and submitted by Friday 18/10/24.

¹⁰ Supplementary Affidavit of Adi Laite Nariu Baleisuva Bokini-Ratu, dated 25 February 2025 at Annexure LBR-2.

¹¹ Ibid.

The Economic Crime Unit has already completed and submitted 2 x Cases (FEP 17/22 – 1 x Vehicle Seizure & 1 x Bank Acc Freezing). The ECU will also be submitting 2 x Completed Cases by Friday 18/10/24.

The Team is also standby for processing of charge of any case finalize by our Legal Team.

Submitted respectfully

Kuliniasi Saumi
Manager Investigation¹²

19. On 14 October 2024 at 4:04 pm Ms. Malimali responded to Mr. Saumi's email as follows:

Thank you.

I will review these.

BUT note that anything that originated from Alexandra Forwood is not going to be given any more resources.

Kind regards
Barbara Malimali¹³

20. However, despite Ms. Forwood being an Australian citizen, she is entitled to make complaints with FICAC, as was confirmed by Mr. Saumi in evidence:

Mr. Dawai: Mr. Saumi, before we ended we were reading that paragraph about non tax payer. Now, from the drawing of the paragraph is it fair to dismiss a complaint on the basis that a person is a non-tax payer?

Mr. Saumi: It may not be fair.

Mr. Dawai: And I believe the question I had put to you was whether the Fijian Election Office have been informed of the decision to stop investigation into Alexandra Forwood complaints, has that been done?

Mr. Saumi: I do not know whether Madam had communicated that decision to Alexandra but I advise her that this is wrong. Whether she communicated, because she is the only person that can communicate outside unless he authorizes us to communicate out from.

Justice *Ashton-Lewis*: *Yes you advised her that it was wrong and she listened, didn't she? She didn't just walk over you and say will not going to do it my way.*

¹² Affidavit of Alifereti Winston Wakanivesi, dated 12 December 2024 at Annex AW-16: Email response from Mr. Saumi to Ms. Malimali's email.

¹³ Ibid.

Mr. Saumi: I'm still illustrating on October 8th and this email that she is asking me is 14, 6 days later.

Justice Ashton-Lewis: *Yeah.*

Mr. Saumi: Yes. So what I advise her, My Lord, the conviction of the Act says us that we have a duty to receive complaints and investigate complaints. And the Act I also told her my email that the Act does not categorize the type of complainers that we need to accommodate that is one. Whether it's a taxpayer or not. And also explain to her about Ms. Forwood. I explained to her Ms. Forwood can be categorized as a whistleblower, we have that whistleblower Provision in our commissioners daily conduct.

Justice Ashton-Lewis: *I want to ask you just a simple question, if you could allow me to. Anyone in this room could make a complaint about something you would look at it, to see if it was legitimate. It wasn't something that could be pushed away. Isn't Ms. Forwood entitled to make a complaint? Whether she lives in Paris or whether she lives in Fiji, isn't she entitled to make a complaint? She doesn't lose any entitlement when she steps off the international boundaries of Fiji. And she is not on the Electoral but she is entitled to make a complaint, I assume you look at it and think oh this is this media person, this is nonsense and you then do the normal way of rejecting it or you will look at it and see there is merit in it, wouldn't you?*

Mr. Saumi: Exactly, My Lord.

Justice Ashton-Lewis: *So you wouldn't be concerned that she's in another country. You wouldn't be concerned that you would just be concerned about this is a complaint made against someone here and I'll look at it, if it's legitimate, I'll deal with it.*

Mr. Saumi: Correct, My Lord. I want to explain my concern.

Justice Ashton-Lewis: *Yes.*

Mr. Saumi: What I really worried about this instruction came...

Justice Ashton-Lewis: *From Ms. Malimali.*

Mr. Saumi: From Ms. Malimali categorized in the country. I explained to her our consequences that might come. According to her, meaning I give this advice to protect her office.

Justice Ashton-Lewis: *Yes.*

Mr. Saumi: And so this is what I said.

Justice Ashton-Lewis: *Well, just before you do, I want to read this in a favourable light to Barbara Malimali I realize it's not the way it's done, but I read this more favourably than I read it unfavourably.*

Ms. Waqanika: Two things. My word.

Justice Ashton-Lewis: *Yes.*

Ms. Waqanika: When a tourist regardless of whether they're a taxpayer here, I mean it was something get wrong here, we want to know the complaint. That's the non-issue that's to me, to everyone should be clear. But I guess the issue that's coming across is Ms. Forwood has every right to lodge a complaint regardless of her case. She has every right to lodge a complaint whether she's a taxpayer or whether she's here or not. The issue is how will you get to step on offer? It was, it's based on the complaint you made a statement then you run with a due process. That's what really ascertained. Anyone can lodge a complaint regardless of whether they are taxpayers or citizens or not. It's the process following that complaint that we have to take into account.

Justice Ashton-Lewis: *So point me to the law that says there's just a template of how you complain and this must be done or the statement to fight it because I haven't seen it. My understanding is a statement can come in the form of a lengthy email pointing out certain things. Is that not allowed under the FICAC Act?*

Ms. Waqanika: I'm not sure about that, maybe would be their SOP.

Mr. Saumi: My Lord, from my experience, if a case has been reported to FICAC and we look at the complaint and there is merit and we investigate and there is a probable offence is committed. And the complaint letter is there, we cannot access the complaint. This is in relation to whistle blower.

Justice Ashton-Lewis: *Yes.*

Mr. Saumi: You know whistle blower complain, that we do evidence base investigation. And those types of investigation are successful because complainant don't show up they gave the information. We develop our intelligence and we go and we are present there when our offence are been committed. That's why in the whistle blower they don't give, that's the time, one anonymous complaint. So what we do from our system, if the content of evidence or materials has hit all the elements of the problem that we are looking at, we record the statement of those to get in one way with the complainant. That's the practice and we are successful in most cases, we are successful in accordance when they just specific investigation and whether it's anonymous complaint. But what I explained Madam is this; Forwood is always are whistleblower. People who are giving information to her are just beside us. They are looking at us. They are the one give everything and they will look at us. If we don't complain, if you don't act another time later they will go against us.

Justice Ashton-Lewis: *I understand that.*

Mr. Saumi: That is my concern that I raised to Madam and I write to Madam but Madam said I hear you.

Justice Ashton-Lewis: *She listen, didn't she?*

Mr. Saumi: Yes, she said I hear you, that's her response that she made. But after a few days later this is again, after a few days later another email came that she said Forwood complain are not allocating resources. And directly just within us I don't know whether she had put again to Supervisor of Election or not.¹⁴

21. The evidence presented demonstrates a deeply problematic approach taken by Ms. Malimali and the CR towards those who were acting on behalf of whistleblowers, such as Ms. Forwood, and their access to legal mechanisms in Fiji. Although Ms. Forwood was portrayed disparagingly as a "serial complainer" and her credibility questioned by figures such as the CR and Ms. Malimali, she had every right to lodge complaints.
22. Mr. Rabuku deposed that it would be easy enough to get Ms. Forwood to provide a Police witness statement or an Affidavit in relation to her complaints. Such a process would resolve the issues raised by Ms. Malimali in relation to false information being provided.
23. The suggestion of establishing a "filtering system" at FICAC to weed out vexatious complaints was discussed by some witnesses. Justice Jitoko stated:

Justice Jitoko: All right, would it satisfy the complainant that the matter is being handled where it or she or he wants it to go. If it is in fact like within the service, with the Commission itself, within the Civil Service, for example, there is a body set up to fill. In other countries there is, you know, is within the system itself there are whistleblowing facilities that are available in departments and so. But in this case, where there are within the FICAC itself a complaint mechanism that is in there. All I was suggesting was that if they're inserted before the lodging, formal lodging of a complaint and acceptance of that complaint and a committee that looks at the seriousness of the complaint and the evidence there is to substantiate these complaints that are filed.¹⁵

24. S-G Green also said something similar:

Mr. Green: I think a filtering system within FICAC would be a very good idea, My Lord. The threat for us public servants has been investigated by FICAC. We could be cleared. FICAC can write a letter tomorrow and say, you have been cleared. But it's the stigma. We are a small community. It's the stigma that sticks with you all throughout your career. I've been in the service for the last 30 years. I've never been investigated by Police, never been investigated, never appeared in Court except to defend the state. But here, I've learned yesterday and during these proceedings that I was being investigated by FICAC. And I didn't even know that I was being investigated. That is the fear that we have. And even if I pick up the phone and said, I'm the Solicitor General, I'm asking you officers of FICAC, is there an

¹⁴ Transcript, Day 7, Session 1 – Mr. Saumi at 19-23.

¹⁵ Transcript, Day 11, Session 1 – Justice Jitoko at 26.

investigation against you? The way things have turned out during this period of time that could be termed as an interference with you.¹⁶

25. However, any sort of filtering system comes with its own problems. If a “filtering committee” was made up of non-FICAC staff, who would select them? FICAC? the JSC? the A-G? In a small country like Fiji, there is also a high chance of numerous conflicts of interest. The current process within FICAC is that once a complaint is received, it is registered and then sent to the Legal Division to undertake an initial legal analysis to ascertain whether the complaint is valid or vexatious. If it is valid it is assigned to the Investigation Division for further information gathering and investigation, and then returned to the Legal Division for a second legal opinion. If it is vexatious the complaint file is closed. So FICAC already has a built in “filtering system”. Should a further filtering system be established, that filtering committee will still always need an initial legal opinion, and this would have to be done by the FICAC Legal Division. The result would be a duplication of systems.
26. Overall, the CoI finds that FICAC’s current systems are adequate, and a further filtering system would only add unnecessary costs, and likely perhaps add unnecessary complications.
27. The decision by the CR to block Ms. Forwood’s emails, without instituting an alternative mechanism for handling such correspondence, has resulted in a de facto denial of her constitutional right under section 25 of the Constitution to information. This act, even if driven by workload concerns, violates fundamental democratic principles and institutional duties of transparency. Section 25 of the Constitution states:
 - (1) Every person has the right of access to:
 - (a) information held by any public office; and
 - (b) information held by another person and required for the protection of any legal right.
 - (2) Every person has the right to the correction or deletion of false or misleading information that affects that person.
 - (3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1) and may regulate the procedure under which information held by a public office may be made available.
28. The CoI finds that Ms. Forwood has every right to make complaints to FICAC, and also, she has every expectation that her complaints will be processed in accordance with FICAC’s policies. This right does not hinge upon a person’s residency or taxpaying status. As such, efforts by Ms. Malimali to dismiss or ignore Ms. Forwood’s complaints on the basis of her living abroad, or not being a taxpayer, are in breach of the FICAC Act.

¹⁶ Transcript, Day 29, Session 1 – S-G Green at 52.

29. Section 12(a) of the FICAC Act requires the Commissioner, through the Deputy Commissioner, and/or, through his or her officers to:
- a. receive and consider complaints alleging corrupt practices and investigate such of those complaints as he or she considers practicable.
30. The words “such of those complaints as he or she considers practicable” provide the Commissioner with the ability not to investigate complaints when it is not practicable to do so. Whether an investigation is “practicable” depends on the circumstances. The dictionary definition of “practicable” is “capable of being done”. There may be genuine reasons why it may not be practicable to investigate a complaint. For instance, the witnesses may all be abroad. Not investigating a class of complaints, such as false income, assets and liabilities declarations by MPs, or, because they are from a certain person does not fall within the “not practicable” bracket. It would be an arbitrary act and an abuse of power.
31. This underscores a fundamental failure by Ms. Malimali to understand and comply with the legal and constitutional obligations owed by FICAC.

4.4 Assessment of Allegations

4.4.1 *First Allegation*

32. The SoE, Ms. Mataciwa had during the period since her appointment in 2023 to the date of her affidavit, 29 November 2024, forwarded complaints to FICAC that she had received on behalf of the FEO. There were 29 complaints, which she had forwarded, some against high-profile politicians.¹⁷
33. On 24 May 2024, Ms. Mataciwa circulated a Press Release as follows:

SoE refers probable commission of electoral breaches to FICAC

Today, Friday 24 May 2024, I have referred two (2) matters of probable commission of electoral breaches to the Fiji Independent Commission Against Corruption [‘FICAC’]. The matters are related to the FijiFirst appointment of its Party Leader and the Honourable Lynda Tabuya, respectively.

With regards to the appointment of the FijiFirst Party Leader, on 09 May 2024, the former FijiFirst General Secretary Mr. Aiyaz Sayed-Khaiyum conducted a press conference and made statements to the effect that former Prime Minister Josaia Voreqe Bainimarama will continue to be the Party Leader of FijiFirst. On the same day, Mr. Bainimarama was convicted for the offence of attempting to pervert the course of justice contravening Section 190 of the Crimes Act 2009 and sentenced to a term of 1-year imprisonment.

¹⁷ Affidavit of Ana Salaivalu Mataciwa, dated 29 November 2024, at [13], Annex AM-3: List of complaints forwarded through to FICAC.

I understand that this conviction has been appealed but Section 5(3) of the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013 [**‘Act’**] states that,

A person is disqualified from being an office holder of a political party that is registered under this Act if that person has, in the 5 years preceding the date when he or she applies to become an office holder of the political party-

- (a) *been declared an undischarged bankrupt; or*
- (b) *been convicted of an offence and sentenced to imprisonment for a period of not less than 6 months.*

An office holder refers to someone that is either elected or appointed by the members of the political party to hold office in that political party. At the moment, Mr. Bainimarama continues his appointment as Party Leader despite not meeting the requirements of Section 5(3) of the Act. The endorsement of the appointment of Mr. Bainimarama as Party Leader may be an offence relating to the Act. Therefore, pursuant to Section 18 of the Electoral Act 2014, I have referred this matter to the FICAC for their further action.

In addition, the Fijian Elections Office [**‘FEO’**] received a complaint against the Honourable Lynda Tabuya and the FEO is of the position that the allegation contained in the complaint maybe an offence relating to the Act.

Apart from the above matters, the FEO has also, to date, referred the following individuals to FICAC for probable commission of electoral breaches:

- a. Hon. Charan Jeath Singh, referred on 31 October 2023;
- b. Aiyaz Sayed-Khaiyum, referred on 15 February 2024;
- c. Frank Bainimarama, referred on 15 February 2024;
- d. H.E Ratu Kotonivere, referred on 15 February 2024;
- e. Usaia Waqatairewa, referred on 20 Mar 2024;
- f. Lynda Tabuya, referred on 5 April 2024;
- g. Manoa Kamikamica, referred on 5 April 2024;
- h. Siromi Turanga, referred on 5 April 2024;
- i. Josaia Gonedwai, referred on 14 May 2024;
- j. Tanya Waqanika, referred on 14 May 2024;
- k. Viliame Takaway, referred on 14 May 2024;
- l. Aseri Radrod, referred on 14 May 2024;
- m. Ifereimi Vasu, referred on 14 May 2024;
- n. Semi Korolavesau, referred on 14 May 2024;
- o. Faiyaz Siddiq Koya, referred on 14 May 2024; and
- p. Semesi Karavaki, referred on 14 May 2024.

I would like to emphasize that the FEO is under a statutory duty to promptly refer these matters to FICAC. By invoking my powers under Section 18 of the Electoral Act 2014, I have merely asked FICAC to look into the “probable” commission of electoral breaches. The use of the words “immediately report the matter” does not afford the FEO any other choice. Procedural fairness will be provided to these individuals when FICAC carries out its assessment on the matters.

Therefore, these referrals must not be misconstrued as finding these individuals guilty of any offence. I reiterate my dedication to continuously uphold independence, impartiality, electoral integrity, accountability, and transparency.

In respect of FICAC's statutory role, all inquiries regarding these complaints should be directed to FICAC.¹⁸

34. On 13 June 2024, the ECF Commissioners issued the following directive:

In the exercise of our powers under section 76(3) of the Constitution of the Republic of Fiji 2013 and section 8(a) of the Electoral Act 2014, the Electoral Commission of Fiji hereby directs the Supervisor of Elections to comply with the following directives:

- (1) The SOE in her capacity as SOE or Registrar of Political Parties when dealing with complaints, is to inform the relevant person of the complaint that has been made against them.
- (2) The SOE should table all complaints she receives with the ECF before any further action is taken, including reporting a person to FICAC.

35. Ms. Mataiciwa was of the opinion that as soon as she realised that a complaint was a “probable commission of an election-related criminal offence”, she should refer it immediately to FICAC and not to the ECF, due to the requirement for such complaints to be referred immediately to FICAC.

36. The requirement is set out in s 18 of the Electoral Act as follows:

If the Electoral Commission or the Supervisor becomes aware at any time of the probable commission of an election-related criminal offence, including any criminal offence prescribed in this Act, it must immediately report the matter in writing to FICAC, and all election officials must fully cooperate in the investigation of any election-related offence.

37. Ms. Bokini-Ratu, Manager Legal of FICAC, gave her opinion that there was no requirement to inform, or seek approval from, the ECF prior to this reporting:

Mr. Dawai: Now, Ms. Bokini, I refer you to the directive from the Electoral Commission which you have before you now. Given your opinion in your affidavit, the comments that you've placed in your affidavit and the directive from the Electoral Commission, in your opinion, what are your views of this particular directive in relation to Section 18 of the Electoral Act?

Ms. Bokini: Thank you, My Lord. I think it's obvious from my legal opinion that my interpretation of Section 18 is that once the SOE or the ECF is made aware of a credible election related complaint, they must immediately refer the matter to FICAC. There is no provision in that section or any other section within the Electoral Act or the related electoral laws that state that the SOE or the ECF must inform a person who is being complained of or that they need to discuss it between themselves and then agree whether to refer it to FICAC or not. I understand the wanting to inform a person who is being complained against out of fairness. I

¹⁸ Press Release of Ms. Ana Mataiciwa, dated 24 May 2024 < [SoE refers probable commission of electoral breaches to FICAC | Fijian Elections Office](#)>

understand that. But if you read the law strictly, there is nothing in the law that says that this must be done.¹⁹

38. Ms. Malimali justified the 13 June Directive on the grounds that Ms. Mataciwa was using an unfair and prejudicial process. She stated that complainants needed to be informed of the existence of a complaint when it was received, so that they would receive an opportunity to be heard.²⁰ Her view, set out as follows, was that Ms. Mataciwa had made a ‘public spectacle’ of complaints:

114. Furthermore, as I recollect it, the ECF was of the view that, it was not fair to the persons complained of that the SoE, Ms. Mataciwa, decided to make the referral of their complaints to FICAC a public spectacle by announcing it to Fiji and the world through social media.

115. In effect, the persons complained of found out about the complaint against them to the SoE and the referral to FICAC through the media.²¹

39. Ms. Malimali stated that the 13 June Directive was issued in order to give complainants the chance to be informed and to ‘be heard’.²² Ms. Mataciwa referred to s 18 of the Electoral Act and did not think that she could comply with the law while following the 13 June Directive.

40. Ms. Malimali was questioned on her interpretation of the Electoral Act by the Counsel Assisting. The point was put to her that Ms. Mataciwa’s interpretation of “immediately” in s 18 followed the ordinary meaning of the word. The exchange is set out below:

Ms. Malimali: Well, our minutes will reflect otherwise. Look, they had discussions about Section 18. All right. The way we, for us, it was like, listen, when somebody complains about somebody, you must give them an opportunity to be heard, right? Tell them this is a complaint against you. Sift out the irrelevant from the relevant and move on. We're not asking her to give it to us, we'll check and we'll give it. Contrary to what I think Puleiwai said yesterday, we don't actually hold the files of these people. I've never seen anybody's file when I was at the Electoral Commission. That was it. So Mataciwa's response to all of the arguments that were put forth was, under Section 18, I have the power. Yes, you have the power to refer to FICAC. So does the Electoral Commission.

Ms. Mason: Well, that wasn't her argument. Her argument was that she had to refer immediately as soon as she knew that there was a probable commission of an offence. So she picks it up. She says that she has some complaints, where the complaint has enough evidence and it's a very simple matter, and she just

¹⁹ Transcript, Day 11, Session 2 – Ms. Bokini-Ratu at 40.

²⁰ Affidavit of Barbara Malimali, dated 27 November 2024, at [113].

²¹ Ibid., [114]-[115].

²² Ibid., [117].

transfers it to FICAC because the section requires that to be done immediately.

Ms. Malimali: Well, what does immediately mean? Right this minute, as soon as I get it?

Ms. Mason: Yes, it does.

Justice Ashton-Lewis: *Well, you can give it a normal meaning. You're a lawyer, you know that when you're faced with something, the first rule in statutory interpretation is give it firstly its normal meaning. Now, I think immediately, and I see that it says the SOE should table all complaints she receives with the ECF before any further action is taken, before any further action. And so immediately is pretty easily able to be understood.*

Ms. Malimali: Yes. We're not saying stop, press, don't send it. We're saying let us know.²³

41. Ms. Malimali was then further pressed on the point that referral to the ECF was not consistent with the wording in s 18 of the Electoral Act. Ms. Malimali raised an argument that this was superseded with the Constitution, as set out below:

Ms. Mason: So that was one occasion where that happened. Can we just go back to this? I'd really like to stick to the point. So what is being put to you is that this word before is not consistent with the requirement under the Act to immediately refer. So Ms. Mataciwa says that she raised that at the meeting and there were robust discussions, but the Commission went ahead with it anyway.

Ms. Malimali: All right. It was she raised it at the 2nd April meeting, right. They were discussing this, that. They went from one end of everything to another. The Constitution was brought out. At the end of the day, we are subservient to the Constitution. Whether we like it or don't like it, this Constitution is here. And so I think Section 16 was brought up of the Constitution.

Ms. Mason: Have you got a copy of Section 16? Can we turn to that?

Ms. Malimali: Sorry, I beg your pardon. Yes. Sorry.

Ms. Mason: So what part of Section 16 was not consistent with what Ms. Mataciwa was saying?

Ms. Malimali: That every person has the right to executive or administrative action that is lawful, rational, proportionate, fair, reasonably prompt, and then B, every person who has been adversely affected by any executive or administrative

²³ Transcript, Day 23, Session 2 – Ms. Malimali at 42-43.

action has the right to be given written reasons for the action. So we're basically saying just be fair to everyone.

Ms. Mason: Okay. But what in there says that as soon as you get a complaint or before you transfer it, you have to tell the complainant about it? Which one says that?

Ms. Malimali: Well, Section 16, I think needs to be read, both 16(1)(a) and (b). Every person has the right to executive or administrative action. That's administrative, what she's doing, referring. That is lawful, rational, proportionate, procedurally fair, and reasonably prompt.

Justice Ashton-Lewis: *Those are pretty good qualifying words, aren't they? Reasonably prompt.*

Ms. Malimali: Yes. And we didn't have a problem with...

Justice Ashton-Lewis: *Sorry, I think you need to read to Ms. Mason's point.*

Ms. Mason: Yes. So there's nothing in there that requires notice of a complaint that's been transferred from one entity to another. No decision has been made.

Ms. Malimali: No, but if you look at (b), in a way that could apply. You referring a matter to FICAC is adverse.²⁴

42. Section 16(1) of the Constitution states:

Subject to the provisions of this Constitution and such other limitations as may be prescribed by law—

- a. every person has the right to executive or administrative action that is lawful, rational, proportionate, procedurally fair, and reasonably prompt;
- b. every person who has been adversely affected by any executive or administrative action has the right to be given written reasons for the action; and
- c. any executive or administrative action may be reviewed by a court, or if appropriate, another independent and impartial tribunal, in accordance with law.

43. Ms. Malimali was further challenged on her interpretation of s16(1) of the Constitution. The legal point at issue was whether the mere referral of a complaint by the SoE to FICAC itself adversely affects those implicated. This was covered in the following exchange:

Ms. Mason: Well, not necessarily. You're just transferring from one department to another.

Ms. Malimali: It's not transferring there.

Ms. Mason: What's adverse about it?

²⁴ Transcript, Day 23, Session 2 – Ms. Malimali at 44-45.

Ms. Malimali: In this country, when somebody tells you you're about to be FICACed or you're going to be FICACed or you are FICACed, that is adverse. You're already prosecuted, convicted, and sentenced.

Ms. Mason: Well, that's just...

Justice Ashton-Lewis: *That was under the previous government, though. It's since 2022. And I realize things don't happen overnight, but that was a previous cancerous taste left after 8 years of a military government and then eight years of a so-called parliamentary government that was still really the same military people, just in suits this time. So that's right, but...*

Ms. Malimali: It hasn't completely come out. The fear is still there.

Ms. Mason: Yes, but that's not what these words say.

Justice Ashton-Lewis: *Yeah.*

Ms. Mason: And we have heard a lot of evidence that the environment has changed, the judiciary is not as they were, and we are two years on from an election. So, you know, Ms. Puleiwai, she has closed some cases, so it's not like cases weren't closed.

Ms. Malimali: I don't know Ms. Puleiwai, I'm sorry.

Ms. Mason: Right, but she has closed some cases during her time in FICAC. So there's no reason to say that just because a complaint is transferred from one entity to another that someone's been adversely affected.

Ms. Malimali: I'd have to disagree. You give anybody the FICAC name in this country, even today, the fear remains.

Ms. Mason: Yes, the fear, but they're not being adversely affected, are they? The complaint is not going to automatically go against them. There's still an investigation to go.

Ms. Malimali: I disagree.²⁵

44. It was additionally put to Ms. Malimali that immediate notification to those persons under investigation may have negative practical consequences for FICAC's operations, as follows:

Ms. Mason: Alright so interestingly and ironically Ms. Puleiwai says that the reason why some of these culprits left and documents were destroyed is because they were alerted about the investigation. They were alerted about the investigation before anything could be done.

²⁵ Ibid., 45-47.

Ms. Malimali: Is that what she's wondering?

Ms. Mason: I'm not sure but that's you will know that their argument about not alerting complaint targets straight away is because they need time to collect information and get search warrants and then people leave the country if you tell them and destroy documents. So that was their argument as to why you don't advise people straight away of a complaint.

Ms. Malimali: For the corruption ones. Yes.²⁶

45. It is unclear what Ms. Malimali meant by “the corruption ones”, as all the complaints which were referred by the SoE to FICAC were “corruption” complaints. The requirement under s 16(1)(b) of the Constitution applies to any person “adversely affected.” It is highly doubtful that the mere referral of a complaint from one government entity to another would adversely affect the person the subject of a complaint. In any event, such notice could have been given after the complaint had been referred to FICAC.

46. There is one point of criticism of Ms. Mataiciwa that the CoI agrees with Ms. Malimali about. The names of those persons whose complaints had been referred to FICAC should not have been publicly released, at least not until those persons the subject of the complaints had first been informed.

47. Ms. Mataiciwa, meanwhile, set out her recollection of the difference of opinion, as follows:

Ms. Mason: All right. So then when you told them that under Section 18 if it was a probable offence you had to immediately refer that. What response did you get?

Ms. Mataiciwa: Um, well the facial expression speaks a lot. So I believe they were quite angry with the fact that to them I was, it was like an insubordination on my part for not listening to the recommendations that they were giving. But I was just basing it on the law. It was quite clear. Section 18, it required me not to take it through to Electoral Commission, but refer it directly to FICAC.

Ms. Mason: Did they have a legal argument? Did they say, well actually the law requires you to send it to us?

Ms. Mataiciwa: They spoke of natural justice and giving the complainants the right to respond. But what we, what I was explaining to them, that is the investigative process when it reaches FICAC. As for us, it's quite straight forward and it's in the law. Once we receive it, we submit it to FICAC and then they'll do their own investigation and that natural justice would come in place there.

²⁶ Transcript, Day 24, Session 3 – Ms. Malimali at 43.

- Ms. Mason: Okay. What about the second part of the directive that talks about the complaints going to the Electoral Commission first before you send it to FICAC. Did they have any legal arguments about why they should step in into that process?
- Ms. Mataciwa: Because they are of the view that they are the Electoral Commission and they have this perception that they have the overarching control on the Registrar of political parties and the office and the Fijian Elections Office. So in their view they thought that it should go to them first before I refer it to FICAC.
- Ms. Mason: And did you discuss with them the meaning of the word ‘immediately’ that’s set out in that section?
- Ms. Mataciwa: We did have a lengthy discussion on this Section 18, but it was apparent that I had a different interpretation to Section 18 and they had a different interpretation of Section 18.²⁷

48. Ms. Mataciwa then recalled that while the difference of opinion was discussed verbally, she did not believe either side got a written legal opinion.²⁸ On her end, she was verbally advised that the 13 June Directive was illegal by the advice of FICAC’s internal legal team, and two external law firms consulted on the matter, namely Krishna and Co, and Mitchell Keil Lawyers.²⁹

49. In relation to the 13 June Directive, the FICAC Investigation reached the following conclusions, as contained in their Investigation Report, dated September 10 2024:

The **Suspect** with other **Commissioners** in abuse of the authority of their office endorsed a resolution in a duly convened meeting of EC to adopt an unlawful process of handling Election related complaints and later issued directives to **PW-1** to comply to the said resolution an act that is not guided by the provisions of the Electoral Act 2014. [sect 18 and sect 115(b)]. The newly adopted process of handling Election related complaints was prejudicial to the rights of **PW-1** and the Fijian Election Office.³⁰

50. The term “suspect” refers to Ms. Malimali and PW-1 refers to Ms. Mataciwa.

51. Throughout the CoI hearing, lengthy arguments were made that Ms. Mataciwa was legally obliged to follow the 13 June Directive, in reliance upon the case of *Electoral Commission v Supervisor of Elections*.³¹

52. *Electoral Commission* concerned a case where the SoE at the time had considered a direction from the ECF to be *ultra vires*, had sought the opinion of

²⁷ Transcript, Day 1, Session 2 – Ms. Mataciwa at 17-18.

²⁸ Ibid., 18.

²⁹ Ibid., 19.

³⁰ See Affidavit of Kuliniasi Saumi, sworn 3 January 2025, at Annexure KSV12 at para [6](a): The FICAC Investigation Report.

³¹ *Electoral Commission v Supervisor of Elections* (29 November 2016) ABU 0069.

the S-G, who supported their position, and then refused to follow the ECF's direction. The Court stated as follows:

But, the bottom line is, the Respondent was mandatorily required to comply with the directions given by the Commission in terms of Section 76(3) of the Constitution read with Section 8(a) of the Electoral Decree and Section 30(7) thereof.³²

53. The CoI considers that these arguments are irrelevant to the CoI's ToRs, as the issues to be enquired into are centred around the FICAC Malimali Investigation, and whether the 13 June Directive was illegal and an abuse of office. The issue of whether Ms. Mataiciwa should or should not have followed an allegedly unlawful directive is not relevant to our enquiry.

54. Moreover, that case can be distinguished on the basis that the Court of Appeal found that the ECF directive at issue was not unconstitutional or illegal:

On the face of the Commission's Decision dated 22nd August, 2014 (at p.14 of the Court Record) and Annexure LT2 (the Affidavit of Larry Thomas) (at pp.10 to 12), I could not see anything unconstitutional or illegal in either.

As I have endeavoured to demonstrate above, I could not see anything in the Commission's directions of 22nd August, 2014 that has had the effect of defeating or frustrating the purpose of what is decreed in the Electoral Decree.³³

55. Furthermore, the FICAC Malimali Investigation was broader than just the ECF's 13 June Directive that complaints should be tabled with the ECF before any further action was taken, including reporting a person to FICAC.³⁴ The FICAC Investigation into the First Allegation also included what had been discussed at a 2nd May ECF meeting, and other ECF meetings, about the relationship of friendship which Ms. Malimali had with various political actors, including Hon. Tabuya, Hon. Kamikamica and Hon. Turaga. It wasn't just about the 13 June Directive in isolation. The investigation involved the surrounding circumstances.

56. The CoI finds that the 13 June Directive was unlawful. If Ms. Mataiciwa, upon reading a complaint submitted to the FEO, considered that it constituted the probable commission of an election-related criminal offence then she is required legally to immediately report the matter in writing to FICAC. Of course, this did not prevent her from notifying the ECF Commissioners that she had done so, nor notifying the persons the subject of the complaints that a complaint had been received by her office, and had been referred by her to FICAC.

57. There was also some discussion around the words "probable commission of an election-related criminal offence" from those who argued that the 13 June Directive was legal, that Ms. Mataiciwa had to have undertaken an assessment

³² Ibid., [47].

³³ Ibid., [36]-[37].

³⁴ Affidavit of Ana Salaivalu Mataiciwa, dated 29 November 2024, at Annex E: 13 June Directives issued to Ms. Mataiciwa from the ECF Commissioners.

in order to ascertain whether or not the complaint involved the “probable commission” of an offence. Ms. Mataciwa’s response was that some complaints were obviously, on their face, a “probable commission” of an offence and no further assessment was required:

Ms. Mason: All right. So paragraph 11, you talk about how the FEO analyses complaints that are received. And I'd like to take you to paragraph, to Section 18 of the Act. And you would know it off by heart, I'm sure. So it says that if the Electoral Commission or the Supervisor becomes aware at any time of the probable commission of an election-related criminal offence, etc, etc., it must immediately report the matter in writing to FICAC. So when you talk in paragraph 11 here of the FEO analyzing the complaints, is that to assess whether there has been a probable commission of an offence?

Ms. Mataciwa: Yes. We have different kinds of complaints that we receive. The ones that are straightforward, for instance, the complaints regarding declaration of assets and liabilities for candidates. Those forms, they are statutory declaration forms. And so once we receive the complaints for those forms, we immediately direct it to FICAC. For other complaints, for instances, there could be complaints relating to our electoral services or there could be complaints with regards to what had happened in the general election which could relate to vote buying and all these sorts. This sort of complaint, we give an opportunity to the person that has been complained of to reply to it and provide a response as to what is the response to that complaint.

Ms. Mason: Okay. So if I could summarize and say you get a complaint, you can look at it and you go, that's easy, that's a probable offence, it should go straight to FICAC, or you say, I don't know if it meets the threshold for probable offence, we need to do some more and then decide whether we'll refer it. Is that how it works?

Ms. Mataciwa: Yes.

Justice Ashton-Lewis: *Ms. Mason, would you ask as what that threshold is?*

Ms. Mason: So that threshold, how do you decide what that is?

Ms. Mataciwa: It depends on the complaint that has been provided. For instances, we might receive a Facebook screenshot of a complaint with regards to vote buying. And so when we receive those sort of complaints, we give an opportunity to the person that has been complained of to provide a response to it. And once they give us a response, then we would be in a better situation to analyze whether it

should be referred to FICAC or the two parties could then just resolve it.³⁵

58. The CoI agrees with Ms. Mataiciwa's understanding. The key question to ask is, does Ms. Mataiciwa consider that an offence has probably been committed. If so, she needs to refer the complaint immediately to FICAC.

59. It must also be remembered that, as referred to earlier, the FICAC Malimali Investigation into this matter took into account the surrounding circumstances which involved evidence of Ms. Malimali stating that she was friends with Ms. Tabuya, and evidence of Ms. Malimali's friendship with Hon. Turaga and Hon. Kamikamica:

Ms. Mason: So you yesterday said that you were friends with Ms. Malimali. Did she not tell you that she'd been advised that she was the preferred candidate?

Mr. Turaga: I was not even aware when the interview was taken or when the assessment was going on in terms of who all were the candidates. I was not even aware.³⁶

...

Ms. Mason: So do you have a friendship with her? So it's both you and your wife, friends of Ms. Malimali?

Mr. Kamikamica: I think it would be probably fair to say that she's more my wife's friend. Because I'm the husband, I'm there by association.³⁷

60. The 10 September 2024 Investigation Report by Mr. Pita Tuberi described the investigation into the First Allegation as follows:

24. On the 02 April 2024 a meeting of Electoral Commission was duly convened at EC Conference Room at around 10:30am. Personally present in the meeting was the **Suspect as Chairperson**, Dr. Atu Emberson-Bain, Ratu Inoke Dokonivalu and Mr. Nemani Mati.

25. Mr. Reginald Jokhan and Ms. Nalini Singh attend the meeting via Zoom whilst Ms. Ateca Ledua was reported absent.

26. In-Attendance in the said meeting was **PW-1** Ms. Ana Mataiciwa as the Acting Secretary of Electoral Commission and **PW-2** Mr. Sefanaia Tudonu as Executive Secretary to Electoral Commission. As per the EC Meeting Minutes the meeting commenced at 10.38am and concluded at 3.16pm.

³⁵ Transcript, Day 1, Session 2 – Ms. Mataiciwa at 13-14.

³⁶ Transcript, Day 4, Session 1 – Hon. Turaga at 30.

³⁷ Transcript, Day 31, Session 4 – Hon. Kamikamica at 2.

27. **PW-1** circulated prior to the meeting a paper titled “FIJIAN ELECTION OFFICE UPDATE”. Documented in this paper are various agendas of meeting which she was going to present. Item No. 8 in the said paper titled “**Complaints**” contains updates of complaints of Cabinet Ministers which she had referred to FICAC including the recent one which the Complaints Team was still verifying.
28. As per the content of paper, the Member of Parliament named were Hon Lynda Tabuya, Hon Manoa Kamikamica and Hon Siromi Turaga. **PW-1** confirms in her statement that when she presented the Item No. 8 in the meeting, the **Suspect** and **other members** questioned her on the process of referring complaints to FICAC.
29. **PW-1** stated that she was demanded to explain why named MP were not notified of the complaint made against them. In response **PW-1** explained to them that she was mandated under section 18 of Electoral Act 2014 to report any Election Related Complaint immediately to FICAC.
30. **PW-1** further stated that after deliberation on the issue the Electoral Commissioners resolved that:
 - a) Her office is to first notify individual MP who has been reported for a breach on the details of the complaint made against him or her
 - b) Table all complaint she receives to the Electoral Commission before further action is taken, including reporting of the matter to FICAC.
31. According to **PW-1** she stated that the relationship between the Electoral Commission and her office was strained after she strongly disagreed during the meeting the two-resolution passed on that day by the Electoral Commissioners.
32. The meeting resolution of that meeting were later confirmed in the next Electoral Commission Meeting followed by a formal directive No. D05/2024 date 13 June 2024 issued by the **Suspect** (*refer to D-15*)
33. The new complaint handling process directed by the Electoral Commissioners had now resulted in the pending of 5 x Complaints the Political Party Complaint Register (*refer to D-11*).³⁸

³⁸ Affidavit of Kuliniyasi Saumi, dated 3 January, at Annex KVS-12: 10 September 2024 FICAC Investigation Report.

4.4.2 *Second Allegation*

61. The Second Allegation came from a letter dated 8 April 2024 from Ms. Forwood, alleging that Ms. Malimali had abused her office.
62. That 8 April letter was emailed to the Hon. PM, the COC Secretariat and Ms. Puleiwai, and was copied to the then speaker Ratu Sir Naiqama Lalabalavu, then President Ratu Williame Kotonivere, Mr. Mahendra Chaudhary, Mr. Savenaca Narube, and various media outlets.³⁹ Ms. Malimali was, at this time, the Chair of the ECF.
63. The letter attached to the email is replicated in full at paragraph 4 of this Chapter.
64. The Second Allegation concerned whether the 2 April letter from Ms. Malimali to the COC, dated 2 April, was falsified. It appeared on its face to have been agreed by the ECF Commissioners, despite having only been sighted and signed by Ms. Malimali.
65. The ECF is an independent, non-partisan authority responsible for overseeing elections in Fiji. It operates under the Electoral Act. Section 3 of the Electoral Act sets out the duties and powers of the ECF:

(1) The Electoral Commission has the responsibility and authority to formulate policy and to oversee the conduct of elections in accordance with this Act and any other related law, including responsibility and authority with respect to the following matters-

- (a) registration of voters;
- (b) registration of political parties;
- (c) determination of the number of members of Parliament in accordance with section 54(2) of the Constitution;
- (d) receipt and return of the writ for an election;
- (f) declaration of the election results and allocation of seats in Parliament;
- (f) adjudication of electoral disputes, including disputes relating to or arising from the right to be nominated as a candidate, but excluding petitions and disputes subsequent to the declaration of election results;
- (g) monitoring and enforcing compliance with the Act and any law governing political parties, on its own initiative or in response to a formal complaint; and
- (h) adopting Rules and instructions consistent with the Act and the Constitution that are necessary for the transparent and orderly conduct of free and fair elections.

(2) Prior to an election, the Electoral Commission must ensure that a nationwide voter information and education programme is implemented on a timely basis, to inform and educate voters concerning-

³⁹ Affidavit of Alexandra Victoria Forwood, dated 4 December 2024, at Annex 6; Affidavit of Kuliniasi Saumi, dated 3 January 2025, Annexure KVS-2: Email from Alexandra Forwood to Prime Minister Sitiveni Rabuka, 8 April 2024.

- (a) the voter registration process;
- (b) candidates and political parties;
- (c) voting procedures, including postal and pre-poll voting, if applicable; and
- (d) procedures for protecting electoral rights.

(3) No member, officer, employee or agent of the Electoral Commission or the Supervisor or any officer, employee or agent of the Fijian Electoral Office shall be held liable in any way in any criminal or civil proceeding for any act or matter done or omitted to be done since the date of their appointment in the *bone fide* exercise or attempted exercise of any powers, functions and duties, whether conferred by this Act or otherwise.

66. The way decisions of the ECF are made is mandated under s 5 of the Electoral Act which requires a majority vote with at least four members in attendance:

(1) The Electoral Commission must adopt all of its decisions at its meetings, which must be held at such place and at times as determined by the Chairperson or a majority of the members of the Electoral Commission, provided however the Electoral Commission by agreement may hold meetings through the use of electronic medium.

(2) If the Chairperson of the Electoral Commission is unable to attend a meeting of the Electoral Commission, the other members who are present at the meeting must elect a member from amongst themselves to chair the meeting.

(3) A decision of the Electoral Commission requires the concurrence of a majority of its members, and at least 4 members must attend and vote at each meeting to constitute a quorum.

(4) The Electoral Commission may adopt a decision despite the absence or abstention of any member at a meeting but if, in a particular matter, a vote is taken to decide a question and the votes cast are equally divided, the member presiding must exercise a casting vote.

(4A) The Electoral Commission must, within 5 days of its meeting, publish a copy of the decisions taken by the Commission at the meeting.

(5) In exercising its powers and functions, the Electoral Commission and each of its members must act in a professional, collegial and impartial manner.

(6) The validity of the transaction of business of the Electoral Commission is not affected if a person who was not entitled to do so took part in the proceedings.

(7) Subject to subsection (8), the Supervisor shall act as the secretary of the Electoral Commission and must attend all the meetings of the Electoral Commission.

(8) Where the Electoral Commission is dealing with objections or appeals against the decisions of the Supervisor, the Supervisor must not be present at such meetings.⁴⁰

67. On top of being the secretary to the ECF the SoE has, under s 6 of the Electoral Act, the following duties and powers:

- (1) The Supervisor, as head of the Fijian Elections Office-

⁴⁰ Ibid., s5.

- (a) administers the registration and regulates the conduct, funding and disclosures of political parties;
- (b) administers the registration of voters and maintains the Register of Voters;
- (c) administers the registration of candidates;
- (d) implements voter information and education initiatives;
- (e) conducts election of members of Parliament and such other elections as prescribed under section 154, including the conduct of voting, counting and tabulation of election results;
- (f) oversees compliance with campaign rules and reporting requirements; and
- (g) performs any other function as conferred by this Act or any other written law.

68. Under s 8 of the Electoral Act the SoE is guaranteed his or her independence on the following conditions:

In the performance of his or her functions and the exercise of his or her powers, the Supervisor is not subject to the direction or control by any person, except that he or she must comply with-

- (a) the directions or instructions that the Electoral Commission gives him or her concerning the performance of his or her functions; and
- (b) a decision of a court of law exercising its jurisdiction in relation to a question on whether he or she has performed the functions or exercised the powers in accordance with the Constitution and the law, or whether he or she should not perform those functions or exercise those powers.⁴¹

69. During the relevant period the Acting SoE was Ms. Mataiciwa, and the ECF Commissioners were:

- a. Mr. Ateca Ledua;
- b. Ms. Nalini Singh;
- c. Mr. Nemani Mati
- d. Mr. Inoke Loganimoce;
- e. Mr. Reginal Jokhan; and
- f. Dr Atu Emberson-Bain.⁴²

70. The Second Allegation was that the April 2 Malimali Letter was signed by Ms. Malimali as the Chairperson of the ECF, purportedly on behalf of, and with the agreement of the other ECF Commissioners, even though none of the other ECF Commissioners had seen it, or knew what its contents were. The April 2 Malimali Letter was a response to a letter from the COC that the Selection Panel which had been established by the COC to shortlist and interview candidates for the substantive position of SoE had recommended Ms. Mataiciwa for the position. Under s76(4) of the Constitution:

The Supervisor of Elections is appointed by the President on the advice of the Constitutional Offices Commission following consultation by the Constitutional Offices Commission with the Electoral Commission.

⁴¹ Ibid., s8.

⁴² Affidavit of Ana Salaivalu Mataiciwa, dated 29 November 2024, at [15].

71. The letter from the COC to the ECF about Ms. Mataiciwa having been the person recommended by the Selection Panel was what the COC considered to be part of their obligation to consult with the ECF.

72. The text of the April 2 Malimali Letter is as follows:

**RE: RESPONSE BY THE ELECTORAL COMMISSION ON THE
CONSULTATION CONCERNING THE APPOINTMENT OF THE
SUPERVISOR OF ELECTIONS PURSUANT TO SECTION 76(4) OF THE
CONSTITUTION**

We refer to our unacknowledged letters dated 11/01/24, 02/02/24 and 28/03/24 in relation to the appointment of a Supervisor of Elections.

In our previous letters, we had recommended that the Constitutional Offices Commission readvertise the position and start the process again with the active involvement of the Electoral Commission to whom the Supervisor of Elections reports (s.76(3) of the Constitution, and s.8(a) of the Electoral Act). The Supervisor of Elections is also Secretary to the Electoral Commission and it is therefore imperative that the Commission is involved from the outset in the recruitment process.

We have 2 other alternatives for you:

1 – the COC could rotate the position of A/SOE amongst the 3 in-house applicants. The other 2 in-house applicants were Director Operations, Ana Senimoli and Director Finance, Sanjeshwar Ram; or

2 – Consider appointing Mr. Graham Everette Leung as the Supervisor of Elections and Ms. Mataiciwa as Deputy.⁴³

73. It was clear from this letter that Ms. Malimali did not want Ms. Mataiciwa to be appointed the SoE. She had recommended two options which were in direct contradiction to what the COC Selection Panel had recommended, namely, that Ms. Mataiciwa be recommended for appointment to the position of SoE.

74. The April 2 Malimali Letter arose from a meeting on 2 April 2024 which was attended in person by the following ECF Commissioners:

- a. Ms. Barbara Malimali, as Chair;
- b. Mr. Nemani Mati
- c. Mr. Ratu Inoke Dokonivalu; and
- d. Dr Atu Emberson-Bain.

75. Two other ECF Commissioners, Ms. Nalini Singh and Mr. Reginald Jokhan, attended the meeting via AVL. Also in attendance was Ms. Mataiciwa and the Secretary to the ECF, Mr. Sefanaia Tudonu. It was the same meeting in which the decisions giving rise to the 13 June Directive had been made, and which

⁴³ Affidavit of Ropate Green, dated 23 December 2024, at Annex 3: Copy of the 2 April Letter Ms. Malimali sent to S-G Green.

reportedly had involved hostile exchanges between the ECF and Ms. Mataiciwa.

76. According to Dr. Emberson-Bain, Ms. Singh left the meeting at approximately 2:30 pm, and Mr. Jokhan left some time afterwards, with neither being in attendance when the letter was apparently drafted:

On Tuesday 2 April 2024, the EC held a meeting in its FEO offices. The meeting was physically attended by Ms. Malimali as Chair, and Commissioners Mati, Dokonivalu, and Emberson-Bain. Commissioner Jokhan was in New Zealand but attended by Zoom. Commissioner Singh was out of Suva but also attended by Zoom. I believe that Commissioner Singh left the meeting around 2.30pm, and Commissioner Jokhan some time afterwards. Both were not in attendance by the time we began to draft the letter.

As per usual practice, Ms. Malimali and I were both drafting different documents. I do not recall exactly what letter I was drafting but I believe I was tasked with writing to the COC to advise it that the EC had exhausted its budget for the year.

I do not recall what letter Ms. Malimali was writing that day. Nor do I recall hearing the discussion she may have had with other Commissioners, as I was focused on my own task. Again, because of the FICAC search warrant, I do not have access to a copy of this letter but I have read the copy annexed to Ms. Malimali's affidavit.⁴⁴

77. Mr. Jokhan explained that there was difficulty with remote attendance due to connectivity issues:

Mr. Jokhan: My Lordship, I attended the meeting, like I mentioned, with Zoom. It kept coming on and off.

Justice Ashton-Lewis: *Yes.*

Mr. Jokhan: And about an hour, 45 minutes before, I had to say, okay, listen, I'm not getting any more reception, which I don't think they heard me. So I had to leave. And they were three-quarter way of the meeting at that time.

Justice Ashton-Lewis: *Well, let me assist. Let me cut you to the chase. When was the first time you read? Not saw, you read this letter written by Miss Malimali to the COC and dated the 2nd of April? When was the first time you saw that?*

Mr. Jokhan: After I arrived in Fiji, after I got all the social media questioning, if I've seen it, I personally asked the chair at that time, can you please give me the letter so we can have a look at it? A couple of days after.

Justice Ashton-Lewis: *Did the chair give you the letter?*

⁴⁴ Affidavit of Dr Atu Emberson-Bain, dated 22 January 2025, at [38]-[40].

Mr. Jokhan: No. At that time, Mr. Sefanaia Tudonu. To my knowledge, emailed the letter.⁴⁵

78. A copy of the April 2 Malimali Letter was then leaked to SM and was then widely circulated. Ms. Forwood started texting Mr. Jokhan about whether he knew about the letter. He confirmed that he did not. Some of the text messages are set out below:

(Jokhan) Hello. Barbara wrote that letter without asking the other Commission Members. Now she is hiding from all of us.

(Forwood) Sir than you so much For telling me.

(Jokhan) We as commission members have no idea what is in the letter.

(Forwood) You all need to give your statements to that effect if true Mr. Jokhan

(Jokhan) Yes. We are planning to do that. Barbara is not responding to our emails, viber messages or phone calls. She has to resign as she has brought shame on other commission members.

(Forwood) What happened is not right- you all know Ms. Mataiciwa is guided by the law. She is just doing her job

(Jokhan) Yes

(Forwood) As we have all waiting for this long

(Jokhan) [Thumbs up emoji]

(Forwood) And thank you for admitting it to me. I would you guys do what is right and write formally to COC and do a presser to tell them what happened. It took courage for you to do it.

(Jokhan) [Response to “It took courage for you to do it”]

Well we just found out that this is a different letter. I went to the commission office and asked them. They did not show me that letter as they need Barbara Malimali authorisation. WTF. We are all very upset about this.

[Response to “and thank you for admitting it to me. I would you guys do what is right and formally to COC...”]

Yes as we have been told that it is a different letter to what we wrote last year so we will be writing and if the press asks me then I will surely say that I as a Electoral Commissioner have no knowledge that we we wrote any such letter. It must be the doing of Barbara Malimali herself on her own account doing that and putting other Commission Members in problem.

⁴⁵ Transcript, Day 14, Session 1 – Mr. Jokhan at 12.

- (Forwood) Thank you Mr. Jokhan may I suggest you get a lawyer preferably not Khaiyum. Someone will be neutral and help you.
- (Jokhan) We have Dr Atu Emberson-Bain who is a lawyer on the Electoral Commission with us.
- (Forwood) Ok look someone independent⁴⁶

79. Mr. Tudonu, the ECF Executive Secretary, gave evidence that the other ECF Commissioners, did not hear back from Ms. Malimali for four days, despite their requests for a copy of the letter:

- Ms. Mason: Okay, all right. And then this next one is Ms. Malimali saying, I did write to the COC following up with a couple of options. It's been taken out of context, and I don't think we should be answering via the media. Now, what date? I can't see the date, oh, it's the 5th. These were both on the 5th of April? Is that correct? At the top of the page it says 5 April. I'm just wanting you to confirm.
- Mr. Tudonu: That's correct, Madam.
- ...
- Ms. Mason: Okay. And so from that period, from the 5th to the 8th, what had been going on in terms of requesting the letter and the whereabouts of the letter?
- Mr. Tudonu: Madam, the period in between the Commissioners were just pressuring me to release the letter. I advised the Commissioners that the letter was signed by the Chairperson. And if they wanted a copy of the letter, they can request approval from the Chairperson and I can share the letter with them. Because during the discussions in the Viber group, the Chairperson did not give any specific instructions on what I should do with the letter.
- ...
- Ms. Mason: All right, so all of this was going on over three days at this stage. Do you know if any of the Commissioners went directly to Ms. Malimali to ask her for the letter, or were they all hounding you?
- Mr. Tudonu: Madam, they had requested the Chairperson in the chat viber group, that's what I'm aware of whether they contacted her directly, I'm not aware of that. But other than raising their concerns in the chat group, they were just applying the pressure on me to release the letter.⁴⁷

⁴⁶ Affidavit of Alexandra Victoria Forwood, dated 4 December 2024, at Exhibit 5: Text message exchange with Mr. Jokhan.

⁴⁷ Transcript, Day 2, Session 1 – Mr. Tudonu at 27-29.

80. The ECF Commissioners share a Viber text group in which they share information. Mr. Tudonu was also included in that group. Mr. Tudonu provided copies of some of their texts. They are replicated below:

(Nalini Singh) Yadras, I am wondering if we should say something about this mysterious letter?

(MalimaliB) I did write to the COC following up and with a couple of options. It's been taken out of context and I don't think we should be answering via the media.⁴⁸

(JRPTelTD) When was this sent. Few people claim to have seen the letter.

Did you see that person asking me to respond. Idiots all writing whatever they want.

Chair can we get a copy of the letter that you had sent.

(Nalini Singh) Yes, we do need to see the letter as I don't recall a resolution on this- that the EC will send a letter to ter COC with some suggestions to how/ who to recruit for SOE? I did miss a meeting so some clarity will be useful as I too am being contacted by external parties...

(JRPTelTD) I am suggesting that all letters signed and sent out must be scanned and sent to all the commission members for our file, too. Our email is secured, so no chance of it being leaked out.

Sefania can you please email us the letter that is being discussed now.

(Atu) Morning everyone.

So that we are all clear about what letter this is, and what it actually says, could Sefania please send us copies of all letters dispatched from the EC on Tuesday.

Hopefully that will clarify the situation as I am not aware of any letter written to the COC on Tuesday other than the one I drafted to notify them exhaustion of meeting funds. We did not discuss the Supervisor's appointment at our Tuesday meeting other than a passing update that there was still no word back from the COC in response to our letter of concern sent earlier in the year? About the failure to notify/include the EC in the recruitment process. That at least is what I recall.

Vinaka.
Atu.⁴⁹

⁴⁸ Affidavit of Sefania Tudonu, Annex 9a: ECF Commissioners Viber Text Messages.

⁴⁹ Ibid., Annex 9b and 11d: ECF Commissioners Viber Text Messages.

81. The evidence clearly shows that none of the other ECF Commissioners knew about or had approved the contents of the April 2 Malimali Letter.

82. Dr. Emberson-Bain provided the following explanation in her affidavit:

Commissioners Mati and Dokonivalu have since told me that they were party to the discussion on the 2 April 2024 letter with Ms. Malimali. In particular they have told me that they were aware of and agreed with the suggestions put forward to the COC in the letter. This means that three out of the four Commissioners still present in the meeting room at the time of the letter was drafted had knowledge of and approved the letter of 2 April 2024.⁵⁰

83. Ms. Mataiciwa was also in attendance to this meeting. She states that they did not discuss her position at all. The FICAC Investigation Report dated 10 September 2024 states:

34. On the same day 02 April 2024, immediately after that meeting, in an attempt to remove **PW-1** from her position as SOE, the **Suspect** wrote a letter and hand delivered to Mr. Ropate Green Lomavatu, the secretary of the Constitutional Office Commission titled *"Response By The Electoral Commission On The Consultation Concerning The Appointment Of The Supervisor Of Election Pursuant to Section 76(4) of The Constitution"* (refer to D-10)
35. In the content of the said letter the Suspect clearly indicated available options to remove **PW-1** including the consideration to appoint Mr. Graham Leung as the Supervisor of Election
36. Findings of the investigation that the letter were personally formulated by Suspect herself without the knowledge of the other Commissioners. There were meeting agenda, meeting deliberation or meeting resolution during the meeting on 02 April 2024 on the issue of Appointment of Supervisor of Election.
37. **PW-1** confirmed when any issue about her is discussed by the Electoral Commissioners, she will be excused from the meeting. **PW-1** however confirmed that she was present all throughout the meeting and nothing was discussed about the appointment of the SOE.
38. The said letter was somehow exposed and was subject of a continuous media coverage. The rest of the Commissioners were caught off guard of what had transpired and were confronting **Suspect** in their viber platform. (refer to D-10A)
39. The **Suspect** confirm in their Viber Group that she did write to COC but her letter was taken out of context. The rest of the Commissioners were demanding that they see the letter but **PW-2** was instructed by the Suspect that the letter will only be accessed by other Commissioners upon her approval. (refer to D-10A)

⁵⁰ Sworn Affidavit of Dr. Atu Emberson-Bain, dated 22 January 2025 at [45].

40. Analysis done on the content of the Letter shows that the main purpose of the letter is to remove **PW-1** from the position of Supervisor of Elections. The content reflected some of the alternative that the Suspect indicated to The Secretary of COC to consider. The alternatives are as follows:
- a) The COC to readvertise the position and start the process again with active involvement of Electoral Commission in the recruitment process.
 - b) The COC to rotate the A/SOE amongst the 3 in-house applicants (**PW-1**, Ana Senimoli the Director Operations, Sanjeshwar Ram the Director Finance),
 - c) The COC to consider appointing Mr. Graham Everrete Leung as the SOE and **PW-1** as Deputy.
41. In the begin of each paragraph of the letter the Suspect was using the following words a) "*We refer*", b) "*In our*", c) "*We have*". These words represent many or represents the entire consensus of the members of the Electoral Commission to the content of the that letter.
42. However, this was not the case. The suspect dishonestly formulated the letter on her own whims. The rest of the members of the Electoral Commissioners were kept in the dark until the letter was exposed in the media.
43. A screen print of Viber Communication of Mr. Reginald Jokhan a member of the Electoral Commission with another person reflects the following "*We as Commission Members have no idea what is in that letter*" it also reflects "*Hello. Barbara wrote that letter without asking the other Commission Members. Now she is hiding from all of us.*"
44. The conclusive findings on this issue show that the Letter dated 02 April 2024 written by the **Suspect** falls under the description of a FALSE DOCUMENT under section 153(1) of the Crimes Act 2009.⁵¹

84. In relation to the Second Allegation, FICAC concluded in its Investigation Report dated September 10, 2024, that:

The **Suspect** had personally tried to influence Constitutional Office Commission (**COC**) to readvertise the appointment of the Supervisor of Election Position. Findings reveals that without the knowledge and consensus of other Commissioner in a duly convened meeting of **EC**, the Suspect dishonestly wrote a letter dated 02 April 2024 to **COC** indicating in the content of the said letter available options to remove **PW-1**.⁵²

85. The CoI finds that the FICAC Investigation into the Second Allegation was procedurally robust, and that the evidence collected supported the conclusion

⁵¹ Affidavit of Kuliniyasi Saumi, 3 January 2025, Annex 12: The FICAC Investigation Report Dated 10 September 2024.

⁵² Ibid., para [6](b).

that FICAC reached. The statement by Dr. Emberson-Bain that Commissioners Mati and Dokonivalu (Loganimoce) had told her that they were party to the discussion on the April 2 Malimali Letter does not seem credible. Commissioners Mati and Loganimoce were on the Viber chat with the other ECF Commissioners when they were all asking for a copy of the April 2 Malimali Letter, and they said nothing at all. That Viber chat went on for four days. If they had indeed known about the April 2 Malimali Letter they would have been expected to say something about it in the Viber chat. However, they said nothing.

4.4.3 *Third Allegation*

86. On 29 August 2024, Ms. Forwood submitted Complaint 2 against Ms. Malimali. This complaint was also based on the charge of Abuse of Office.⁵³

87. Ms. Forwood's email to Ms. Puleiwai, along with a letter to Ms. Mataiciwa, are replicated at paragraphs 6 and 7 of this Chapter.

88. Ms. Forwood also sent an email to Ms. Mataiciwa, dated 8 June 2024 at 1:22 pm:

Dear Ms. Mataiciwa,

Hope you are well and safe well. I believe that your office leaked my personal information pertaining to my voting status. I firmly believe that someone in your institution has abused office and provided information about me to Ms. Lynda Tabuya.

Given the concerns, I am demanding an investigation and that this matter is referred for abuse of Office. Please refer to the evidence above.

Kindly requesting an acknowledgement email.

Alexandra Forwood (Nee Bott).⁵⁴

89. Hon Tabuya had posted to a site called "Vuvale I Vunimatolu" that Ms. Forwood was neither a voter nor a taxpayer. This message also said that Ms. Forwood was in the habit of complaining about everyone. The FICAC Investigation Report stated:

47. It was then identified through investigation that on the 04 June 2024, PW-2 had made a verbal request to FEO for voter status of Alexandra Forwood. PW-2 was questioned on the reason he requested the information. He then stated that the **Suspect** had directed him to obtain voter status of Alexandra Forwood.

48. Through this enquiry the information requested was disseminated back to the Secretarial Office of the Electoral Commission via email dated

⁵³ Affidavit of Kuliniyasi Saumi, dated 3 January 2025, Annex KVS-5: Email from Ms. Forwood to Ms. Puleiwai, 29 August 2024.

⁵⁴ Ibid., Annexure KVS-5 – Email sent by Ms. Forwood to Ms. Mataiciwa dated 8 June 2024.

04 June 2024. The information was received and acknowledged by **PW-2**.

49. **PW-2** confirmed in his statement that he disseminated the said information to the **Suspect** informing her that there is no Alexandra Forwood registered on the National Register of Voter.
50. The investigation cannot fully establish how the information reached Hon Lynda Tabuya, however we can only confirm that the information was disseminated to the **Suspect** who have a close connection with Hon Lynda Tabuya. The same information was utilized by Hon Lynda Tabuya for a purpose unrelated to an election.⁵⁵

90. In relation to the Third Allegation, FICAC concluded in their Investigation Report dated 10 September 2024 that:

The **Suspect** directed one Sefanaia Tudonu (**PW-2**) the Executive Secretary of the EC to obtain voter information of Alexandra Forwood (Complainant) from the National Register of Voter (NRV). The said information was communicated back to the **Suspect** by **PW-2** and somehow reached the Minister for Women – Hon. Lynda Tabuya. The said information was used by Hon Lynda Tabuya for a purpose not related to Election (**refer to D20**)⁵⁶

91. The CoI finds nothing wrong in FICAC's investigation of the Third Allegation. FICAC had not come to any conclusion because they could not establish how the information reached Hon. Tabuya. The investigation and the complaint had been linked to a potential abuse of office offence under s 139 of the Crimes Act. However, Mr. Saumi deposed in evidence that they had also been considering a breach of s138(2) of the Electoral Act which states:

Any person who uses any information contained in the Register of Voters, Register of Postal Voters or voter list for a commercial purpose or other purpose unrelated to an election commits an offence and shall be liable upon conviction to a term of imprisonment not exceeding 5 years.

92. It appears clear that Ms. Malimali had requested the voting information of Ms. Forwood for a purpose unrelated to an election. FICAC had not yet established whether the voting information of Ms. Forwood, which Hon. Tabuya had, in her possession, had come from Ms. Malimali. Nevertheless Ms. Malimali should not have been accessing that information, unless it was for an election related purpose. There was no evidence presented to the CoI that demonstrated any election related purpose.

⁵⁵ Affidavit of Kuliniasi Saumi, 3 January 2025, Annex KVS – 12: The FICAC Investigation Report Dated 10 September 2024.

⁵⁶ Ibid., para [6](c).

4.4.4: Conclusion

93. The CoI has found that all three Allegations against Ms. Malimali were supported by evidence and rightly formed a *prima facie* case against Ms. Malimali. The three Allegations were all serious, and if proven, would have led to the following offences being committed:
- a. First Allegation: Abuse of Office under s 139 of the Crimes Act with a maximum penalty of 10 years imprisonment, or 17 years imprisonment if the act was done for gain;
 - b. Second Allegation: Forgery under s 156(1) of the Crimes Act with a maximum penalty of 10 years imprisonment; and
 - c. Third Allegation: Abuse of Office under s 139 with a maximum penalty of 10 years imprisonment or 17 years imprisonment if the act was done for gain; or a breach of s 138(2) of the Electoral Act with a maximum penalty of 5 years imprisonment.

4.5: FICAC Procedure re Malimali Investigation

94. When FICAC receives a complaint, they follow a process that begins with the registration of the complaint followed by a referral to the FICAC Legal Division for a preliminary legal analysis to see whether there is a *prima facie* case. If the complaint is vexatious, it is at this stage dismissed.
95. If the complaint is valid and warrants pursuing, the case is delegated to the Investigations Division, whose manager assigns it to a team of investigators to investigate the matter, seek search warrants if required, and complete an investigation report. Once this is done, the file is sent back to the Legal Division for an opinion on whether the evidentiary threshold for charging has been reached, or whether the case should be closed for want of prosecution, or whether further information and investigations are required.
96. According to Ms. Puleiwai, the standard process for a FICAC investigation is that suspects are only informed of an investigation against them the moment that they are invited in for a caution interview. This is done because FICAC has had instances in the past where suspects, upon becoming aware of an investigation, have destroyed documents, and sometimes have left the country.⁵⁷
97. Ms. Puleiwai gave evidence that, in some instances, when suspects inquire with FICAC about a complaint against them, that person is usually informed that there is a complaint in the system, without any further details given to them until such a time as FICAC has a *prima facie* case, and suspects are then invited to come in for a caution interview, at which they would have their constitutional rights of natural justice accorded to them.⁵⁸

⁵⁷ Affidavit of Francis Puleiwai, 10 December 2024 at [28].

⁵⁸ *Ibid.*, [29].

98. Ms. Puleiwai stated that the process of notifying the President of an investigation of a Cabinet Minister prior to charging had been used previously in the investigation against Hon. Ravu.⁵⁹

4.5.1 Preliminary Investigations

99. On 9 April 2024, Ms. Puleiwai responded by email to the complaint letter above:

Dear Ms. Forwood

I acknowledged receipt of your letter and the content is noted.

We will be in contact should we require more information.

Thank you.⁶⁰

100. Complaint One was subsequently registered at FICAC with the Case ID number 0082/2024/SU.⁶¹

101. On 13 April 2024, Ms. Puleiwai submitted Complaint One to the FICAC Legal Division for a legal assessment. According to Ms. Bokini-Ratu, Manager of the Legal Division, she had inadvertently overlooked the file due to the number of files and her workload at the time. Accordingly, the file was not allocated to a member of her team at that time.⁶²

102. On 29 August 2024, Ms. Forwood sent an email to Ms. Puleiwai following up on Complaint One and lodging Complaint Two. As a result of Ms. Forwood's email, Ms. Puleiwai followed up with the Legal Division.⁶³

103. According to Ms. Bokini-Ratu, she received a phone call from Ms. Puleiwai in late August following up on the complaint against Ms. Malimali and informing her that a further new complaint had been filed against Ms. Malimali. According to Ms. Bokini-Ratu, it was at this point, when she went to check on the file, that she discovered the file had not yet been allocated. She then immediately allocated the file and requested an urgent legal opinion from Ms. Lilian Mausio, the Principal State Counsel, on both matters.⁶⁴

104. On 30 August 2024, Ms. Mausio issued an internal memorandum to Ms. Bokini-Ratu, assessing Complaint One. She concluded that there was a *prima facie* case warranting further investigation:

⁵⁹ Ibid., [36].

⁶⁰ Affidavit of Alexandra Victoria Forwood, dated 4 December 2024, at Annex 6: Email response from Ms. Puleiwai to Ms. Forwood following receipt of Ms. Forwood's letter of complaint.

⁶¹ Affidavit of Kuliniyasi Saumi, dated 3 January 2025 at [12].

⁶² Affidavit of Adi Laite Naru Baleisuva Bokini-Ratu, dated 12 December 2024 at [12].

⁶³ Ibid., Annex LBR-2: Email follow up from Ms. Puleiwai to Ms. Bokini-Ratu.

⁶⁴ Affidavit of Kuliniyasi Saumi, 3 January 2025 at [14].

Background

On 8 April 2024, a letter of complaint was sent to the Prime Minister's office via email by one Alexandra Forwood ('the Complainant'), copying in the Commission. The complaint alleged abuse of office by Barbara Malimali because she had allegedly sent a letter to the Constitutional Offices Commission ('COC') seeking the removal of the then Acting Supervisor of Elections, Ana Mataciwa.

Barbara Malimali was, at the material time the Chair of the Electoral Commission ('EC'). According to some viber screenshots attached to the Complainant's letter, other members of the Electoral Commission had not been notified of this letter, nor were they privy to the contents of the letter even after inquiring.

Further to the substantive complaint, the Complainant has also subsequently raised another complaint against Barbara Malimali for 'misbehaviour' with the COC for allegedly releasing her information to Minister for Women and Poverty Alleviation, Hon. Lynda Tabuya. This was contained in a later email dated 29 August 2024 sent directly to FICAC Acting Deputy Commissioner Ms. Puleiwai.

II. Do the complaints warrant further investigation by FICAC?

A perusal of the complaints reveals that there is a prima facie case that warrants further investigation.

From the annexed screenshots of the Complainant, another member of the EC (Reginald Jokhan) states that the impugned letter sent by Barbara to the COC was not vetted by the other EC members, nor were they privy to the information contained within or aware of its existence. This was confirmed by Jokhan in a news item dated 9 April 2024¹.

Although the contents of the impugned letter are not confirmed, it is implied that the letter was calling for the removal of the then Acting SOE Mataciwa from her office. This is supported by a news item dated 8 April 2024² where the Prime Minister alluded to the fact that the

"Acting Supervisor of Elections Ana Mataciwa will be given time to respond to a letter of complaint, calling for her removal.

The letter was written by the Electoral Commission Chair, Barbara Malimali and was delivered to the Constitutional offices Commission Secretariat."

The wording of the Constitutional provisions on the EC and the Electoral Act itself would strongly imply that the EC acts as a body, and therefore consensus is needed by all members of the EC before a decision is made. This is bolstered by section 75 of the Constitution.

This is further strengthened by section 5 of the Electoral Act 2014, which provides for instances where the EC shall meet. It states that:

"(1) The Electoral Commission must adopt all of its decisions at its meetings, which must be held at such place and at such times as determined by the Chairperson or a majority of the members of the EC.

¹ <https://www.fijivillage.com/news/FICAC-analyzes-complaint-sent-against-Malimali-4fx85r/>

² <https://fijilive.com/ec-calls-formataciwa-removal-pm-aware/>

Clarification can there be a subsequent legal opinion fleshing out the possible charges (if any).

Respectfully submitted for your review and direction.

Thank you.

Lilian Mausio
Principal State Counsel.⁶⁵

105. According to Mr. Wakanivesi, following the preliminary legal analysis the following steps were taken:

1. That the investigation on Ms. Barabara Malimali commenced on the 30th of August 2024 by a team led by Chief Investigator Milika Cakacaka. The case was registered as FEP 133/24 after the instructions from Manager Investigation vide email dated 30th August 2024. Annexed hereto and marked “AW-9” is the copy of the email from Manager Investigations Mr. Kuliniyasi Saumi dated 30 August 2024.
2. That the team executed search warrants and conducted inquiries from the 30th of August 2024. That a search warrant dated 02 September 2024 was also executed at the Solicitor General’s office with Mr. Ropate Green notified accordingly for the submission of the original letter from the Electoral Commission dated 02 April 2024 and that nothing was provided to this search warrant.⁶⁶

106. On 1 September 2024, Ms. Puleiwai informed the PM of the pending investigation into Ms. Malimali and requested that the FICAC Investigation Team be given one additional week to complete their inquiries before any appointment was made. The PM agreed.⁶⁷

107. Ms. Puleiwai considered that there was a significant public interest in completing the Investigation in time to inform the decision over whether to appoint Ms. Malimali. This required the FICAC Investigation Team to work swiftly to meet the deadline agreed with the PM.

108. On 30 August 2024, Ms. Puleiwai found out that Ms. Malimali had been selected as the preferred candidate for the position of FICAC Commissioner.

⁶⁵ Affidavit of Adi Laite Naru Baleisuva Bokini-Ratu, dated 12 December 2024, at Annex LBR-2: Legal Opinion assessing Complaint One.

⁶⁶ Affidavit of Alifereti Winston Wakanivesi, dated 12 December 2024 at [9]-[10].

⁶⁷ Affidavit of Francis Puleiwai, 10 December 2024 at [45].

Ms. Puleiwai had herself applied for the position, and had encouraged another staff member, Ms. Kolora Naliva to also apply:

I recall I contacted the President's office to confirm whether His Excellency had indeed endorsed the appointment of Ms. Malimali as the Commissioner since we have not received any response again after the letter on the 02 September 2024, to which I was informed to liaise with the JSC. I asked again does this mean Ms. Malimali has been appointed, to which the Executive officer in the President's office reiterated to liaise with JSC. I then asked whether Ms. Malimali has already been sworn in since she was coming to the office in the afternoon, to which I was informed that she hasn't been sworn in.

I then messaged the Honourable Prime Minister, Mr. Rabuka to inform him of the update that Ms. Malimali would be coming to the office accompanied by CR to be introduced as the Commissioner.⁶⁸

109. The FICAC Malimali Investigation was prioritised because Ms. Puleiwai considered it was important that the Investigation be completed before Ms. Malimali was appointed.

4.5.2 Search Warrants

110. The FICAC Investigation team obtained two search warrants for their investigations, one for documents held at the ECF, and the other for documents from the COC, which were held by the S-G as the Secretary at the COC. The ECF search warrant was executed without issue. However, the COC search warrant became exceedingly problematic.
111. As set out above, FICAC investigators successfully executed a search warrant over the FEO and the ECF Secretariat Office on 30 August 2024, retrieving the requested documents.⁶⁹
112. On 2 September 2024, FICAC was granted a search warrant to obtain COC documents from the Office of the S-G for records pertinent to the Second Allegation, for the period from 1 January 2024 to 2 September 2024.⁷⁰
113. The text of the search warrant was as follows:

In the Magistrate's Court at SUVA Fiji

To: **Investigator Pita Tuberi**, an office of the **Fiji Independent Commission Against Corruption**.

Whereas it is made to appear to me by information laid this day by **Investigator Pita Tuberi** that there is reason to believe that in **Office of the Solicitor General at Level 7, Suvavou House, Suva** of the **Solicitor General**, there are **Original or stamped copy of records pertaining to the letter that was sent from the Chairperson of**

⁶⁸ Affidavit of Francis Puleiwai, dated 10 December 2024 at [59]-[60].

⁶⁹ Affidavit of Kuliniyasi Saumi, 3 January 2025 at [18]-[19].

⁷⁰ Ibid., [22].

the Electoral Commission of Fiji to the Constitutional Offices Commission (COC) for the removal of the then Acting Supervisor of Elections, Ms. Ana Mataciwa for the period 01 January 2024 to date as tabulated in Appendix 1, which are evidence or likely to contain evidence of **Abuse of Office** being offences/an offence to which the Fiji Independent Commission Against Corruption Act applies.

You, and any other officers of the Fiji Independent Commission Against Corruption who may be assisting you, are hereby authorised pursuant to Section 10B of the Fiji Independent Commission Against Corruption Act of 2007 to enter the said **Office** if necessary by force and search the specified premises or place and, if anything searched for be found, or any other thing which there is reasonable cause to suspect to have been stolen or unlawfully obtained be found, to seize it and bring it before this Court to be dealt with according to law.

Dated this **02nd** day of **September, 2024**

APPENDIX 1

As per Search Warrant of Investigator Pita Tuberi dated

No.	Particulars
1.	Meeting Minutes, Directives and Instructions, Internal Memorandum and Official Letter
2.	Employment Contract, Letter of Appointments, and Job Description of Ms. Barbara Malimali as Chairperson of Electoral Commission.
3.	Polices and Standard Operating Procedures (SOP) for the Constitutional Offices Commission (COC).
4.	Viber screenshots, Email correspondence and Computer data storage mediums such as mobile phones, computers, laptops, hard drives and any other electronic devices capable of storing electronic data which may store electronic copies of documents and correspondences.
5.	COC resolution to remove Ms. Ana Mataciwa.
6.	List of all the members of Electoral Commission.
7.	Register Book / Dispatch records for the letters received at COC.
8.	Letter from the Chairperson of the Electoral Commission of Fiji, Ms. Barbara Malimali to Constitutional Offices Commission (COC)>
9.	Letters dated 13 June 2024 from the Chairperson of the Electoral Commission of Fiji, Ms. Barbara Malimali to Ms. Ana Mataciwa, subject to "Directive to the Supervisor of Elections", with Ref #: D05/2024 and D06/2024

Dated this **02nd** day of **September, 2024**⁷¹

- 114.** On 2 September at 1:27 pm, the Manager of Investigations at FICAC, Mr. Saumi called A-G Leung to advise him that FICAC Investigators would be executing a search warrant in relation to documents from the COC offices. A-G Leung indicated that he was in Parliament and directed Mr. Saumi to liaise directly with the S-G.⁷²

⁷¹ Affidavit of Kuliniyasi Saumi, dated 3 January 2025 at Annex KVS-9: Search warrant contents.

⁷² Ibid., [20]-[21].

115. On 2 September 2024 at 3:13 pm Mr. Saumi then sent a text to S-G Green to remind him again about the search warrant:

(Mr. Saumi)	Solicitor General Sir ni bula vinaka. The Commission is kindly requesting your assistance in the provision of certain records from Constitutional Office Commission. (COC). We've been directed by the A-G – Mr. Leung this morning to consult with your office. Please find attached is a copy of Search Warrant which we will be executing at your office this afternoon to gain lawful access into the records and uplift the same for investigation purposes. We look forward to your kind assistance in this matter. ⁷³
(S-G Green)	Who is been investigated? What is the nature of the complaint?
(Mr. Saumi)	Sir there is an ongoing investigation against Chairman of Electoral Commission – Ms. Malimali on allegations of Abuse of Office, Have also sent a copy of Search Warrant through your email.
(S-G Green)	Why do you need COC documents?
(Mr. Saumi)	Sir, there were official correspondence made to COC from the EC Chairman. We need to those correspondence including details action or decision made by COC. The Content of these correspondence is what the Commission is interested in
(S-G Green)	Sami. Who is the complainant?
(Mr. Saumi)	Sir, I'm not at liberty to disclose details of the Complainant. ⁷⁴

116. The search warrant was emailed to S-G Green, at 3:57 pm on 2 September 2024, by Mr. Saumi. The A-G was copied into the email:

The Solicitor General

Dear Sir

Greetings from Fiji Independent Commission Against Corruption.

The Commission is kindly requesting your assistance in the provision of certain records from Constitutional Office Commission. (COC).

⁷³ Ibid., Annex KVS-10: Text message exchange with S-G Green relating to the execution of the search warrant.

⁷⁴ Ibid., Annex KVS-10 – Text message exchange between Mr. Saumi and S - G Green.

We've been directed by the A-G – Mr. Leung this afternoon to consult with your office. Please find attached is a copy of Search Warrant which we will be executing at your office this afternoon to gain lawful access into the records and uplift the same for investigation purposes.

We look forward to your kind assistance in this matter.⁷⁵

117. Following the email being sent, Mr. Saumi then visited the S-G's office on 2 September 2024, in which a State Solicitor informed Mr. Saumi to return the following day as they were unable to facilitate the search warrant without S-G Green's approval.⁷⁶
118. At 8:12 am on 3 September he called S-G Green and they agreed to meet. Before 10 am that same day, S-G Green's Secretary called Mr. Saumi and informed him that S-G Green was unavailable.⁷⁷
119. From 2 – 4 September following his call with A-G Leung, Mr. Saumi made numerous attempts to arrange a meeting with S-G Green. The first attempt was made via email, as outlined at paragraph 116 above.
120. The FICAC Investigators then visited S-G Green's office twice on the 3rd and 4th of September 2024. On 3 September, they were told the S-G was unavailable. Subsequently on the 4th of September, S-G Green did meet with them. However, he refused to allow the Investigators to access the documents, on the grounds that he required the approval of the PM in his capacity as Chairman of the COC.⁷⁸
121. Mr. Saumi saw this as disregarding the authority of the FICAC Search Warrant:

That the next day (03/09/24) at around 8:12am I called the Solicitor General and spoke to him advising him of our Search Warrant and our intention to uplift records from Constitutional Office Commission. He advised me to come to his office at 10:00am Annexed hereto and marked “KVS – 8” extract of my Vodafone Call Records (Incoming & Outgoing Call)

That before 10:00am I received a call from the Solicitor General's secretary who advised me that the Solicitor General is busy and we can meet him on Thursday afternoon (05/09/24). I sent another email to the Solicitor General advising him of the urgency and if he can appoint someone to facilitate. Annexed hereto and marked “KVS – 11” copy of my email to S-G

That the investigators visited Solicitor General's Office to get the documents. They couldn't access the records. They were informed that the Solicitor General was out of office and was told to come after midday the next day.⁷⁹

⁷⁵ Ibid., Annex KVS-10: Email sent to S - G Green containing the search warrant, A - G Leung was copied into the email.

⁷⁶ Ibid., [23].

⁷⁷ Ibid., [25]-[27].

⁷⁸ Ibid., [29].

⁷⁹ Ibid., [25]-[27].

122. The email referred to above that Mr. Saumi had sent to S-G Green was sent on 3 September 2024 at 11:02 am as follows:

The Solicitor General

Good Morning Sir

As per the advise of by your secretary (Ms. Nakove) via telephone of reschedule date of our proposed meeting this morning, we wish to advise your office of need and urgency of accessing record indicated in the attached Search Warrant.

Sir, we understand the official commitment you have in office, and kindly suggesting if any of your officer can be appointed to facilitate the execution of our Search Warrant.

Please note that all documents retrieved for our purpose will be documented through FICAC Search List with your endorsement before we depart the COC office.

Submitted for your kind consideration.

Kuliniasi Saumi
Manager Investigation
Fiji Independent Commission Against Corruption.⁸⁰

123. Mr. Saumi stated that the FICAC Investigators did not subsequently acquire the documents the subject of the search warrant.⁸¹
124. Mr. Saumi directly addressed the question of whether S-G Green's actions constituted obstruction:

Ms. Mason: Mr. Saumi, in relation to the conduct of the Solicitor General in your attempts to execute the search warrant, would you consider that they were serious enough to constitute obstruction?

Mr. Saumi: Yes, My Lord. A search warrant is a lawful authority, even though we have the authority to come in and do the search. I've been respected in office, I notify them first but they did not consider. I understand that the Solicitor General is a lawyer and of the understanding that he understands the strength of the warrant and he will accommodate. He did not. So my work, the work of the investigators were affected.⁸²

125. The allegation was put to S-G Green who denied it, stating that "We were trying to facilitate the search warrant. We were trying to give them the documents."⁸³
126. He testified that he objected to the broadness of the Search Warrant:

⁸⁰ Ibid., KVS-11 – Email sent from Mr. Saumi to S-G Green advising of the urgency to conduct the search warrant.

⁸¹ Transcript, Day 6, Session 1 – Mr. Saumi at 14.

⁸² Ibid., 16-17.

⁸³ Ibid., 36.

Mr. Green: No, but my issue with the particulars provided they were very broad. For example, if you look at item number one, it says meeting minutes, directives, instructions, internal memorandums, official letters, no dates, no particularized the issues that they want from issue number one. I looked at item number four, it says viber screenshots, e-mail correspondence.⁸⁴

127. Counsel Assisting pointed out in her questioning of S-G Green that despite him saying that there was no date, the search warrant covered a fixed nine-month period, so the search warrant would then not have been too onerous or broad. However, S-G Green did not agree:

Ms. Mason: Okay, so just going back to the search warrant, the question is that the records that were requested were records pertaining to that letter, and for the period 1 January to 2 September. Is that correct?

Mr. Green: My Lord, the letter does not have a time period. It says 1st January.

Ms. Mason: But they are not asking for the letter. If you go to the third line, you will see that what they are asking for is the original or stamped copy of records pertaining to the letter. Right? Not the letter. So it is the records, and then they go down two more lines, and it says for the period 1 January to date, which means the date of the search warrant, as tabulated in Appendix 1. So, they clearly ask for all records that relate to that letter for a specified time period, which is 1 January to 2 September. Is that correct?

Mr. Green: My Lord, our reading of the letter, and our actions on that day, is that we asked for them to come and sit with us.

...

Ms. Mason: But Mr. Solicitor General, you said that so many times, and you are not answering the question. This is the third time I am asking it.

Justice Ashton-Lewis: *Well, just be patient, because what Ms. Mason says is right, and you have not answered it. I have listened to it. So put the question again, and it is a simple, I think, yes or no answer. So put it to... Because I do not draw any negative conclusion. I do not think the Solicitor General... I notice he is looking down, trying to find. That his question, your question, it's okay. It is clear, Mr. Solicitor General, if you would listen to it and answer it. And I think the answer can be given in either yes or no. So listen carefully to what Mrs. Mason is asking, please.*

Ms. Mason: All right, so I am asking this question, because you said earlier that there was no time frame indicated for the

⁸⁴ Ibid., 9.

documents, that it was just so enormous a task. So I am taking you back to the search warrant, and I am putting to you that there actually is a time period specified, and that time period is 1 January 2024 to 2 September. When you read the search warrant now, do you accept that that is the time period which pertains to the documents requested in the search warrant.

Mr. Green: I do not accept that.

Ms. Mason: I would like you to give me a reason why you don't accept. That is pretty clear reading.

Mr. Green: The reason, My Lord, the reason is that if you look at the search warrant, you have to...The search warrant refers you to the appendix. As I have stated earlier, and it is in my affidavit in reply, that these are very... What they are requesting are very broad.

Justice Ashton-Lewis: *Yes, let us go back for a minute. The time period is clear. I have read it. It is from 1 January 2024 up to 9 September 2024. I assume that the documentation set out in Appendix 1 is what they want relating to that period. Nine months, if you like. They want meeting minutes, directives. They want employment contracts, appointments. So I will come in a minute to what I think you will say. They want policies, Viber, and all what is in 4 and 5 and 6 and 7 and 8 and 9. Now, but it is only for that nine-month period. Now, is that so voluminous that that is hard to comply with? Now, you have been good because if it is voluminous, you have said, look, sit down, we need to talk this because there is so much there. And you said that you did say that. But let me ask you the question now. For that period, 1 January 2024 up to 9 September 2024, in that Appendix 1, the documents required between 1 and 9, is that humongous? And that is why you were asking, can you identify specifically within that Appendix 1? Is that what you were doing?*

Mr. Green: Yes, that is what we are doing.

...

Ms. Mason: I just want to confirm from the earlier discussion, you do not agree that there is a time period specified?

Mr. Green: I do not agree, but if that is the time period that they are looking for, this could have been resolved in our meeting.⁸⁵

128. The S-G's explanations are not credible. The search warrant clearly and plainly identified a time limitation, requiring only documents after 01 January 2024.⁸⁶

⁸⁵ Transcript, Day 29, Session 1, S-G Green 13-17.

⁸⁶ Affidavit of Kuliniasi Saumi, dated 3 January 2025 at Annex KVS-9: Contents list of the search warrant.

As the search was conducted at the start of September 2024, this would be a period of approximately nine months.

129. Mr. Saumi gave evidence that on 4 September 2024 he advised FICAC investigators to continue with the search, at which point Mr. Green advised them that the release of documents required the approval of the PM:

That the next day 04/09/24 before midday I was notified by Mrs. Puileiwai via telephone that the Chief Registrar was bringing in the new Commissioner and we are to meet her at Commissioner's conference room at 1400hrs.

That I advised the Investigators to continue with the search. The investigators visited the Solicitor General and was advise that he cannot release the documents as it requires the approval of the Prime Minister who is the Chairman of the COC. The Solicitor disregarded the authority the FICAC Search Warrant, refuse to access to investigators to conduct search and gave excuse that release the documents requires the approval of the Prime Minister who is the Chairman of the COC.⁸⁷

130. Mr. Green was also questioned on his claim that he required the approval of the PM, as Chairman of the COC. Mr. Green did not dispute that he had informed FICAC investigators that permission from the PM was needed in order to release the requested documents:

Ms. Mason: Sir, paragraph 23. So you'll see at paragraph 22 that's when he talks about sending you the email on the 2nd of September. At paragraph 23, he says after sending the email I visited the Solicitor General's office at level 7 of the Suvavou House with two other investigators. The Solicitor General was not available. So another State Solicitor was available we advised the State Solicitor of our intention to execute a search warrant however he advised that we return the next day to meet the Solicitor General and upon his approval they will facilitate and then he says he sent you the text message and we've been through those text messages on the next day on the 3rd at around 8.12 he called you so this would be the conversation you remember I presume and I spoke to him advising him of our search warrant and our intention to uplift records from the COC. He advised me to come to his office at 10 o'clock you go to the next paragraph he says before 10 o'clock I received a call from the Solicitor General's secretary who advised me that the Solicitor General is busy and we can meet him on Thursday afternoon so that's two days later. I sent another email to the Solicitor General advising him of the urgency and if he can appoint someone to facilitate and I just read through that email earlier. Then he says that the investigators visited the Solicitor General's office to get the records. They couldn't access the records. They were informed that the Solicitor General was out of the office and was told to come after midday the next day. So all of that was on the 3rd. Phone calls, arrangements for a meeting they then turn up and still get pushed away. The next day on the 4th, before midday, I

⁸⁷ Ibid., [28]-[29].

was notified by Ms. Puleiwai via telephone that the Chief Registrar was bringing in the new Commissioner. Then paragraph 29 I advised the investigators to continue with the search. The investigators visited the Solicitor General and was advised that he cannot release the documents as it requires the approval of the Prime Minister who is the Chairman of the COC.

Justice Ashton-Lewis: *The Prime Minister is not above the law. They've had a properly search warrant. The Prime Minister's got to obey it as well. You don't need his approval. Where is all these protocols set out? Because that is nonsense and it's poor jurisprudence. It is a court order. We live in a country under the rule of law and everyone has to obey it or take the appropriate steps to argue against it. Now, I know you know that but to read this again that you have to get permission from the Prime Minister no you don't. You're a good lawyer and you know that as well as I do.*

Ms. Mason: So I put to you Mr. Solicitor General that through these multiple attempts from the 2nd to the 5th by FICAC to have a duly constituted search warrant executed that you and your office stalled any compliance with that search warrant because you knew that Ms. Malimali was going to be appointed. Do you agree?

Justice Ashton-Lewis: *It looks like that doesn't it?*

Mr. Green: I absolutely disagree with that statement, My Lord. Especially the fact that my Office stall these investigations and did not allow FICAC officers to access COC documents.

Justice Ashton-Lewis: *They can't disallow it. The FICAC offices have a court order.*

Mr. Green: Absolutely, My Lord.

Justice Ashton-Lewis: *The only way they can disallow it is they get an order from someone like me to say, yep I accept that.*

Mr. Green: Absolutely, My Lord. I totally agree. We did not stall. They still have the powers under the court order. They can enforce the court order.⁸⁸

131. Mr. Green further stated the following, in response to Mr. Saumi's evidence that he obstructed the execution of the search warrant:

Mr. Green: My Lord I would state that we had the discussion on the 3rd on the 4th and my intent was to facilitate at no point in time was I stalling, at no point in time I prevented them from accessing our documents. All I said was that we are

⁸⁸ Transcript, Day 29, Session 1 – S-G Green at 31-33.

facilitating, give you some time I return on the 5th when events have taken over.

Ms. Mason: So do you accept in hindsight that it was wrong to not allocate the task to a senior lawyer if you couldn't be there?

Mr. Green: The senior lawyers have come to me, My Lord, they have come to me to discuss this matter with the FICAC officers. The FICAC officers they told the FICAC officers they can come and meet with me as I am the secretary and they are the delegate.⁸⁹

132. Counsel Assisting asked follow up questions of the Hon PM on the above matter, whose responses are provided below in bold and italics:

- a.** Have you ever advised the Solicitor-General, or the Attorney-General, or any other person from their offices that your approval is required when documents need to be provided to an agency attempting to execute a search warrant?

I do not ever recall advising either the Solicitor General nor the Attorney General that they would need my approval to allow an agency properly empowered by law to execute a Search Warrant on Government agencies and records.

I do remember actually telling the Secretary to Cabinet, that I do not have any authority to stop anybody lawfully empowered by the Courts to execute a Search Warrant on Cabinet Records.

- b.** If so, please provide details.

- c.** Does the COC have any practice or policy that sets out that your approval is required when documents need to be provided to an agency attempting to execute a search warrant?

No

- d.** Is it your understanding that all senior public servants should know that when they are presented with a valid search warrant, they should make the requested documents available immediately, or apply to the court challenging the discoverability of any documents they do not think should be disclosed?

That is my understanding, and I would expect that by the time they reached those senior levels in the Service, that they would be thoroughly familiar with General Orders and Standard Operating Procedures of the Service.

- e.** Are there any other comments you wish to make?

No, Madam.⁹⁰

133. The CoI does not find the S-G's responses credible. He was on the JSC, and also on the Selection Panel that chose Ms. Malimali to be the new FICAC

⁸⁹ Ibid., 36-37.

⁹⁰ *Urgent Request for Further Information*, dated 9 April 2025.

Commissioner. The S-G also had an open complaint registered at FICAC which he knew about, or ought to have known about. He knew that Ms. Malimali was to be appointed on the 3rd or 4th of September because he had been privy to this information via his membership of the JSC. The CoI finds on the balance of probabilities that the S-G's actions in stalling the execution of the search warrant did amount to an obstruction of the execution of the search warrant.

4.5.3 Witness Interviews

134. On the evening of 4 September 2024, the SoE Ms. Mataciwa, the ECF Executive Secretary Mr. Tudonu, and the FEO Acting Legal Officer Mr. Rahul Avinash Chand, all provided signed written statements to FICAC during the FICAC Malimali Investigation into the abuse of office complaints against Ms. Malimali.
135. The statement by FEO Acting Legal Officer, Mr. Chand, was recorded by FICAC Investigator Pita Tuberi, and signed by Mr. Chand on 4 September 2024, following an interview lasting just over an hour, from 22.41 hours to 23.51 hours. Prior to Mr. Tudonu becoming the ECF Secretary, Mr. Chand was administrative assistant from September 2021 to January 2024, and thereafter acting Executive Secretary to the ECF from January to March 2024.⁹¹
136. Mr. Chand's substantive statement primarily comments on the relationship between Ms. Malimali and Hon. Tabuya. He notes the following off the record comments in a meeting of the ECF between January and March 2024:

I wish to confirm that I can recall on one of the EC meetings from January 2024 to March 2024 that Ms. Barbara Malimali stated that she receives gifts such as bags and sun-glasses from Cabinet Minister Ms. Lynda Tabuya. In this meeting I can recall that Mr. Nemani Mati, Mr. Inoke Loganimoce Dokonivalu, Mr. Reginald Jokhin, Dr. Emberson-Bain, Ms. Nalini Singh, SoE Ms. Ana Mataciwa and myself were present during this meeting. I was instructed to turn off the record for the meeting and this is when EC Chairperson Ms. Barbara Malimali stated the above. She also mentioned that Ms. Lynda gave the gift to one of her friends to pass it to her.⁹²
137. The statement by ECF Executive Secretary Mr. Sefanaia Navuda Tudonu, was recorded by FICAC Investigator Milika Cakacaka, and signed by Mr. Tudonu on 4 September 2024, following an interview lasting just over an hour from 21.25 hours to 23.00 hours.⁹³
138. Mr. Tudonu's substantive statement primarily comments on the documents uplifted in relation to the 13 June Directive and the April 2 Malimali Letter. It also provides comments on the Commissioners' concerns around the April 2 Malimali Letter:

⁹¹ Rahul Avinash Chand FICAC Statement, signed 4 September 2024.

⁹² Ibid., 2.

⁹³ Sefanaia Navuda Tudonu FICAC Statement, signed 4 September 2024.

I recall that this letter was requested by the Commissioners as they were not aware of the letter. They highlighted their grievances in the EC viber chat group, raising their queries if there had been a letter to the COC regarding the appointment of the SoE.⁹⁴

- 139.** Additionally, Mr. Tudonu confirms that Ms. Malimali looked into Ms. Forwood's voter status:

I was further asked about the email around June 04th 2024, of requesting of information from Fiji Elections office on checking the National Register of Voter (NRV) on the name Alexander Forewood I can confirm that I received the instructions verbally from Chairperson Ms. Barbara Malimali to request for the information to FEO office and also through Immigration office. There was no response from Immigration. Mr. Duwai responded to the email that there is no Alexander Forewood listed in the NRV. The information was updated to the ECF Commissioners in one of the meetings but I could not confirm which meetings.⁹⁵

- 140.** The statement by SoE Ms. Mataiciwa, was recorded by FICAC Investigator Ana Utonika, and signed by Ms. Mataiciwa on 4 September 2024, following an interview lasting just over an hour from 20.44 hours to 22.56 hours.

- 141.** Ms. Mataiciwa's substantive statement primarily comments on the ECF not wanting her to pass complaints directly to FICAC, a position which Ms. Mataiciwa strongly disagreed with, as it went against her legal obligations:

The ECF Chairperson and the members had questioned me on the process of referring complaints to FICAC. They also demanded a reason why these Members of Parliament (MP) were not notified of the complaints made against them. I informed the ECF that I am mandated under section 18 of the act to report election-related complaints. It was during this meeting, the ECF had resolved that my office is responsible to formally notify a person who has a complaint lodged against them at FEO, before we report the matter to FICAC. Also the ECF resolved that all complaints should be tabled with the ECF before any further actions are taken. I can confirm that the relationship was strained after this meeting as I strongly disagreed with both of these resolutions, as I had explained in that meeting; I am mandated to report these election related complaints to FICAC under section 18 of the Act and I will abide by it.⁹⁶

- 142.** An issue was raised about the witnesses all being investigated in the same room. Ordinarily, witnesses should be interviewed separately. This was put to Mr. Saumi and he stated:

Mr. Saumi:	They are witnesses. They are witnesses and they are commenting on different documents. So they have, if there were criticisms of the likelihood of conspiracy or what, I don't think that happened because they, even though they're probably in the same room, they have different scope of statement that they will give, depending on the documents
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⁹⁴ Ibid., 3.

⁹⁵ Ibid.

⁹⁶ Ana Mataiciwa FICAC Statement, signed 4 September 2024 at 6.

that the investigators are showing them and what they will adduce. That is my view, Madam, My Lord.⁹⁷

143. The CoI considers that it was certainly not good practice to be interviewing all three witnesses in the same room. The evidence was that it was a large conference room and each witness was not able to clearly hear and decipher the conversations being held with others in the room.⁹⁸ Mr. Tudonu was asked about whether being in the same room affected his statement and this is what he said:

Ms. Mason: Okay, now, the statement that you gave to FICAC, did you give, was that an honest opinion of what happened? Would you stand by the statement?

Mr. Tudonu: That's correct, Madam.⁹⁹

4.5.4 *Events Leading To Arrest*

144. Following the introduction of Ms. Malimali to FICAC staff on 4 September 2024, Ms. Puleiwai met with the investigation team and they all agreed to continue the investigation into Ms. Malimali.¹⁰⁰

145. Ms. Puleiwai gave evidence that a meeting was held on 4 September 2024 where it was discussed and confirmed that there was sufficient evidence to interview Ms. Malimali and for Ms. Bokini-Ratu to prepare the charge sheet for abuse of office for the First Allegation:

THAT on that same afternoon at about 0500hrs after Ms. Malimali had left the Commission, I requested the team, which is inclusive of the Manager Investigation, Mr. Saumi, Manager Legal, Ms. Laite Bokini, Mr. Wakanivesi, the Professional Standard officer, our Digital Forensic officer, and the Chief Investigator to meet with me in the Manager Legal's room and to discuss the evidence that we have and whether we had a case against Ms. Malimali or not on alleged Abuse of office.

I remember speaking to the team to just hold on and not give up yet and encouraging all of them not to give up and to do the work that we have been paid to do and fight for the truth. Especially seeing how their morale had gone down after the introduction of Ms. Malimali and noting from what Mr. Wakanivesi had stated in the meeting. Since that evening, I still had not received any formal notification from the President's office.

That during that meeting in the Manager Legal's room, we all had a thorough discussion and had perused the evidence to which we all had agreed that we had sufficient evidence to go ahead with the record of interview against Ms. Malimali. I then informed Ms. Bokini to put down a legal opinion that evening including the draft charges for my perusal before it is sent to Mr. Saumi and Mr. Wakanivesi for their preparation tomorrow. As for the charges against Mr. Prasad, it was already approved,

⁹⁷ Transcript, Day 6, session 2 – Mr. Saumi at 4-5

⁹⁸ Transcript, Day 2, Session 1-2-3 – Mr. Tudonu at 50.

⁹⁹ Ibid., 75.

¹⁰⁰ Affidavit of Alifereti Winston Wakanivesi, dated 12 December 2024 at [13].

and the Investigation team were given a copy of the same to prepare their formal charges against Mr. Prasad.¹⁰¹

That I had been corresponding via text messages with the Manager Legal, Ms. Bokini, on her opinion and the draft charges against Ms. Malimali to which she confirmed that she would send it to me that night of the 04 September 2024 for my perusal. I had waited for her opinion that evening. Early the next morning she had sent her opinion and the draft charges to which I went through and concurred for Ms. Malimali to be interviewed and thereafter charged. The same was sent to Mr. Saumi for his team to act upon that morning of the 05 September 2024.¹⁰²

146. Mr. Saumi instructed Mr. Wakanivesi to contact the witnesses, including the ECF Commissioners and have their statements recorded.¹⁰³
147. On 5 September 2024 at 7:55 am, Mr. Saumi advised Ms. Puleiwai that the investigation was on the verge of completion, and recommended a caution interview with Ms. Malimali:

Good Morning Madam

Reference to above subject matter please kindly advise the investigation into the complaint against Mrs. Malimali is on verge of completion.

We are intending to proceed with her Caution Interview this morning. Given the current situation that she is now appointed our Commissioner we anticipate that there will be some forms of verbal and physical confrontation should she resist.

Due to this anticipated circumstance we may need to utilize our powers of arrest and request for your endorsement.

Submitted respectfully

MI CE¹⁰⁴

148. On 5 September 2024 at 8 am Ms. Puleiwai approved Mr. Saumi's request:

MI C/E

Approved. Please proceed as discussed. I am exercising my powers under Section 115(5) of the Constitution for the team to continue with its investigation and bring her for caution interview. She is aware of the same and she will also respect the law and hope it does not come to that.

Thank you.¹⁰⁵

¹⁰¹ Affidavit of Francis Puleiwai, dated 10 December 2024 at [76]-[78].

¹⁰² Affidavit of Francis Puleiwai, dated 10 December 2024 at [81].

¹⁰³ Affidavit of Alifereti Winston Wakanivesi, dated 12 December 2024 at [14].

¹⁰⁴ Ibid., Annex AW-11: Email from Mr. Saumi to Ms. Puleiwai containing recommendation to arrest Ms. Malimali to conduct the caution interview.

¹⁰⁵ Ibid., Annex AW-12: Email from Ms. Puleiwai to Mr. Saumi approving the recommendation to arrest Ms. Malimali to conduct the caution interview.

149. On 5 September 2024 at 8:20 am, Mr. Saumi gathered a team comprising Mr. Alifereti Wakanivesi, Mr. Jone Cama, and Ms. Milika Cakacaka, and Mr. Saumi himself to visit Ms. Malimali at her office, arrest her and conduct a caution interview.¹⁰⁶
150. On 5 September 2024 at 8:28 am, the FICAC team approached Ms. Malimali, at which point Mr. Saumi tapped Ms. Malimali on her shoulder and effected the arrest. According to Mr. Wakanivesi, Ms. Malimali stated that she believed this was an act of insubordination and requested a call to her lawyer.¹⁰⁷
151. Under questioning, Ms. Malimali was of the view that if a subordinate uses their lawful powers to effect arrest, it is tantamount to misfeasance and treason. She stated as follows:

Ms. Mason: Yes, because it's something that we've heard a lot of. Correspondence going missing, etc., etc., or just non-responses. All right. Now, I'm just going down to 153, which is your second to last Paragraph, but I do have some more after that. You say, if I were the head of State, the supervisor of elections and her three cohorts would have been guilty of misprision of treason, if not treason.

Ms. Malimali: I was being dramatic.

Justice Ashton-Lewis: *I think you were.*

Ms. Mason: Okay.

Ms. Mason: But yes, because you're not the head of state.

Ms. Malimali: I will be, but not yet.

Justice Ashton-Lewis: *You're forgiven. Keep going.*

Ms. Malimali: Yeah, that's me being dramatic.

Ms. Mason: I'm sorry. Okay. I had a question then. Just because somebody is the head of state or the King of England, are these people in senior positions immune from criminal charges or criminal investigations?

Ms. Malimali: The President, I think might be. I think there immunity for His Taxes, I think. There is some immunity for his Excellency, I think, I'm not quite sure what like the Diplomats.

Ms. Mason: Yes, but no, no. But he can still be charged with abuse of office and FICAC can turn up with a search warrant, I'm sure. So that's why the previous President had a FICAC

¹⁰⁶ Ibid., [17].

¹⁰⁷ Ibid., [18].

complaint that was investigated. So nobody is immune from criminal charges. Correct?

Ms. Malimali: We might have diplomats who might be immune to some.¹⁰⁸

152. Ms. Malimali was then brought down to the FICAC interview rooms located in level 1 of the Rev John Hunt Building, and kept there under guard by Ms. Cakacaka.¹⁰⁹
153. On 5 September 2024 at 8:28 am, according to Mr. Wakanivesi, he visited Ms. Puleiwai's office, received a copy of the draft charge against Ms. Malimali, and took the same down in preparation for the caution interview with Ms. Malimali.¹¹⁰
154. The draft charge sheet stated:

COUNT ONE

Statement of Offence (a)

ABUSE OF OFFICE: Contrary to section 139 of the Crimes Act 2009

Particulars of the Offence

BARBARA MALIMALI between 2 April 2024 and 10 July 2024, at Suva in the Central Division, whilst being employed in the civil service as the Chairperson of the Electoral Commission of Fiji, in abuse of the authority of her office, did an arbitrary act, namely interfered with the lawful duty of the ~~then Acting~~ Supervisor of Elections Ana Mataciwa to report the probable commission of election related criminal offences to the Fiji Independent Commission Against Corruption, which was an act prejudicial to the rights of the ~~then Acting~~ Supervisor of Elections and the Fijian Elections Office.¹¹¹

155. The above draft charge sheet was drafted by Ms. Bokini-Ratu and contained charging information communicated to Ms. Malimali. It was understood that this document would be finalised following the caution interview with Ms. Malimali, if she did not provide an adequate explanation:

Ms. Mason: And then, Sir, in your bundle its page 1052 and it's a copy of what had been started as a draft charge. So it's 1052 and it's Annex 13 for those who have the annexure. Do you have a copy of that, Mr. Wakanivesi?

Mr. Wakanivesi: Yes, yes, My Lord.

Ms. Mason: Okay, who had drafted this?

Mr. Wakanivesi: This was, yes, Ms. Bokini. I think this was handed to me that morning. I had actually went to meet Ms. Bokini at her office

¹⁰⁸ Transcript, Day 24, Session 3 – Ms. Malimali at 7-8.

¹⁰⁹ Affidavit of Alifereti Winston Wakanivesi, dated 12 December 2024.

¹¹⁰ Ibid., [19].

¹¹¹ Ibid., Annex AW-13: Draft charge sheet outlining the offences FICAC were intending to charge Ms. Malimali with.

to get her opinion on the proposed interviews for the Electoral Commissioners. When I came to her office, she was discussing with Ms. Puleiwai. And then I went straight to that office and whilst discussing with them, I was informed that they are actually drafting the charges. And this was the copy that I got from them.

Ms. Mason: Right, and this information here would have been what Mr. Saumi communicated to Ms. Malimali

Mr. Wakanivesi: Yes, My Lord

Ms. Mason: All right. So is it usual that the charge sheets are finalized after the caution interview?

Mr. Wakanivesi: Yes, My Lord.¹¹²

- 156.** Ms. Bokini explained that in her legal opinion, there was enough to charge Ms. Malimali prior to a caution interview, but that over her 10 years at FICAC it had always been the organisation's practice to conduct caution interviews prior to pressing formal charges:

Ms. Mason: And then you go down on the next page, the last paragraph before the heading. Is it in the public interest to prosecute? Just the paragraph before that, you say, there is sufficient evidence to make out a charge. Now, when do you determine whether there is sufficient evidence, what standard or what threshold do you use?

Ms. Bokini: First, we try to make out whether there is a prima facie case, whether there is enough evidence touching on all the elements of the offence. And then we determine whether it's in the public interest to prosecute. At that stage we don't make a determination of whether a tribunal could convict beyond reasonable doubt as yet.

Ms. Mason: Do you wait till after the caution interview for that?

Ms. Bokini: Yes.

Ms. Mason: But you say this is enough to charge. So we'll go to the caution interview and then we'll make our final decision after the caution interview.

Ms. Bokini: Yes. Yes, My Lord.

Ms. Mason: And is this a practice that FICAC has engaged in for a long time?

Ms. Bokini: As long as I've been there. Yes, My Lord.

Ms. Mason: How long have you been at FICAC?

¹¹² Transcript, Day 9, Session 2 – Mr. Wakanivesi at 5-6.

Ms. Bokini: This last September was my 10th anniversary with the Commission.¹¹³

- 157.** FICAC's position on the illegality of the 13 June Directive formed the basis for the caution interview. In Ms. Bokini-Ratu's view, abuse of office was the strongest of the three charges contemplated as of 4 and 5 September 2024:

Ms. Mason: Do you agree with Mr. Saumi when he said that there was sufficient information on the 4th and the 5th to lay those charges in relation to those three offences?

Ms. Bokini: I agree, My Lord. I agree with him with regard to the first two for abuse of office. And I think Mr. Saumi had stated falsification of documents for the second one. But for me I would not have gone with falsification of documents. I would have gone with a charge of giving false information to a public servant under Section 201 of the Crimes Act.

Ms. Mason: So it would have been a different section of the Crimes Act that you would have used?

Ms. Bokini: Yes.

Ms. Mason: Ok.

Ms. Bokini: For the last one regarding the release of voter information, this one I was not sure about. I think there was enough circumstantial evidence to say that Ms. Malimali might have released that information, but I don't. In my opinion, I don't think we would have been able to charge for.¹¹⁴

- 158.** Other caution interviews were prepared to be conducted with other ECF Commissioners, however these were not undertaken. After Ms. Malimali's release, the FICAC Malimali Investigation was transferred to the DPP:

Ms. Mason: You then go on to talk about in paragraph 21 of your evidence, page 206, that you were instructed to conduct the caution interviews of the Electoral Commission of Fiji Commissioners on the Same morning of the 5th of September. Now, what happened to that work?

Mr. Wakanivesi: Yes, My Lord. I was instructed on that morning by Manager Investigations to caution interview with the Electoral Commissioners. This did not go on, I was still preparing the documents whilst Manager Investigation was in that the meeting with the lawyers and Ms. Puleiwai. So while I was preparing, I was just waiting for him before we actually proceed with the whole process of getting the Electoral Commissioners. And this did not proceed, My Lord.

¹¹³ Transcript, Day 11, Session 2 – Ms. Bokini-Ratu at 8-9.

¹¹⁴ Transcript, Day 11, Session 2 – Ms. Bokini-Ratu at 11-12.

Ms. Mason: Right, and can you confirm that you agree with the evidence that Mr. Saumi gave that the charges against the ECF commissioners, the other ones have also been transferred to the DPP

Mr. Wakanivesi: Yes, My Lord.¹¹⁵

4.5.5 Investigation Findings

159. According to Mr. Saumi, the FICAC Investigation Team's findings, as at 2 pm on 4 September 2024, before the arrival of the CR and Ms. Malimali to the FICAC offices, was as follows:

- a.** Ms. Malimali with other Commissioners of the Electoral Commission, had abused their office by unlawfully endorsing a resolution in a duly convened meeting of the ECF to adopt an unlawful process of handling election related complaints. The resolution was formalised through a directive issued by Ms. Malimali to comply with the said resolution. The resolution and directive were not guided by the provisions of the Electoral Act 2014 [Sect 18 and 155 (b)];
- b.** Ms. Malimali formulated a falsified Electoral Commission Letter dated 02 April 2024 written to the Secretary of the Constitutional Office Commission. The said letter was dishonestly formulated without the knowledge and consensus of the other Commissioners in a duly convened meeting of the Electoral Commission; and
- c.** the unlawful use of National Register of Voter Information whereby Ms. Malimali had requested the Voter Status of the Complainant (Alexandra Forward) through one of the ECF Staff. The Voter Status Information was released to the Hon Minister for Women – Lynda Tabuya, which she then used it for purposes not related to the Election.¹¹⁶

160. On the morning of 5 September 2024 at 8 am, Mr. Saumi and Ms. Puleiwai agreed that, given the potential for Ms. Malimali to resist, FICAC should exercise its powers of arrest to enable the caution interview to take place.¹¹⁷

161. The draft charge sheet that had been drawn up was for abuse of office under s139 of the Crimes Act relating to the Second Allegation, namely abuse of office as a result of the 13 June Directive.¹¹⁸

¹¹⁵ Transcript, Day 9, Session 2 – Mr. Wakanivesi, at 6-7.

¹¹⁶ Affidavit of Kuliniyasi Saumi, 3 January 2025 at [30].

¹¹⁷ Ibid., [33]-[34].

¹¹⁸ Affidavit of Alifereti Wakinivesi, dated 12 December 2024, Annexure AW-13: Draft Charge against Barbara Malimali.

4.5.6 Was Ms. Puleiwai Driven By Improper Purpose?

162. Those that supported Ms. Malimali believed that the FICAC Malimali Investigation was a case of “sour-grapes” because Ms. Puleiwai was angry as she had been unsuccessful in her application for the position of FICAC Commissioner:

Ms. Mason: So the complaint that had been made was before FICAC. It had been made in April and this was now September and they were actively investigating in relation to whether or not that complaint was serious or whether it was vexatious or whether it was prima facie. Isn't that a decision for FICAC themselves to make?

Justice Ashton-Lewis: *But it then has the corollary. If you knew, Chief Justice, that all the complaint, all the allegation was coming out of FICAC's investigators, would you give that credibility as you would give if it came from...? Because FICAC is the body that investigates, arrests, then charges and then carries out. There's nothing wrong with that. They're entitled to do that. But would that give you cause for thought seeing it's coming from FICAC? I'm a bit concerned about that.*

Chief Justice Temo: *If that is the position, I would appreciate the head of FICAC putting before the JSC some narrative on what is the allegation. What is the allegation they're talking about?*

Justice Ashton-Lewis: *And at that stage, that was the Acting Deputy, Ms. Frances Puleiwai.*

Chief Justice Temo: *And the problem is that she herself was an unsuccessful applicant for the Commissioner's Post. So if it comes from her, it appears the credibility of the complainant is affected. We, the decision makers, might think it is a case of sour grapes. But if it comes from someone who's credible within the organization and if they can spell it out to us, what is the allegation? Then we can make an assessment whether it's a serious allegation or it is the usual Fiji brown clobbering machine.¹¹⁹*

163. Furthermore, supporters of Malimali referred to the fact that Complaint One was received on 8 April 2024 while the notice calling for applications for the FICAC Commissioner position was first advertised on 15 June 2024.¹²⁰
164. The evidence before the CoI, provided by Ms. Bokini-Ratu, was that Ms. Puleiwai submitted Complaint One as soon as it was received for a legal review on 13 April 2024, approximately two months prior to the FICAC Commissioner

¹¹⁹ Transcript, Day 15, Session 1 – CJ Temo at 22.

¹²⁰ Affidavit of Tomasi Bainivalu, dated 31 December 2024 at [5].

position being advertised. The evidence demonstrates that Ms. Puleiwai did not sit on Complaint One until she discovered that Ms. Malimali had been selected as FICAC Commissioner.

- 165.** The CoI is not swayed by the “sour grapes” argument. Ms. Puleiwai actioned Complaint One long before she could have even been aware of Ms. Malimali’s application for the position of a new FICAC Commissioner.
- 166.** Ms. Malimali also presented her view to the CoI that Ms. Puleiwai would have directly benefited from her arrest and removal from office, by being able to stay on as Acting Deputy Commissioner of FICAC. Ms. Malimali was challenged on this point, as it was not clearly apparent that Ms. Puleiwai would have been removed once the new FICAC Commissioner took up her post. The relevant exchange is set out below:

Ms. Mason: All right. That's your view. Okay. Now, when you say that she was going to, there was personal gain. Now, she hadn't even been shortlisted. So why would she think that she would be appointed to the Commissioner's position?

Ms. Malimali: With me out of the way, right, me out of the way. Say for instance, they charge me and I will fight tooth and nail for my reputation. She stays on as head of FICAC.

Ms. Mason: Well, no, they had a selection panel that interviewed a whole lot of other people. I would presume it would be the next one down on the list.

Ms. Malimali: Maybe, I don't know. I can't speak for them. But whilst all of this was happening, she would remain the head of FICAC.

Justice Ashton-Lewis: *She was what?*

Ms. Malimali: She would remain the head of FICAC.

Ms. Mason: Not necessarily. You see, she obviously, obviously the JSC didn't think that she should be in the position of Commissioner. That's obvious to everyone because they didn't even select her for an interview. So she was not even in the running. And then they either would re-advertise or they'd just get the next person on the list. The differences between the top three or four were not that great. And so it didn't necessarily have to be any personal gain for her. She would have realized by that stage that she was just going to stay on as Acting.¹²¹

- 167.** A further point that was put to Ms. Malimali was that Ms. Puleiwai was also encouraging and recommending others to apply for the FICAC Commissioner position, as set out in this exchange:

¹²¹ Transcript, Day 23, Session 2 – Ms. Malimali at 82-83.

Justice Ashton-Lewis: *And the fact that she was recommending others, to be appointed as Commissioner.*

Ms. Malimali: No, she didn't recommend others.

Ms. Mason: She did.

Justice Ashton-Lewis: *No, no, she made it. She did.*

Ms. Malimali: No, she referred to Ms. Naliva, who applied for the position.

Ms. Mason: Yes, she recommended that they apply for the position.

Justice Ashton-Lewis: *Yes.*

Ms. Mason: She wouldn't be saying to people, oh, look, why don't you apply or you apply, if she was really fixated and obsessed on getting it herself.¹²²

168. During questioning, Ms. Puleiwai was questioned around her motive behind the FICAC Malimali Investigation:

Ms. Mason: Okay. And you will know that the complaint, there is an allegation that you only revived or put efforts into Ms. Forwood's complaint once you knew that you weren't the successful candidate, because you were upset at not being chosen. What do you say to that?

Ms. Puleiwai: I disagree, My Lord. For the mere fact that, yes, I found out that Ms. Malimali was considered, and I recall, because all the files that go through my table, I am aware of who are the complainants and who has been complained about, and when I received that information, and I was like, hang on, there is a file that I can send down for investigation, because at the back of my mind, I knew, because I had gone through what the complaint was about. Oh, in my view...

Justice Ashton-Lewis: *I think she's frozen, so we'll just see if it comes back. Pardon? Pardon?*¹²³

...

Ms. Mason: All right, and then just before you became frozen, I put to you the allegation that you had reactivated a complaint against Ms. Malimali, which had been in hibernation, I guess, for some months, because you were unhappy at not having been selected for the FICAC Commissioner's role.

Ms. Puleiwai: I disagree, my Lord. Can I explain?

Justice Ashton-Lewis: *Yes, please do.*

¹²² Ibid., 86.

¹²³ Transcript, Day 19, Session 2 – Ms. Puleiwai at 2.

Ms. Puleiwai:

I remember that before I received my email from Zarina Bi who is the, I believe she's the Deputy Registrar, who had emailed stating that I was unsuccessful in my application, but this was prior to that receiving that email. I had already received information that Ms. Malimali was considered for the post of the Commissioner, and I remember receiving that information, and I was taken back, as I recall, sending down a file for all the complaints that come through my table. I go through what is the complaint about and how serious it is, and then when I send it down for legal opinion, because it's a matter of public interest as well, and there are certain cases that I usually direct the Manager Legal for urgency of the legal opinion, and I remember going through the complaint and I had sent it down, but at that point in time when I received information that Ms. Malimali was considered for the post, I said, hang on, isn't there a file? There's a complaint against Ms. Malimali, and it's under investigation, because I've looked at the seriousness of the complaint that has come in. But when I inquired with the Manager Legal, I first inquired with the Manager Investigation, because I thought the file was already under investigation, because I wanted to find out the status, and then Mr. Kuliniasi Saumi said no, there's no file, I'm still waiting, and you would recall that he recalled as well that there was a complaint that came in, and with all complaints that has been coming from Ms. Forwood, she usually copies the Manager Investigation. I don't know for what reason, maybe for transparency purposes, but Mr. Saumi was aware of this complaint as well. And when I inquired with Ms. Bokini Ratu, that's when she said, the file is still here, and she apologised, she said, I haven't allocated it to any legal officer, and I said, you need to look at the, I need an opinion urgently, whether we need to go for an investigation or have the complaint closed. So there was a legal opinion, and before I acted on for an investigation to be done, and I strongly denied that allegation, that because I was unsuccessful, I had rushed it.¹²⁴

169. Mr. Saumi was questioned around whether he felt pressured to reach a certain conclusion during the FICAC Malimali Investigation:

Ms. Mason: Did you at any stage feel pressured by Ms. Puleiwai to conduct your Investigation in a way that led to the charges being filed against Ms. Malimali?

Mr. Saumi: Yes, based on the question. I did not prioritize the letter.

Ms. Mason: Sorry, I don't know if you understand my question. So this is a question not about prioritizing. This is a question about finding that the allegation against Ms. Malimali should result in charges. Did you feel under pressure to find to conduct your Investigation in a way that led to charges?

¹²⁴ Ibid., 5-7.

Mr. Saumi: I think that's not the case. To me is to steady [sufficing.] if there were convincing evidence to charge then that's it. That is what will be communicated back to them. If there is no evidence, the same result will be communicated back to them. There is no pressure to get the Investigation [Indiscernible 06.28.1...] for a charge. I know the view My Lord that Investigation is done for two purpose. One, it's made of fabricators and two, is to clear the position of matter if there is no case [Indiscernible 6.55.5...]. That's my view. So if there are pressures we were doing [Indiscernible 07.06.6...]. From my view, I cannot say charge when the evidence are not convinced. I will make the necessary recommendation. That is why I am saying this. And this Investigation was quite fast, the reason the evidence and documents what will be available. Not like some other Investigations where complain were receive [Indiscernible 07.49.3...] five to six years ago where we have to go out and look for the [Indiscernible 07.56.3...]. But the incident that happen here is just a few months back. And when the complainants have to provide the documents [Indiscernible 0.08.10.06...] the process, evidence of the documents were available. That is why, one it's a fabricated matter and I am worried because people asked through social media, because the file is now in my hand.¹²⁵

170. Although some of what Mr. Saumi is recorded to have said is indecipherable, he has essentially said that he will only recommend charges if the evidence is clear.
171. While there was a lot of speculation about Ms. Puleiwai's motivations, the evidence was that she relied on the advice of her Manager Legal, Ms. Bokini-Ratu and her Manager of Investigations, Mr. Saumi. They were both experienced senior officials who appeared from the evidence to be credible and honest professionals. They had nothing to gain from pursuing trumped up charges.
172. Mr. Saumi was the former Manager Investigations for FICAC, holding the role since September 2021. Prior to his dismissal by Ms. Malimali, he was employed by FICAC for 15 years. Prior to his employment at FICAC, he previously worked for the Fiji Police force for 10 years.¹²⁶
173. Mr. Saumi, who was a witness in the recent Bainimarama and Qiliho trial was described by the learned Magistrate as a "very senior investigating officer".¹²⁷
174. For the CoI to find that Ms. Puleiwai was motivated in her actions by an improper purpose, the evidence needs to establish a basis for that view. The CoI does not consider that there is sufficient evidence to establish that Ms. Puleiwai

¹²⁵ Transcript, Day 7, Session 1 – Mr. Saumi at 1-2.

¹²⁶ Transcript, Day 5, Session 5 – Mr. Saumi at 16-17.

¹²⁷ See *The State v Bainimarama and Qiliho* #AA 036 of 2023, 14 March 2024, High Court Appellant Jurisdiction at [44].

was motivated by an improper purpose. The more credible view is that Ms. Puleiwai, Mr. Saumi and Ms. Bokini-Ratu were simply doing their jobs.

4.6 Was the Malimali Investigation Rushed?

175. Ms. Bokini-Ratu was asked whether the investigation was rushed and gave evidence that this was a concern, but that it had to be done due to the imminent appointment of Ms. Malimali as FICAC Commissioner:

Ms. Mason: And you just said earlier that the investigation wasn't, a file wasn't put together in the way that it normally would, and that's the only thing that didn't happen. Obviously this was an investigation that was done more quickly than some others. We've heard some evidence that sometimes you do have to do rushed things like this. This is not the only time. So in relation to the speed with which it was done, which I again say the evidence was that it wasn't extraordinary, do you think that the reason for that was to ensure that Ms. Malimali did not get the position of FICAC Commissioner, or to ensure her appointment was done properly, or some other reason?

Ms. Bokini: It would be to ensure that her appointment was done properly, My Lord.

Justice Ashton-Lewis: *You see the difficulty with this one, Counsel, the rushing of it, you can draw a negative aspect. They were rushing it through to get at Ms. Malimali but you can also draw, and I'll have to spend a long time going through the evidence that it was done quickly in fairness to her. Because she was coming in and you needed to get this thing done and out of the way and either dismissed or dealt with in whatever way. So this is a difficult one, this one. And to hear Ms. Bokini say that you thought things were done fairly and properly at least, is helpful in this. Looking at this question.*

Ms. Bokini: My Lord, if I may.

Justice Ashton-Lewis: *Yes.*

Ms. Bokini: We had actually had some discussion on this, on whether the public would perceive us as rushing through the investigation to sort of stop Ms. Malimali from coming in. The conclusion that we had all agreed on was we needed to rush it so that when she did come in, the office of the Commissioner was, would be free from any kind of reproach.

Justice Ashton-Lewis: *Yes, yes. I mean, you know, most people choose to do good, not bad. But there's a small proportion of people that clearly and if you're in the law, choose to do bad. And so thank you for that, Ms. Bokini.*

Ms. Mason: So it was a considered decision, then?

Ms. Bokini: Yes, My Lord. It wasn't something that we did lightly. Yes.¹²⁸

176. Mr. Saumi was asked whether the investigation was rushed and gave evidence that while it was prioritised his concern was to be thorough:

Ms. Mason: So the email towards the end of the page in it, it's an email from Ms. Puleiwai to yourself and she says, I need this to be prioritized urgently today and next week, please. Now, did you know why you had been asked to prioritise that urgently?

Mr. Saumi: Your Lordship, I cannot explain on that. I believe Ms. Puleiwai can explain on that. But to my recollection, at that point in time there were a lot of issues, a lot of media coverage on the issue of Mrs. Malimali. And secondly, we had received continuous follow up on the complaint from the complainants on the progress of the Investigations initially reported. That is what I can recollect, My Lord.

Ms. Mason: And did you, through all the media coverage, do you know, at this date, on the 30th of August, did you know that Ms. Malimali had been selected as the preferred candidate for the FICAC Commissioner's role?

Mr. Saumi: There were rumours, but I cannot confirm.

Ms. Mason: So you had heard the rumours?

Mr. Saumi: Yes, I have read it through social media comments and there were information going around that the Judicial Appointing Authority, which is the Judicial Services Commission, were finalizing some kind of appointment, but we do not confirm that whether it's Ms. Malimali or...

Ms. Mason: When you heard this information, were you worried about getting the Investigation done in a hurry?

Mr. Saumi: No, My Lord. My concern to get this Investigation done is through the follow up made to us from the complainant. And my interest is on I have received the investigations I need to do what I'm required to do.

Ms. Mason: So your main focus was on that, not necessarily speeding it up, just doing your job?

Mr. Saumi: Yes, because what my assessment at the time, it was a kind of an interest, Public Interest. There were a lot of communications, a lot of comments, a lot of going around. So my concern is, if I do not do these Investigations and ascertain the truth behind this complaints, I might be subject to questions from the public. Why? So that was the driving factor that pushed me. I do not know what's in Ms. Puleiwai's mind, but the instruction to me is clear.

¹²⁸ Transcript, Day 11, Session 2 – Ms. Bokini-Ratu at 13-14.

Ms. Mason: Did you, as the Manager of Investigations, did you feel like, because nothing really had been done on the complaint since 8 April that FICAC had dropped the ball, shall we say?

Mr. Saumi: My Lord, can the question be repeated?

Ms. Mason: Did you feel that FICAC should have done a better job in Investigating this complaint when it came in on the 8th of April, and that you had to do it quickly because you had really or FICAC, not you. But the Legal division had been tardy in not getting an opinion done earlier.

Mr. Saumi: Yes, I agree with that, My Lord. FICAC should have, the Commission should have done Investigations then. But from my end as a Manager Investigations, I will act when I receive the instructions to proceed with the Investigations. I agree with what's been put across that FICAC should have done it. But the thing that I want to say, if it was referred to us, then I believe we could have done it then.¹²⁹

... ...

Justice Ashton-Lewis: *Who is asking?*

Mr. Saumi: No, what I am saying My Lord it is on the media. Media every day.

Justice Ashton-Lewis: *So it is just the media?*

Mr. Saumi: Just the media. So if there is something on media suddenly the pressure will come from the top, from the Commissioner, what about this case? What are you doing in this case? So that is the way I see this. And for Madam, she's been appointed. If we found nothing against her that will be beneficial to her too because [Indiscernible 09.20.1...] and then there's nothing there. We have reason to justified there's no evidence against her. That is why My Lord but not to rush the Investigation especially for [Indiscernible 09.38.9...]¹³⁰

... ...

Ms. Mason: Now I'd like to ask you, because obviously there was some hurrying that was going on. So you were, you were rushing with the investigation into Ms. Malimali and the arrest. Now, did you do that A, to ensure that Ms. Malimali did not get the position of Commissioner, or B, to ensure her appointment was done properly or for some other reason?

Mr. Saumi: I have answered this during my examination in chief. The reason is that we were rushing the investigations because it

¹²⁹ Transcript, Day 5, Session 5 – Mr. Saumi at 23-24.

¹³⁰ Transcript, Day 7, Session 1 – Mr. Saumi at 2-3.

was a public interest, at that time there were a lot of media coverage and I agree with that.

Ms. Mason: To ensure that her appointment was done properly.

Mr. Saumi: To clear if there's really a merit. Whether there's really a merit on the allegations we need to conduct that investigation...

Justice Ashton-Lewis: Mrs. Mason, he has answered that. That and he made it clear it was done to ensure that she was appointed properly.¹³¹

- 177.** While the evidence was clear that the investigation was rushed, the CoI has had to carefully consider the evidence to understand the motivation behind the urgency, and secondly, to consider whether the urgent nature of the investigation jeopardised the fairness, objectivity, and robustness of the investigation. The CoI finds, on the balance of probabilities, that the investigation was fair and objective, and was driven by proper motives. Ms. Puleiwai, Mr. Saumi, Ms. Bokini-Ratu and Mr. Wakanivesi were found to be honest and credible witnesses.
- 178.** The CoI did not get any sense that Mr. Saumi, Mr. Wakanivesi, and Ms. Bokini-Ratu were pressured by Ms. Puleiwai into producing advice or evidence that would result in charges against Ms. Malimali. The fact that they all discussed the urgency as a risk demonstrates an openness in the team, not consistent with the view that Ms. Puleiwai pressured Mr. Saumi, Mr. Wakanivesi, and Ms. Bokini-Ratu into pursuing trumped up charges.
- 179.** The FICAC Malimali Investigation followed all the usual steps. A complaint was received, it was registered, it was sent to the Legal Division for an initial assessment, it was then sent to the Investigations Division who obtained two search warrants, obtained further information, undertook witness interviews, and sent the file back to the Legal Division, who then provided a second legal opinion and a draft charge sheet. The decisions that the evidentiary threshold for charging had been reached, and a caution interview could be conducted, were made collectively by the team led by the Acting Deputy Commissioner, and including the Manager Legal, the Manager Investigations, and Mr. Wakanivesi. The CoI has concluded that the FICAC Malimali Investigation was conducted with fairness, integrity and without fault.

4.7: Conclusion

- 180.** The evidence examined in this Chapter demonstrates that the FICAC Malimali Investigation was not borne out of a personal vendetta or bias, but rather FICAC followed proper legal and investigative procedures, consistent with its own processes and policies. FICAC was duty bound to register and assess the two

¹³¹ Transcript, Day 8, Session 3 – Mr. Saumi at 80-81.

Complaints lodged by Ms. Forwood. There is nothing in the FICAC Act which bars overseas citizens, or anybody for that matter, from lodging complaints with FICAC. Ms. Forwood did not lodge any statement along with her complaints. This was seen as problematic because there would not be any consequences for those filing vexatious complaints. However, there was no requirement for her to lodge a statement. Going forward, it would not be unreasonable for FICAC, to adopt a policy to the effect that all complaints, with the exception of whistleblower complaints, must be accompanied by a complainant statement in a specified form, or an affidavit.

- 181.** The Forwood complaints resulted in three allegations:
 - a.** the First Malimali Allegation related to an alleged abuse of office, whereby Ms. Malimali, along with other ECF Commissioners, had endorsed a resolution to adopt an unlawful process of handling election related complaints;¹³²
 - b.** the Second Malimali Allegation was that an ECF letter, dated 2 April 2024, written to the Secretary of the COC was falsified in that it was dishonestly formulated by Ms. Malimali, without the knowledge and consent of the other ECF Commissioners; and
 - c.** the Third Malimali Allegation related to an unlawful use of the National Register of Voter Information whereby Ms. Malimali had requested the voter status of Ms. Forwood, which ended up being released to the Minister for Women, Hon. Lynda Tabuya.¹³³
- 182.** The usual FICAC process is that complaints are registered, then sent to the Legal Division for an initial legal assessment, then sent to the Investigations Division for further investigation. These procedures were followed. Two search warrants were obtained. One for the uplift of documents from the ECF. The other for the uplift of documents from the COC which were held at the S-G's office.
- 183.** From 2 to 4 September 2024 FICAC investigators made multiple attempts to execute the COC search warrant, but were stonewalled by the S-G who advanced numerous excuses as to why the search warrant could not be executed. At the hearing, new excuses not advanced at the time were put forward by the S-G. One was that the search warrant was too broad, allegedly, there being no specific time frame. However, this was clearly wrong as a timeframe had been set out in the search warrant. The S-G also stated that he had wanted to discuss matters with Mr. Saumi. However, in the multiple text and email exchanges there was not a shred of evidence substantiating this claim. Mr. Saumi's attempts to work respectfully with the S-G's office were met with fob-offs.

¹³² Annexure 6 of Sworn Affidavit of Alexandra Forwood dated 11 December 2024 – Letter of Complaint to SoE Mataiciwa.

¹³³ Ibid.

184. Over these three or so days, the S-G knew, because he was a member of the JSC, that Ms. Malimali was imminently about to be appointed to the position of FICAC Commissioner. Mr. Green also knew that Ms. Forwood had lodged a complaint about his conduct with FICAC. It appears to the CoI, on the balance of probabilities, that the S-G was deliberately stalling the execution of the search warrant until Ms. Malimali was appointed, and by doing so was obstructing justice. He knew that the search warrant related to an investigation into an allegation of abuse of office against Ms. Malimali, because Mr. Saumi communicated this to him via text message.
185. A decision was made collectively by Ms. Puleiwai, Ms. Bokini-Ratu, Mr. Wakanivesi, and Mr. Saumi that the evidential threshold to lay charges had been reached on 4 September 2024 in relation to the First Malimali Allegation.
186. There is no doubt that the FICAC Malimali Investigation was rushed. However, the rush did not result in flaws which tainted the Investigation, or the evidence collected. The CoI accepts that the motivation behind the expediting of the FICAC Malimali Investigation was because the FICAC team wished to clear up the allegations prior to Ms. Malimali being appointed. Ms. Puleiwai had asked the President and the PM to give them a week to do so.
187. The CoI has carefully considered the allegation that Ms. Puleiwai was motivated by ill feelings towards Ms. Malimali, and finds on the balance of probabilities, that this was not so. Mr. Saumi was a senior experienced investigator having spent 10 years as a Police Investigator and 15 years at FICAC. He came across as a credible witness who was focussed on the task at hand, namely, gathering evidence to see if there were grounds for charges to be laid. Likewise, Mr. Wakanivesi was also a credible witness, again an experienced investigator whose motivation was to do his job well. Ms. Bokini-Ratu was also a credible witness. She had been with FICAC as a Legal Officer and now the Manager of the Legal Division, for 10 years. Ms. Puleiwai's evidence was also credible, consistent and detailed. Ms. Puleiwai led the team in a way in which decisions were made collectively by them, thus sheltering her from the accusation that she had herself led and driven the investigation towards a negative outcome for Ms. Malimali. The evidence before the CoI did not bear this narrative out.
188. The CoI has concluded that the FICAC Malimali Investigation was conducted in good faith, fairly, and in accordance with FICAC's normal policies and processes, despite the short timeframe in which it was finalised.



CHAPTER 5

Selection and Appointment

CHAPTER 5: SELECTION & APPOINTMENT

5.1: Introduction

1. This Chapter provides a detailed examination of the entire Appointment Process used by the JSC in selecting their preferred candidate for the position of FICAC Commissioner.
2. During the course of the CoI's work, and our analysis of s 5 of the FICAC Act, we discovered that s 5 of the FICAC Act is *ultra vires* s 82 of the Constitution. The first section of this Chapter is devoted to an analysis of the law to show how s 5 of the FICAC Act is *ultra vires* the Constitution, and therefore invalid.
3. Despite s 5 being invalid, this Chapter will still analyse the Appointment Process as set out in s 5 as this is what the ToRs require.
4. The remaining sections will discuss the processes followed by the JSC, and are set out as follows:
 - 5.3: Decision to Appoint New Commissioner;
 - 5.4: Advertising of Commissioner's Position;
 - 5.5: Scrutiny and Reference Checks;
 - 5.6: Failure to Disclose FICAC Investigation;
 - 5.7: Failure to Disclose Tuvalu Issue;
 - 5.8: Acceptance of Selection Panel Recommendation;
 - 5.9: Consultation With A-G;
 - 5.10: President's Appointment;
 - 5.11: Prior knowledge of Complaint and Investigation;
 - 5.12: Was the Appointment Rushed? and
 - 5.13: Conclusion.

5.2: Legality of Appointment Process

5. The CoI came to the conclusion during the hearing that s 5 of the FICAC Act is *ultra vires* s 82 of the Constitution.
6. Sections 5(1) and 5(3) of the FICAC Act state:
 - (1) The Commissioner shall be appointed by the President on the recommendation of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General.
 - (2) The Commissioner shall hold office on such terms and conditions as determined by the President acting on the advice of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General.

7. Initially an issue had arisen as a result of multiple requests from the CoI to the JSC, requesting that the JSC recommend to the President the suspension of Ms. Malimali during the course of the CoI's work. The CoI first requested the JSC, in person, on 10 December 2024, and then subsequently in writing twice on 13 December 2024, and on 26 January 2025, to recommend to the President that the FICAC Commissioner be suspended, because of the high likelihood that she would interfere with witnesses, directly or indirectly, if she continued in her position.
8. The JSC wrote back to the CoI on two occasions advising that it did not have the power to recommend to the President that the FICAC Commissioner be suspended. The response letters from the JSC did not include any explanation as to why the JSC supposedly lacked the power to suspend.
9. On 10 February 2025 the CoI requested a legal opinion from Professor Philip Joseph KC in relation to who could legally effect the suspension of Ms. Malimali. A copy of the CoI request for advice is attached as **Annex E**.
10. On Friday 14 February 2025, the CoI received the legal opinion from Professor Joseph that confirmed the views of the CoI, namely, that the JSC did have the power to recommend the suspension of the FICAC Commissioner. A copy of the First KC Opinion is attached as **Annex F**. In addition, Professor Joseph also agreed that, in the alternative, the PM could, under s 82 of the Constitution advise the President to suspend the FICAC Commissioner.
11. Section 82 of the Constitution states:

In the exercise of his or her powers and executive authority, the President acts only on the advice of Cabinet or a Minister or of some other body or authority prescribed by this Constitution for a particular purpose as the body or authority on whose advice the President acts in that case.
12. Relying upon the First KC Opinion, on 18 February 2025, the PM submitted a recommendation to the President that Ms. Malimali be suspended. However, instead of suspending Ms. Malimali, the matter was referred from the President's Office back to the JSC who, the CoI understands, put Ms. Malimali on three weeks leave, instead of suspending her.
13. The President's Official Secretary, Ms. Vukidonu Qionibaravi was summoned to appear before the CoI on Wednesday 19 February 2025, during which there was some discussion about s 82 of the Constitution. Ms. Qionibaravi had highlighted the second part of s 82 of the Constitution which refers to the President acting on the advice of "some other body or authority prescribed by this Constitution for a particular purpose as the body or authority on whose advice the President acts in that case", submitting that it was more properly the JSC that could and should advise the President on matters related to the FICAC Commissioner's suspension.

14. The CoI's view, which was communicated to Ms. Qionibaravi at that time, was that the second part of s 82 was not relevant to the matters before the CoI.
15. In this instance, the JSC was conflicted, and so it was the PM who should advise the President on any matters related to Ms. Malimali's suspension. The position of the CoI was that it was mandatory for the President to act upon the advice of the PM. He did not have a discretion to decline to act. The CoI was concerned at that time that this point may not have been understood by Ms. Qionibaravi, and/or, may not have been adequately communicated to the President.
16. Subsequently, Counsel Assisting considered further the inter-relationship between s 82 of the Constitution and s 5 of the FICAC Act, and it then occurred to her that the President could not act on *any recommendation* from the JSC in relation to FICAC appointments, suspensions, or dismissals. The JSC's powers of appointment, suspension, and/or, dismissal of the FICAC Commissioner *are not* prescribed by the Constitution. They are sourced in s 5 of the FICAC Act. This would therefore mean that s 5(1) along with ss 5(3), 6(1), 6(2), 7(1) and 7(2) of the FICAC Act are all ultra vires the Constitution. This was because the President, under s 82, can only act on the advice of the Cabinet or a Minister, or of a body prescribed under the Constitution for a particular purpose as the body on whose advice the President acts in that case, and the JSC's powers of appointment, suspension, and/or, dismissal did not come from the Constitution. They came from s 5 of the FICAC Act.
17. The CoI later discovered that the JSC also recommended to the President that Mr. Fotofili be appointed as interim Acting Deputy Commissioner of FICAC while the FICAC Commissioner was on leave. Mr. Fotofili was then subsequently appointed to this position by the President.
18. Given the analysis above, that the JSC has no lawful powers to make any suspension, dismissal, or appointment recommendations to the President in relation to FICAC Commissioners or Deputy Commissioners, it is the CoI's view that the appointments of both Ms. Malimali and Mr. Fotofili ought to be immediately revoked, as they are illegal. Currently, the PM is able to recommend the appointment of a Commissioner or Deputy Commissioner to the President.
19. In relation to the issue of the legality of s 5 of the FICAC Act, a second opinion was sought from Professor Joseph on 24 February 2025. A copy of the request from Counsel Assisting is attached as **Annex G**. Professor Joseph, provided a second opinion on 25 February 2025, a copy of which is attached as **Annex H**. Professor Joseph agreed with Counsel Assisting that s 5 of the FICAC Act was ultra vires s 82 the Constitution.
20. Section 82 of the Constitution secures the democratic ideal. The President exercises the executive authority of the State, primarily on the advice of Cabinet or a Minister, including the PM. The Parliament of Fiji is elected "by secret

ballot in fair and free elections administered by the Electoral Commission”,¹ and the member so elected who commands the confidence of that body has the mandate to be appointed PM and head of the political executive. That person, in turn, has the mandate to advise the President in discharging executive power.

21. The provisions of ss 5(1) and (3), 6(1) and (2), and 7(1) and (2) of the FICAC Act each contravene s 82 of the Constitution. These provisions provide that the President shall make appointments to FICAC on the recommendation of the JSC. The purported authority prescribed by ss 5 – 7 of the FICAC Act is not “prescribed by this Constitution”. On the contrary, it is an authority prescribed by ordinary statute in contravention of s 82 of the Constitution.
22. The Constitution is “the supreme law of the State.”² and “any law inconsistent with this Constitution is invalid to the extent of the inconsistency”.³ Sections 5(1) and (3), 6(1) and (2), and 7(1) and (2) of the FICAC Act are inconsistent with s 82 of the Constitution and are invalid *pro tanto*, that is, to the extent of the inconsistency.
23. Professor Joseph advised that the invalid parts of ss 5 – 7 of the FICAC Act could be clinically severed, without altering the character or substance of the remaining part. Sometimes, invalid legislation that is not textually severable may still be upheld if the offending part is substantively severable through emendation, or amending the instrument so as to remove or correct the invalid part. However, that recourse would not be required with the FICAC Act.
24. Sections 5 – 7 lend themselves to the blue pencil test, that is, clinically severing the invalid part, by simply excising in those provisions the words, “on the recommendation of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General”. That recourse would leave the power to appoint the FICAC Commissioner/Deputy Commissioner in the hands of the President, acting on the advice of the PM. This recourse would comply with s 82 of the Constitution. However, ss 5 – 7 of the FICAC Act may be amended so as to require the PM to obtain the concurrence of the COC, or some other entity established for this purpose, before tending advice to the President.
25. Accordingly, the authority of the JSC to make recommendations in this respect is contrary to the wording of s 82 of the Constitution. As s 2(2) of the Constitution provides that any law contrary to the Constitution is invalid to the extent of its inconsistency, then these parts of ss 5 – 7 of the FICAC Act which refer to the JSC are *ultra vires* as they are inconsistent with s 82 of the Constitution.
26. In any proposal for legislative amendment, care needs to be taken in relation to s 115 (12) of the Constitution, which provides that it is the JSC who advises the

¹ s 52 of the Constitution.

² *Ibid.*, s 2(1).

³ *Ibid.*, s 2(2).

President of the remuneration of the Commissioner and Deputy Commissioner, after consulting the A-G. Section 115(12) stands unless the Constitution is amended to remove it. Alternatively, under s 91(5) of the Constitution, Cabinet may seek the opinion of the Supreme Court on whether s 115(12) is invalid because it is inconsistent with s 97(2) of the Constitution which requires the courts and all judicial officers to be independent of the legislative and executive branches of government. If the Supreme Court finds that s 115(12) is invalid, then deleting s 115(12) of the Constitution will not be necessary.

27. The discovery that s 5 of the FICAC Act is invalid, has meant that the answer to one of the main issues in the ToRs, which posits whether the appointment of Ms. Malimali was conducted “according to law” is a simple “no.” Her appointment was illegal, because s 5 of the FICAC Act is itself invalid.
28. Although the CoI is of the opinion that s 5 of the FICAC Act is invalid, an assessment is still needed of the JSC’s Appointment Process because the ToRs necessitate this.

5.3: Decision To Appoint A New Commissioner

29. Under s 104(1) of the Constitution the JSC is comprised of the following persons:
 - (a) the Chief Justice, who is to be the chairperson;
 - (b) the President of the Court of Appeal;
 - (c) the Permanent Secretary responsible for Justice;
 - (d) a legal practitioner to be appointed by the President on the advice of the Chief Justice following consultation by the Chief Justice with the Attorney-General and who –
 - (i) has not less than 15 years post-admission practice; and
 - (ii) has not been found guilty of any disciplinary proceeding involving legal practitioners whether in Fiji or abroad, including any proceedings by the Independent Legal Services Commission or any proceeding under the law governing legal practitioners, barristers and solicitors prior to the establishment of the Independent Legal Services Commission; and
 - (e) a person, not being a legal practitioner, appointed by the President on the advice of the Chief Justice following consultation by the Chief Justice with the Attorney-General.
30. At the time the members of the JSC were, as he was then, Acting CJ Salesi Temo, as he was then the President of the Court of Appeal, Justice Jitoko, and the S-G Ropate Green, then Acting PS responsible for Justice, Ms. Shoma Devan Singh as the legal practitioner appointed by the President, and Ms. Vani Catanasiga as the layperson appointed by the President.
31. The decision to appoint a new FICAC Commissioner was itself unusual. In the past, and ever since FICAC’s inception in 2007, there has always only ever been a FICAC Deputy Commissioner, or a FICAC Commissioner, never both at the same time. The definition of Commissioner in s 2 of the FICAC Act includes

the Deputy Commissioner, with the consequence that all powers of the Commissioner can be exercised by a Deputy Commissioner.

32. According to Ms. Puleiwai, the decision to appoint a new FICAC Commissioner came from Hon. Turaga:

Do you know who had made the decision to appoint a new FICAC Commissioner?

I recall when I had re-joined FICAC as the Acting Deputy Commissioner, I was first informed by the then Minister for Justice and the Attorney General, Siromi Turaga of his intention to bring in a Commissioner for FICAC. He had stated this in our meeting in the FICAC board room either December 2023 or January 2024 in the presence of the Solicitor General, Mr. Ropate Green and the Chief Registrar, Mr. Tomasi Bainivalu. Mr. Turaga had stated that he intends to bring in a Commissioner to head the institution but that was never confirmed again. However, during our Induction Training between the 12 – 16 February 2024, Mr. Turaga was again our Chief guest to launch our Strategic Plan 2024 – 2029 (5years plan) and he informed all the FICAC officers present that he will be bringing in a FICAC Commissioner to head the institution. On the 05 June 2024, the new Attorney General Graham Leung was sworn in and FICAC came under his portfolio. However, in the first few days of him taking office, the new A-G Graham Leung had an impromptu visit to FICAC office to meet with me as the Acting Deputy Commissioner and also some of the Managers and lawyers at FICAC to generally discuss his expectations and how we could work together. In that meeting as well, he emphasized that he will be bringing in a new Commissioner to head the institution. I had explained to him on the role of the Commissioner and the Deputy Commissioner which they had the same powers and currently we do not have the funding for it. He stated that the post will need to be filled and he will speak to the JSC about it. That was only time I have been informed about it and there was nothing in writing to formally notify our office about their intention so we could plan for it accordingly.⁴

33. Mr. Bainivalu has said that the JSC decision to advertise for applications for the position of FICAC Commissioner came through oral directions from the Chair, Justice Temo.⁵
34. Hon. Turaga has denied that he had any involvement at all in the decision to appoint a new FICAC Commissioner. He states that the decision was made by the JSC. Questions in relation to who had decided to appoint a new FICAC Commissioner were also sent to Justice Temo, who did not respond because he apparently did not have time to do so. Likewise, similar questions sent to S-G Mr. Green were not responded to.
35. The Hon A-G Mr. Leung, has stated that he does recall making the impromptu visit to the FICAC offices, as described by Ms. Puleiwai, soon after his appointment as A-G. However, he does not recall what he said:

I do recall making an impromptu visit to the FICAC offices soon after my appointment as the Attorney General. I have no recollection of having said that “I

⁴ *Urgent Request for Information* dated 9 April 2025. Response received from Ms. Puleiwai dated 11 April 2025.

⁵ See response of Mr. Bainivalu dated 22 April 2025 to questions in writing requested on 9 April 2025.

would be bringing in a new Commissioner to head the institution...” or words to that effect. Although I had just commenced work in my new role, I was aware that the appointing authority of the Commissioner FICAC under the relevant legislation, was effectively the JSC under the Chairmanship of the Chief Justice. The JSC’s legal obligation would be discharged simply by consulting the A-G; nothing more was required by the JSC. They could consult me, and whatever my views, they were entitled to accept or reject them.⁶

- 36.** Ms. Bokini-Ratu, the Manager Legal of FICAC was present when the Hon A-G Mr. Leung came into FICAC for the impromptu meeting and she corroborates Ms. Puleiwai’s recollection:

I was present when the Hon. A-G Mr. Leung came into FICAC to meet the then A/DC and officers in 2024 (I can’t recall the exact date). I do recall Mr. Leung saying that he intended to have the post of Commissioner filled. I also recall that Mr. Leung had asked Mr. Dean (Manager Finance) and Ms. Puleiwai during that meeting if there would be enough funds to cater for the Commissioner’s salary if a Commissioner were to be appointed soon. I cannot recall Mr. Dean’s answer to that question.⁷

- 37.** The CoI finds the evidence of Ms. Puleiwai that the decision to recruit a new FICAC Commissioner came from Hon. Turaga when he was the A-G to be more credible. Her recollection is detailed and consistent, and she has no reason to concoct such a story. Her evidence in relation to what Mr. Leung said has also been corroborated by Ms. Bokini-Ratu.
- 38.** The evidence points to the decision having come from the A-G’s office and not from the JSC, nor FICAC itself.
- 39.** On the balance of probabilities, and weighing the evidence before it, it is more probable than not that the idea of recruiting a new FICAC Commissioner came from Hon. Turaga, and then was repeated by Mr. Leung at the impromptu meeting at FICAC. Mr. Leung, as the incumbent, would have had to have been briefed by the outgoing A-G Hon. Turaga on key matters affecting that portfolio. The evidence is that Mr. Leung had stated that a new FICAC Commissioner was required. This idea must have come from someone else, because Mr. Leung had only just started. Also, at that time the S-G, who is situated at the same premises, and works closely with the A-G, was also the Acting PS of Justice and by dint of that position was a member of the JSC.
- 40.** Both Mr. Leung and Hon. Turaga have pointed to s104(8) of the Constitution which provides that:

In the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law.

⁶ Response from A-G Leung dated 25 April 2025 to CoI questions in writing.

⁷ Response from Ms. Bokini-Ratu dated 25 April 2025 to CoI questions in writing.

41. For the A-G to have suggested to the JSC that they look at recruiting a person to fill the position of FICAC Commissioner does not of itself run afoul of the JSC's independence, as the JSC is free to take or leave that suggestion.
42. What the evidence before the CoI on this issue does, do for the purposes of contextual background for the CoI's assessment, is indicate clearly that the decision came from the Executive arm of Government, not from FICAC itself, and not from the Judiciary.

5.4 Advertising of Commissioner's Position

43. On 15 June 2024 the position of FICAC Commissioner was first advertised.⁸
44. The First Ad stated that applicants must:
 - a. be currently admitted as a legal practitioner in Fiji or in another country prescribed by law, and have 15 years post admission experience, and should possess knowledge, skills and experience in a similar field;
 - b. have two – three years of people management or supervisory experience leading teams;
 - c. possess formal degree qualifications in a relevant field from a recognised university is highly desirable;
 - d. demonstrate the ability to think strategically and must be willing to work towards ensuring that FICAC is recognised as an accountable and transparent organisation;
 - e. have relevant skills and experience to manage staff, resources with sensitivity and integrity and possess the appropriate leadership skills to manage and lead FICAC to deliver and achieve a standard of excellence;
 - f. have proven ability to manage relationships with all relevant stakeholders of FICAC; and
 - g. not have any criminal records or Independent Legal Services Commission convictions.
45. Applicants for the position were required to submit the following:
 - a. application letter;
 - b. Curriculum Vitae;
 - c. copies of academic certificates and degrees;
 - d. Certificate of Admission to the Bar;
 - e. Certificate of Good Standing;
 - f. Certificate of Citizenship or passport bio data page or Birth Certificate;
 - g. passport sized photo; and

⁸ Affidavit of Tomasi Bainivalu, Secretary to Judicial Services Commission dated 31 December 2024 at [5].

- h. two referees.⁹
46. Applications were to be lodged by no later than 28 June 2024.¹⁰
47. Mr. Bainivalu gave evidence that while they were open to applications from overseas, there was no proactive advertising in overseas jurisdictions.¹¹
48. Fifteen applications were received from:
- a. Ms. Seini Puamau;
 - b. Mr. Eliesa Burenivalu Tuiloma;
 - c. Mr. Sevuloni R. Valenitabua;
 - d. Ms. Francis Puleiwai;
 - e. Ms. Ana Rokomokoti;
 - f. Ms. Sarafina Marama Tamanisaqa;
 - g. Mr. Eroni Maopa;
 - h. Mr. Simione Valenitabua;
 - i. Mr. Anirudh Singh;
 - j. Mr. Abhay Singh;
 - k. Mr. Tevita T. Muloilagi;
 - l. Mr. Malcolm Maitava;
 - m. Ms. Joytika Jattan;
 - n. Ms. Kolora Naliva-Celua; and,
 - o. Mr. Biu Matavou Kama.¹²

5.4.1 *Decision to Re-Advertise*

49. In early July, according to Mr. Bainivalu, the JSC was given all 15 of the applications which had been received, including the applicants' CVs and relevant qualifications to consider.¹³ This has been contradicted by a member of the JSC, Ms. Shoma Devan Singh, who did not receive the applications nor the list of applicants when she requested them.¹⁴
50. On 10 July 2024 the JSC held a meeting, and a decision was made by them to re-advertise the position of FICAC Commissioner.¹⁵
51. In the JSC meeting minutes from the meeting held on 10 July 2024 the discussion centred around the re-advertising being necessary for the purpose of attracting overseas candidates:

⁹ Ibid., Exhibit TB1: First Advertisement seeking for Applications for FICAC Commissioner position.

¹⁰ Ibid.

¹¹ Transcript, Day 16, Session 1 – Mr. Bainivalu at 18.

¹² Affidavit of Tomasi Bainivalu, Secretary to Judicial Services Commission dated 31 December 2024 at Exhibit TB3: List of Applications Received following the First Ad.

¹³ Transcript, Day 16, Session 1 – Mr. Bainivalu at 18.

¹⁴ Information submitted by CR Bainivalu on 22 April 2025 in response to request for further information from Counsel Assisting dated 9 April 2025. Email dated 2 September 2024.

¹⁵ Affidavit of Tomasi Bainivalu, Secretary to Judicial Services Commission dated 31 December 2024 at [6].

- (III) Re-advertisement of Commissioner of FICAC position. The position had been advertised in the dailies on 15th June, 2024 and closed on 28th June, 2024. Having gone through the list of applicants it is recommended that the position be re-advertised this weekend. *The re-advertisement to be open to overseas applicants so that more and a mixture of applications could be received and considered for this high caliber position* [emphasis added].¹⁶

52. Justice Jitoko, provided the CoI with a copy of an extract from the minutes of the 10 July 2024 JSC Meeting setting out the rationale for the decision to readvertise. According to Justice Temo, the FICAC Commissioner needed to be someone with proven Court experience who knew how to prosecute:

Item 8:

Acting Chief Justice: Last one is the Re-advertisement of the Commissioner FICAC decision. Have you got the list?

Zarina Bi: Yes Sir

Acting Chief Justice: This is the list of those who applied. Have a look at it.

Acting Chief Justice: We've heard the Attorney General in his speech in Parliament talking about FICAC, the need to make some good leadership to make it effective against people who dip their hand into the public purse. So for someone to come and lead this institution what they were designed for, *we need someone really proven, court experience and has it, knows how to prosecute*. So that's why we are asking for further advertisement to cast the net wider. So further advertisement was accepted and we agreed to that. *Do you know anyone in Fiji who's credible to fill this? We need someone who is determined* [emphasis added].

Justice Jitoko: With a lot of experience. I think we might have to look overseas in this post. It's such an important post.

Acting Chief Justice: So we agree on the re-advertisement.

Resolution: Members agreed that the advertisement of Commissioner FICAC be re-advertised.¹⁷

53. It appears from the passage emphasized above that JSC members were asked if they knew of anyone suitable. This would have encouraged members to think of and recommend individuals that they knew. In via voce evidence Justice Jikoto explains further:

Mr. Chaudhry: Mr. Jitoko, my question is that three of the person [indiscernible 1:54:58]... if the applicants being Mr. Tuiloma, Sevuloni Valenitabua and Ms. Rokomokoti were shortlisted for the second round of interview. Now here these three [indiscernible 1:55:20] were in suitable for shortlisting

¹⁶ Affidavit of Filimone Jitoko, dated 8 January 2025, at [8].

¹⁷ Ibid., Annex I: Meeting minutes for No.8/24 with the resolution that the advertisement of FICAC Commissioner be re-advertised.

and the second batch. Why they were not proceeded for looking for an interview during the first round?

Justice Jitoko: *Yes, I think the answer is very simple, Mr. Chaudhry. The Commission decided to cast its net wider, right. And that would be including those that have already applied, they can reapply and that's nothing to stop those who apply to reapply in the second instance. And I think the Commission has every right to say, well we're looking at this candidate here, we will re advertise and cast the net wider. And you will see that I had said so that we might have to look overseas for this vote. Right that is in my intention was to cast the net wider and if it's the end, we came out with only. our locals. In the second advertisement, the intention was there to get as many applicants as we can.*¹⁸

54. One of the applicants who responded to the First Ad was Ms. Puleiwai. According to CR Bainivalu, there were no discussions about her suitability during the 10 July 2024 JSC meeting, or about the suitability of the other candidates who had applied:

Ms. Mason: Yes. So, it's the 15 from there, and then the one to five of the second thing, which makes it 20. All right. I see that Ms. Puleiwai was not shortlisted. Was there some discussion at the first meeting about her suitability or about shortlisting her?

Justice Ashton-Lewis: *At the first meeting?*

Ms. Mason: Yes. The meeting of the JSC, which you described at your paragraph ix of your affidavit. So, meeting on 10th of July, was there any discussion about Ms. Puleiwai's suitability for the role?

CR Bainivalu: I wasn't part of the panel. That paragraph meaning that it was the 16 days that were shortlisted, those were the decisions of the three panels. The three panels who were appointed to conduct the interview, that shortlist candidates were the prerogative that was them. But to answer the question, no, I did not. That was not discussed in the JSC.

Ms. Mason: Right. So, before the advertisement went out again, there was no discussion about Ms. Puleiwai's suitability. Is that what you're saying?

CR Bainivalu: No, there's no discussions of it.

Justice Ashton-Lewis: *At that meeting, that first meeting, was there any discussion about who Ms. Puleiwai was, what she was doing, and about her suitability?*

CR Bainivalu: Not that I recall, My Lord, but I can only answer this this way, but not in that meeting.¹⁹

¹⁸ Transcript, Day 11, Session 1 – Justice Jitoko at 49.

¹⁹ Transcript, Day 16, Session 1 – Mr. Bainivalu at 20-21; Affidavit of Filimone Jitoko, Speaker of the Parliament of Fiji dated 8 January 2025.

55. According to Mr. Bainivalu, it was not discussed whether the quality, or rather the lack of quality, of the applicants necessitated re-advertising:

Justice Ashton-Lewis: Yes. Please keep going. So, that's not answering Ms. Mason's question. No. Specifically, she asked, was the decision to not go with anyone in that first list, but to re-advertise on the basis of the quality of the applicants?

CR Bainivalu: If that is the question, that was not discussed, My Lord.²⁰

56. It appears that the JSC was not happy with both the quantity and the quality of the applicants for the FICAC Commissioner's position, so the vacancy was re-advertised.

5.4.2 *Second Advertisement of FICAC Commissioner Position*

57. On 13 July 2024 the position of FICAC Commissioner was re-advertised.²¹
58. Applications were to be lodged no later than 4 pm, Friday, 26 July 2024.
59. Eight applications were received. However, three of these were applications by people who had applied originally under the First Ad.²²
60. Those who applied in the second round were:
- a. Mr. Jeremaia Lewaravu;
 - b. Ms. Barbara Malimali;
 - c. Mr. John Rabuku;
 - d. Ms. Lavi Lotu Rokoika;
 - e. Mr. Semesa Druavesi Karavaki;
 - f. Ms. Frances Leba Puleiwai;
 - g. Ms. Kolora Naliva-Celua; and
 - h. Mr. Biu Matavou.

5.5: Shortlisting and Interviews

61. On 10 July 2024 the JSC decided that a Selection Panel should be established to assess and shortlist the applications, to interview the short-listed candidates, and to make a recommendation to the JSC. Mr. Waqaivolavola notes in his affidavit that he was added to the Panel, sometime in August.²³

²⁰ Ibid., 19.

²¹ Affidavit of Tomasi Bainivalu, Secretary to Judicial Services Commission dated 31 December 2024 at [6]

²² Affidavit of Tomasi Bainivalu, Secretary to Judicial Services Commission dated 31 December 2024 at [6]; Transcript, Day 16, Session 1 – Mr. Bainivalu at 19-20.

²³ Affidavit of Josaia Waqaivolavola, Acting Chief Magistrate dated 7 January 2025 at [2]

62. There were three panellists selected for the hiring of the FICAC Commissioner.²⁴ The Selection Panel comprised Justice Temo, S-G Green, and the Acting Chief Magistrate, Mr. Josaia Waqaivolavola.²⁵

63. When the CR was asked why Mr. Waqaivolavola was chosen to be on the Selection Panel, he replied that this was at the discretion of the JSC:

Ms. Mason: And why was Mr. Waqaivolavola chosen?

CR Bainivalu: Well, that's the decision of the JSC. Normally, they put in the names, but all judicial officers' appointment, in my experience, the last two and a half years, they picked from the judicial officers and their experience and their maturity and all that. So it's the call of the JSC through the chairman, ma'am.²⁶

64. The Selection Panel was determined by the JSC, through its Chairperson Justice Temo, and was made up of the CJ Justice Temo, Mr. Ropate Green and Mr. Josaia Waqaivolavola.²⁷

65. This was confirmed by the CR viva voce:

Ms. Mason: Okay, now, then, when it gets to the second round, is that when you establish, by you, I mean the JSC, establishes the selection panel?

CR Bainivalu: Yes.

Ms. Mason: And you say there at paragraph eight that the selection panel was the Chief Justice and Mr. Ropate Green and Mr. Josaia Waqaivolavola.

CR Bainivalu: That is correct, ma'am.

Ms. Mason: Was it the JSC that made this decision of who the panel should be?

CR Bainivalu: Yes.²⁸

66. The decision to shortlist candidates was made by the Selection Panel.²⁹ It is notable that despite two rounds of applications, in which Ms. Pulewai applied both times, she was not considered suitable for shortlisting. Six candidates were short-listed.

²⁴ Transcript, Day 16, Session 1 – Mr. Bainivalu at 21.

²⁵ Affidavit of Tomasi Bainivalu, Secretary to Judicial Services Commission, dated 31 December 2024 at Exhibit TB1: First Ad Seeking Applications for FICAC Commissioner position.

²⁶ Transcript, Day 16, Session 1 – Mr. Bainivalu at 21.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid., 20.

67. On 20 and 24 August 2024, the shortlisted candidates were interviewed.³⁰ Two of the shortlisted candidates, John Rabuku and Joytika Jattan withdrew their applications. The candidates interviewed were:

- a. Mr. Eliesa Tuiloma;
- b. Mr. Sevuloni Valenitabua;
- c. Ms. Ana Rokomokoti; and
- d. Ms. Barbara Malimali.

68. Although the interviews of the shortlisted candidates were scheduled for only 30 minutes each,³¹ Mr. Waqaivolavola gave evidence that the interviews lasted for about one and a half to three hours each,³² from between 2:30 – 7 pm for the first three candidates, with Ms. Malimali returning on the next day, 21 August 2024, for an approximately two to three hour interview.³³

69. The interviewees received the scores as set out in the following table.³⁴

	<u>Names of Candidates</u>	<u>Hon. Acting Chief Judge</u>	<u>S-G Green</u>	<u>Mr. Waqaivolavola</u>	<u>Total Marks</u>	<u>Position</u>
1.	Mr. Eliesa Tuiloma	45	43	30	118	4 th
2.	Mr. Sevuloni Valenitabua	48	43	40	131	2 nd
3.	Ms. Ana Rokomokoti	48	45	33	126	3 rd
4.	Ms. Babara Malimali	50	47	44	141	1st
5.	Mr. John Rabuku	Withdrew				
6.	Ms. Joytika Jattan	Withdrew				

70. In later correspondence, Justice Jitoko states that Mr. Waqaivolavola was conflicted because of his relationship with Ms. Malimali, and he should have stepped aside. If Mr. Waqaivolavola's scores are disregarded because of his undeclared conflict of interest, then the difference in scores is negligible, with Ms. Malimali scoring 97, Ms. Rokomokoti scoring 93, Mr. Valenitabua scoring 91, and Mr. Tuiloma scoring 88.

71. Of the four candidates who were interviewed, three of them were applicants in the first round. Only one, Ms. Malimali, was a “new” applicant. Following the interviews, the Selection Panel made a recommendation to the JSC on their

³⁰ Affidavit of Tomasi Bainivalu, Secretary to Judicial Services Commission dated 31 December 2024 at TB4: The JSC Selection Panel Recommendation Report.

³¹ Transcript, Day 16, Session 1 – Mr. Bainivalu at 22.

³² Transcript, Day 24, Session 1 – Mr. Waqaivolavola at 14-15.

³³ Ibid., 15.

³⁴ Affidavit of Filimone Jitoko, Speaker of the Parliament of Fiji dated 8 January 2025 at Annex II: The JSC Selection Panel Recommendation Report.

preferred choice in relation to the appointment to FICAC Commissioner.³⁵ A report was then compiled recommending that Ms. Malimali be appointed as FICAC Commissioner. The report was signed by Justice Temo, S-G Green, and Mr. Waqaivolavola on 27 August 2024, unanimously recommending Ms. Malimali.³⁶

72. The Selection Panel report was as follows:

Report on the Selection of the Commissioner
Fiji Independent Commission Against Corruption

The Commissioner FICAC position had been vacant since last year after the resignation of Mr. Rashmi Aslam. The position had been advertised on 15th June 2024 whereby the Judicial Services Commission (JSC) noted that suitable applications had not been received thus the JSC decided that the position be re-advertised. The post had been re-advertised on 13th July in the Fiji Sun, Fiji Times and posted on Judicial website.

The Chairperson of the JSC, the Solicitor-General and the Acting Chief Magistrate had been nominated to be the panellist for the selection of Commissioner FICAC.

The interview had been conducted on 20th and 21st August.

Altogether twenty- three [23] applications have been received, from which six [6] had been shortlisted to attend the interview.

Tabulated scores are as below:

	<u>Names of Candidates</u>	<u>Hon. Acting Chief Judge</u>	<u>S-G Green</u>	<u>Mr. Waqaivolavola</u>	<u>Total Marks</u>	<u>Position</u>
1.	Mr. Eliesa Tuiloma	45	43	30	118	4 th
2.	Mr. Sevuloni Valenitabua	48	43	40	131	2 nd
3.	Ms. Ana Rokomokoti	48	45	33	126	3 rd
4.	Ms.Barbara Malimali	50	47	44	141	1st
5.	Mr. John Rabuku			Withdrew		
6.	Ms. Joytika Jattan			Withdrew		

Applicants were assessed in the following areas with other probing questions:

1. Leadership
2. Problem Solving
3. Handling difficult employees
4. Mentoring
5. Time Management
6. Motivation
7. Using of discretion
8. Linguistics and Social Skills

³⁵ Transcript, Day 16, Session 1 – Mr. Bainivalu at 21.

³⁶ Affidavit of Tomasi Bainivalu, Secretary to Judicial Services Commission dated 31 December 2024 at TB4: The JSC Selection Panel Recommendation Report.

9. Knowledge on Criminal Law Practice³⁷**Collective Decisions and recommendations of the Interviewing Panel****Assessment**

Ms. Barbara Malimali – she has post admission experience of 25 years. Practiced in all Courts with exposure to Criminal practice for 20 years. She had worked with auditors. Ms. Malimali had taught Criminal Law from 019 to 2024. She has an open-door policy, has exposure to deal with media. She has capacity to empower staff in terms of training employees and investigators together with financial skills. Ms. Malimali strongly believes in healthy relationship at workplace and team exercise.

Mr. Sevuloni Valenitabua – the panels were pleased that he was upfront and declared that he has a medical condition pertaining to Heart. He stated that he can handle the position as he had managed 30 Lawyers in the Solomons. He is used to resolving matters and got good mentoring skills. Has practiced in Criminal Law are for over 28 years, had been the Director of Public Prosecutors in Nauru from 2016 to 2020.

The panel had been considerate of Mr. Valenitabua's medical condition which may not be fit for the position as the successful candidate has to handle a challenging environment at the FICAC office.

Ms. Ana Rokomokoti – she had held positions as Resident Magistrate, Chief Registrar and Chief Magistrate, has post admission experience of 25 years. Served in the Military, has leadership and problem-solving qualities. Has been teaching courses on Criminal Law for the past 10 year.

Mr. Eliesa Tuiloma – has leadership and administrative qualities. Believes in problem solving, mentoring and delegation. Has done Criminal Law, prosecution from Civil angle.

LPU Search: Principal Legal Officer based at LPU has confirmed that there are no cases pending against Mr. Tuiloma and Ms. Malimali.

There is a case pending before Fiji Mediation Center for Ms. Rokomokoti.

Conclusion with Recommendation

The panellist unanimously recommends that Ms. Barbara Malimali be appointed as Commissioner FICAC as she had proven to be the most meritorious during the selection process.

Ms. Malimali scored the highest rating of 141 followed by Mr. Valenitabua who scored the second highest. Ms. Rokomokoti scored the 3rd highest and Mr. Tuiloma 4th highest.

Mr. John Rabuku and Ms. Joytika Jattan had withdrawn their interest.³⁸

- 73.** There was a misunderstanding with at least one Selection Panel member that the FICAC Commissioner had to be a legal practitioner. This in itself would have narrowed the range of potential candidates. It was not until the CoI that one of the Selection Panel members realised that this was not the case:

Ms. Mason: Now, I know that you were only there for the panel and you're not a member of the JSC, but do you think there's a

³⁷ Ibid.

³⁸ Ibid.

sort of a bit of a misunderstanding about the qualifications for FICAC Commissioner that people don't understand that it actually can be a non-lawyer?

Mr. Waqaivolavola: The first time I heard about that when I was here and the Chief Justice was giving evidence.³⁹

74. According to Mr. Waqaivolavola, there were no prior discussions about the interviews, or about preferred candidates:

Ms. Waqanika: Were you or any other member on the panel, on the interview panel, I'll say interview panel, were you ever pressured, or were you given that impression that she must be the one that?

Mr. Waqaivolavola: Yeah, the impression that I had, and also that my resolve walking into that room was to interview the best candidate. And there was no pre-discussions, I think that's what you're saying, on who's the best candidate and all that. No, it was walked in, we assessed, then we gave the marks accordingly, and that was it.⁴⁰

75. Justice Temo, when discussing the rationale for the re-advertisement of the position at the 10 July 2024 JSC meeting, noted as part of the rationale for re-advertising was that they were specifically seeking a candidate who had experience prosecuting:

Acting Chief Justice: So for someone to come and lead this institution what they were designed for, we need *someone really proven, court experience and has it, knows how to prosecute*. So that's why we are asking for further advertisement to cast the net wider. So further advertisement was accepted and we agreed to that [emphasis added].⁴¹

76. However, Ms. Malimali's experience did not fit this criterion. In her criminal litigation practice, she had only ever been defence counsel. She had no prosecution experience at all. It is quite a different set of skills and mindset being a prosecution lawyer as opposed to being defence counsel. The other issue was that the role needed someone experienced in either investigating or prosecuting high level complex white collar economic crimes, and Ms. Malimali certainly had no experience in this field at all.

5.5.1 Why did Two Applicants Withdraw?

77. Recently, the Supreme Court had released an opinion concluding that the Constitution barred any lawyer who had been found guilty of a disciplinary proceeding from being appointed as a judicial officer in Fiji. Mr. Rabuku had been

³⁹ Transcript, Day 24, Session 1 – Mr. Waqaivolavola at 10.

⁴⁰ Ibid., 27.

⁴¹ Transcript, Day 15, Session 1 – Justice Temo at 25.

one of the judicial officers who had been the subject of that Supreme Court opinion, as he had at that time been appointed DPP by the JSC chaired by Justice Temo.⁴²

78. The Supreme Court case had highlighted an ILSC decision against Mr. Rabuku, and according to Mr. Waqaivolavola once it was brought to Mr. Rabuku's attention that the advertisement had stated that applicants should not have any criminal records or ILSC convictions, Mr. Rabuku withdrew:

Ms. Mason: I understand from evidence that has been filed by CR Bainivalu that Mr. Rabuku and Ms. Joytika Jathan withdrew.

Mr. Waqaivolavola: Yes, indeed.

Ms. Mason: Do you know why they withdrew?

Mr. Waqaivolavola: Mr. Rabuku withdrew because the advertisement says something about...

Ms. Mason: Is... Yes, sorry?

Justice Ashton-Lewis: *Take your time, take your time, please.*

Mr. Waqaivolavola: Yes.

Ms. Mason: I have a copy of one of the advertisements here, if you'd like to have a look at it.

Mr. Waqaivolavola: Yeah, not having any criminal records or independent legal services.

Justice Ashton-Lewis: *If you could please be close to the microphone. Thank you, Orisi.*

Mr. Waqaivolavola: Yes, thank you, My Lord. I think that the preferred qualifications talks about not having any criminal records or independent legal services commission conviction. That was because of the decision against him and then he realized that he did not... That is my understanding from the exchange.

Ms. Mason: Right, right, but he...

Ms. Waqanika: Right from the initial part.

Ms. Mason: Yes, so was that related to the Supreme Court decision that said that he couldn't be the DPP head?

Ms. Waqanika: Yes.

Ms. Mason: So, but that Provision in the Constitution doesn't apply to the FICAC Commissioner. So, what, I mean, you probably can't answer this. Why was it a qualification for the FICAC head?

⁴² In the Matter of a Reference by Cabinet for an Opinion From the Supreme Court Concerning the Interpretation and Application of Sections 105(2) (b), 114(2), 116(4) and 117(2) of the Constitution of the Republic of Fiji [2024] FJSC 20 at [92].

Mr. Waqaivolavola: Well, that was his response from what I, what we experienced in there, what he did when he came in there. That was raised and then he withdrew...⁴³

Ms. Mason: Yes, so was that related to the Supreme Court decision that said that he couldn't be the FICAC head?

Ms. Waqanika: Yes.

Ms. Mason: So, but that Provision in the Constitution doesn't apply to the FICAC Commissioner. So, what, I mean, you probably can't answer this. Why was it a qualification for the FICAC head?

Ms. Waqanika: Well, that was his response from what I, what we experienced in there, what he did when he came in there. That was raised and then he withdrew...⁴⁴

79. Mr. Rabuku provided his own account which, while he didn't frame his removal from the process as a "withdrawal," largely corroborated the position of Mr. Waqaivolavola that he left the process when the issue of the Supreme Court decision was raised:

Ms. Mason: Okay, Mr. Rabuku, on a separate matter, you applied for the position of FICAC Commissioner.

Mr. Rabuku: Yes, I did.

Ms. Mason: Why did you withdraw?

Mr. Rabuku: Actually, I did not withdraw. As a matter of fact, I put in a good application. It was about over 4,000 words.

Ms. Mason: Yes, and you were selected for the interview.

Mr. Rabuku: I was selected for an interview.

Ms. Mason: And what happened?

Mr. Rabuku: I went to the interview, but I was told at the interview by the panel that they were still worried about the repercussions of the Supreme Court ruling that I could not hold the position of the DPP.⁴⁵

80. Mr. Rabuku then provided an explanation of the relatively minor offence which he understood prevented his being further considered for the FICAC Commissioner position:

Justice Ashton-Lewis: Just remind me of that ruling, please.

Mr. Rabuku: So there was a question by Cabinet to the Supreme Court as to whether I could hold the position of DPP.

Justice Ashton-Lewis: and what was that complaint?

⁴³ Transcript, Day 24, Session 1 – Mr. Waqaivolavola at 8-9.

⁴⁴ Ibid., 9.

⁴⁵ Transcript, Day 31, Session 5 – Mr. Rabuku at 18-19.

Mr. Rabuku: No, it wasn't the Law Society. It was the Legal Practitioners Unit. It was a failure to reply to a notice. I was given a notice to reply to a complaint filed by a wife of a client. And truth be told, I didn't know that it was an offence not to reply. So they served me two notices. I did not reply to it. The case had already been completed. Then I got a charge and summons. So I appealed before the Legal Practitioners Unit, before Justice Madigan. For the first time, I then realised it was an offence. So I pleaded guilty and I mitigated. But he fined me \$500.

Justice Ashton-Lewis: *And what did you do again that you pleaded guilty to?*

Mr. Rabuku: I did not reply to a notice.

Justice Ashton-Lewis: *And what was that?*

Mr. Rabuku: You see, what happens at the Legal Practitioners Unit, My Lord, is this. Somebody files a complaint against you. Then the Legal Practitioners Unit will send you a notice to say there's a complaint against you. Please reply. Her complaint was that...

Justice Ashton-Lewis: *You didn't reply?*

Mr. Rabuku: I didn't reply to that notice.

Justice Ashton-Lewis: *Why didn't you reply?*

Mr. Rabuku: The matter was an appeal to the Court of Appeal. And by which time this complaint had been filed, I had already litigated the matter already before the Court of Appeal. And it was going up to the Supreme Court. And the complaint was, to my recollection, was about not visiting her husband in prison, who was my client. And to me it was, it's none of your business. You're the wife, you're not the client. If he wants to complain, he can complain. But it was entirely my fault because I didn't even know it was an offence not to reply to a notice. And I only knew that when I went before the judge.

Justice Ashton-Lewis: *Did you plead guilty?*

Mr. Rabuku: When I went before the judge, I explained to the judge why I did not reply to the notice. And he said, well, Mr. Rabuku that's all irrelevant because at the point you don't reply to the second notice, the offence is complete.

Justice Ashton-Lewis: *What?*

Mr. Rabuku: And I said, oh, okay. Therefore I apologise. And then I'm mitigated.

Justice Ashton-Lewis: *What was the punishment you got?*

Mr. Rabuku: He suspended my licence for three months.

Justice Ashton-Lewis: *What?*

Mr. Rabuku: And so I had to, and fined me \$500 and publicly reprimanded me.

Justice Ashton-Lewis: *I was also counsel to the Law Society in Victoria. And the Law Society had the power to suspend a solicitor for one year, three years, or five. Now my job wasn't to be counsel in that, but mainly the ones that had to go up to the Supreme Court for the striking off of someone, for a striking off offence. And what you've done shouldn't even really be an offence, if you're not hiding something from me that I don't think you are. So, all right. And that prohibited you from being able to be FICAC Commissioner.*

Ms. Mason: Well, it didn't. That was my next question. Because you don't have to be a judicial officer to be the FICAC Commissioner. So, I wondered why I thought you'd withdrawn, but you were told, don't bother, because you come with baggage.

Mr. Rabuku: Yes.⁴⁶

81. The fact of the negative ILSC finding should not have been used to exclude Mr. Rabuku from further consideration by the Selection Panel, as being a Judicial Officer was not one of the legislative requirements for the Commissioner of FICAC.
82. There have been previous FICAC Commissioners and/or Deputy Commissioners, who were not lawyers, such as Mr. George Langman. However, in practice this minor offence proved fatal when Mr. Rabuku went to his interview with the Selection Panel:

Mr. Rabuku: Well, I think it was put to me this way, that we're still concerned about the Supreme Court ruling. And so my answer was, but that's not even a condition to be a FICAC Commissioner.

Ms. Mason: Yes, it's not relevant.

Mr. Rabuku: It's not relevant. And I don't know why you then have to extend the conditions of the FICAC Commissioner job when it's not a constitutional provision. But you see, by then, My Lord, I was already sitting as the deputy DPP, because I'd left the DPP's office and then came back as the deputy.

Justice Ashton-Lewis: *Yes.*

Mr. Rabuku: And so I said, look, let's just end it here, right? It's fine. I actually wanted an interview, but they said, you know, but if you're going to conduct an interview and it's only going to be an exercise in futility, because you're still going to rely on the Supreme Court opinion, then just end it here. Then, you know, I'm at the office of the DPP. I'm deputy DPP's substantive position, and I'm okay. And so those were the concerns on which I left the interview.

⁴⁶ Ibid., 19-21.

Justice Ashton-Lewis: Fair Enough.

Ms. Mason: So, right. What did they say to that? Did they say, okay?

Mr. Rabuku: Well that ended extremely well.⁴⁷

- 83.** It was unnecessary for Mr. Rabuku to withdraw, as there was no legislative bar to his applying for the position of FICAC Commissioner. Mr. Rabuku was a senior law practitioner who was very experienced as a prosecutor, having worked at the DPP for many years. The pressure put on Mr. Rabuku to withdraw appears to have come about because the JSC did not want any more negative media publicity about Mr. Rabuku. Of course this should not have been a reason to disqualify him. It is surprising that, on the one hand, the JSC recognised that it needed more suitably qualified people to apply for the position, yet on the other hand, it used narrow and unduly strict criteria barring otherwise suitable candidates.
- 84.** There is no information before the CoI as to why Ms. Joytika Jattan withdrew her application for the position of FICAC Commissioner.

5.5.2 Was Ms. Malimali Told to Apply?

- 85.** According to Ms. Malimali, nobody had approached her to ask her to apply for the FICAC Commissioner position:

Ms. Mason: Right. Okay. All right. And so then you went through and in paragraph five you say that you had been informed at least two weeks prior. And you will have heard, well, you might not have heard the evidence of Ms. Puleiwai. And she said that before she applied for the position of acting, so she'd been in Nauru, and then she was shoulder tapped to apply for this position. So she was already someone who had been tagged. So had you been shoulder tapped?

Ms. Malimali: You mean headhunted?

Ms. Mason: Yes. Same thing, yes.

Ms. Malimali: No.⁴⁸

- 86.** Ms. Malimali stated in evidence that she had been sent the advertisement by “I think a couple of friends”, including Ms. Waqanika.⁴⁹
- 87.** There was no evidence before the CoI that Ms. Malimali was asked to apply for the position of FICAC Commissioner.

⁴⁷ Ibid., 21-22.

⁴⁸ Transcript, Day 23, Session 2 – Ms. Malimali at 3-5.

⁴⁹ Ibid., 5.

5.6: Due Diligence on Preferred Candidate

5.6.1 Reference Checks

88. Ordinarily for a senior and important position, the hiring entity will undertake reference checks, psychometric tests, and police checks. The Selection Panel had only been engaged to undertake the short-listing and the candidate interviews. It was then for the JSC to complete the rest of the procedures that would be expected for a senior position such as FICAC Commissioner. According to Mr. Waqaivolavola, he had assumed that reference checks would have been done by the CR's office:

Ms. Mason: Yes. All right. Okay, now I'd like to go to Annexure in that same book. This is a question about reference checks. So once you decided that Ms. Malimali was the best candidate, did you do any reference checks?

Mr. Waqaivolavola: Once I've decided, we've decided reference check, no. We interviewed according to the records before us and also in terms of the rubrics that was designed, upon which we interview the candidates

Ms. Mason: Right.

Mr. Waqaivolavola: Yes.

Ms. Mason: But it would be normal process, wouldn't it, to do reference checks? Especially for a senior position like this.

Mr. Waqaivolavola: Yes, we'll probably have to leave reference check. Usually when it comes to that stage, I think all those are done by the Chief Registrar's Office.

Ms. Mason: Yes, so you were just on the panel and that was the next level.

Mr. Waqaivolavola: Yes.

Ms. Mason: That's what you're saying. Yep, that's understandable. However, just in terms of your opinion on best practice, do you think reference checks should have been done?

Mr. Waqaivolavola: A reference check was done, I'm sure.⁵⁰

89. Justice Temo said he was unaware as to whether Ms. Malimali had submitted any referees for the role. He did not conduct reference checks on the basis that he had seen her legal practice over the last 10 years:

Ms. Forwood: Have you contacted a referee?

Chief Justice Temo: *To the best of my knowledge, she didn't submit a referee.*

⁵⁰ Transcript, Day 24, Session 1 – Mr. Waqaivolavola at 19.

Ms. Forwood: As part of the job advertisement, one of the requirements was that Ms. Malimali or the applicants either provide a reference.

Justice Ashton-Lewis: Ah, well, now that's a lot easier. So, what she's saying, you heard it, Chief Justice, that part of the application process for the job, they had to provide two references. Did Ms. Malimali do that?

Chief Justice Temo: No, she didn't. But I've observed her practice in the criminal courts in Fiji.

Justice Ashton-Lewis: Yep.

Chief Justice Temo: For more than 10 years.⁵¹

90. As part of the application process, applicants were required to submit two referees.⁵² In Ms. Malimali's application for the FICAC Commissioner position, she provided details for two referees:

Hon. Filimoni Vosarogo
Minister for Lands and Mineral Resources
Ph: +679 9904140
Email: filimoni.vosarogo@lands.gov.fj

Ms. Tanya Waqanika
Waqanika Lawyers
Ph: +679 2907040
Email: tmwaqaika@gmail.com⁵³

91. However, the JSC did not conduct any reference checks at all. Neither Hon. Vosarogo nor Ms. Waqanika were contacted. Neither were any efforts made to contact previous employers of Ms. Malimali.
92. In addition, Ms. Malimali was at that time, the ECF Commissioner. In that regard, she was a senior constitutional office holder, and her performance at the ECF should have been examined. The JSC should have properly tasked someone, such as the Secretary, Mr. Bainivalu, with attending to the due diligence phase of the selection process. It would have been simple enough to ask Ms. Malimali for her permission for the JSC to enquire with the COC and the SoE about Ms. Malimali's performance as the ECF Chair. However, none of this was done.
93. Hon PM Rabuka was asked whether, in his position as Chairman of the COC, the entity which Ms. Malimali reported to, he should have been contacted by the JSC as to Ms. Malimali's performance as ECF Chairperson:

Ms. Mason: All right. Now, do you think that the person who's under investigation for criminal charges should not be appointed to

⁵¹ Transcript, Day 15, Session 1 – CJ Temo at 89.

⁵² Affidavit of Tomasi Bainivalu, dated 31 December 2024, Annex TB1 and TB2: Requirements outlined in the advertisements requesting applications for the role of FICAC Commissioner.

⁵³ Affidavit of Barbara Malimali, dated 27 November 2024 at Annex BM-11: Ms. Malimali's two references as part of her application for the role of FICAC Commissioner.

head that organization until that investigation has been completed?

Mr. Rabuka: If I had known that, My Lord, if I had known that there was a criminal investigation, I would have been more cautious.

Justice Ashton-Lewis: *Right.*

Mr. Rabuka: Perhaps that's why I asked the Attorney General, if he was aware, and asked him for advice. That's when he advised me, only you can now go up to the President.

...

Ms. Mason: All right. And so, in hindsight, you agree that her appointment should have been deferred pending the outcome of the investigation?

Mr. Rabuka: In hindsight, My Lord, if I had any indication at the time that it was a reasonable complaint, I would have asked His Excellency to reconsider.

Justice Ashton-Lewis: *Well, thank you. That's probably an extreme, but to have at least postponed the appointment until the complaint was dealt with.⁵⁴*

...

Ms. Mason: So were you contacted by anyone from the JSC in relation to Ms. Malimali's performance as the chair of the Electoral Commission?

Mr. Rabuka: No, My Lord.

Ms. Mason: Would you have expected that before they hired her or chose her that they would talk to her last employer or last place of employment?

Mr. Rabuka: That did not take place, My Lord.⁵⁵

94. This was also put to Hon Seruiratu, who is the LoOp, and also a member of the COC:

Ms. Mason: Then finally, did you ever get a call or some communication from the JSC who appointed Ms. Malimali as the Commissioner of FICAC about what her employment, what her tenure at the COC was like, as a reference check so to speak?

Mr. Seruiratu: No, My Lord. There was no call from the COC. And again I keep questioning the resignation because there was not even any call or advice whatsoever from the Secretariat of the COC itself. Or for that purpose, the Attorney General, who will be consulted by the Judicial Services Commission, according to the Constitution, if they are making the appointment of the FICAC Commissioner. So, the Attorney

⁵⁴ Transcript, Day 1, Session 1 – PM Rabuka at 25-26.

⁵⁵ Ibid., 40.

General being a member of the COC, at least, because I keep making those statements. As you've said, if somebody had advised me that she had tendered that resignation letter on the 3rd I wouldn't have continued making those statements. Because there was no correspondence at all or call from the Judicial Services Commission and the Secretariat of the COC itself.

Ms. Mason: So, do you think the Judicial Services Commission should have contacted the COC and asked you, what was this person's performance like when she was with the COC appointment?

Mr. Seruiratu: My response to that is a consultation between the JSC and the COC is with the Attorney General, who is also a member of the, so I assume that once the Attorney General is consulted, he would have discussed it with the Honorable PM as well, who is chair of the COC. But with the members of the COC, because they are different bodies governed by separate clauses in the Constitution.⁵⁶

95. Furthermore, Hon Seuiratu was questioned about Ms. Malimali's appointment and suitability:

Ms. Mason: All right. And so if, speculating, if you were on the JSC, would you have, given the circumstances around Ms. Malimali's situation at the Electoral Commission, including the investigation, would you have appointed her as the FICAC Commissioner?

Mr. Seruiratu: I would have, if I were in the JSC, My Lord, I would have asked that perhaps put the appointment on hold, get the investigation cleared, and then make an informed decision once that has been cleared, rather than just continuing with it...

Ms. Mason: Right. Okay. Thank you. And so keeping in mind her performance as the Chair of the Electoral Commission, would you recommend her as suitable for another leadership position, given how that ended up?

Mr. Seruiratu: Can you repeat your question?

Ms. Mason: So given her performance as the Electoral Commissioner, would you recommend her for another leadership position in a government institution?

Mr. Seruiratu: My Lord, I have no issues at all with her qualifications and, but I think it's the leadership issue that is questionable and I would have serious concerns on that. She's a professional, whatever, and highly qualified for the role, but I think it's, and everybody have their own leadership styles.

Justice Ashton-Lewis: *So really, your main concern, taking Ms. Mason's question, why you would not necessarily support Ms. Malimali for another leadership position is not so much*

⁵⁶ Transcript, Day 2, Session 1-2-3, Mr. Seruiratu at 177-178.

lack of talent and lack of history, but a lack of being able to form and get a good leadership. Is that it?

Mr. Seruiratu: Yes, My Lord.⁵⁷

5.6.2 Other Tests or Checks

96. There were no personality or psychometric tests conducted, as would be expected for such a senior position:

Ms. Mason: I'm pleased to hear that, because I thought, what, half an hour? Yes. And did you do any other checks? Like, they have, in New Zealand and other countries, for senior positions like this, they have agencies come in and they do personality checks and psychological checks and those sorts of things. Was any of that done?

Mr. Waqaivolavola: No, I wasn't aware of any such checks.⁵⁸

97. No information was provided to the CoI that any Police checks were undertaken by the JSC.
98. Neither did the JSC contact FICAC to ask them whether there were any pending investigations against Ms. Malimali.

5.6.3 Legal Practitioners Unit Search

99. On 26 August 2024 a request by Zarina Bi, the Assistant Secretary for the JSC, was made via email to Mr. Chand to conduct an LPU search for any complaints or investigations of the following candidates:

- a. Mr. Eliesa Tuiloma;
- b. Ms. Ana Rokomokoti; and
- c. Ms. Barbara Malimali.⁵⁹

100. CR Bainivalu had requested that the search be undertaken urgently.⁶⁰

101. On 26 August 2024 Mr. Chand responded to the request at 12:36 pm and noted that there were only four members of the legal team at work that day. Mr. Chand stated that they would try their best to complete the check, or at least the check of Ms. Malimali that day:

We are working on the same. Only 4 members from the Legal Team (including me) are at work today, Sir but we will try our best to at least work on complaints against Ms. Malimali and complete the same.

1. Sir, there are no complaints against Mr. Eliesa Tuiloma.

⁵⁷ Ibid., 181-182.

⁵⁸ Transcript, Day 24, Session 1 – Mr. Waqaivolavola at 16.

⁵⁹ Affidavit of Tomasi Bainivalu, Secretary to Judicial Services Commission dated 31 December 2024 at TB7: Email request from Ms. Bi to the LPU requesting for a LPU check into the FICAC Commissioner Role Applicants.

⁶⁰ Ibid.

2. There are 2 complaints against Ms. Rokomokoti.
3. There are 3 complaints against Ms. Malimali.

Submitted for your information as a preliminary update, Sir.⁶¹

- 102.** CR Bainivalu replied by email at 12:45 pm stressing that even if Mr. Chand was the only officer, he knew that the LPU team would execute its obligations:

Thank you for your early response...kindly work on them and await your legal opinions please on the ones that has pending complaints...

Even if you Mr. Avneel, were the only officer present today at work, my faith in you with your expertise, I still know considering the urgent requests, that the LPU team will execute its obligations...⁶²

- 103.** On 26 August 2024, Mr. Chand advised via email to CR Bainivalu that there were three complaints against Ms. Malimali:

Ms. Mason: So Mr. Bainivalu, you will recall that we had some discussion about quite a lot of your affidavit. I'd like to go to page 172 of the document you have, which is annexure 7 of your affidavit. And you'll see there that it is an email sent on 26 August 2024 by Mr. Avneel Chand, and he is advising you of the complaints that are with the LPU against Mr. Iliesa Tuiloma, Ms. Rokomokoti, and Ms. Malimali. And he advises that there are three complaints against Ms. Malimali. Could you tell us what they were, please?

Mr. Bainivalu: I can't make the exact complaints, but I think that there were three pending complaints under the, with the Legal Practices Unit. I'm sorry My Lord. I cannot exactly indicated what are those complaints but I would take from that email that there were some pending complaints, as other legal practices that we deal with, Sir.

Ms. Mason: Now, I'm taking it you say you can't recall exactly what those complaints were about?

Mr. Bainivalu: Yes, ma'am.

Ms. Mason: Can you recall if one of them was about Ms. Malimali's conduct in the Tuvalu case?

Mr. Bainivalu: Not that I remember, I'm sorry, My Lord.

Ms. Mason: All right, and then, Emelia, you can see on that same page that you send an email to, back to Mr. Chand, and you say, thank you for your early response. Kindly work on them and await your legal opinions, please, on the ones that has pending complaints. Even if you, Mr. Avneel, were the only officer present today at work, my faith in you, with your expertise, I still know, considering the urgent requests, that the LPU team will execute its obligations. Now, why was this seen as an urgent request?

⁶¹ Ibid.

⁶² Ibid.

Mr. Bainivalu:

Normally, this is not the only one, My Lord. In every, when we're having these transitions, appointment of resident magistrates, appointment of other judicial officers, where JSC had those authority to do so, after the short list, after the panel had come out to their decision in terms of appointing the judicial officer, it comes back to me, to the unit, as its head, to check whether there is any complaints for that matter. Or even during the process as well. I take it that in this case, it was during that process. Now I can remember, now it has come to mind, I believe, when this process taken its course, some of the complaints, when I came on board, there were about 2,000 untouched complaints in the LPU. And the way I see it, it was never been touched due to some many reasons. One of the factors was shortage of staffs in the LPU unit, My Lord. When these officers begin to apply for judicial officer's post, they took out those old complaints and they go through that. And they give me their opinions whether to move forward, they go through the files, some of them, I would say, My Lord, about 10 or less than that years complaints. So when they go through that, it's through the opinion with their recommendations. I also go through that after they put their recommendations. Then some of their recommendations was, there's a complaint withdrawal in the file that was never touched. Some may say, we now recommend it to be dismissed because it was the complainant did not come back to follow up the complaints. There are many reasons to that. I would assume that this is one of those when they look into those files, untouched complaints for some years back. If you like, My Lord, we can come back and I can elaborate more on the details of those complaints. But I can remember after Avnil and his small team during that time, when they came back with their opinions, those three complaints were recommended to be dismissed.⁶³

104. On 27 August 2024 at 8:16 am, Mr. Chand provided an update via email that there were no complaints against Ms. Malimali and only one complaint against Ms. Ana Rokomokoti, which had been referred to mediation. The mediation had not yet occurred.⁶⁴ Ms. Malimali's complaints had been "resolved."
105. The opinions from the LPU, which recommended the dismissal of the complaints against Ms. Malimali, were provided to the CoI. They all seemed sensible and the CoI took no issue with the dismissal of these complaints.

5.7: Failure to Disclose FICAC Investigation

106. Ms. Malimali had known from early April 2024 that there was a FICAC complaint against her:

⁶³ Transcript, Day 17, Session 3 – CR Bainivalu at 2-4.

⁶⁴ Affidavit of Tomasi Bainivalu, Secretary to Judicial Services Commission dated 31 December 2024 at TB7: Email request from Ms. Bi to the LPU requesting for a LPU check into the candidates.

- Ms. Mason: Well, Ms. Puleiwai gave evidence yesterday that when Mr. Wakanivesi had raised this issue, that the CR was on the phone, and then he turned around and said, what did you say? In a bit of a tone to Mr. Wakanivesi. And then that was the only response that was made to Mr. Wakanivesi's really quite serious statement. Do you recall that?
- Ms. Malimali: I think I heard him say, what did you say? And then I spoke and said, look, I respect your views, this is what you have to say. And I just left it at that then Mr. Bainivalu excused himself.
- Ms. Mason: Yes. The staff had already raised it through Mr. Wakanivesi, and I think there was some statement that Mr. Saumi had supported him. It didn't say outright he had supported him. So I thought, coming in as the Commissioner with this, what I call the elephant in the room, that you would have wanted to discuss it with them and discuss a way forward. And I'll ask again, why did you not do that?
- Ms. Malimali: I think in hindsight, you might be correct. But I think you know, the circumstances, I was coming with all the, before I even went to, what's the name of this place, FICAC,...
- Justice Ashton-Lewis:** *I think your answer is fair and that is in hindsight, I probably should have. But the only people who were there at that time is yourself and the others. But I think the answer, in hindsight, I should have, is fine.*
- Ms. Mason: Right. And in your mind, what were you thinking in terms of how you would deal with the problem?
- Ms. Malimali: I wasn't actually thinking about it, because I didn't even know what the allegation was. Because on my way to FICAC, Ms. Forwood had already posted I was going. So when I went to the Chief Registrar and he told me, okay, here's your letter, we're going. I said, oh, I've already read it on Facebook. Ms. Forwood has posted it. So the only thing that I knew at that time was that Ms. Forwood had lodged a letter of complaint, I think, in April.
- Ms. Mason: Yes. Early April.
- Ms. Malimali: Yes. And all of the other bits and pieces in the middle, I do not know, except what was posted on Facebook. Although I told people, please, my mental state is in a mess, please stop sending me stuff. Well-meaning friends would do screenshots and send it to me thinking they'd been helpful. They weren't. So, you know, to be honest, I wasn't even thinking about it. I was like, you know, I walked into a room where the palpable dislike, it was palpable, but I was like, you know what, I'm going to work with these people, I'm going to get through this, we're going to work through this together. So I was hoping they would tell me, but they didn't, and so I just thought, oh, gosh, I don't know what to do. So in my mind, I was like, Barbara, get in there, just start

working and see how you go. I'm sorry I can't answer it any other way.⁶⁵

107. Ms. Malimali also gave evidence that friends had sent her updates,⁶⁶ and so she was aware of the FICAC complaint because it regularly resurfaced on Facebook:

Ms. Mason: You didn't know that the FICAC investigation, you knew there was a complaint, but you didn't know the investigation was ramping up?

Ms. Malimali: I knew there was a complaint because always, every day, something on Facebook comes up.⁶⁷

108. According to Ms. Malimali she thought there was nothing to the complaint as it had been brought by Ms. Forwood and therefore she believed she did not need to follow up about the complaint, stating that she believed she would be contacted by FICAC eventually if there was anything to it:

Ms. Mason: Right. Did you think to contact FICAC and say what is this about? I need to know what the complaint is because I need to protect myself.

Ms. Malimali: No. I just didn't think there was anything to it.

Justice Ashton-Lewis: *You thought what, sorry?*

Ms. Malimali: I didn't think there was anything to it, My Lord. So I just thought, okay, FICAC will eventually get to me and ask me if there's anything in it.

Justice Ashton-Lewis: *So you were going to wait for FICAC to ask you to explain?*

Ms. Malimali: Well, I had, Ms. Forwood...

Justice Ashton-Lewis: *There's nothing wrong with that. It's just that I want to know, was it you were prepared to wait and let FICAC come because you've given a view that these things are hurtful and there might be no substance in it? So was it, look, I'll let FICAC come to me or either you would go to FICAC. Now, I think you didn't go to FICAC. So your view, again, was no, they can come to me. And in many ways, when people, you will know this in your own experience, get accused of something that they think is groundless, a lot of the attitude can be, well, I'm not going to join in this fray. I'll wait for people to come to me and I'll provide my answer. And they can either accept it or whatever.*

Ms. Malimali: My thinking was the same because I thought this is, I said, look, this is groundless. So, I mean, I've been getting attacked. The last thing I needed was to turn up at FICAC's doors and ask, and the next thing it will be appearing on

⁶⁵ Transcript, Day 23, Session 2 – Ms. Malimali at 9-10.

⁶⁶ Ibid., 10.

⁶⁷ Ibid., 2.

Facebook. So I just thought maybe, the way I deal with things when I'm being attacked is to keep quiet. Just, I put up a wall. I put up a wall.⁶⁸

- 109.** In evidence Ms. Malimali accepted that she had been aware of the FICAC complaint. However, she did not inform the Selection Panel as she considered there to be a difference between a complaint and a case. The difference, according to Ms. Malimali, is that a complaint is a complaint that has been lodged, and that a case has had more progression:

Ms. Mason: So S-G Green, who is on the selection panel, says that he asked you if you had a pending case with FICAC and your answer was that you did not. So why did you tell him that when you knew you had a FICAC complaint?

Ms. Malimali: I did not have a pending case with FICAC that I knew of. What I had was a complaint by Ms. Forwood and what had happened to that complaint I did not know.

Ms. Mason: What's the difference between a pending case and a complaint?

Ms. Malimali: A complaint is a complaint. You can write in, complain about somebody. A case is it's actually moved and you've either been questioned or there's something in court, my understanding. For me, it was a complaint made by Ms. Forwood bearing in mind that Ms. Forwood had made complaints about other people.

Ms. Mason: Let's not talk about other things that aren't relevant. Let's stick to this complaint. So Ms. Forwood had made a complaint. You knew about it. You say that a pending case is different from a complaint. I don't think that it is. But anyway, so a pending case. So why did you not disclose the complaint? There's still no reason not to disclose the complaint.

Ms. Malimali: It didn't occur to me that this was an issue. I'm sorry.

Ms. Mason: Well, they've specifically asked you. So it's a bit different from not knowing and non-disclosure. You've been asked directly a question by a selection panel who, if you had said yes, they would not have appointed you. So why did you not tell them that crucial information?

Ms. Malimali: I don't know. It just didn't occur to me.⁶⁹

- 110.** Additionally, in his affidavit evidence S-G Green had stated that the Selection Panel was never aware that Ms. Malimali was being investigated by FICAC:

At no stage prior to the interview, appointment, and arrest, was the panel or the JSC aware or informed that Ms. Malimali was being investigated by FICAC. I only

⁶⁸ Ibid., 11-12.

⁶⁹ Ibid., 9-10.

became aware of the FICAC Investigation against Ms. Malimali on the morning of 5 September 2024, when she was arrested.⁷⁰

- 111.** S-G Green gave further viva voce evidence that during the JSC Selection Panel interview of Ms. Malimali, he had asked Ms. Malimali whether she had any pending cases at either FICAC or the LPU, to which she had replied in the negative:

Ms. Mason: Yes. And then the JSC, regardless if anyone knew, just as a standard check, they should have contacted FICAC. Do you agree with that? Or do you think it was sufficient that at the interview you asked Ms. Malimali do you have any complaints? And she said no. And then that should have been the end of the matter.

Mr. Green: I think when we asked Ms. Malimali if she was aware of any investigation against her, and she said no.

Justice Ashton-Lewis: Pardon?

Mr. Green: She said no, that she was not aware of any investigation.⁷¹

- 112.** Mr. Waqaivolavola supported this testimony:

Ms. Mason: Right, I'll just read you what the Solicitor General said. He said, during her interview for the FICAC Commissioner Position, Ms. Malimali was asked if she had any pending cases with FICAC or the LPU, and she confirmed that she did not.

Mr. Waqaivolavola: Yes, yes, I would agree with that.⁷²

- 113.** On 3 September 2024, FICAC officers executed a search warrant at the offices of the ECF.⁷³ In her affidavit Ms. Malimali made it clear that she was aware that in part this investigation concerned alleged wrongdoing by her:

I was told that the FICAC investigators were trying to find something that would connect me to Hon. Ms. Tabuya and to prove some sort of abuse on my part.⁷⁴

- 114.** On 3 September 2024, Ms. Malimali was, without doubt, aware that there was an investigation against her, as she wrote a lengthy email to Ms. Puleiwai describing the search warrant as unwarranted.⁷⁵ According to Ms. Malimali, Ms. Puleiwai had improper motives:

Ms. Mason: All right. And then we go on. So that's the 3rd quite late, and then we go on to the 4th at 6:28 and...

⁷⁰ Affidavit of Ropate Green Lomavatu, dated 23 December 2024, at [30].

⁷¹ Transcript, Day 29, Session 1 – S-G Green at 69.

⁷² Transcript, Day 24, Session 1 – Mr. Waqaivolavola at 16.

⁷³ Affidavit of Ms. Malimali dated 27 November 2024 at [56].

⁷⁴ Ibid., [63].

⁷⁵ Ibid., Annex BM 4: Email sent to Ms. Puleiwai in relation to the execution of the search warrant at the FEO.

Ms. Malimali: What you will see, Madam, that in my email of the 3rd, it's actually a long one.

Ms. Mason: Yes, it is.

Ms. Malimali: Where I'd actually asked her, are you doing this raid because of improper motives? Are you not abusing your authority, you know. Are doing this because your application was unsuccessful? And did you investigate how a letter from the Electoral Commission of Fiji was leaked? Why are you denying me natural justice? You're putting the cart before the horse.⁷⁶

Ms. Mason: So this is a much longer email, I think, than the first one. And, again, you're reacting not liking anything that's been done and not liking the search warrant and the execution of the search warrant. Correct?

Ms. Malimali: Well, if you put it that way.

Justice Ashton-Lewis: *Have you read this one? Do you want to read it before you? Pardon?*

Ms. Malimali: I remember this one, I was very upset. I sat up all night. I sat up all night on my phone, I think, or my laptop, and I typed this. I was really, really upset.⁷⁷

115. Despite knowing that she was the subject of a FICAC Investigation, Ms. Malimali still failed to notify the JSC of the investigation against her. Her earlier excuse of not disclosing because it was a “complaint” not a “case” cannot still be relied on by her. Obviously with FICAC obtaining a search warrant from a court, the complaint must have progressed to a “case”.

116. According to Ms. Malimali, even after the search warrant had been executed, she still believed that there was nothing to the complaint:

Ms. Mason: And so... So what did you think would happen? They had obviously gone to court and got a search warrant approved then executed the search warrant. Obviously, it must have been serious. It wasn't just a complaint.

Ms. Malimali: Not necessarily, Madam. That's part of the process. Yes.⁷⁸

117. It is difficult to fathom how Ms. Malimali could consider an investigation at the point of a lawfully executed search warrant as anything but serious. Certainly, the excuse of there being “nothing to” the complaint was no longer open to her. She should at this stage have disclosed the fact of the investigation to the JSC. Her lack of disclosure is substantially more serious when one takes into account the fact that she was asked about FICAC cases against her at her candidate interview, and said that there were none. She must have known that it was highly

⁷⁶ Transcript, Day 23, Session 2 – Ms. Malimali at 60.

⁷⁷ Ibid., 61-62.

⁷⁸ Ibid., 42.

relevant and important information and that it ought to have been disclosed to the JSC as soon as she had discovered that she was under active investigation.

118. Ms. Malimali was aware of the investigation and chose not to inform anyone. Her decision to bury her head in the sand resulted in dire consequences, consequences which caused significant prejudice to a whole host of people, including the JSC, Ms. Puleiwai, and other FICAC staff. More importantly, it has resulted in a significant amount of public funds being invested into a CoI, which was necessary given the damage done to the institutional integrity of FICAC, and the need to restore public confidence in FICAC, and in the institutions of state generally. Ms. Malimali was on the verge of being appointed the FICAC Commissioner and knew about the FICAC investigation into her actions. At this stage she had an obligation to inform the JSC, lest the decision to appoint her as FICAC Commissioner be called in to question, as did subsequently occur.
119. The JSC members, the CJ, the S-G, and Justice Jitoko, along with the President and the PM have all said in evidence that had they known of the Investigation, they would not have proceeded with her appointment.⁷⁹

5.8: Failure to Disclose Tuvalu Issue

120. Ms. Malimali had been declined a PC in 2017 in Tuvalu on the basis of section 7(2)(c) of the Legal Practitioners Act 2015. The Tuvalu Legal Practitioners Committee was of the opinion that Ms. Malimali was not a fit and proper person to practice in Tuvalu.⁸⁰ Counsel Assisting had requested from the Tuvalu A-G's office, and been sent, a copy of a letter to Ms. Malimali from the Tuvalu A-G in response to Ms. Malimali's application to practice law in Tuvalu. That letter stated:

Date: 23 May 2017

To: Barbara Malimali

Subject: Legal Practitioners Committee decision on expression of interest to Practice

This letter serves to relay the decision of the Legal Practitioners Committee with regards to your application expressing your interest to practice in Tuvalu.

The Committee in its meetings dated Friday 19 May 2017 and also this morning Tuesday 23 May 2017 has considered and decided on your application. The Committee after considering your application has duly declined it on the basis of section 7(2) (c) of the Legal Practitioners Act 2015. The Committee is of the view that you do not satisfy the requirement under section 7(2) (c) being a fit and proper person to practice in Tuvalu.

⁷⁹ Transcript, Day 1, Session 1 – PM Rabuka at 26; Transcript, Day 11, Session 1 – Justice Jitoko at 3; Transcript, Day 5, Session 1 - Ratu Wiliame Katonivere at 16; Transcript, Day 15, Session 1 – CJ Temo at 21; Transcript, Day 28, Session 2 – S-G Green at 14-15.

⁸⁰ Legal Practitioners Committee decision on expression of interest to practice, dated 23 May 2017.

I believe that you do understand the position of the Committee, which is based on the decision of the Court of Appeal in the case of the *Crown v Ielemia* Case No: 1/16, in which you were implicated in as referred to in the Judgment.

I do hope this clarifies the position in particular the conclusion that the Committee has come to in relation to your application. On that note too, I once again on behalf of the Legal Practitioners Committee, convey our sincere gratitude to you for showing your interest to practice in Tuvalu.

Sincerely,

Laingane Italeli Talia
Attorney General (A-G)
Chair of Legal Practitioners Committee

121. The case referred to in the Tuvalu A-G's letter was the Court of Appeal case of *Crown v Ielemia No: 1/16*⁸¹ in which the Court of Appeal had quashed a High Court decision and ordered a rehearing, finding an apparent bias due to an inappropriate encounter between Ms. Malimali and the High Court Judge presiding over the case.
122. The *Ielemia* case concerned an appeal by the Tuvalu government to the Court of Appeal against a decision of the High Court of Tuvalu, dated 5 September 2016, formalised on 12 September 2016, which had quashed four convictions against the respondent, Apisai Ielemia, on the basis that they were "manifestly unsafe". The High Court had acquitted Mr. Ielemia and ordered that there be no retrial.
123. The High Court case was itself an appeal which arose from Ielemia's initial conviction on four counts of Abuse of Office under section 90(1) of the Tuvalu Penal Code, following a trial presided over by the Senior Magistrate.⁸²
124. The State had appealed the High Court's decision, relying on the sole ground of bias or apparent bias, alleging that an inappropriate encounter between the Judge and Ms. Malimali, who was co-counsel for Mr. Ielemia during the appeal, was such that a reasonable bystander might conclude that the Judge did not bring an impartial and unprejudiced mind to the resolution of the appeal.⁸³ The appeal to the Court of Appeal was based on the conduct of Ms. Malimali and the High Court Judge during the course of the High Court Appeal, which commenced on 30 August 2016.
125. At the end of the second day of the High Court hearing, on 31 August 2016, the Judge had advised counsel for both parties that he had formed the view that justice could be met by a compromise agreement between the State and the Respondent.⁸⁴

⁸¹ *Crown v Ielemia No: 1/16*, Court of Appeal of Tuvalu, dated 13 March 2017, at [3] – [10].

⁸² *Ibid.*, [5].

⁸³ *Ibid.*, [13].

⁸⁴ *Ibid.*, [26].

126. On 31 August 2016, after the Court had adjourned for the day, Ms. Malimali was seen talking to, and drinking alcohol with, the Judge. The Judge acknowledged that during this time he had approached Ms. Malimali and asked whether “the deal had been struck”. He then confirmed that he invited Ms. Malimali to share dinner with him and three other visitors.⁸⁵
127. Later in the evening of the same night, Ms. Malimali and the Judge were still talking and drinking alone, and the bar was reopened for them sometime after 11 pm, following which they went for a walk together on the beach.⁸⁶
128. They were next seen returning from the beach, and upon their return they went up together to the Judge’s room:

The Judge and the respondent’s counsel were next seen going up the stairs at the hotel reception. One deponent said that both were dripping wet. The same deponent said the Judge asked him to give the Judge a wake up call at 7 am. He described the respondent’s counsel as looking very drunk. The Judge’s account is that he simply escorted the respondent’s counsel to the edge of the water. The Judge does not specifically comment on the security guard’s description of him as dripping wet. Nor does he deny or comment on the security guard’s evidence that he, the Judge, asked for a wake up call as he and the respondent’s counsel went up the stairs to the Judges room.⁸⁷

129. On 4 September 2016, the day before the Judge announced his Judgement, Ms. Malimali asked the Judge to lunch, and on 5 September 2016, the Judge, Ms. Malimali and other lawyers drank at a house in the hotel premises. They then went to the Judge’s room where they continued to drink.⁸⁸
130. The Court’s reasoning in relation to the above was as follows:

We deal with the first factor. We acknowledge that an informed observer would be aware that there will be occasions where there is contact between the judiciary and the profession and that such contact does not give rise to the possibility of bias. The issue is, has the line been crossed between normal professional conduct and that which is not. Where the nature, extent and duration of the association is beyond normal given all the circumstances, it is inevitable that a fair-minded observer would apprehend that the Judge might be biased. Here the uncontested evidence is of a considerable period where the Judge and the respondent’s counsel were together on a one to one basis. That association included the Judge’s confirmation that he asked counsel “whether the deal had been struck”. We have no doubt that the line has been crossed and that the fair-minded observer would so conclude.

We consider the second factor. There is first the drinking and talking on a one to one basis at the hotel. Next there is the walk together along the beach. There was no need for the Judge to do this. Whether they swam together or the Judge simply stayed and watched the respondent’s counsel swim in not critical to the interpretation of the events. It was followed by the return together to the hotel and then to the Judge’s room. Again we do not accept that there was any need for this. The fact that the Judge asked a security person for a wakeup call at the time indicates that if there was any

⁸⁵ Ibid., [28].

⁸⁶ Ibid., [27] – [28].

⁸⁷ Ibid., [29].

⁸⁸ Ibid., [31] – [32].

genuine concern on the Judge's part arising from the lack of sobriety of the respondent's counsel, hotel staff were available and could have dealt with the situation. There was no need for the Judge to be involved. Good manners did not require his participation in a situation which clearly compromised his ethical and professional obligations. All of this would lead a fair minded observer to apprehend that the Judge might not bring an impartial and unprejudiced mind to the resolution of the appeal.

Next we consider the lack of disclosure of the association by the Judge to Counsel for the Crown. The Judge admits in his memorandum to being made aware on 1 September of an allegation of sexual impropriety on his part arising from events on the evening of 31 August 2016. He did not say who brought this to his attention. It was his obligation to make a disclosure to counsel for both parties to the appeal: see para [69] *Ebner v Official Trustee in Bankruptcy*. He did not. There is no evidence that Crown counsel knew of the events of 31 August. There was no suggestion that the Crown waived the right to challenge the Judge, as we have recorded above. As Merkel J said at para [221] in *Aussie Airlines*, a failure to disclose is relevant (if at all) because it may be said to cast some evidential light on the ultimate question of reasonable apprehension of bias. The circumstances of this case suggest that the fair minded and informed lay observer would conclude that the failure to disclose was intentional and was yet a further reason to conclude that there was a real apprehension that the Judge was biased.

The last matter, namely the lunch invitation on 4 September, might by itself be insignificant. However, when viewed with the earlier events, it suggests the association between the Judge and the respondent's counsel had crossed the line of normal professional conduct, particularly as it occurred before judgement was delivered. The events following the farewell party do not assist by themselves and we do not rely on them in the conclusion we reach.⁸⁹

131. Ultimately, the Court found that the evidence showed that the association between the Judge and Ms. Malimali during the period where the appeal in the High Court was heard, amounted to such that a fair-minded lay observer would apprehend that the Judge might not bring an impartial mind to the resolution of the appeal. Consequently, the Court of Appeal allowed the State's appeal and quashed the High Court's decision, ordering a rehearing in the High Court.⁹⁰
132. What is referred throughout this Report as the Tuvalu Issue was described by Ms. Malimali as follows:

Ms. Malimali: Well, I went out there. I was like, I didn't read the judgement because people said read this judgement and I said, you know what, no. I was never given an opportunity to answer these allegations. I think I got drunk. There was this old dude there. I went in. I was walking around, sorry, and I went into the bar. I had a beer and then a few more beers, and then I think, I think I may have had a couple of whiskeys, then I blacked out or something.

Justice Ashton-Lewis: A few beers and whisky. Very, very good. I mean, that's a death sentence. No wonder you blacked out. You're under stress. You're in a court case. Two beers, a couple of

⁸⁹ Ibid., [35] - [38].

⁹⁰ Ibid., [39].

whiskeys. Do you drink whisky neat? Yes. Please go on. Please keep talking.

Ms. Malimali: And I think I may have misbehaved. I got drunk and silly. I think they said I went for a swim and all of these things.

Justice Ashton-Lewis: *You got what?*

Ms. Mason: Yes. So, what they say is that you'd gone for a swim and then you'd spent the night in the judge's room after going for a swim with him, the judge.

Ms. Malimali: Oh.

Justice Ashton-Lewis: *Oh, the judge.*

Ms. Mason: Yes. And there were a whole lot of affidavits from the staff of the hotel giving evidence of all of this and then the Crown Law Office or the State Law Office found out later.

Justice Ashton-Lewis: *Could you speak loudly, please?*

Ms. Mason: Sorry, the Crown Law Office found out later and they put in an application to appeal that decision on the basis of bias or perceived bias. So, yes.

Ms. Malimali: Okay. So, I behaved badly. No, I did not sleep with the judge, if that's what you're asking.

Ms. Mason: No, we're not asking that.

Justice Ashton-Lewis: *No, we're not asking that.*

Ms. Mason: And the case says that you spent the night in the judge's room.

Justice Ashton-Lewis: *Is that right?*

Ms. Mason: And we're just going from what the case said.

Ms. Malimali: I think I...

Justice Ashton-Lewis: *Well, you said you behaved badly.*

Ms. Malimali: I think I went in there. I came back and my hotel was a bit further down.

Justice Ashton-Lewis: *Yes.*

Ms. Malimali: And I think I went up to the judge's room. I probably crashed. And then I got up, I think, I don't know, at dawn or whatever time, and I stumbled back to my hotel. I think that is what happened.⁹¹

- 133.** The Tuvalu Issue occurred, in 2016, almost nine years ago. It could be said that it is now “old history” and everyone has moved on. This may well be the case, however, Ms. Malimali, was arguably still obliged to report it. It was for the

⁹¹ Transcript, Day 23, Session 3 - Ms. Malimali at 12-14.

JSC to decide whether the events that occurred in the Tuvalu Issue were relevant to their assessment of Ms. Malimali's character, especially for a high level anti-corruption position.

134. There are two aspects to the Tuvalu Issue. One is whether or not Ms. Malimali disclosed it to the JSC. The second is whether Ms. Malimali should have disclosed to the JSC, the fact that she lied about the Tuvalu Issue on every single Fiji PC application from 2018 onwards. The next two sub-sections will discuss these two aspects in turn.

5.8.1 LPU Application

135. A requirement in the application form for a PC in Fiji is that the practitioner declares whether they have been refused admission or struck off the role of barristers and solicitors in Fiji or elsewhere.
136. The relevant part of the PC application form is titled "Statements on Personal Character" and is included below for reference.

Part D: Statements on Personal Character

	Have you ever:	Yes	No
1	Been convicted of a crime or offence (including a conviction which is now removed from official record) before or since the date of your admission in Fiji or elsewhere?		
2.	Been charged with any offence that is currently awaiting legal action?		
3.	Been refused admission or struck off the roll of barristers and or / solicitors and/or legal practitioners in Fiji or elsewhere?		
4.	Been refused a practising certificate, had it suspended or cancelled in Fiji or elsewhere?		
5.	Been found guilty of professional misconduct in Fiji or elsewhere?		
6.	Been found guilty of unsatisfactory professional conduct in Fiji or elsewhere?		

If your answer is YES to any of the above questions, please provide all relevant details on a separate sheet.⁹²

137. Initially Ms. Malimali claimed that she did not know about the Tuvalu letter declining her PC application:

Ms. Mason: All right. Okay, I'd like to turn to some LPU issues. You probably know that there is a letter that came from the Attorney General in Tuvalu about the Legal Practitioners Committee concluding that you did not satisfy the

⁹² Fiji Law Society Practising Certificate Application Form, Exhibit 13.

requirement of being a fit and proper person to practise in Tuvalu. Have you seen that letter?

Ms. Malimali: I have seen that letter.

Ms. Mason: Got a copy? Okay. So why did you not disclose this issue to, firstly, to the JSC?

Ms. Mason: You didn't know about this letter?

Ms. Malimali: No.

Ms. Mason: Okay. So you obviously applied for a practising certificate? Well, you must have. Otherwise, why would they bother?

Ms. Malimali: I guess I may have. I guess I must have, yes.⁹³

Justice Ashton-Lewis: *Why would you apply then?*

Ms. Mason: Why would you apply for a practising certificate if you didn't care what the outcome was?

Ms. Malimali: I think I could be wrong. I think what happened was they had said to put in a letter applying for a practising certificate.

Ms. Mason: Yeah.

Ms. Malimali: I think that's what... because I remember Apisai came and said to me, you know, these people are asking for you to put in a letter.

Ms. Mason: Yeah.

Ms. Malimali: So, we put in a letter and then he came back to me, I think, and said, oh, your persona non grata here or something like that.

Ms. Mason: Right. So, did you know that you were not allowed to practise in Tuvalu?

Ms. Malimali: No.

Ms. Mason: You'd been turned down?

Ms. Malimali: No.

Ms. Mason: You had no knowledge at all?

Ms. Malimali: He just said...

Ms. Mason: Well, I'd just like to remind you you're under oath

Ms. Malimali: I know.

Ms. Mason: And perjury is quite serious.

⁹³ Transcript, Day 23, Session 3 – Ms. Malimali at 11.

Ms. Malimali: Perjury is serious.

Ms. Mason: Is that still your answer?

Ms. Malimali: I can't remember. As far as I know, I don't think I've seen that letter. When you sent it to me, I've sent it to the CR to let them know.⁹⁴

138. However, Ms. Malimali must have known that she was barred from practice in Tuvalu. The first Fiji PC application made by Ms. Malimali after the Tuvalu Issue was for the period 1 March 2018 to 28 February 2019. At Part D: Statements on Personal Character in answer to the question “Have you ever been refused admission or struck off the roll of barristers and/or solicitors and/or legal practitioners in Fiji or elsewhere?”⁹⁵ Ms. Malimali had answered “Yes”.⁹⁶ So she did know that she had been barred from practice. In the comments section Ms. Malimali had handwritten “In Tuvalu in 2016, they asked me to write in a letter asking to appear in the HC. They refused. I informed Mr. Chand of LPU.”⁹⁷ Ms. Malimali had signed a Statutory Declaration that she had provided all true and accurate information.⁹⁸

139. Her lack of disclosure as to the 2018/2019 PC Application was put to Ms. Malimali who responded as follows:

Ms. Mason: Yeah. So, it's the 2018 to 2019 one. If you could go to the second page, you'll see there that you have, you have ticked yes that you had been refused admission or struck off the role of barristers in Fiji and elsewhere, and you say in Tuvalu in 2016. So, how can you explain that, given your answer that you didn't know?

Ms. Malimali: Is that what I said?

Ms. Mason: That is what you said.

Ms. Malimali: I'm sorry. I'm reading it now. This is definitely my handwriting.

Ms. Mason: Yeah.

Ms. Malimali: I informed Mr. Chand of LPU. They asked me to write a letter, something to appear in the High Court. They refused. I informed Mr. Chand of LPU.

Ms. Mason: Right. But you ticked the yes. So, I read this, and it seems clear to me that you knew that you'd been refused a practising certificate in Tuvalu.

Ms. Malimali: Ms. Mason, I'm seeing now this is what I wrote back in 2018.

⁹⁴ Ibid., 15.

⁹⁵ Exhibit 13: Fiji Law Society Practising Certificate Application Form.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

- Ms. Mason: Yeah.
- Ms. Malimali: So, in Tuvalu in 2016, this letter is dated 2017. Okay. So, from this, it's obvious that I guess I knew that they didn't want me there.
- Ms. Mason: Yeah. You knew that they didn't want you there. You knew that you'd been refused admission in Tuvalu. That's what this says very clearly. I see.
- Ms. Malimali: It's my handwriting, Ms. Mason. I do not doubt this is my handwriting. Yeah. I've written this.
- Justice Ashton-Lewis:** *I think it would be a bit of a long bow to draw that it was a forgery.*
- Ms. Malimali: No, this is my handwriting
- Ms. Mason: Yeah.
- Ms. Malimali: But honest to God, I can't remember.
- Justice Ashton-Lewis:** *Do you have problems with your memory?*
- Ms. Malimali: I can absorb a lot of information.
- Justice Ashton-Lewis:** *Yeah.*
- Ms. Malimali: And then when I'm done...
- Justice Ashton-Lewis:** *Gone.*
- Ms. Malimali: And then I move on to the next bit. But this, I cannot remember. But it is my handwriting. It is my signature. I wrote that.
- Justice Ashton-Lewis:** *Is this the one, Mrs. Mason, and this is, I'm looking at*
- Ms. Mason: That's the 2018...
- Justice Ashton-Lewis:** *Yeah, I'm looking at that. But in that Part D, Statements on Personal Character.*
- Ms. Mason: Yes, that's it.
- Justice Ashton-Lewis:** *Are you going to refer to five and six?*
- Ms. Mason: No, to three. If you go to three, you'll see it's ticked yes. Yes, I've been refused admission or struck off.
- Ms. Malimali: I even have the date wrong. I wrote 2016 when I see from the letter here it says 2017.
- Ms. Mason: Yes, but maybe the case was in 2016.
- Justice Ashton-Lewis:** *Anyway, please go on, Mrs. Mason.*
- Ms. Mason: All right, so do you now accept that your response to me before that you didn't know was wrong?

- Ms. Malimali: No, I don't accept I was wrong.
- Ms. Mason: So you didn't know? You didn't know. You still maintain that you did not know that you had been refused admission to Tuvalu.
- Ms. Malimali: Look, I'd been probably told, but the actual letter, I don't think I've seen it.
- Ms. Mason: No, but I asked you, have you been refused admission to Tuvalu to practise, and you said no.
- Ms. Malimali: I did.
- Ms. Mason: I said, did you know that you had, and you said no. And then here, you're saying yes.
- Ms. Malimali: Yes, I now see that I've written here, and I wrote 2016 when actually that's wrong.
- Ms. Mason: Well, that's not the issue. The issue is that you ticked yes, yet you told me when I asked you that you hadn't.
- Justice Ashton-Lewis:** *I'm sorry, may I just interrupt for a minute?*
- Ms. Mason: Yes, Sir.
- Justice Ashton-Lewis:** *Ms. Malimali, everyone's handwriting is their own. Would you please read out to me the one and two that start at the bottom "In Tuvalu in 2016, they asked me" Could you please read the whole lot out?*
- Ms. Malimali: In Tuvalu in 2016, they asked me to write in a letter. I don't know what it says.
- Justice Ashton-Lewis:** *Could you put the microphone near your mouth?*
- Ms. Malimali: In Tuvalu in 2016, they asked me to write in a letter asking to appear in the High Court. They refused, informed Mr. Chand of LPU.⁹⁹

- 140.** The next PC application submitted by Ms. Malimali was for the period from 1 March 2019 to 28 February 2020. In answer to the question "Have you ever been refused admission or struck off the roll of barristers and/or solicitors and/or legal practitioners in Fiji or elsewhere?",¹⁰⁰ Ms. Malimali had ticked "No".¹⁰¹ In the comments section she had written "I think I am persona non grata in Tuvalu. I was apparently not liked by the Gvt. I think that was in 2015 or 2016. I used to represent the former PM, who died in 2018."¹⁰² Ms. Malimali signed a Statutory Declaration that she had provided all true and accurate information.¹⁰³

⁹⁹ Transcript, Day 23, Session 3 – Ms. Malimali at 16-20.

¹⁰⁰ Exhibit 13: Fiji Law Society Practising Certificate Application Form,

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

141. Her dishonesty was put to Ms. Malimali who responded as follows:

Ms. Mason: Okay, so I'd now like to go on to the next application and that's 2019 to 2020. And it's in there, it should be in there somewhere. There's a whole lot of them in there. It should just be the next one. I think maybe take the bulldog clip off, it might be easier. So 2019, 2020, and it's about the fourth page in to get to the statements on personal character. So if you look at the statements of personal character, the question at the top is, have you ever? Now, that means that not just in the last year or the previous year but it's ever. So then we get to, have you ever, in C, been refused admission or struck off the role of barristers and or solicitors and or legal practitioners and you say no.

Justice Ashton-Lewis: *In Fiji or elsewhere.*

Ms. Mason: Yes, in Fiji or elsewhere. So why did you do that?

Ms. Malimali: I'm not quite sure.

Ms. Mason: So, this is only a year later. The previous year you've said yes. So, this is dishonest, isn't it?

Ms. Malimali: No, it isn't. I suspect what happened was it may have been an error on my part because the next paragraph down, madam, says if your answer is yes to any of the above questions, please provide all the relevant details.

Ms. Mason: Yes, but you've still not ticked correctly. C, it's either yes or no. You've ticked no.

Justice Ashton-Lewis: *Would you read, sorry, answer, miss?*

Ms. Malimali: Yes, I don't think I was being dishonest. I think it was an honest mistake that I didn't tick it because I ticked it the year before.

Justice Ashton-Lewis: *You did*

Ms. Malimali: And I didn't tick it this year. But I then wrote because if you look, if your answer is yes to any of the above questions, please provide all relevant details on a separate sheet.

Ms. Mason: Right. And so it says there, I think I am persona non grata in Tuvalu. I was apparently not liked by the government. I think that was in 2005 and 2016. I used to represent the former PM who died in 2018. Now, that doesn't tell the story of what happened in the high court case, does it? It doesn't say anything about inappropriate excursions with the judge in a case that you were representing.

Ms. Malimali: Miss Mason, I'd agree with you. Yes, it doesn't say that.

Ms. Mason: Okay. So why did you not disclose fully what had happened?

- Ms. Malimali: I think the question was in relation to being something to do with the PC.
- Ms. Mason: Yes.
- Ms. Malimali: And I said the Tuvalu didn't like me.
- Ms. Mason: Yes, but that really wasn't the issue. The issue was your conduct. And that should have been disclosed. It wasn't about Tuvalu not liking you and you acting for the former PM. It was absolutely nothing to do with that.
- Ms. Malimali: Madam, I was never asked by the Tuvaluans to answer to any allegations.
- Ms. Mason: What do you mean by that? What allegations?
- Ms. Malimali: No allegation of misconduct was put to me.
- Ms. Mason: Well, it's already clear in a case. So the judge, it went through a court of appeal and they made a decision. And that's there for everybody to see.
- Ms. Malimali: That's their finding.
- Ms. Mason: Yes, that is their finding.
- Ms. Malimali: From Tuvalu.
- Ms. Mason: Yes, which you knew about. You knew that you had been refused admission.
- Ms. Malimali: This is Fiji.
- Ms. Mason: No, no, that's not a response. What's that got to do with anything? That this is Fiji and that's Tuvalu?
- Ms. Malimali: Well, I put in the application. And I wrote what I could from memory. If the people in the Chief Registrar's Office wanted me to answer some more to it, they could have asked me.
- Ms. Mason: Are you saying that you forgot about the encounter with the judge and the case, the court of appeal case and what they'd said?
- Ms. Malimali: Yes.
- Ms. Mason: Seriously, you expect us to believe that you forgot about something so momentous to be in a case and for a finding of a court to have been overturned because of your behaviour, that you just forgot that a year later? Do you really seriously expect us to believe that?
- Ms. Malimali: This is what I believe. What you believe is your business, Ms. Mason.

Justice Ashton-Lewis: *No, there's something extra. I asked you before lunch. You're under oath.*

Ms. Malimali: Yes My Lord.

Justice Ashton-Lewis: *To tell the truth, the whole truth, and nothing but the truth. You've answered, I don't remember. Now, I think Mrs. Mason's putting it pretty compelling that you can't remember this. And if you can't, you can't. I'll have to make a decision about that but I would remind you again of the oath you've taken and in many instances, it's far better to throw your cape down and say, yes, I did wrong. Yes, I shouldn't have done it. I regret it. And then when saying, well, why haven't you disclosed these things, to say, I felt ashamed. I disclosed. But that's only if it's you. I'm saying it as a hypothetical. So I'm just encouraging you, listen carefully to the question and don't be afraid to, no matter how bad the truth is, no one's perfect. But if you keep running around trying to hide things, you look worse.*

Ms. Malimali: I'm not hiding.

Justice Ashton-Lewis: *Pardon?*

Ms. Malimali: My Lord, I'm not hiding anything.

Justice Ashton-Lewis: *All right, well, that will be for me to decide.*

Ms. Mason: All right, so you forgot a year later about something. Do you know of anybody else or any other case where the lawyer for one of the parties has spent the night in a judge's room and the decision was later overturned?

Ms. Malimali: No. Not that I know of.

Ms. Mason: No, because it's a very unusual thing, isn't it?

Ms. Malimali: Yes.

Ms. Mason: Not the kind of thing you'd forget, especially if it was you. Anyway.¹⁰⁴

- 142.** The next PC application is for the period 1 March 2020 to 28 February 2021. In answer to the question “Have you ever been refused admission or struck off the roll of barristers and/or solicitors and/or legal practitioners in Fiji or elsewhere?” Ms. Malimali had ticked “No”.¹⁰⁵ In her comments section she had written “As a litigator, I had a few verbal clashes with my IOs + the media, & government officials in Fiji & the Region. It was part & parcel of my work. I defended my clients without fear or favour...”¹⁰⁶ A Statutory Declaration was

¹⁰⁴ Transcript, Day 23, Session 3 – Ms. Malimali at 20-23.

¹⁰⁵ Exhibit 13: Fiji Law Society Practising Certificate Application Form.

¹⁰⁶ Ibid.

signed by Ms. Malimali that she had provided all true and accurate information.

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143. This was put to Ms. Malimali who responded as follows:

Ms. Mason: So the next application is 2020 to 2021. So that's on the second page, if you could have a look at that. Again, that's the exact same question. I'll wait till you get there. It says statements on personal character. Yeah, I think maybe the court clerk can help.

Justice Ashton-Lewis: *Yeah.*

Ms. Mason: I think if you take the bulldog clip off, they might be stapled. So we just want the 2020 to 2021.

Ms. Malimali: Oh, right, this one. Sorry, yes.

Ms. Mason: Okay, so Part D, statements on personal character. You see there, again, it says, have you ever, not in the last year or last two years, and C, been refused admission or struck off the role of barristers and solicitors in Fiji and elsewhere? And you ticked no, and there's nothing about Tuvalu at all. So why did you not tell the truth there?

Ms. Malimali: I don't think it was not telling the truth. I actually don't know why I didn't tick that. But again, I did the same thing. If your answer is yes to any of the above questions.

Justice Ashton-Lewis: *Please put the microphone near your mouth.*

Ms. Malimali: But then I wrote further.

Ms. Mason: Not about Tuvalu.

Ms. Malimali: Not about Tuvalu, but I'd written, as a litigator, I had a few verbal clashes with my IOs and the media and government officials of Fiji and the region. It was part and parcel of my work. I defended my clients without fear or fear. If there are some recent complaints against me, I have no knowledge of them.

Justice Ashton-Lewis: *But...*

Ms. Mason: But that's not...

Justice Ashton-Lewis: *You can move that microphone. So just pull it to where you are, rather than you leaning across. Yes, Mrs Mason.*

Ms. Mason: Okay. So, but that's... Firstly, you're ticking the wrong box. You're not saying yes and disclosing like you're meant to be. And then second, there's no mention of Tuvalu. No one would ever know anything to do with Tuvalu if you were

¹⁰⁷ Ibid.

reading this application. Right. So again, I ask, why did you not tell the truth?

Ms. Malimali: Madam, it's not about not telling the truth. It's just...

Ms. Mason: But, it is. It's very serious, this that's gone on here.

Ms. Malimali: No, madam. I disagree that I wasn't telling the truth. I'd written there that there might be... I work around the region. There might be some complaints I don't know.

Justice Ashton-Lewis: *Look, I want to go back. So what... You say, I'm not... It's not that I'm not telling the truth. So what is the truth?*

Ms. Malimali: I mean, I'd written it in my previous...

Justice Ashton-Lewis: *Yeah, you have.*

Ms. Malimali: Two previous. And then in the third one, I went... I just went General.

Justice Ashton-Lewis: *No, I... You can... I want to know what was the truth. You said, I was not telling... A double negative. I was not not telling the truth. Now, the little bit of documentation I see of your indiscretion in Tuvalu, I see three, and I want to ask Mrs Mason this. Have you been refused admission or struck off the role of barristers and solicitors and or legal practitioners in Fiji or elsewhere? So have you been refused admission? Well, that's clearly the case, isn't it? Miss Malimali cannot get a practising certificate because one of these documents says...*

Ms. Mason: Yes, and she knows.

Justice Ashton-Lewis: *One of these documents says she does not pass the fit and proper test. Well, that's synonymous with refused admission. For whatever reason, she might have run into a bank with a revolver and held it up. The end result is the same. You're refused admission. And so I notice again, for the second time, the answer is no. And then you go and have you been refused a practising certificate or suspended? Well, refused a practising certificate is what happened. And you've said no. And then when you... You haven't been found guilty of misconduct. The conduct would be misconduct. If you'd fought in a solicitor's tribunal in Tuvalu and gone through... I'm pretty sure the finding would be against you. But you might not. As I said, you said nothing untoward happened. You crashed on a bed. So I believe you in that. But it's a bad look.*

Ms. Malimali: I know.

Justice Ashton-Lewis: *Given that you're supposed to be a fit and proper person. One, not to be denied in another country. And two, to get a practising certificate here. And now, three, a reward for your good work in what you're doing. So it's absolutely paramount that you not only be honest in this court, but*

that you be honest in everything. Look what's happened to poor Linda Tabuya. She got devastated over people releasing images of herself. Now, she's telling the truth. She did that for her husband. The question of whether she was married or not married, put that aside. And yet, and I saw one of the great answers and I think she's been treated fairly is that when you go into public life, your private life is really even more invaded. And to do this is simply dishonest. I accept that you say you don't remember why. I'm prepared to accept that. But you can see the outcome. Do you see the difficult position you've put me in? Do you think I would get joy destroying your life? And I've got, before we go today, I want to bring before you, I have received news about something that I want to ask you and it involves the Chief Justice and I want to ask Ms. Waqanika, not Mr. Dawai, and not Mr. Chaudhry, it's just us. And it's really concerned me and I'm now deciding what's the next step I take to find out, is it true? Now, there's a very simple way. I'll ask you and you'll say, no, it's a lie. Well, all right, that helps. So it's really important, I repeat again, don't tell the truth in anything. It won't, truth doesn't necessarily destroy. You're a criminal lawyer, you've seen people stand up, didn't want to do it, and admit they did it, and then were treated really well by a judge. But the more they lied, that was devastating. So please just bear that in your mind. Ms. Mason, please go on.

Ms. Mason: All right, so where we had got to was I had asked you why you had not been truthful in this application.

Ms. Malimali: I'm sorry, I don't think I was being dishonest. I just didn't fill the thing out. I didn't even think about it. I'm now sitting here and looking at these things after how many years of filling it out.

Ms. Mason: Do you now see that it was dishonest?

Justice Ashton-Lewis: *Not whether you thought you'd made a decision, but Mrs. Mason's question is relevant.*

Ms. Malimali: No, it wasn't dishonest.

Ms. Mason: It wasn't?

Ms. Malimali: It was not dishonest.

Justice Ashton-Lewis: *It was or wasn't. It wasn't.*

Ms. Malimali: I don't think I was dishonest, no.

Justice Ashton-Lewis: *All right, well, if that's your answer.*

Ms. Malimali: Yes.¹⁰⁸

¹⁰⁸ Transcript, Day 23, Session 3 – Ms. Malimali at 23-26.

144. The next PC application is for the period from 1 March 2021 to 28 February 2022. In answer to the question “Have you ever been refused admission or struck off the roll of barristers and/or solicitors and/or legal practitioners in Fiji or elsewhere?”¹⁰⁹ Ms. Malimali ticked “No”.¹¹⁰ In her Statutory Declaration stating that all information in the PC application was true and accurate, Ms. Malimali stated “... In relation to being refused a Practising Certificate, I am aware that the Government of Tuvalu brought in new conditions after I defended the late Prime Minister, Mr. Apisai Lelemia.”¹¹¹

145. This was put to Ms. Malimali who responded as follows:

Ms. Mason: So 2021 to 2022 is the next one. And the relevant page is.

Justice Ashton-Lewis: *Oh, yes. And is, oh, no, there's Miss Malimali's statutory declaration.*

Ms. Mason: It's a two-page on one. It's about the third page in. And again, the statements on personal character. Have you ever been refused admission or struck off the roll? Again, it's not answered truthfully. And there's no explanation at all. Do you see that?

Ms. Malimali: Yes, I see that now.

Ms. Mason: Okay. All right. So why was this not answered truthfully?

Ms. Malimali: I have no idea, but I see in my stack dec...

Justice Ashton-Lewis: *Yes, let's have a look at that.*

Ms. Malimali: That I mentioned something about it.

Ms. Mason: Right. So what did you say?

Ms. Malimali: I just flipped and I saw it.

Ms. Mason: Oh, here. Interestingly, you say in relation to being refused a practising certificate. So you did know you'd been refused a practising certificate.

Justice Ashton-Lewis: *Now, when you wrote that, did it not occur to you to flip back and recheck these boxes that you've ticked no, no, no on? Did that statement you made think, oh, gosh, I better go back and scrub out the tick in the no and put a tick in the yes?*

Ms. Malimali: I should have.

Justice Ashton-Lewis: *Yes.*

¹⁰⁹ Exhibit 13: Fiji Law Society Practising Certificate Application Form.

¹¹⁰ Ibid.

¹¹¹ Ibid.

- Ms. Malimali: I should have.
- Ms. Mason: Okay, and despite the things that you've said previously, it looks here that you knew. You hadn't forgotten, had you? Three years later, you had not forgotten about the refusal of a practising certificate. Is that correct?
- Ms. Malimali: Well, this is what I've written, Ms. Mason. I really, I know where you're trying to lead me, but...
- Ms. Mason: I'm not really leading you, Ms. Malimali. I'm actually putting to you some very factual information in your applications for practising certificate. So again, in this one here, why did you not tick the correct box?
- Ms. Malimali: I don't know.
- Ms. Mason: Okay. Do you think it was, now looking back on it, do you think it was dishonest?
- Justice Ashton-Lewis:** *Again, not speaking about your state of mind, looking at it objectively. To write a statement saying that I was refused a practising certificate, you've been frank there, but then leaving a page before a box saying no when it should have been yes was it convenient to forget it?*
- Ms. Malimali: No, I was wrong not to. It was an error on my part, but I was not dishonest.
- Justice Ashton-Lewis:** *All right, that's a fair enough answer. You've conceded that it was wrong and I can't jump into your head, neither can anyone other than you, to say if in your head I wasn't being dishonest, then probably the worst someone could say is you were damn silly.*
- Ms. Mason: So when you say it was an error, what kind of error would that be?
- Ms. Malimali: You know, Madam, if I'd thought about it properly, I would have ticked the yes. But I know me and these kind of forms. Half the time we're filling it just outside the LPU and it's just, let's fill, fill, fill, fill out the information, go and put it in.
- Justice Ashton-Lewis:** *Yes, that sometimes happens.*
- Ms. Malimali: Because I know this is what I do anyway. A lot of times I've done it. Just filled it outside, found somebody to witness my stat-dec, and put it in.
- Ms. Mason: Did you not care about the information in here being accurate?
- Ms. Malimali: No, I wouldn't say that. I do care that it's accurate, that the information we put in is accurate. But I'm also aware that the LPU has a whole file on me anyway. And so they would have my information. I wasn't trying to deceive anybody, Mrs. Mason.

Ms. Mason: Yes, but I can't understand how someone could tick the no box when they should have clearly ticked the yes box. Especially a lawyer, especially someone familiar with this. I can't understand why that would be an error or an accident.

Ms. Malimali: I'm sorry, I have no other answer for you except to say I really don't know why I didn't do it. I should have, yes, I should have. But I didn't, and I'm sorry.

Ms. Mason: And do you understand that this now puts you in a position of being found to be dishonest by the LPU?

Ms. Malimali: I don't know about that.

Justice Ashton-Lewis: *Why don't you know about that?*

Ms. Mason: Why don't you know about that?

Ms. Malimali: I think they would ask me, LPU would ask me, and I would provide an explanation. Yes. I honestly do not think that I was being dishonest.

Justice Ashton-Lewis: *No, look, you've said that, and you've said it about four times now. So if you go to the LPU, they either have to accept what you say or say quietly, no, she's lying. She's embarrassed, she's trying to cover up. Well, should this person be given a practising certificate? Should this person be found to be a fit and proper person? Hmm. Go on, Mrs. Mason.*¹¹²

146. The next PC application is for the period 1 March 2022 to 28 February 2023. In response to the question “Have you ever been refused admission or struck off the roll of barristers and/or solicitors and/or legal practitioners in Fiji or elsewhere?”¹¹³ Ms. Malimali had ticked “No”.¹¹⁴ There is no mention of Tuvalu at all in this application. She had signed a Statutory Declaration that all of the information in her application was true and accurate.¹¹⁵

147. The next PC application is for the period 1 March 2023 to 29 February 2024. In response to the question “Have you ever been refused admission or struck off the roll of barristers and/or solicitors and/or legal practitioners in Fiji or elsewhere?”¹¹⁶ Ms. Malimali had ticked “No”.¹¹⁷ She had signed a Statutory Declaration that the information provided was true and accurate. On the Statutory Declaration Ms. Malimali had written, inter alia, “In relation to PC refusal, I am aware that after I defend [sic] the late Mr. Apisai Lelemia of Tuvalu

¹¹² Transcript, Day 23, Session 3 – Ms. Malimali at 27-29.

¹¹³ Exhibit 13: Fiji Law Society Practising Certificate Application Form.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

the then Government of Tuvalu introduced new conditions for Practice or appearance”.¹¹⁸

148. This was put to Ms. Malimali who responded as follows:

Ms. Mason: Okay, so this is the 23 to 2024 one. It should be the next one in there. So in the second page, it says, have you ever been refused admission or struck off the roll? You've said no instead of saying yes. What's your explanation for not telling the truth on that?

Ms. Malimali: I have

Ms. Mason: All right.

Ms. Malimali: But I see I brought it up in my stat-dec.

Ms. Mason: Yes, you do. And you say, in relation to PC refusal, I'm aware that a, what does that say?

Justice Ashton-Lewis: *You read it, please Ms. Malimali.*

Ms. Malimali: I have the same problem.

Ms. Mason: Oh, no, that after I defended the late Mr. Apisai Lelemo of Tuvalu, the then government of Tuvalu introduced new conditions for practise or appearance. Now, that's not correct, is it? That's not why your PC was refused?

Ms. Malimali: Yes.

Ms. Mason: That's completely leading someone astray from the actual truth, isn't it?

Ms. Malimali: I actually disagree.

Ms. Mason: So how does this explanation here have anything to do with the reason why you were refused a practising certificate?

Ms. Malimali: I don't know, Ms. Mason. I don't know.

Ms. Mason: You wrote it, so it can't be an error like the other ones. You can't say your hand slipped and you ticked the wrong box. This is clearly a misrepresentation of the situation, isn't it?

Ms. Malimali: That's what you say, Ms. Mason. I disagree.

Ms. Mason: All right. You think it's what, a representation of what happened?

Ms. Malimali: Ms. Mason, I don't know why I didn't tick it. You call it dishonest. I don't know why I didn't do it. I should have. I agree I should have. But I was not dishonest.

¹¹⁸ Ibid.

Ms. Mason: As the Commissioner of FICAC, if you had one of those declarations on assets and liabilities and people had just not disclosed things and come up with the kinds of excuses you're coming up with, what would you say to that? Would you charge them? Or would you say, oh, it's all right there, don't worry?

Ms. Malimali: I actually wouldn't speak like that. What I would say is...

Justice Ashton-Lewis: *Into the microphone.*

Ms. Malimali: I would actually ask for an explanation.

Ms. Mason: Yes. And if the explanation was the kind of thing that you've been providing us here, would you then just say, oh, all right, I won't charge you?

Ms. Malimali: I think that is not a fair question.

Ms. Mason: Why not?

Justice Ashton-Lewis: *Well, that's my decision to make.*

Ms. Malimali: Sorry, sorry. No, if someone says to me I made an honest mistake, I should have done it, I admit or I accede that I didn't fill it out properly or correctly. And I think in a couple of cases I said yes.

Justice Ashton-Lewis: *But that's not what you're saying, you see. If someone said that, unless they were a rampant recidivist in these things, you'd forgive them and say, well, don't do it again. But you've done it time and time again. And then saying to questions that I know they're hard, that Mrs. Mason is asking you, I wasn't dishonest, I don't agree. But then saying, but I shouldn't have done it. So you can clearly see you haven't answered the relevant, ticked the relevant honestly. And so because if you did it honestly, you would tick it.*

Ms. Malimali: I'm looking at these applications now and realise I should have ticked it, I did not. And my only explanation is, I'm sorry, I didn't, I should have, but I did not.

Justice Ashton-Lewis: *All right, well, I will take that into account. But I want to ask a question in the light of Mrs. Mason. If you were selecting and interviewing someone for the role of Commissioner of FICAC, and that is a senior position, and you had evidence like this, and would you find them, and given the answers that you're given, not one time, not two times, not three times, four times, would you be of the view, I know this person is still, look at the, I mean, almost, I'm pretty sure you would have done this. I think Ms. Waqanika will have. One thing as a lawyer, you're in a relationship of umberame fide. Does that ring a bell to you, those words? It's used mainly in insurance cases. An insurance contract is a contract of umberame, U-M-B, umberame fide. Translated from the Latin into English is a contract*

of the utmost good faith. So it's even more powerful than a contract to sell a car or to buy a house. It's a special. Now, when you're going for things like this, this job, you're in a position of being a person of umberame fide, of utmost good faith. Now, therefore, you have given answers. But if you were on the other end hearing someone and just saw the answers, oh, they don't think they were, well, they say they weren't being dishonest, but they say, I should have done this. So I should have gone back and ticked these boxes. I should have, but I didn't. Not once, not twice, not three times. And then I did know about Tuvalu because it's in a couple of these. And I do know that I was found to be a person of not fit and proper. If you had all of that, I would imagine that the answers that the person would give when you would challenge them, they would have to be pretty good answers to be forgiven because of saying like you're going into the position of utmost good faith.

Ms. Malimali: I understand, but I have no answer for you. And I did not, I wasn't being dishonest, but if you think I was...

Justice Ashton-Lewis: *I accept that answer. So you don't need to go over that, but I do want you overnight. Cause you're going to be probably most of the day tomorrow. I do want you to really think about this. And if your answer is the same, I have to accept that. And so I do accept it, but I'm surprised.*

Ms. Mason: Okay. So the last one, I'll just go back to the question that I had put to you. If you had a FICAC case under the Political Parties Registration Act of an MP who had not filled in his form properly and not declared everything, would you accept an explanation from them that I just, it was a mistake and I forgot, would you accept that? Or would they be charged?

Ms. Malimali: Well, I'd actually, it's not as black and white as that. I'd actually ask them a little bit more.

Ms. Mason: Like what?

Ms. Malimali: What do you mean? You didn't forget what kind of document was it? What kind of error I would actually investigate.

Ms. Mason: It was a statutory declaration that they'd sworn in front of a lawyer.

Justice Ashton-Lewis: *It's a sworn document.*

Ms. Mason: Yes, sworn document. So what could they be forgetting about that?

Ms. Malimali: I understand this, but sometimes we forget. Sometimes we make mistakes, we declare the wrong things.

Ms. Mason: So you'd be quite lenient?

Ms. Malimali: Lenient might not be the right word. I would actually check, double check. I would check.

Justice Ashton-Lewis: *So if the answer they gave was the same as yours, and you've done it six times, you've made the same mistake. You say, now that we've investigated, I realise I should not have done this, I should have filled it in, I was rushing and everything, but I am not dishonest, and I was not being dishonest in that. How would you receive that?*

Ms. Malimali: I may accept it, depending on the situation.

Justice Ashton-Lewis: *It's an MP who's of considerable wealth, gained from both salary and position as a Member of Parliament outside, and it's happened not once, not twice, not three times, and you get the answer that you're saying. You get the answer, oh, look, I know I should have, but I didn't because I was rushed or whatever. And then you put it to them, don't you think you were dishonest as a Member of Parliament in that? And the person said, no, I don't think I was dishonest, I was either confused or whatever. Would you accept that?*

Ms. Malimali: I may, because at the end of the day, My Lord, the other element of any offence would be the mental element.

Justice Ashton-Lewis: *Well if these things, well, hold on, I need your help now. Those under the Electoral Act that they have to fill in, where is the mens rea concept? There's certainly actus reus, you've done here, as you've done here, but is mens rea just assumed, like it can be assumed here, or is it set out specifically?*

Ms. Malimali: I think it might be set out in a few of the provisions.

Justice Ashton-Lewis: *Can you get that for me, please?*

Ms. Malimali: I think Mr. Dawai might be more helpful in that regard than I am.

Ms. Mason: I think the evidence that has been provided by the SOE is that it has strict liability, there's no mental element.

Justice Ashton-Lewis: *Well, yes, there it is, yep.*

Ms. Mason: Okay, so what would you do?

Justice Ashton-Lewis: *So strict liability, the state of their mind is irrelevant.*

Ms. Malimali: Right. Well, again, I'd have to look at the whole thing. I can't make a decision just like that. I cannot.

Ms. Mason: Are you empathising more with a person who may not have been honest because that's what you have done in your past?

Ms. Malimali: No, Miss Mason.

Ms. Mason: Really?

Ms. Malimali: Yes, Miss Mason.¹¹⁹

- 149.** The final PC application is for the period 1 March 2024 to 28 February 2025. In response to the question “Have you ever been refused admission or struck off the roll of barrister and/or solicitors and/or legal practitioners in Fiji or elsewhere?”¹²⁰ Ms. Malimali ticked “No”.¹²¹ A Statutory Declaration signed by Ms. Malimali stating that she had provided true and accurate information is attached to the PC application.¹²²

- 150.** This was put to Ms. Malimali who responded as follows:

Ms. Mason: So then this is the last one, is the 24 to 25.

Justice Ashton-Lewis: *So how many of these do we have?*

Ms. Mason: This is the last, fortunately. There are seven of them.

Justice Ashton-Lewis: *Seven, right. Thank you.*

Ms. Mason: So if you go to the Part D, have you been refused admission or struck off? Have you ever again? Yes. It's a false answer, and there's no explanation at all, and not even in the statutory declaration, there's nothing. So why were you not truthful here?

Ms. Malimali: I really don't know, Miss Mason. I guess you don't believe me, but that's my answer. I really don't know.

Justice Ashton-Lewis: *Well, her belief or not is not important. You've answered and said, I really don't know. That's probably one of the best answers, but it's for me to believe you or disbelieve you.*

Ms. Malimali: I'm sorry, I can't do any better than that.¹²³

- 151.** The CR Mr. Bainivalu, who heads the LPU, upon having the circumstances explained to him, agreed that the description given by Ms. Malimali did not accurately reflect the events leading to her being refused a PC to practice law in Tuvalu:

Ms. Mason: Yes, because Ms. Malimali has said she didn't know about the letter that I first showed you, but it's clear from these documents that she did know. And her explanation there, I'm aware that after I defended the late Mr. Apisai Lelemia of Tuvalu, the then government of Tuvalu introduced new conditions for practice. Does that even get close to explaining what she had actually done?

¹¹⁹ Transcript, Day 23, Session 3 – Ms. Malimali at 29-34.

¹²⁰ Exhibit 13: Fiji Law Society Practising Certificate Application Form.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Transcript, Day 23, Session 3 – Ms. Malimali at 34.

- CR Bainivalu: Sorry, Ms. Mason, can you?
- Ms. Mason: Does that explanation she sets out there, does that get even close to explaining what it was that led to her being refused a practicing certificate by Tuvalu?
- CR Bainivalu: Yes.¹²⁴
- ...
- Ms. Mason: All right, so what happened in that case is that Ms. Malimali and Mr. Vosarogo were acting for the previous PM of Tuvalu, and it was an appeal from a high court decision.
- CR Bainivalu: That's right.
- Ms. Mason: The high court decision, or actually the Magistrate, the lower district court. They had found against the previous PM who they were acting for, and they were appealing it. In the middle of the appeal, Ms. Malimali entered into a drinking session with the judge who was hearing it, and then went for a swim with him, and then spent the night in his room.

Justice Ashton-Lewis: *At the hotel.*

- Ms. Mason: At the hotel. And then the Judge didn't disclose that to the court the next day, and Ms. Malimali didn't disclose it either. The Judge made his decision in favour of Ms. Malimali and Mr. Vosarogo's client, and then everyone went home. And then the lawyers for the Tuvalu Crown government found out about what had happened. They then appealed that decision to the Court of Appeal, saying that there was a perception of bias, and the Court of Appeal found in favor of the Tuvalu government, and they made some disparaging comments, primarily about the judge, but Ms. Malimali obviously was the other party to this, and then that led to that letter which I showed you from the Tuvalu Practicing Committee, so the equivalent of your division, saying she is not a fit and proper person. So my question to you, is in her statutory declaration, in the application for a practicing certificate from March 2023 to February 2024, does the explanation she gives accurately describe what the problem with her behaviour was?

- CR Bainivalu: No.¹²⁵

152. Further he agreed that dishonesty in statutory declarations was a very serious issue for the LPU:

- Ms. Mason: So CR Bainivalu, dishonesty in Fiji in the solution of applications and dishonesty in statutory declarations. Is that a serious issue that the LPU would do something about?
- CR Bainivalu: It's very serious. It's serious, it's serious.

¹²⁴ Transcript, Day 16, Session 2 – Mr. Bainivalu at 61.

¹²⁵ Transcript, Day 16, Session 2 – Mr. Bainivalu at 62-63.

- Ms. Mason: Yes, and does that go towards the integrity of a person.
- CR Bainivalu: Yes.
- Ms. Mason: Do you think all of this should have been disclosed to the JSC selection panel?
- CR Bainivalu: The...yes, when we checked an all judicial appointment to my knowledge in the past two and a half years, they do their checks from the LPU and they send me the final result mainly on whether there is an ILSC matter. So we're looking at the local cases. But I would assume all these years, there was never any of that. That's why the PC was kept renewing.¹²⁶

153. Justice Temo did not wish to be drawn into commenting on an issue he had not read the facts of. However, he indicated that if there was a legal requirement to do so, then Ms. Malimali should have declared the Tuvalu A-G's decision to bar Ms. Malimali from practicing in Tuvalu:

- Ms. Mason: Do you think it should have been disclosed to you?
- Chief Justice Temo:** *Well we have...see that's one of the problems that we have. We rely on the integrity of the counsel, the applicants to be upfront.*
- Justice Ashton-Lewis:** *Yes.*
- Chief Justice Temo:** *But there's nothing to stop us later. If there is a complaint on that issue to re-examine. So to be fair to Ms. Malimali I can't answer something I haven't read or otherwise I'll be walking down a path full of miles.*
- Ms. Mason: So, if we just go to, then the general principle, if someone had been turned down for Practicing Certificate in another jurisdiction, do you think that they should have disclosed that to you?
- Justice Ashton-Lewis:** *Or to the Legal Practicing Unit?*
- Chief Justice Temo:** *If there is a legal requirement for them. Yes, they should.*¹²⁷

154. The CoI finds that in all seven of her Fiji PC applications since 2018 Ms. Malimali has been dishonest. The evidence is clear. Ms. Malimali knew she had been refused her application to practice in Tuvalu, yet she disclosed it only once in her 2018/2019 application but did not accurately explain why. In all of the subsequent applications Ms. Malimali did not tell the truth. Ms. Malimali is now at risk of seven counts of making false declarations under s 180 of the Crimes Act. Ms. Malimali is also at risk of perjury charges under s 176 of the Crimes Act for giving evidence that she did not know that she had been refused a PC in Tuvalu when the evidence was clear that she did know.

¹²⁶ Ibid., 65.

¹²⁷ Transcript, Day 15, Session 1 – CJ Temo at 69.

155. The CoI considers that Ms. Malimali was obliged to advise the JSC that she had falsified her Fiji application for a PC for the previous seven years.

5.8.2 Disclosure of Tuvalu Issue to JSC

156. This section examines whether Ms. Malimali disclosed the Tuvalu Issue to the JSC, including exploring the question of whether she even needed to do so.
157. Under questioning, Ms. Malimali claimed that she did not believe that it was necessary to disclose the Tuvalu Issue to the JSC as it was not a pending LPU complaint:

Ms. Mason: Okay. So, do you think you should have disclosed to the selection panel when they asked you whether you had pending cases with the LPU that you had been found to not be a fit and proper person to practise in Tuvalu?

Ms. Malimali: No.

Ms. Mason: No, do you think that was not important?

Ms. Malimali: Because it wasn't a pending complaint with LPU.¹²⁸

158. In addition, during questioning, Ms. Malimali gave evidence that she had spoken to CR Bainivalu and possibly Mr. Green about both the Tuvalu Issue and the FICAC Malimali Investigation:

Ms. Mason: Now, you did not tell them about FICAC, did you? That day?

Ms. Malimali: I did. I'm pretty sure I did say, look, Alexandra Forwood's posting about me again, because I remember during the interviews, during, I think at that meeting I had said, look, I read on the way here that I was coming here. So everyone seems to be well informed about my movements and what's happening with me. And also by this stage, I think I could be wrong, but they had posted up about Tuvalu and all of that, was all over Facebook. You said here, I did inform them that Ms. Alexandra Forwood seems to be well informed and that she had posted on Facebook that I was going to take up the position.¹²⁹

159. However, upon questioning her about statements in her Affidavit, she contradicted this position:

Ms. Mason: Yes. And in here, you're talking about going to meet the Acting Chief Justice and the Solicitor General. So that was after you were told that your application had been successful?

Ms. Malimali: I believe so, yes.

Ms. Mason: Now, the Solicitor General, was he there as the acting PS for Justice? Was that his role?

¹²⁸ Transcript, Day 23, Session 3 – Ms. Malimali at 36.

¹²⁹ Transcript, Day 24, Session 2 – Ms. Malimali at 24-25.

- Ms. Malimali: I guess he was there as the member of the JSC, I think.
- Ms. Mason: Yes, I think not as S-G, but as acting PS for Justice.
- Ms. Malimali: I'm not sure. Had they diverted the roles then?
- Ms. Mason: Yes, he's not there anymore.
- Ms. Malimali: Right. I can't say what role he was in.
- Ms. Mason: Okay.
- Ms. Malimali: When he was at that meeting, whether he was there as S-G or PSJ.
- Ms. Mason: Right. Now, is he a friend of yours, Mr. Green?
- Ms. Malimali: No. I mean, I know these people, like, hello, goodbye, but we're not friends.
- Ms. Mason: Yes, that's okay.
- Ms. Malimali: We might be friends now, I don't know. I'm not sure, actually, but I've known Mr. Green on an, I mean, when they've, gosh, for how many years I've known him, but we didn't, our paths rarely crossed. We only crossed maybe at conferences or something, but other than that, our paths rarely crossed. And then it crossed again in 2023 when he called me and came to see me at Satham campus to ask me if I would be on the Electoral Commission.
- Ms. Mason: Okay, all right. So 135, you say they also wanted to know whether there was anything that would affect my taking up the position.

160. Paragraph 134 and 135 of Ms. Malimali's affidavit states:

134. I presented myself and I was taken to meet the Acting Chief Justice and the Solicitor General, where I was told that my application had been successful.
135. They also wanted to know whether there was anything that would affect my taking up of the position. *I told them that I did not know anything that would hinder my taking up the position but I did inform them that a Ms. Alexandra Forwood seems to be well informed and that she had posted on Facebook that I was going to take up the position.*¹³⁰ [emphasis added]

161. According to Ms. Malimali, a few days after her interview, she was called into CR Bainivalu's office and asked to explain the Tuvalu Issue. Ms. Malimali said she explained the matter, stating that she was inebriated at the time, that it was wrong of her, and that she should not have acted as she had. According to Ms. Malimali, the CR then let her go saying that they would discuss it:

¹³⁰ Affidavit of Barbara Malimali at [134]-[135].

Ms. Mason: Okay. So, do you think you should have disclosed to the selection panel when they asked you whether you had pending cases with the LPU that you had been found to not be a fit and proper person to practise in Tuvalu?

Ms. Malimali: No.

Ms. Mason: No, do you think that was not important?

Ms. Malimali: Because it wasn't a pending complaint with LPU.

Ms. Mason: No, but it was an issue. Do you think in the interests of full disclosure, you should have disclosed that?

Ms. Malimali: No, there was nothing to disclose about that. But I was asked about it, about Tuvalu.

Ms. Mason: Yes, by whom?

Ms. Malimali: By the Chief Registrar.

Ms. Mason: And when did he ask you about this?

Ms. Malimali: After the interviews, he called me into the office, and he said, look, this Tuvalu thing, what is it? So, I explained to him.

Justice Ashton-Lewis: *Yeah.*

Ms. Mason: So, how long after the interview?

Ms. Malimali: Probably a few days later. A few days later, I think when they said they were going to do their checks, he called me into his office and asked.

Justice Ashton-Lewis: *And what was your answer?*

Ms. Malimali: My answer was, yes, there was something in Tuvalu. I explained to him what happened.

Justice Ashton-Lewis: *Accurately. You were inebriated. You were seen. I think you were in wet clothes. The judge was in wet clothes, I understand as well. You were seen going into his room. And you were seen coming out the next morning.*

Ms. Malimali: Because I think he had the judgement with him.

Justice Ashton-Lewis: *Yeah, well, I assume he did.*

Ms. Malimali: The Chief Registrar. He asked me about it, and I explained to him.

Justice Ashton-Lewis: *yes.*

Ms. Malimali: And I told him, yes, this is what happened. Sorry, I told him what I recalled of what happened in Tuvalu. I said, I am sorry. Yes, it was wrong of me. Absolutely wrong of me. I shouldn't have done that.

Justice Ashton-Lewis: *Exactly right.*

Ms. Malimali: I know this.

Justice Ashton-Lewis: *And what was his response? You seemed to come up and do everything. What did he say?*

Ms. Malimali: Well, he said to me, all right, you've told me. You can go, and we'll discuss it.

Justice Ashton-Lewis: *I take it you never spoke about it again, and then you were appointed.*

Ms. Malimali: Yes. He did ask me, madam, and I spoke with him about it.

Ms. Mason: There were a couple of statements by at least one JSC member that it wasn't really anything terrible. And that it wasn't even clear who it was that had stayed the night in the judge's room. I don't know where they got that from but does that sound like something you might have said?

Ms. Malimali: No.¹³¹

162. The assertion by Ms. Malimali that she had disclosed both the Tuvalu Issue and the FICAC Malimali Investigation¹³² was put to the CR, Mr. Bainivalu, who responded as follows:

Ms. Mason: So, and then one of the further things that she says, which puts her directly at odds with your evidence, is that she said that once she received the news that she was the preferred candidate after the interviews, that she met with you on a few occasions. On one of those occasions the Chief Justice was there, and maybe more. But Ms. Malimali says that she disclosed to you two things. She said she did tell you about the FICAC investigation, and she also says that she did tell you about the Tuvalu issues. So the problem that we have now to get through is one of you is not telling the truth. Either it's Ms. Malimali or yourself, because those two propositions cannot stand together.

Justice Ashton-Lewis: *They can't, and I wish to remind you very carefully on the oath you have taken. And that oath is to tell the truth, the whole truth, and nothing but the truth. I reminded Ms. Malimali of this in relation to questions about you. And she said, well, I'm telling the truth, which meant if I believe her, you're a liar. If I don't believe her and believe you, she is a liar. Because the evidence is so controverted, one of you is telling untruths and you're both under oath. And we have put up with nine weeks of people trying to shut this inquiry down. People then, when they weren't successful on that, people attacking Ms. Mason's professional standing. When they weren't successful on that, attacking Ms. Mason's personal view. Now that leads me to great concern at the end of this. And I will not hesitate to write and name names clearly. Then what the President does is up to him. But I will not hold back in naming certain*

¹³¹ Transcript, Day 23, Session 3 – Ms. Malimali at 36-37.

¹³² Transcript, Day 23, Session 3 – Ms. Malimali at 36-37.

people, and you're one of them, as possibly lying under oath. That's called perjury.

CR Bainivalu: What is the question again?

Ms. Mason: Okay, so the question is, at paragraph 18 of your affidavit, you say, I reiterate that the JSC and I, as its secretary, were not aware of any complaint against Ms. Barbara Malimali. Now, is that statement correct?

CR Bainivalu: That statement is correct.

Justice Ashton-Lewis: *So Ms. Malimali is lying?*

CR Bainivalu: I don't know what she said, but if she said that in Court...

Justice Ashton-Lewis: *Well, you can say something, because I said to you she has directly...*

CR Bainivalu: Well, if she said that, My Lord, then maybe she's lying.¹³³

...

Ms. Mason: So, CR Bainivalu, just going back to Ms. Malimali and the FICAC investigation. So she said that, and you've just said, that you had no knowledge of that investigation. So she said that there were a few meetings which she attended with you. Do you recall those meetings?

CR Bainivalu: This is meeting before the appointment?

Ms. Mason: Yes, so after she'd been, after you'd communicated to her that she was the preferred person...

CR Bainivalu: Sorry, after the appointment?

Ms. Mason: No, before the appointment.

CR Bainivalu: No, I didn't have meetings with her before the appointment.

CR Bainivalu: I think so. If she said that, then...

Ms. Mason: Yes, she said she was in and out of your office. She had several meetings. That is what she said. She said she couldn't remember the detail of it, but she had many meetings with you. She said at one of those meetings, she disclosed that she had this FICAC investigation, and she also disclosed the Tuvalu case. So is any of that true?

CR Bainivalu: No, I don't think so.¹³⁴

163. Counsel Assisting also put Ms. Malimali's assertion to have disclosed the Tuvalu Issue to the CR to Justice Temo, who responded as follows:

¹³³ Transcript, Day 37, Session 1 – Mr. Bainivalu at 3-4.

¹³⁴ Transcript, Day 37, Session 1 – Mr. Bainivalu at 11-12.

Ms. Mason: And did the Chief Registrar also ever talk to you about the Tuvalu case?

Justice Temo: *Can't recall that. But the Tuvalu case, I don't know nothing about the Tuvalu case.*

Ms. Mason: Okay. So Ms. Malimali had been turned down. So she had applied to practice in Tuvalu after having done some cases, at least one case there. And the Attorney General who decides on practicing certificates had turned her down.

Justice Temo: *Is there any for me to hear what the...*

Justice Ashton-Lewis: *Yes, it's appropriate that you...*

Ms. Mason: No. The issue is that Ms. Malimali says that she disclosed this to the Chief Registrar. And so the question is, did the Chief Registrar then disclose that to you? Did he brief you on it?

Justice Temo: *I can't recall.*¹³⁵

- 164.** In relation to the disclosure of the Tuvalu Issue, the CoI has received evidence from Ms. Malimali and CR Bainivalu that is in direct contradiction to each other. Either Ms. Malimali's statement that she had a meeting with the CR where she informed CR Bainivalu about the Tuvalu Issue and the FICAC Malimali Investigation is true, or CR Bainivalu is being truthful when he stated that such a conversation did not occur, and Ms. Malimali did not disclose the Tuvalu Issue to him.
- 165.** On the balance of probabilities, the CoI believes that CR Bainivalu's position that the Tuvalu Issue was not disclosed by Ms. Malimali is correct. Ms. Malimali has a history of deceit in relation to the Tuvalu Issue, even going to the extent of claiming that she had no recollection of the events. Furthermore, she has consistently been dishonest in seven consecutive PC applications, failing to declare that she was refused a PC in Tuvalu in six of them, and failed to accurately disclose the reason why she was barred in one of them.
- 166.** According to S-G Green, he had not been made aware of the Tuvalu Issue, or the FICAC Malimali Investigation and could not recall being in a meeting where these matters were discussed:

Ms. Mason: Right, okay. All right. And then at paragraph 30, you say that at no stage prior to the interview, appointment and arrest was the panel or the JSC aware or informed that Ms. Malimali was being investigated. Now on Friday, Ms. Malimali told the Commission of Inquiry that she had some conversations about both the Tuvalu case and the FICAC investigation with the Chief Registrar and she said possibly yourself. Were you involved in any meetings?

¹³⁵ Transcript, Day 36, Session 1 – CJ Temo at 37-38.

Mr. Green: No, I, at this time, I'm still not aware of the Tuvalu case. I have not read anything. I was not informed of the Tuvalu case or what transpired. I have heard about it.¹³⁶

167. Mr. Green gave evidence that because the Tuvalu matter had occurred more than six years ago, there was a time limitation, and it would be at Ms. Malimali's discretion whether she ought to have disclosed the matter:

Ms. Mason: Now Mr. Solicitor General, I'd just like to hand you these and this is a question about disclosure. So we've gone through the lack of disclosure in terms of what had happened with FICAC but there was also another issue around the lack of disclosure and Ms. Malimali had been turned down for an application for a practicing certificate in Tuvalu for not being a fit and proper person to practice there. Do you think this should have been disclosed to the JSC?

Mr. Green: This letter is obviously to Ms. Malimali. I think the discretion is upon Ms. Malimali whether to disclose it or not.

Ms. Mason: She should have disclosed it?

Mr. Green: I think the discretion is with, I cannot speak for Ms. Malimali.

Justice Ashton-Lewis: *I cannot hear you.*

Mr. Green: I cannot speak for Ms. Malimali but the letter is written to Ms. Malimali. Should she disclose this to the LPU, that is something that is in her discretion. It's 2017 and in 2023, six years limitation period. I cannot really answer your question because of the time limitations and the fact that this letter was sent to Ms. Malimali and not to our office.

Ms. Mason: Right, but for the JSC's assessment do you think this should have been disclosed to the JSC?

Mr. Green: Like I said, there is a time limitation to this. This was in 2017. Should we then go back seven years back and dig up the past and plus it's from Tuvalu. It's from another jurisdiction. Had it been 2024 then it would certainly become relevant, but it's 2017. But that is just my opinion.

Ms. Mason: Right, okay.

Mr. Green: The other members of the, may have a different opinion to that but I would certainly argue on terms of timeline that we ought to be careful with the timeline if this is true. I cannot confirm that it is true but if this is true then time has passed on. People have moved on. Should we still continue to hold this against Ms. Malimali?

Justice Ashton-Lewis: *Yes.*

Mr. Green: That is the key question that needs to be asked, My Lord, in terms of this.

¹³⁶ Transcript, Day 28, Session 2 – S-G Green at 14.

Justice Ashton-Lewis: *In your opinion is it a serious, going back to 2017 is it serious to be held by another jurisdiction to not be a fit and proper person?*

Mr. Green: I think it's a serious matter, but I do not know the background to this.

Justice Ashton-Lewis: *Pardon?*

Mr. Green: I do not know the background to the case. I am not aware of the background, but I think the way they have worded it, to me it sounds serious.¹³⁷

- 168.** However, Mr. Green did agree that anyone who holds the position of FICAC Commissioner must be a person of integrity and honesty:

Ms. Mason: Yes. So the other point is that especially given that this is the head of the corruption agency, wouldn't issues like honesty be right up at the top in terms of something to check?

Mr. Green: I would agree with you. Anyone who holds this position must be a person of integrity with honesty. That is the caliber of the person that we are looking at.¹³⁸

- 169.** Ms. Vaurasi, a former President of the FLS, thought that the Tuvalu Issue should have been disclosed to the JSC:

Ms. Mason: Okay. Now I'd like to move to a different issue. And that relates to your position as a senior practitioner in Fiji. You may or may not have seen floating around on social media a decision by a Court of Appeal in the Tuvalu jurisdiction in relation to some inappropriate conduct by Ms. Malimali. Have you seen that decision?

Ms. Vaurasi: Yes, I have.

Ms. Mason: And we have had correspondence from the Attorney General of Tuvalu that Ms. Malimali's 2017 application for a practicing certificate was turned down because the committee, the Legal Practitioners Committee in Tuvalu was of the view that she did not satisfy the requirement of being a fit and proper person to practice in Tuvalu. Do you think this should have been disclosed in her application for the Commissioner?¹³⁹

... ...

Ms. Mason: Ms. Vaurasi, before the break, I had put to you this issue of the Tuvalu case and the fact of a letter which had been sent to the Commission by the Tuvalu Attorney General and she had advised that the Tuvalu Legal Practitioners Committee had declined Ms. Malimali's application to practice because they

¹³⁷ Ibid., 18-19.

¹³⁸ Ibid., 27.

¹³⁹ Transcript, Day 13, Session 1 – Ms. Vaurasi at 27.

thought she did not satisfy the requirement to be a fit and proper person to practice in Tuvalu. Do you think that this should have been disclosed to the Judicial Services Commission?

Ms. Vaurasi: Yes.¹⁴⁰

- 170.** The evidence highlights significant inconsistencies in Ms. Malimali's account regarding her disclosure of both the Tuvalu Issue and the FICAC Investigation. While she initially claimed to have informed S-G Green and CR Bainivalu, her affidavit and subsequent testimony suggests that she did not do so. Notably, her affidavit omits any mention of the disclosure of the FICAC Malimali Investigation. Ms. Malimali later conceded that she "probably did not" disclose it. This lack of disclosure is corroborated by S-G Green and CR Bainivalu, who stated that Ms. Malimali did not disclose these issues prior to her appointment as FICAC Commissioner. Given the nature of the FICAC Commissioner's role, where integrity and honesty are paramount, these discrepancies and omissions raise serious issues, both ethical and potentially criminal, which in turn put in question the validity of her appointment as FICAC Commissioner.

5.9: Acceptance of Selection Panel Recommendation

- 171.** On 20 and 21 August 2024 the Selection Panel conducted interviews with the short-listed candidates, including Ms. Malimali.¹⁴¹
- 172.** According to Ms. Malimali, she was informally told that she would be appointed FICAC Commissioner around 22 or 23 August 2024. This early indication was on the basis that she had scored the highest in the interview and would be recommended:

Ms. Malimali Although I received my formal letter of appointment on 04/09/24, I had been informed of my successful application at least 2 weeks prior, around the 22nd or 23rd of August.¹⁴²

- 173.** On 28 August 2024, the Selection Panel submitted their report on the selection of the Commissioner to the wider JSC members. This included the recommendation that Ms. Malimali be appointed as the FICAC Commissioner.¹⁴³ The JSC agreed with the Selection Panel's recommendation via email, formally accepting the recommendation on 28 August 2024.¹⁴⁴

¹⁴⁰ Ibid., 2-3.

¹⁴¹ Affidavit of Graham Leung, Attorney-General dated 11 December 2024 at Annex A: The JSC Selection Panel Recommendation Report.

¹⁴² Transcript, Day 23, Session 2 – Ms. Malimali at 70.

¹⁴³ Affidavit of Tomasi Bainivalu, annex TB4: The JSC Selection Panel Recommendation Report.

¹⁴⁴ Ibid.

174. The decision to hire Ms. Malimali was made via a “flying minute” dated 28 August 2024,¹⁴⁵ a process by which decisions are made outside of regular board meetings, in this case by way of email:

Chief Justice Temo: And the others. So, some cases we do have meetings. Some cases its flying minutes.

Justice Ashton-Lewis: Yes.

Chief Justice Temo: So, to make sure that the wheel of justice continues to flow.

Justice Ashton-Lewis: Yes.

Chief Justice Temo: So, most decisions are in the essence of time are done by flying minutes.¹⁴⁶

175. On 28 August 2024 at 2 pm, Ms. Bi, the Assistant Secretary to the JSC sent an email to all JSC members stating:

Good afternoon Your Lordship/Sir.Madam,

Reference is made to the Commissioner FICAC position which had been advertised on 15th June and later re-advertised on 13th July.

The Interview had been conducted on 20th and 21st August, 2024. Penalist for the Selection Process had been as follows:

1. Hon. Acting Chief Justice
2. Solicitor-General Mr. Green
3. Acting Chief Magistrate Mr. Waqaivolavola

Recommendation

The Panel unanimously recommends for **Ms. Barbara Mailmali** to be appointed as Commissioner FICAC in view of the ratings, assessment and clearance from the Legal Practitioners Unit which is stated in the report.

Attached please find a detailed CV of Ms. Malimali.

The recommendation is submitted for your comments please.

For any further clarifications please do not hesitate to contact the Secretary, JSC.

Have a blessed afternoon.

Kind Regards,

Zarina M Bi
Deputy Registrar Corporate & Assistant Secretary for Judicial Services
Commission
 Judicial Department
 Suva

¹⁴⁵ Affidavit of Filimone Jitoko, annex IV: Flying minute to accept the recommendation to appoint Ms. Malimali as the FICAC Commissioner.

¹⁴⁶ Transcript, Day 15, Session 1 – CJ Temo at 10.

Fiji
Ph: 679 3211336

176. On 28 August 2024, Justice Jitoko and Mr. Green sent reply emails to Ms. Bi agreeing with the recommendation that Ms. Malimali be appointed as FICAC Commissioner. The flying minutes were signed by Justice Temo and CR Bainivalu.¹⁴⁷
177. On Thursday 5 September 2024 at 4.41 pm, obviously once Ms. Malimali had already been appointed, one of the JSC members, Ms. Devan sent a letter in which she stated:

Dear Mr. Bainivalu,

Re: Appointment of Commissioner for Fiji Independent Legal Services Commission (FICAC)

I respectfully refer to the email which was circulated by the Deputy Registrar Corporate & Assistant Secretary for Judicial Services Commission (JSC) Ms. Zarina Bi on Wednesday 28 August 2024 to the members of the Judicial Services Commission seeking their respective views and endorsement on the unanimous recommendation by the Selection Panel to appoint Ms. Barbara Malimali as the Commissioner for FICAC.

On 29 August 2024 I informed your office that I wished to give the recommendation proper consideration before responding to the Secretariat's email dated 28 August 2024.

On 2 September 2024, I sent a formal email to the Secretariat, with the respected members of the Judicial Services Commission copied, requesting the list of the 23 applicants who had applied for the position of Commissioner. To date, I have not received a response to my email.

On the evening of Wednesday, 3 September 2024, I was informed by your good office that the recommendation was scheduled to be discussed through a formal agenda at a Judicial Services Commission (JSC) meeting set for yesterday at 2:30 p.m. However, this meeting was cancelled as of yesterday morning.

I then received a phone call from Ms. Zarina Bi at 1:05 p.m. this afternoon requesting my attendance at an urgent JSC meeting scheduled for 2:20 p.m. Due to pressing work deadlines, I had to apologize for my inability to attend.

Therefore, to the best of my knowledge, Ms. Malimali's appointment has not yet been endorsed by the members of the Judicial Services Commission.

Given the above, I was concerned to learn from the media reports after midday today that Ms. Malimali has already been appointed as the Commissioner. This appointment is now reportedly under scrutiny due to investigations by FICAC alleging abuse of office.

¹⁴⁷ Affidavit of Tomasi Bainivalu, Secretary to Judicial Services Commission dated 31 December 2024 at Annex TB5; Affidavit of Filimone Jitoko, Speaker of the Parliament of Fiji dated 8 January 2025 at [17].

As a member of the JSC, and to uphold my personal integrity in this matter, I wish to make the following inquiries with your office:

- (i) can you confirm whether Ms. Malimali's appointment has been finalized?
- (ii) if so, when and by what process was this done? I respectfully request a copy of the letter of recommendation sent to the Honourable President's office, the letter of appointment to Ms. Malimali confirming her position, and the minutes of the JSC meeting endorsing her appointment.

In light of the concerning media reports, I request that all respected members of the JSC be kept fully apprised of any further decisions or actions taken regarding this matter.

I await your prompt response to be properly informed about Ms. Malimali's appointment as Commissioner.

I also request a copy of the JSC minutes held this afternoon at 2.30 p.m.

Yours faithfully,

SHOMA DEVAN¹⁴⁸

178. The CR Mr. Bainivalu responded via email on 5 September 2024 at 11:47 pm as follows:

Bula Ms. Shoma,

Your letter is well received and noted and also read the contents of it to the ACJ, the chair this afternoon and His Lordships brief response, that the urgent meeting today has reached its quorum, hence the meeting went ahead....ofcourse you gave your excuse and was noted...

With much respect to your concerns, with my assistance, Ms. Bi not giving you the full lists of Applicants as requested earlier....we see no purpose doing it because, what we all went through from day 1 of the short listing to interview processes were really conducted in good faith, despite being cumbersome and all were on open merits, where the Hon ACJ was the chair of the Interview panellists in its processes...

And with your very busy schedules, Ms. Shoma, on most times we seek your presence, thus will not stop the JSC from proceedings, especially when urgent meetings like this afternoon was called by ACJ, the chair on the 11th hour ...

Please again with so much respect and do not take me wrong....if the S-G/PSJ can leave his important meeting at Pearl Resort today, the President of the COA can vacate his Appeal matters this afternoon and Ms. Vani to come in via zoom from Nadi, and the ACJ to avail himself, considering his Lordships' very very busy schedule...the members had reached its quorum...hence this very urgent meeting commenced.....

¹⁴⁸ Information submitted by CR Bainivalu on 22 April 2025 in response to request for further information from Counsel Assisting dated 9 April 2025.

I just couldn't understand why most times you sought to be excused from the JSC meetings....

I as secretary with much respect, wish to remind you that such moment in times, when JSCs integrity and its professional duties are challenged, we need to come together and intact our unison in supporting the process of our Independent roles....

You asked to be excused and the tone of your last paragraph demanding the minutes etc, to me is very disrespectful.....

I am sorry 😊 because you did not know what the other JSC members and myself with my Assistant Ms. Bi went through today....

Should, you need anything, it will be given to you in our next meeting hopefully, you will not give any more excuse....

Please Ms. Shom, with much respect I hope you will understand where the other majority members of the JSC are coming from including the two secretaries this afternoon..

I express the above with love and so much respect and ask for your forgiveness on our short falls with my assistance, Ms. Binif theres any....but we will continue to better our service deliveries in future....

Blessed evening and God Bless you all Honourable members 🙏❤️.

Vinaka vakalevu Sara.

CR¹⁴⁹

179. There are serious issues surrounding the JSC's process in choosing Ms. Malimali, as the best candidate on the evening of Wednesday 3 September. There was no meeting held. According to Ms. Devan's 5 September letter, a JSC meeting had been scheduled for 2.30 pm on 4 September for the purpose of discussing the recommendation. On the morning of 4 September, this meeting was cancelled, and instead the "flying minute" procedure was adopted. The evidence before the CoI was that only the CJ, and Justice Jitoko, and the S-G endorsed the recommendation of the JSC Selection Panel.
180. The S-G had a FICAC complaint against him and arguably should not have been involved in the Appointment Process. If one accepts that he should not have been involved, then this was a decision endorsed by only two of the five JSC members, and would thus add to the invalidation of the decision.
181. Another issue about the JSC's process is that the Selection Panel included the CJ and the S-G who were themselves members of the JSC, the body to decide whether or not to accept the Selection Panel's recommendation. This is highly irregular. Normally, the point of establishing a Selection Panel is to involve a second layer of decision making in the expectation that the end decision will be more robust. Here however, two of the JSC Selection Panel members, namely

¹⁴⁹ Ibid.

the CJ and S-G were also on the decision-making body, the JSC. The third JSC Selection Panel member, Mr. Waqaivolavola, was conflicted, being a close associate of Ms. Malimali, and should have removed himself from the Panel. All in all, the JSC process lacked integrity and was so procedurally deficient as to be rendered invalid.

182. Moreover, the evidence points towards a rush to get Ms. Malimali into the position. The Selection Panel's report was only received on the 28th of August. No reference or Police or FICAC checks were done in relation to Ms. Malimali's fitness for the position. There was no need for the JSC to accept the Selection Panel's recommendation on the same day, and to do so via a Flying Minute. Ms. Puleiwai had been appointed to "hold the fort" and was doing so. It wasn't as if there was a dire need for the new FICAC Commissioner to start straight away.
183. There was a view that FICAC had become bogged down in small fry, in cases against Ministers for small amounts of money, while the top-level economic fraudsters were being left alone:

Chief Justice Temo: In my perception, when I was looking around for formidable lawyers, what I see in Fiji, FICAC was going, you know, going after the small criminals.

Justice Ashton-Lewis: Yes.

Chief Justice Temo: The big criminals were laughing away to the back.

...

Chief Justice Temo: When I look at the scenario in Fiji, and all our forces, we were fighting small battles.

Justice Ashton-Lewis: Yeah.

Chief Justice Temo: You know, they were concentrating on the MPs who stole only \$28,000. Yet they're not directing on the ones who are stealing millions of dollars. They're laughing over to the bank. But I'm very happy that our system is concentrating on the small timers.

Justice Ashton-Lewis: Yes, and that's frustrating.

Chief Justice Temo: Very frustrating.

Justice Ashton-Lewis: Yes.

Chief Justice Temo: So that's why when they looking around for lawyers who can turn FICAC into a mean, lean machine to do what its job is supposed to be, you are saddened, because the skill level coming in will not achieve what you have in your hand.

Justice Ashton-Lewis: Absolutely.

Chief Justice Temo: Because even Langman, he was the Deputy...

Justice Ashton-Lewis: Ten years he was there. Yes.

Chief Justice Temo: He made a recommendation in the files that whoever is the Commissioner must be a very good criminal litigator.

Justice Ashton-Lewis: Yeah.

Chief Justice Temo: Because he or she will decide when to charge.

Justice Ashton-Lewis: Well, he can assess evidence.

Chief Justice Temo: Yeah.

Justice Ashton-Lewis: And he can say there's not enough there to charge.

Chief Justice Temo: Exactly.

Justice Ashton-Lewis: So go and get more if you can.

Chief Justice Temo: Exactly.

*Justice Ashton-Lewis: But I disagree with you on the \$28,000 MP. If it's a member of parliament that's a very different person, he represents a constituency. He represents the people of Fiji. If he steals \$5,000...*¹⁵⁰

184. Mr. Green gave evidence that the opinion of the JSC was that the FICAC Commissioner needed to be someone with more experience in litigation, and equipped to be able to do very complex litigation cases and deal with complex investigations and gathering of evidence:

Justice Ashton-Lewis: But that's not my question. My question is why that, initially, Ms. Puleiwai was brought in at the request when she came back from Nauru. She was brought in at the request of the acting Chief Justice and was, with words to the effect, clean this all up, get it all going. So certainly at that stage there was a view that she was an appropriate person and she went into the position. There's no evidence that she wasn't doing the job in any way other than competently. And yet she applies in the first round.

Mr. Green: Yeah...

Justice Ashton-Lewis: Please let me finish. She applies in the first round. She doesn't even have the courtesy of a response till she sees an advertisement for the second round. She finds out she's not in that and I've heard you and I've heard others say because there was no one in the first round. So my question was how did a person go from being requested to come, being in the position and doing it with no complaints against her be found not to be, there's not anyone who can do the job yet she was doing the job! I've never had a straight answer for that one.

¹⁵⁰ Transcript, Day 15, Session 1 – Chief Justice Temo at 27-29.

Mr. Green: I think at that particular point in time...

Justice Ashton-Lewis: *Pardon?*

Mr. Green: At that particular point in time, My Lord.

Justice Ashton-Lewis: *Yes.*

Mr. Green: I think the JSC felt that it needs someone with more experience in litigations.

Justice Ashton-Lewis: *Right, right.*

Mr. Green: Someone who is better equipped to be able to do litigations that are of very complex case and also not only in terms of litigation in very complex cases but also in terms of investigation, gathering of...

Justice Ashton-Lewis: *Ms. Malimali of course had been in criminal law for what, 21 years and so she certainly had trial experience.*

Mr. Green: Yeah.

Justice Ashton-Lewis: *She had that and so I've taken it that the view was that we needed someone more with Ms. Malimali's experience. The Chief Justice said I asked her to come to hold the fort and then we needed someone with more trial experience. Is that what was discussed?*

Mr. Green: That was what was discussed and the idea of her holding the fort is that we would like to train her to then become the Commissioner to work under someone with litigation experience.¹⁵¹

185. However, FICAC has a dual purpose, to investigate and prosecute corruption related cases, but also to educate the civil service and the public on the evils of corruption. It was available to the JSC to select someone with more investigative skills, or someone with more advocacy and education skills. In this case, Justice Temo had wanted a prosecutor to lead FICAC:

Ms. Mason: Right, there's also another provision in here and that's 13F that allows for the transfer of proceedings from FICAC to the Police or to the DPP. So one of the options in terms of what you were saying, Your Lordship, about good Prosecutors, then for very serious or complex cases, they could be transferred to the DPP who would then have the expertise to prosecute these cases. Some could be with FICAC. But as you say, there needs to be very skilled people prosecuting some of this white collar crime. So there's the flexibility there in the FICAC Act to do that. So reading the Act as a whole, it's sort of a bit of a mix of that Police community education function, the Prosecution function.

¹⁵¹ Transcript, Day 28, Session 2 – S-G Green at 16-17.

But one of the things that you have given evidence on the omission or the missing part being someone who is able to have a nose for complicated white collar crime.

*Chief Justice Temo: I agree with you. There's arguments both ways.*¹⁵²

186. However, as has been set out earlier, Ms. Malimali had zero prosecuting skills, and certainly no experience investigating or being involved in high level complex economic crime. Instead, she had been defence counsel.

5.9.1 Conflicts of Interest

187. One of the issues which tainted the Appointment Process was the lack of care taken to ensure there were no unmanageable conflicts of interest.
188. Mr. Waqaivolavola gave evidence that he was a professional colleague of Ms. Malimali, went to law school in the same year and was friends with Mr. Tuiloma, and was distantly related to Ms. Rokomokoti and Mr. Valenitabua.¹⁵³
189. In evidence, Mr. Waqaivolavola stated that:
- a. he had supervised Ms. Malimali's post graduate course, and worked with her teaching different subjects of law at the University of the South Pacific;¹⁵⁴
 - b. he was friends with and had studied law in the same year and school as Mr. Tuiloma;¹⁵⁵
 - c. he is related to Ms. Rokomokoti and Mr. Valenitabua.¹⁵⁶
190. When questioned, Mr. Waqaivolavola did not seem to think it necessary to declare any of his relationships in a conflicts of interest register. However, he agreed that it would help protect against accusations, when pressed on the issue:

Ms. Mason: And then you say that there was no reason for me to declare any interest. But I put to you that in something like this, that you should have declared your interest regardless, and that actually the JSC should have a conflicts register for any panel like this, so that before you come on, you have to fill something out saying, here are my conflicts to remind you to declare them. Would you agree with that?

Mr. Waqaivolavola: Yes, there was nothing like that. But in my view, in Fiji, everyone knows everyone. And in the profession, we all came out together at the same time. And these two were my relatives, but very distant relatives. It wasn't like the, I think below the PSC regulations talks about father, mother,

¹⁵² Transcript, Day 15, Session 1 – CJ Temo at 35.

¹⁵³ Transcript, Day 24, Session 1 – Mr. Waqaivolavola at 17.

¹⁵⁴ Affidavit of Josaia Waqavolavola, Acting Chief Magistrate, dated 7 January 2025 at [9].

¹⁵⁵ Ibid., [10].

¹⁵⁶ Ibid., [11].

brother, sister, cousin, in-laws. But these two, in the Fijian context, they are my relatives, but one of them I can't trace back to the tree. And the other one was a descendant of my grandfather's eldest brother. That distant in terms of Western civilization. So I saw it in that way, from the Western perspectives, that I'm going in here, they are my relatives in the Fijian context, he is my relative in the Western context, twice, thrice, fourth time removed. So it wasn't a concern for me at that stage. That was my understanding. But you're right, there should be such a register or policy.

Ms. Mason: Yes, so I'm not accusing you of favouring somebody or anything. So it's all about the process, because the Commissioner's report will be forward-looking.

Mr. Waqaivolavola: Yes, you're right.

Ms. Mason: And there seems to us through all these questions and evidence, that there's very little regard placed on having a conflict of interest register. And I think the Chief Registrar said, oh, we just leave it up to people, but that's not good enough, is it? That there should be a formal process.

Mr. Waqaivolavola: To cover all aspects in terms of the Western perspectives and the Fijian perspectives.

Ms. Mason: Yes, and to protect all of you. That would protect all of you from accusations.

Mr. Waqaivolavola: It would.

Ms. Mason: Yes.

Mr. Waqaivolavola: Yes, I'd agree.¹⁵⁷

191. In evidence Mr. Waqaivolavola seemed to suggest that it was normal in Fiji to be conflicted, as "...everyone knows everyone. And in the profession, we all came out together at the same time."¹⁵⁸
192. In relation to Ms. Rokomokoti and Mr. Valenitabua, Mr. Waqaivolavola said he gave evidence that they were very distant relatives, with one being a descendant of his grandfather's eldest brother, and the other being untraceable on the family tree.¹⁵⁹
193. On 29 August 2024 Justice Jitoko sent an email noting that Mr. Waqaivolavola and Ms. Malimali were teaching colleagues at USP Law School. He noted that he believed that Mr. Waqaivolavola should have declared this as a conflict, and/or, recused himself:

¹⁵⁷ Transcript, Day 24, Session 1 – Mr. Waqaivolavola at 17-18; Affidavit of Josaia Waqavolavola, Acting Chief Magistrate, dated 7 January 2025 at [12].

¹⁵⁸ Ibid., 17.

¹⁵⁹ Ibid., 17-18.

Bula Ms. Bi,

I endorse the Interviewing Panel's recommendation of Ms. Malimali for the post on the strength of the Hon. the Acting CJ's and S G's assessments as, if I am correct that the A/CM and Ms. Malimali were teaching colleagues at USP Law School at the same time, then I believe he should have declared it and/or excused himself.

Can I have a copy of the 13th July advertisement please?

Vinaka,
Filimone ¹⁶⁰

194. The CoI finds it concerning that Mr. Waqaivolavola initially did not think he needed to declare a conflict of interest. However, Justice Jitoko was unwilling to rely on Mr. Waqaivolavola's assessment of the candidates for this very reason.
195. Mr. Waqaivolavola was conflicted, in particular in relation to Ms. Malimali. He should not have been on the Selection Panel.
196. In this regard there is clearly a deficit in the JSC's processes. The CoI recommends that a conflicts register should be established for use in all future interviews, so that all interests are declared prior to any persons being involved in any selection panel.

5.10: Consultation With A-G

197. Under s 5 of the FICAC Act, the FICAC Commissioner is appointed by the President on the recommendation of the JSC, following consultation by the JSC with the A-G.
198. Under s 104(8) of the Constitution the JSC is independent from the direction or control of any authority. Accordingly, this includes the A-G.
199. The opinion of the A-G was that in this process his views were not binding on the JSC. Mr. Leung, as A-G, is consulted from time to time regarding various judicial appointments:

Since I commenced work as Attorney-General, the Acting Chief Justice as Chair of the Judicial Services Commission has consulted me from time to time, with regard to various judicial appointments. By law, my approval is not required for these appointments.¹⁶¹

200. On 2 September 2024, by way of email, Justice Temo requested Mr. Leung's advice concerning the appointment of Ms. Malimali as FICAC Commissioner.¹⁶²

¹⁶⁰ Affidavit of Filimone Jitoko, Speaker of the Parliament of Fiji dated 8 January 2025 at Annex III.

¹⁶¹ Ibid., [15].

¹⁶² Ibid., [17], Annex A: Email chain between A-G Leung and Justice Temo concerning the appointment of Ms. Malimali.

- 201.** On 2 September 2024, by way of email, Mr. Leung endorsed the decision to appoint Ms. Malimali as FICAC Commissioner:

On or about 2nd September 2024, the Acting Chief Justice wrote to me and consulted on its recommendation that Ms. Barbara Malimali be appointed to fill the vacant post of Commissioner of Fiji Independent Commission against Corruption. I understand that the same day, I communicated back to the Judicial Services that I was in agreement with and endorsed its decision.¹⁶³

- 202.** Later, on 2 September 2024 at 1:27 pm, Mr. Saumi called A-G Leung and notified him of the pending Search Warrant in relation to critical COC documents held at the S-G's office. According to Mr. Saumi, during this phone conversation, he advised Mr. Leung that there was an ongoing investigation against Ms. Malimali, and that FICAC intended to execute the Search Warrant at the S-G's office.

- 203.** On 3 September 2024, Mr. Leung called the Acting Deputy Commissioner of FICAC, Ms. Puleiwai. Ms. Puleiwai confirmed that there was an active investigation of a complaint against Ms. Malimali for abuse of office. According to Mr. Leung, this conversation was brief, and he cannot recall whether the nature of the complaint against Ms. Malimali was disclosed:

On 3rd September 2024, I called the Acting Deputy Commissioner of FICAC Ms. Francis Puleiwai (Ms. Puleiwai) on mobile number 9905831 from my "Official" phone 9907305, and had a brief telephone call when she confirmed there was a complaint against Ms. Barbara Malimali, then Chairman of the Electoral Commission, and an applicant for the post of Commissioner FICAC. I cannot recall whether Ms. Puleiwai disclosed the nature of the complaint. This conversation was brief and took place more than 3 months ago. I did not keep a minute or record contemporaneously, the details of our conversation. I have not extracted the phone record of this telephone call.¹⁶⁴

- 204.** According to A-G Leung, this call was on the basis of rumours that there may have been a FICAC complaint against Ms. Malimali:

Ms. Mason: In that paragraph, you say that on the 3rd of September, you called the Acting Deputy Commissioner of FICAC, Ms. Puleiwai. Can you tell us why you called her?

Mr. Leung: I think if I'm not mistaken, My Lord. There were Chinese whispers, possibly in social media. I can't confirm that Ms. Malimali may have been perhaps reported to FICAC, or there may have been complaints about Ms. Malimali, the details of which I wasn't aware of at the time. But you know, Your Lordship may or may not know this, you've got extensive experience working in this country. Fiji is a country that abounds with rumours of one kind or another. So one has to be careful in rushing to judgement.¹⁶⁵

¹⁶³ Ibid.

¹⁶⁴ Ibid., [18].

¹⁶⁵ Transcript, Day 10, Session 1 – Mr. Leung at 10.

205. However, according to Ms. Puleiwai, when A-G Leung called her, she informed him that the team were looking at completing the investigation that week and they were ready to charge Ms. Malimali if the evidence warranted this. Ms. Puleiwai states that she further asked A-G Leung whether the JSC had informed him that Ms. Malimali was under investigation to which he stated that he was not informed.¹⁶⁶

206. On 3 September 2024 Mr. Leung called Justice Temo and recommended that the appointment of Ms. Malimali be put on hold:

As a result, and out of caution, on Tuesday 3rd September 2024, I contacted the Acting Chief Justice Judge Salesi Temo by mobile telephone, and suggested he put Ms. Malimali's appointment on hold. He said he would do so.¹⁶⁷

207. CR Bainivalu gave evidence that he had not been informed that the appointment was to be put on hold:

Ms. Mason: So, Mr. Bainivalu, in paragraph 19, the Honorable Attorney General states that he discovered, through a telephone conversation with Ms. Puleiwai, that there was an investigation into Ms. Malimali. And he advised the Chief Justice of this investigation and suggested that the appointment be put on hold, and the Chief Justice agreed. Did you know that this had occurred?

CR Bainivalu: This conversation?

Ms. Mason: Yes, this conversation.

CR Bainivalu: I was not aware of it.

Ms. Mason: So, you didn't know that, initially, the appointment had been put on hold?

CR Bainivalu: As a secretary, I was never told to be put on hold, ma'am.¹⁶⁸

208. On 3 September 2024, Mr. Leung received an email from Dr. Atu Emberson-Bain, one of the Commissioners of the ECF, with a covering letter and a copy of a letter dated 3 September 2024.¹⁶⁹ This letter complained about the recent search warrant executed pursuant to s 10B of the FICAC Act by FICAC officials on 3 September 2024 at the premises of the ECF. Various files, devices, and equipment were removed from the office. The letter alleged that the ECF Commissioners were unaware as to why the search had been conducted, and concluded, on account of a news article, that it was in relation to complaints made by Ms. Forwood.¹⁷⁰

¹⁶⁶ Affidavit of Francis Puleiwai, dated 10 December 2024, at [48].

¹⁶⁷ Affidavit of Graham Leung, Attorney-General dated 11 December 2024 at [19].

¹⁶⁸ Transcript, Day 16, Session 1 – Mr. Bainivalu at 24.

¹⁶⁹ Affidavit of Graham Leung, Attorney-General dated 11 December 2024 at [20].

¹⁷⁰ Ibid., Annex A: Email chain between A-G Leung and Justice Temo concerning the appointment of Ms. Malimali.

209. In the letter the ECF Commissioners stated that they considered these complaints about Ms. Malimali in relation to abuse of office to be vexatious and of no merit, particularly one made by Ms. Forwood, who they alleged had engaged in “systematic bullying and harassment of Ms. Malimali on social media” in the five months prior to the letter.¹⁷¹
210. The ECF Letter was signed by Commissioners Nemani Mati, Dr. Atu Emberson-Bain, Ratu Inoke Dokonivalu, Reginald Jokhan, and Nalini Singh, and stated:

Dear Chairperson,

Re: Raid on the Electoral Commission of Fiji (ECF) Office

We write with regard to a disgraceful raid conducted at the premises of the Electoral Commission of Fiji (ECF) this afternoon. At around 2.00pm, six FICAC officers, acting under instruction from the Acting Commissioner of FICAC, arrived with a search warrant pursuant to section 10B of the Fiji Independent Commission of Corruption (FICAC) Act. The officers proceeded to search through files, devices and equipment, and then removed office equipment and hundreds of electronic files containing ECF meeting agendas and minutes, directives, instructions and official letters; the letter of appointment of Ms. Barbara Malimali as Chairperson of the ECF; a list of all members of the ECF, letters of appointment and allowances; dispatch records for official ECF letters to the Constitutional Offices Commission (COC) pertaining to the appointment of the Supervisor of Elections; and copies of email correspondence requesting confirmation of Alexandra Forwood in the National Register of Voters.

The ECF is disturbed about the indiscriminate appropriation of so many official and confidential documents belonging to the Commission. We are at a loss to understand why this has happened. We have not been given a reason or explanation, or received any communication from FICAC; all we know is what we have heard in the media. According to a news item on Fiji Village on Thursday 9 April 2024, FICAC confirmed to journalist Vijay Narayan that it had received a letter of complaint from one Alexandra Forwood against the Chair of the ECF, Ms. Barbara Malimali, on 8 April.

To date, Ms. Malimali has received no formal communication from FICAC in this regard. Natural justice demands that she should have been notified of this complaint and advised that an investigation was underway. As for the Commission itself, common courtesy surely requires that as a constitutional body, we are entitled to be advised of any intention to investigate any of our members, and certainly any intention to conduct a raid on our premises.

It is also concerning for us that a search warrant should be executed on the basis of a vexatious complaint of no merit, in particular an allegation by Ms. Forwood of abuse of office.

Ms. Forwood has been engaged in systematic bullying and harassment of Ms. Malimali on social media over the past five months. This has included making wild and unsubstantiated allegations that Ms. Malimali, in her capacity as Chair of the ECF, has sought to dismiss the Acting Supervisor of Elections; to interfere with the

¹⁷¹ Ibid.

process of appointing the Supervisor of Elections (SOE); and generally to interfere with the work of the SOE.

We take the opportunity to respectfully remind the JSC that the ECF is mandated under the Constitution (section 76(4)) to be consulted in the appointment of the SOE. Ms. Malimali, on behalf of the ECF, accordingly wrote on numerous occasions to remind the COC of its duty to consult the Commission. On 15 April 2024, she wrote to record our dismay that a communication to the COC dated 2 April 2024 had been leaked to an online blogger within the space of just 30 minutes of delivery to the Solicitor General's Office. The content of this letter was misconstrued by Ms. Forwood, the online blogger, to suggest that the ECF was interfering with the recruitment process; in particular, that the Chair was calling for the dismissal of the Acting Supervisor. There has never been any such call. The ECF has focussed on addressing the failure of the COC to consult, despite its constitutional obligations to do so.

We believe there has been nothing in the actions of the ECF Chair that can be construed as interference with the appointment or work of the Supervisor of Elections or that is an abuse of office. In this regard, we draw attention to section 76(2) of the Constitution, which states that the SOE acts "under the direction of" the ECF; and section 76(3) of the Constitution, which states that the SOE "must comply with any directions that the Electoral Commission gives him or her concerning the performance of his or her function." Section 8(a) of the Electoral Act 2014 and *Electoral Commission v Supervisor of Elections* [2016] FJCA 159 reinforce this relationship between the ECF and the SOE.

The raid on ECF premises by FICAC was uncalled for. It was unreasonable and disproportionate. It also reflects poorly on the way FICAC conducts its investigations. We ask that the JSC investigate our complaint against FICAC as a matter of urgency.¹⁷²

211. The ECF Commissioners appeared oblivious to the requirement for FICAC to be independent under s 115(6) of the Constitution. The fact of the matter was that they had a valid search warrant and were executing it.
212. Further, the A-G did not himself know at the time that the ECF Commissioners were also under investigation:

Ms. Mason: Now, Mr. Attorney General, when we left off before the morning adjournment, we're having some conversations about your paragraph 37 and the conflict of interest issue. Now, would you agree that? And now that you know that the Electoral Commissioners were also being investigated alongside Ms. Malimali. That they were conflicted as well?

Justice Ashton-Lewis: *I don't think you knew that, did you?*

Mr. Leung: No, I didn't know that at the time,

Justice Ashton-Lewis: *That they were being investigated.*

Ms. Mason: Yes. But knowing now.

¹⁷² Ibid.

Justice Ashton-Lewis: *Yes.*

Ms. Mason: Would you agree that they were conflicted?

Mr. Leung: Well, that's. My Lord, that's a matter of opinion. I'm not sure I understand the question.

Justice Ashton-Lewis: *I think it's more than that. If anything, if we step aside from that question, the value of their advice is probably lessened.*

Mr. Leung: Yes that I would, put that way, My Lord I would agree with you.

Justice Ashton-Lewis: *Yes.*

Ms. Mason: Yes. And they. I mean, they had an interest in shutting the investigation down. Because they were part of the investigation as well, weren't they?

Mr. Leung: Oh, I wasn't aware that they were part of the investigation.¹⁷³

- 213.** A-G Mr. Leung did not contact FICAC to clarify the situation. According to Mr. Leung, he did not contact FICAC as he was concerned about breaching the independence guaranteed to FICAC under s 115(6) of the Constitution:

Justice Ashton-Lewis: *In other words, Ms. Mason, you're saying, should you not have sought to go wider, you get further information? Is that what you're asking?*

Ms. Mason: Yes, it is.

Mr. Leung: Yes, Thank you, My Lord. I mean, hindsight, My Lord, is a great thing. But I may have, at the back of my mind, possibly have been thinking about Section 115, subsection 6 of the Constitution. That in the performance of its functions or the exercise authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority. And it is quite possible, had I pursued that line of questioning. I may well have been accused of interfering. So I think my approach to FICAC, although I'm the typical, I'm the line minister, has been one of hands off. It's very easy inadvertently to get into a situation, even with the best of intentions, that somebody could misconstrue that as interference with the power or independence.

Ms. Mason: Yes. But can you have a look at section 115(9) of the Constitution?

Mr. Leung: I see that, My Lord. Yes.

¹⁷³ Transcript, Day 10, Session 2 – Mr. Leung at 3. Note that at this stage, the ECF Commissioners did not know themselves that they were under investigation.

Ms. Mason: So that section says the commission should provide regular updates and advice to the Attorney General on any matter relating to its functions and responsibilities?

Mr. Leung: That's correct, My Lord. That's in the Constitution.

Ms. Mason: Yes. And don't you think in your role as the person who the Chief Justice consults, you are entitled and you actually should have rung Ms. Puleiwai up and said, look, this is what the Commissioners say. What do you have to say?

Mr. Leung: My Lord, at the risk of stating the obvious, the Commission provides Advice to the Attorney General. The Attorney General does not provide advice or guidance.

Justice Ashton-Lewis: *But are you saying if there's something like this, you've been advised beforehand that there's a complaint? Given that you are an important office and you have to be briefed, does that just open the door for you to say nothing and just wait for everything to come in? Or when you get something that is a bit iffy, that you should go and say, look, I want to know more about this. You are to brief me.*

Mr. Leung: Yes, as I said, My Lord, since I started in this position in June last year, FICAC, I have considered it best that I be at arm's length.

Justice Ashton-Lewis: *Yes, all right.*

Mr. Leung: From that institution.

Justice Ashton-Lewis: *Yes, you have said that.*

Ms. Mason: But you had called. You had called Ms. Puleiwai once on that day.

Mr. Leung: That's correct, My Lord. I've admitted that before the Commission.

Ms. Mason: So it wouldn't have been anything out of the ordinary to call her a second time to get clarification on that first call, would it?

Justice Ashton-Lewis: *But I think.*

Mr. Leung: I think I've answered that.¹⁷⁴

- 214.** The CoI does not accept the A-G's response that somehow, s 115(6) of the Constitution which provides for the independence of FICAC, prevented him from calling Ms. Puleiwai for a full briefing on the FICAC Malimali Investigation. Section 115(9) stipulates that FICAC is to provide regular updates and advice to the A-G on *any matter* relevant to its functions and responsibilities. Mr. Leung had already contacted Ms. Puleiwai once that day,

¹⁷⁴ Transcript, Day 10, Session 1 – Mr. Leung at 23-25.

and he should have requested a written briefing which he could have then provided to the Chair of the JSC. These are basic functions and processes that anyone in a senior position should be automatically following. In this regard the A-G has been derelict in his duties.

- 215.** Mr. Leung gave evidence that he had not considered what would happen if FICAC had found that the complaint was not vexatious. He had not considered what would happen if the JSC appointed a FICAC Commissioner who was then charged:

Ms. Mason: All right. Now, when you were thinking about this and reading the letter from the Electoral Commission, and also after the discussion with Ms. Puleiwai, did you think what would happen if FICAC found that, contrary to what the Electoral Commissioners had said, that the Complaint was not vexatious. Did you think, actually, if it's not, what's the outcome going to be?

Mr. Leung: I don't believe, with the benefit of hindsight or looking back at those events several months ago, that I had considered that.

Ms. Mason: Right. Do you know that the file has been transferred from FICAC to the DPP?

Mr. Leung: I believe there's been newspaper anecdotal reports to that effect, My Lord.

Ms. Mason: And that FICAC evidence is that they had reached the evidentiary threshold for charging for three separate quite serious offences with penalties of ten years each.

Mr. Leung: Against who, My Lord?

Ms. Mason: Against Ms. Malimali.

Mr. Leung: I'm not personally aware of that, My Lord. This is the first time I'm hearing this.

Ms. Mason: Okay, so

Justice Ashton-Lewis: *Are you aware that she was arrested?*

Mr. Leung: I was aware that she was arrested because it was in the newspapers, My Lord, the day she turned up for work.

Ms. Mason: So did you think through or have discussions with anyone about what if the complaint isn't vexatious? We're appointing, not you. But the JSC is appointing someone who could then be charged?

Mr. Leung: No, My Lord, because as I mentioned, at the risk of repetition, the appointing authority of the FICAC Commissioner under the FICAC Act of 2007 is the Judicial Services Commission. And four jurors of long experience

had either interviewed, vetted, screened, shortlisted and considered and culled the applications, which was, I think, from memory, was it 19 or was it 23, and reduced it to 4? According to their report, Ms. Malimali gained the highest scores and then they then proceeded that basis to send her name to me.¹⁷⁵

216. In evidence, Mr. Leung stated that had the ECF Commissioners known they were under investigation and written the same letter he would not have placed the same amount of weight on the letter. Mr. Leung would not be drawn into answering whether he thought the ECF Commissioners were objectively conflicted:

Justice Ashton-Lewis: Well their knowledge is not important to you. It's your view of objectively now, as Ms. Mason has, have made it objectively now, looking at what you now know, were they conflicted?

Mr. Leung: Well, objectively, if they were under investigation and if they knew they were under investigation, and if they knew that and wrote to me under those circumstances, the value that I might have placed or did place on that letter would not necessarily be the same, would be diminished.¹⁷⁶

217. On the basis of the endorsement of Ms. Malimali by the ECF Commissioners, the A-G's belief that they are "prominent citizens whose credibility I did not doubt", Mr. Leung considered that he could no longer persist with his initial advice to Justice Temo that Ms. Malimali's appointment be put on hold:

Following receipt of the 3rd September 2024 letter from the Electoral Commission referred to in the preceding paragraph, I called the Acting Chief Justice, the Honourable Mr. Justice Salesi Temo and told him that I could no longer persist with the reservation I had in relation to the appointment of Ms. Malimali as commissioner of the Fiji Independent Commission Against Corruption. I explained to the Acting Chief Justice that faced with the views of five prominent citizens whose credibility I did not doubt, against those of a well-known anti-government blogger Alexander Forwood, I preferred to rely on the endorsement of the Electoral Commissioners. I told the Acting Chief Justice that in light of this development, there was no rational basis upon which I could object to or delay the Judicial Services Commission proceeding to confirm the appointment of Ms. Barbara Malimali as Commissioner for the Fiji Independent Commission Against Corruption.¹⁷⁷

218. Under questioning, Justice Temo acknowledged that while the JSC was only required to consult with the A-G, he placed weight on the A-G's opinion on the basis that the advice given by the A-G represented the view of the Coalition Government. Justice Temo's view was that any advice given, whether opinion or legal, would be valued:

Ms. Mason: Yes. Can I just go back to paragraph 21? And I'd like to just explore your response a bit more. So, are you saying that the

¹⁷⁵ Transcript, Day 10, Session 1 – Mr. Leung at 32-33.

¹⁷⁶ Transcript, Day 10, Session 2 – Mr. Leung at 4-5.

¹⁷⁷ Affidavit of Graham Leung, Attorney-General dated 11 December 2024 at [21].

Attorney General, as the consultee, is there to not provide you legal advice, but to provide you with the views of the parliamentary arm? Would that be correct?

Chief Justice Temo: *That's a good point. Legal advice and opinion.*

Ms. Mason: Yes.

Chief Justice Temo: *I value whatever he gives me.*

Ms. Mason: Yes.

Chief Justice Temo: *Whether it's legal opinion or opinion, I still value it. Looking at it, it's the view of the coalition government, in the person of the Honorable Attorney General.*¹⁷⁸

- 219.** Justice Temo acknowledged under questioning that it would have been helpful to receive a full briefing from the A-G on the situation, as to what the issues were, where the investigation was at, and some options for proceeding:

Ms. Mason: So, when the Attorney General, or anybody, reported, not reported to you, advised you about the situation, do you think that you should have been given a full briefing on what the charges were, what the allegation was, where was the investigation coming through?

Justice Ashton-Lewis: *Please hold on, Chief Justice. I need to, you mean when Mr. Leung had said, hold on? Is this when you're pointing to that you should have been given more information?*

Ms. Mason: Yes, because, I mean, obviously, it had serious consequences for everybody concerned. And if there was a process where you're advised something is so much of a problem that you need to halt the appointment, then at that point, somebody should have provided you with a full briefing on what the issues were, how serious they were, and what the options were in terms of moving forward.

Justice Ashton-Lewis: *Just before you answer, Chief Justice, I'm sorry to interrupt you again. I think that's been answered, and I think it's been answered, but put the question again. I'm sorry, but put it again.*

Ms. Mason: So when you were notified that there was an issue with the appointment, and this is right at the beginning, and you said...

Chief Justice Temo: *There's an issue with what?*

Justice Ashton-Lewis: *When Graham Leung told you to hold off.*

Ms. Mason: To hold off on the appointment of Ms. Malimali because there was an issue, and you did hold off, at that point, should he have provided you with a full briefing on what the issues

¹⁷⁸ Transcript, Day 15, Session 1 – Chief Justice Temo at 11.

were, where the investigation was up to, and some options for you to proceed to make your decision on?

*Chief Justice Temo: It would have been helpful.*¹⁷⁹

220. Initially, the A-G acted professionally in seeking information from Ms. Puleiwai in relation to the FICAC Malimali Investigation and then advising the CJ that he should hold off the appointment because of that Investigation. However, it was absolutely inappropriate and potentially unlawful of the A-G to prefer the “views of five prominent citizens, against those of a well-known anti-government blogger Alexandra Forwood.”

221. In the first place, the legal authority to determine whether a complaint is serious or vexatious, or is likely to result in charges lies with FICAC, not the ECF Commissioners, and it is the Courts who are the final arbiters, should FICAC decide to lay charges, not the ECF Commissioners and not the A-G. Whether or not the ECF Commissioners are prominent or credible citizens is completely irrelevant.

222. Even when questioned on this issue, the A-G still did not seem to grasp this point:

Ms. Mason: And then going back to your affidavit, you've then put an excerpt into your affidavit, in particular the part of the letter that says that the basis of the search warrant was a vexatious complaint of no merit. Do you think that determining whether a complaint is of merit or not, a complaint to FICAC is something that the Electoral Commissioners should be doing?

Mr. Leung: Well, with respect, My Lord, I didn't consider that it was specifically part of my ministerial responsibility to be entering those discussions. If this correspondence was made available to the Minister of Justice, he would have been the line Minister and he would have taken it Forwood as he considered.¹⁸⁰

223. Secondly, the A-G's casting of the problem as a false dichotomy, that is, as one of choosing either the views of the ECF Commissioners, or the views of Ms. Forwood, is misplaced and erroneous. It was not Ms. Forwood who was investigating the complaint. It was FICAC. It was irrelevant that Ms. Forwood had filed the complaint. The key issues were instead constitutional. FICAC is independent under s 115(6) of the Constitution, and should have been left alone to complete the FICAC Malimali Investigation. The A-G, under s 115(9) could have and should have requested a formal briefing from FICAC on the FICAC Malimali Investigation. Section 115(9) states that:

¹⁷⁹ Ibid., 55-56.

¹⁸⁰ Transcript, Day 10, Session 1 – A-G Leung at 19.

The Commission shall provide regular updates and advice to the Attorney General on any matter relating to its functions and responsibilities.

- 224.** Mr. Leung claimed that he was concerned about being accused of interfering had he contacted Ms. Puleiwai. However, this is just nonsensical as Mr. Leung had already contacted Ms. Puleiwai once that day. In any event, FICAC is obliged to update the A-G “on any matter relating to its functions and responsibilities.” Surely, a briefing from Ms. Puleiwai in relation to where FICAC was up to in its investigations, and how long they needed to complete them, was a perfectly legitimate request for the A-G to have, in the circumstances, made.
- 225.** For the A-G to suggest that he was just a mere consultee, not an advisor to the JSC is just passing the buck. The reality is that the CJ relied upon the A-G’s advice in making decisions, as shown by the fact that the CJ put the appointment on hold when advised by the A-G to do so. The seriousness of the issue before the JSC, namely whether to appoint someone who was being investigated for abuse of office by FICAC, to the head position, appears to have been lost on Mr. Leung. His role and duties as A-G were treated with a level of casualness not befitting the position of A-G.

5.11: President’s Appointment

- 226.** On 4 September 2024, at about mid-morning, the President appointed Ms. Malimali as FICAC Commissioner, effective from 5 September 2024.¹⁸¹
- 227.** That morning of the 4th of September, the CR requested to meet with the former President, Ratu Katonivere. The purpose of the meeting was for the CR to deliver the JSC recommendation to appoint Ms. Malimali as the FICAC Commissioner.¹⁸² The President asked the CR whether the JSC had considered the letter from Ms. Puleiwai dated 30 August 2024 which had outlined the allegations against Ms. Malimali.¹⁸³
- 228.** The President’s evidence is that the CR responded by stating that they were aware of the allegations, but there was nothing to be worried about as the appointment of Ms. Malimali had been carried out with due diligence:

“I have received a letter from the Acting Deputy Commissioner of FICAC Ms. Puleiwai and I wanted to ask you if the allegations against Ms. Malimali were true and if the JSC had considered the letter received on the allegations.

Also, we have submitted the letter to the Solicitor General’s office for an opinion or an advice to me.”¹⁸⁴

¹⁸¹ Affidavit of Tomasi Bainivalu, Secretary to Judicial Services Commission dated 31 December 2024 at Annex TB6: Appointment letter of Ms. Malimali .

¹⁸² Affidavit of Ratu Wiliame Maivalili Katonivere dated 13 December 2024, at [9d].

¹⁸³ Ibid., [9h].

¹⁸⁴ Ibid.

229. His Excellency stated that CR Bainivalu responded as follows:

- a. that they are aware of the allegations, and it was nothing to be worried about as the appointment of Ms. Malimali was carried out with due diligence and she was the meritorious candidate;
- b. there was a number of applicants with around 6 or 7 short-listed and that due process was followed; and
- c. the JSC had consulted the Attorney General and that he concurred with the recommendation for appointment.¹⁸⁵

230. On 4 September 2024, the Hon PM, concerned about appointing a new FICAC Commissioner who was under FICAC investigation, had requested to meet with the President. The purpose of this meeting was to advise the President that there was an outstanding investigation into Ms. Malimali:

Ms. Mason: And then did you contact the President about this letter and about the investigation?

Mr. Rabuka: I did, ma'am, My Lord.

Ms. Mason: All right. So how did you do that?

Mr. Rabuka: I went up and asked for an appointment, went up to His Excellency the President and advised him that there was an outstanding investigation on Malimali. He told me that, oh, I've just approved the appointment.¹⁸⁶

231. The CoI is left in no doubt that there was a rush to get Ms. Malimali appointed into the position of FICAC Commissioner. Ms. Malimali herself had provided evidence when questioned that it was common knowledge that Ms. Puleiwai was trying to “stop” her appointment. She had said this information had come from the CR:

Ms. Mason: All right. Now I'd like to just move on to paragraph 66 of your affidavit. And in there, you're talking about the email that we just looked at. And you say that I was aware that she, and that's Ms. Puleiwai, disagreed with my appointment as Commissioner and that she was trying to stop my appointment. How were you aware of this? Who told you this?

Ms. Malimali: I mean, if you step back and look at it objectively, all of these letters and emails and everything were flying around at the same time. And the next thing, search warrant. Next thing, arrest and all of these. I'd heard from various sources that she had tried to stop my appointment. She'd gone to the Prime Minister, the President. I think she tried to see the Attorney General. I'm not sure. But I had heard that she was trying to stop it.

¹⁸⁵ Ibid., [9g].

¹⁸⁶ Transcript, Day 1, Session 1 – Hon. Rabuka at 16 – 17.

- Ms. Mason: So who had told you this?
- Ms. Malimali: I'd heard from several sources. As you know, Madam, Fiji is small. The coconut wireless goes very fast. So I knew from several sources, I think also the Chief Registrar may have told me, but I can't be sure.
- Ms. Mason: That's because he knew about the letter to the President. So he would have known.
- Ms. Malimali: Possibly. He may have been one of the several sources that told me about all of the things that were happening behind the scenes. And I think at the time the Prime Minister was away in Tonga for the forum meeting. And all of these discussions were also happening.
- Ms. Mason: And what did they tell you? What did the Chief Registrar say?
- Ms. Malimali: I can't remember the exact words. But my sources, including the Chief Registrar, it wasn't just him, there were other people around the place, they were saying, Puleiwai is trying to stop your appointment.
- Justice Ashton-Lewis:** *Did the Chief Registrar say that?*
- Ms. Malimali: He didn't say those words, no.
- Justice Ashton-Lewis:** *So what words did he use?*
- Ms. Malimali: I think he may have said words to the effect of, Ms. Puleiwai is complaining about you.
- Justice Ashton-Lewis:** *Complaining about you?*
- Ms. Malimali: But from my other friends and colleagues who told me, the words they used were, Puleiwai is trying to stop your appointment.
- Ms. Mason: So who were they?
- Justice Ashton-Lewis:** *Try to think carefully on this one. If they're friends, they must be known to you. So if you can stretch please, I need to know who were they?*
- Ms. Mason: Was it Mr. Kamikamica's wife?
- Ms. Malimali: Oh no. Definitely not Anne Steele.
- Justice Ashton-Lewis:** *Definitely not?*
- Ms. Malimali: Definitely not her.
- Justice Ashton-Lewis:** *Oh right.*
- Ms. Mason: Mr. Vosarogo?

- Ms. Malimali: No, I don't think it was Fili, no.
- Ms. Mason: Well the Chief Registrar would know about the President's letter. There might be some other people.
- Ms. Malimali: As your Lordship said, this place is leaking like a sieve.
- Justice Ashton-Lewis:** *Oh, it is.*
- Ms. Malimali: So I know how Government works. Things reach me before they reach the recipient. So I, Mr. Bainivalu, the Chief Registrar would have told me as a matter of course.
- Justice Ashton-Lewis:** *Yes.*
- Ms. Malimali: But before he told me, I had received, I think from other sources, than he told me, than other people told me. So I'd heard from people. I'm thinking it was Ms. Waqanika.
- Justice Ashton-Lewis:** *It might have been Ms. Waqanika.*
- Ms. Waqanika: My Lord!
- Justice Ashton-Lewis:** *Did you know?*
- Ms. Waqanika: No. In fact, I've only met Ms. Pulewai personally once when I went with a client.
- Justice Ashton-Lewis:** *Yes.*
- Ms. Waqanika: But I only came to know that she got the job and then she was arrested. In fact, I told Ms. Mason.
- Justice Ashton-Lewis:** *So you did not know that Ms. Pulewai was trying to stop?*
- Ms. Waqanika: No. I honestly did not know that behind the scenes. I have no idea.
- Ms. Malimali: Well, sorry.
- Justice Ashton-Lewis:** *It leaves then only one. It must be Mr. Dawai. He's looking very innocent sitting there. Well go on.*
- Ms. Mason: Yes. So can you think of who else? You can tell us who all your friends are.
- ...
- Ms. Mason: Yes, I think we can go. We'll just go to one. So is the Chief Registrar a friend of yours?
- Ms. Malimali: No.
- Ms. Mason: He's not?
- Ms. Malimali: No.

Ms. Mason: You don't have grog sessions?

Ms. Malimali: I don't think he drinks grog.

Ms. Mason: I don't know.

Justice Ashton-Lewis: *I don't think he does. He's a highly religious man.*

Ms. Malimali: He's a strict AOG, I think, and they don't.... You see, Madam, the Chief Registrar and I, like with a lot of these people, are hi and bye, is my relationship.

Ms. Mason: Okay.

Ms. Malimali: And then when I interviewed and got the position, we started to communicate more. But other than that, the last time I saw Mr. Chief Registrar was here. Maybe we're friends now, I don't know. But we were not friends at the time.

Ms. Mason: All right. Now, I don't know if you were here, but Ms. Puleiwai has said that that was definitely not her motivation. So that's why I've asked you all these questions. Where did that idea come from? Because it seems to have been a widely circulated idea. And what happened in the end was all of the explanations which Ms. Puleiwai had, no one wanted to know. Because someone had cultivated this idea that she was just this revengeful person out to get you. And that dominated the narrative. So it is quite important that you think about who told you this and where they got that story from.

Ms. Malimali: I'm sorry. I'm not being dishonest, nor am I trying to avoid. The person I remember saying, you know, there's a complaint by Ms. Puleiwai is the Chief Registrar. The other people outside, I can't remember. And it would have been, I think, probably also on Facebook. Because a lot of discussions were going on on Facebook as people were for me, against me, for Ms. Puleiwai, against Ms. Puleiwai. So a lot of discussions were also happening on Facebook.

Justice Ashton-Lewis: *Well, I think obviously it's a fair call that one of them was the CR. But you did say others had been telling you and you were asked, can you remember? And you've said no, you can't.*

Ms. Malimali: I thought it was Ms. Waqanika, but she's saying no.¹⁸⁷

5.12: Prior Knowledge of Complaint and Investigation

- 232.** This section will examine the veracity of the claims from many of the witnesses that they did not know anything about the FICAC Malimali Investigation, or the Malimali complaint.

¹⁸⁷ Transcript, Day 23, Session 2 – Ms. Malimali at 76-81.

5.12.1 Did S-G Green Know?

- 233.** The S-G had claimed that neither he, nor the JSC knew anything of the FICAC Malimali Investigation until after the appointment:

However, I was not aware that prior to Ms. Malimali's appointment and arrest, she was being investigated by FICAC for the allegations mentioned in the preceding paragraph.¹⁸⁸

- 234.** On 30 August 2024 by way of email Ms. Forwood wrote to CR Bainivalu, Hon Turaga, and S-G Green about the FICAC complaint which she had lodged against Ms. Malimali. The email also referred to complaints against CR Bainivalu, Hon Turaga, and S-G Green which had also been filed by Ms. Forwood:

Bula Tomiasi, Ropate, Siromi

Written without prejudice

I hope you are well and safe. It has been brought to my attention that Barabra Malimali will be appointed as the new Ficac Commissioner as she has advised her associates and relatives that she is due to be appointed and is awaiting the Presidential letter for signing.

Now, as you are aware Ms. Malimali is under Ficac investigation for abuse of office and a subsequent complaint was lodged at COC for misbehavior for releasing personal information to a third party. This was lodged in July 2024.

Ms. Pulewai also applied for the position twice and you did not even call her in for an interview from what I dug up due to your Nepotism.

Are you appointing Ms. Malimali to block the complaints lodged against you 3 so that it is not investigated?

Ms. Malimali has also written unlawful written directives to FOE demanding an explanation as to why Ms. Tabuya complain was referred to FICAC [sic]. In addition to that she has issued unlawful written directives to FOE stating that all complaints lodged must be given to her and not to FICAC. This is an blatant abuse of office when she has no powers to do so. The written directives is not even published as per Section 5 of the Electoral Act 2014 as required by LAW.

If you guys have nothing to hid, let the investigation carry on instead of the blocking it otherwise the public will know as they are not stupid.

With regards,

Alexandra Forwood.¹⁸⁹

- 235.** In his evidence, S-G Green confirmed that he had, at least briefly, read the 30 August 2024 email from Ms. Forwood. According to the S-G the standard procedure in his office was that an email invoking a FICAC investigation would

¹⁸⁸ Affidavit of Ropate Green dated 23 December 2024 at [19].

¹⁸⁹ Ibid., [14], Annex 5: Email from Ms. Forwood relating to the complaint filed against Ms. Malimali.

need to come by way of official correspondence from FICAC to garner a response from his office:

Justice Ashton-Lewis: *So on the 30th of August, some five days before Ms. Malimali was appointed, yourself, Tomasi the CR, and the Minister for Justice were at least advised that Ms. Malimali was under investigation. So did you read this email?*

Mr. Green: I mean, I may have read it. I cannot confirm whether I...

Justice Ashton-Lewis: *No, that's fine.*

Mr. Green: It was just a brief perusal as I've stated. For us at the office, it's our procedure that if someone was to invoke the, for us to respond, it needs to come by way of an official correspondence. If FICAC have investigated Ms. Malimali, then we would have expected FICAC to write to us.¹⁹⁰

236. Mr. Green gave evidence that he had seen the email, but had not considered it thoroughly as he was of the view that Ms. Forwood had a reputation for constantly harassing government officials. He did, however, give evidence that on a couple of occasions he had started to respond to her email but then stopped:

Justice Ashton-Lewis: *Well, maybe before you ask that, S-G Green, I think you're following what we're going along with, and I'd be grateful to, please come up, yes. I would be grateful to hear from you. Did you receive this email from Alexandra Forwood? Would you help Mr. Green please, Ms. Mason, show him what you're talking about.*

Mr. Green: My email address is on this email and I presume that I received this email. I'm not denying that I did not.

Justice Ashton-Lewis: *No, that's alright, that will weigh more when you go into evidence. So you have seen it, I thank you for that. Do you remember reading it?*

Mr. Green: I may have read it My Lord, but I can't remember going deep into it. What I consider is with the greatest of respect to Ms. Forwood. She has constantly harassed government officials.

Justice Ashton-Lewis: *But you've heard what I've said, and did you block her?*

Mr. Green: Yes.

Justice Ashton-Lewis: *No, that's fine.*

Mr. Green: A couple of times I think I've started responded to her email then I stopped.

Justice Ashton-Lewis: *Yes, no.*

¹⁹⁰ Transcript, Day 28, Session 1 – S-G Green at 34.

Mr. Green: But I read it and I just pile it away.¹⁹¹

237. Mr. Green stated that as they were just allegations, and that unsubstantiated allegations are common, it was prudent not to dwell on them as that would effectively bring any hiring decision to a standstill:

Justice Ashton-Lewis: Is she blocked now on your side?

Mr. Green: No, I have not blocked it.

Justice Ashton-Lewis: I think that's wise.

Mr. Green: I still have her, but I rarely read her. Most of what she said, My Lord, re unsubstantiated allegations.

Justice Ashton-Lewis: You what?

Mr. Green: Are allegations. I just just allegations. I mean, I have so many allegations against her. Ms. Mason has so many allegations against her. And so do you, My Lord, so all of us. It would be prudent not to dwell on these allegations, but to focus on our work. If we are to focus on these allegations, then we will not be able to make appointments.¹⁹²

238. S-G Green gave evidence that during the interview he asked Ms. Malimali whether she had any pending cases at either FICAC or the LPU, to which she replied in the negative:

In response to paragraphs 25 and 26 of Ms. Puleiwai's affidavit, I reiterate that during her interview for the FICAC Commissioner position, Ms. Malimali confirmed she had no pending cases with FICAC or the LPU. If she became aware of such matters later, it was her responsibility to disclose them to the JSC. However, as Ms. Puleiwai admits in paragraph 28 of her affidavit, Ms. Malimali was not informed of any FICAC Investigation against her.¹⁹³

239. Mr. Green then gave evidence that he had asked Mr. Saumi from FICAC whether there was an investigation and had been told by him that Ms. Malimali was being investigated, but that they could not release any further information to him. According to Mr. Green, this occurred during the FICAC search warrant request when they came to his office requesting information:

Justice Ashton-Lewis: There would also be an incumbent requirement on the CR, yourself, and the Minister for Justice, no matter whether you thought Ms. Forwood was a crackpot, given the serious allegations that she's making here, to not sit back and wait for FICAC to come or wait 24 hours or 48 and think, well, look, we will go to FICAC because, let me ask you the simple question. If you had known that Ms. Malimali was under investigation, would you have supported her being appointed the Commissioner of

¹⁹¹ Ibid., 31-32.

¹⁹² Transcript, Day 16, Session 1 – S-G Green at 33.

¹⁹³ Affidavit of Ropate Green, Solicitor-General in reply to Ms. Puleiwai, sworn 23 January 2025 at [13].

FICAC on the 4th, some five days later? Or would you have said, no, we've got to hold off on this appointment. We've got to find out the validity of the allegations. We should therefore, FICAC haven't written to us, we'll go to FICAC. So what would you have done?

Mr. Green: My Lord, um...

Justice Ashton-Lewis: *You personally, I'm asking. In your capacity as Solicitor General.*

Mr. Green: I did ask FICAC.

Justice Ashton-Lewis: *You did?*

Mr. Green: I did ask FICAC, who was being investigated?

Justice Ashton-Lewis: *Yes?*

Mr. Green: And I did ask Mr. Saumi, who was being investigated? And they said they cannot release any information to me.

Justice Ashton-Lewis: *I understand. I've heard this. But did you contact them on official Solicitor General letterhead or COC? Or did you just make a phone call?*

Mr. Green: No, it was they...

Ms. Mason: That was during the search warrant.

Mr. Green: It was during the search warrant. They came to my office and they needed our documents. And during the conversation, then I asked, who is being investigated?

Justice Ashton-Lewis: *So they said, no, we can't tell you.*

Mr. Green: No, no. They said it was Ms. Malimali. Then my next question is, whatever can you tell me? What is the details, the particulars? So that I can identify the documents. You can't ask for the minutes of our meeting dating back to 2014 and expect us to submit everything.

Justice Ashton-Lewis: *Yes.*

Mr. Green: It's unreasonable. You must give me the details. At that particular point in time, they said, I cannot give you any details. I cannot confirm what you're trying to...¹⁹⁴

240. However, on 2 August 2024 at 4:27 pm the FICAC Manager of Investigations, Mr. Saumi, in the course of trying to get a search warrant executed, had sent a

¹⁹⁴ Transcript, Day 28, Session 1 – S-G Green at 34-35.

text message to Mr. Green informing him that the investigation was against Ms. Malimali.¹⁹⁵

241. Mr. Green acknowledged under questioning that he was aware that Mr. Saumi had responded that it was Ms. Malimali who was under investigation. For context it is best to quote the texts in full:

[Mr. Green] Who is been investigated? What is the nature of the complain?

[Mr. Saumi] Sir there is ongoing investigation against Chairman of Electoral Commission – Ms. Malimali on allegation of Abuse of Office.¹⁹⁶

242. Consequently, despite Mr. Green saying that FICAC did not give him the information, he was clearly told in the above text that Ms. Malimali was being investigated for an abuse of office allegation. Under questioning, Mr. Green gave evidence that these texts were not “official correspondence” and therefore prior to the appointment, he was still unaware of the FICAC Malimali Investigation. Mr. Green insisted that unless there was a letter on the official FICAC letterhead, it did not count as “official communication” and therefore did not require further action.¹⁹⁷

243. He continued to insist under questioning that despite asking who the investigation was about he did not know that it was Ms. Malimali that was being investigated, and that Mr. Saumi had replied that he was unable to provide those details:

Ms. Mason: So, let's just go through this text as it happens. He says, Sir, there is ongoing investigation against Chairman of Electoral Commission Ms. Malimali on allegations of abuse of office. So, this was sent on the same day, 2nd of September. So, you got information on the 2nd of September that there was a FICAC investigation against Ms. Malimali for allegations of abuse of office. Do you accept that?

Mr. Green: Yes. Right. It's there on the...

Ms. Mason: Yes, it is there. And then he sent his thing through the search warrant through your email. And then you say, where do you need COC documents?

Justice Ashton-Lewis: *Now, you see, that's not for you to ask.*

Ms. Mason: No.

Justice Ashton-Lewis: *He could say to you, that's none of your business. We have a search warrant. We want to execute it. Now, I know that you were asking it not improperly, but he could be rude and*

¹⁹⁵ Affidavit of Kuliniyasi Saumi, Manager Investigations, dated 3 January 2024 at [24], KVS-10: Text message exchange between Mr. Saumi and S-G Green.

¹⁹⁶ Transcript, Day 29, Session 1 – S-G Green at 19.

¹⁹⁷ Ibid., 20.

say, it's none of your business, Solicitor General. Or he could be what you would expect to do, to say, we want it for A, B and C. But he was doing nothing wrong. I'll let Ms. Mason go on. You're a skilled enough lawyer to know this, that there was no requirement to answer that question.

Ms. Mason: No. And I just want to go back to something we were discussing yesterday. And you said you had not received official notification that Ms. Malimali was under FICAC investigation. Right? Because it was from Ms. Forwood and she was a member of the public, not official. But this here is official notification, isn't it?

Mr. Green: It's a text message.

Ms. Mason: Yes, from FICAC.

Mr. Green: As I stated yesterday.

Justice Ashton-Lewis: *Yes.*

Mr. Green: Official documents would be written letter under the FICAC letterhead.¹⁹⁸

Ms. Mason: But you know this was a FICAC the Manager of Investigations, not a junior person who you said you knew and you've got a search warrant. You ask, what's the issue? He tells you clearly ongoing investigations and not just at complaint level, against, clearly who it's against, the Chairman of Electoral Commission Ms. Malimali. And it also tells you what it's for, allegations of abuse of office. Now I don't know how much clearer that can get.

...

Mr. Green: We had this exchange me and Mr. Saumi.

Justice Ashton-Lewis: *Yes.*

Mr. Green: We had this exchange. I'm not denying the existence these.

Justice Ashton-Lewis: *No, no.*

Mr. Green: Text messages. For me to act upon this we always require this is what we always require from all our entities is that they write officially to us. I'm not the office of the Solicitor General is not the investigating authority here. To inform JSC I think FICAC should have informed JSC because they in FICAC also knew.¹⁹⁹

¹⁹⁸ Ibid., 19-20.

¹⁹⁹ Ibid., 20-22.

244. It is clear from this exchange that Mr. Green did indeed know by the afternoon of 2 September 2024 that there was an active investigation against Ms. Malimali for abuse of office.
245. Mr. Green had been integral to the process of recommending Ms. Malimali. He was well aware, and accepted under questioning, that knowledge of a FICAC Investigation should have resulted in an immediate halt to the Appointment Process. Mr. Green was, at best, negligent in his duty to escalate the matter to the JSC as soon as he had been informed by Mr. Saumi, on 2 September 2024 of the FICAC Malimali Investigation, and at worst, part of a conspiracy to get Ms. Malimali in so she could close cases pertaining to her friends and allies.
246. At a minimum, Mr. Green should have been aware that Ms. Malimali had lied to him during the interview. S-G Green has acknowledged that had Ms. Malimali disclosed the FICAC investigation to the JSC then the recommendation to have her appointed as FICAC Commissioner would need to be reconsidered:

Ms. Mason: And do you also think that, in terms of the optics, that Ms. Malimali just should not have been appointed to that position? That's the key. Enough people knew that she was under investigation, and those people should have said, look, this is just going to be really bad, we need to stop until this matter has been sorted, because regardless of if it goes to the Police or whoever, if she did end up being charged, it would have been a bad look for FICAC, and the JSC.

Mr. Green: I think if JSC have been officially informed that there was an...

Justice Ashton-Lewis: *They had been.*

Mr. Green: Officially informed?

Justice Ashton-Lewis: *They'd be... Well, what's officially informed? Someone's signed...*

Ms. Mason: By a letter...

Mr. Green: By a FICAC writing...

Ms. Mason: Yes, and by disclosure by Ms. Malimali, which she did not do?

Justice Ashton-Lewis: *I was going to come to that.*

Mr. Green: So, if FICAC have disclosed it, or Ms. Malimali have disclosed it to JSC, then I think the appropriate action would be to reconsider.²⁰⁰

²⁰⁰ Ibid., 47.

247. The evidence is clear. Mr. S-G Ropate Green did, on the 30th of August, know that Ms. Malimali was under investigation by FICAC for abuse of office because he received an email from Ms. Forwood saying this. Ms. Forwood also advised the S-G that she had filed a FICAC complaint against him, and so he was also aware of his own complaint.
248. Then again on the afternoon of the 3rd of September, there is clear evidence that again the S-G knew Ms. Malimali was being investigated by FICAC for abuse of office, because he was sent a text by the FICAC Manager of Investigations, clearly stating this. The excuse that this text was not “official correspondence” is unacceptable and should not even have been advanced. The answer to the question of whether the S-G had knowledge of the FICAC Malimali Investigation, prior to Ms. Malimali’s appointment is a resounding “yes.”

5.12.2 Did CR Bainivalu Know?

249. CR Bainivalu claims not to have known about the FICAC Malimali Investigation. He was sent the same email dated 30 August 2024 from Ms. Forwood to himself and Hon. Turaga and the S-G. That email is set out above at paragraph 234.
250. CR Bainivalu gave evidence that he had blocked Ms. Forwood from emailing him some time in 2022, and accordingly had not seen the 30 August email which discussed the FICAC Malimali investigation:

Ms. Mason: Mr. Chief Registrar, when did you block her address? Can you recall?

CR Bainivalu: I think at my early stage sitting on this seat as the Chief Registrar. I did that with so much respect to everyone. This is my personal view on it. I just don't want, because I had so much on my table as I was sharing with you, Ms. Mason, before we proceed this morning. So I just don't want to disturb, because it's an independence of our Institution. And me, judiciary is my baby. I started as a court officer, you know that, My Lord. And 35 years on this Judicial Department, I just feel this is an opportunity for me as a Chief Registrar of Fiji. It was my dream for the last 30 plus years. So that's how I see it. I just don't want to be disturbed by other things, but to focus on what I do every day. I don't know, I'm not only a JSC Secretary. I'm a CR and look after 1,000 plus staff with 30 plus Magistrates and 20 plus Judges. I look after Legal Aid Assets Commission. I look after Legal Practitioners Unit where more than 1,000 lawyers around Fiji. There's so much on my table. I love my job, but such things, I just block myself from it. I don't go social media. I don't have a Facebook either, or Instagram for that matter. So maybe other, I'm ready to take whatever questions they put to me from Alexander Forwood, but I did not receive this.

...

...

Ms. Mason: So 2022 sometime.

CR Bainivalu: Yes, that's correct.²⁰¹

251. However, under s 25(1) of the Constitution every person has a right to information held by a public office, which accordingly places an obligation on public officers to make available information when it is requested, except to the extent it is legitimately limited. There is also an ancillary obligation to accept questions and complaints from members of the public.

252. Further, alternative arrangements to monitor the email address had not been made. Accordingly, the obligation for Mr. Bainivalu to make information available was not met:

Ms. Mason: You'll see that Section 25(1) says that every person has the right of access to information held by any public office and information held by another person and required for the exercise or protection of any legal right. Now, this Section would allow any person, because it says every person, to write to you and to request information and that will place an obligation on all state institutions to receive these emails and process them, wouldn't you think?

CR Bainivalu: There's so many answers I would say this way to that question.

Justice Ashton-Lewis: *Would you speak up, please?*

CR Bainivalu: Yes. I think there will be different answers to that question, Madam. But I protect the Independence of the Judiciary as its Secretary. I realize now that I'm the door. If they want to come to any Judge, any Magistrate, it has to come through the Chief Registrar's office.

Justice Ashton-Lewis: *Through the?*

CR Bainivalu: The Chief Registrar's office.

Justice Ashton-Lewis: *Yes, of course.*

CR Bainivalu: It will come straight to Judicial Officers.

Justice Ashton-Lewis: *Yes.*

CR Bainivalu: So, as, we speak. Even you did mention something, My Lord, this morning. I've taken that on board and we will learn from it.

Justice Ashton-Lewis: *Yes.*

CR Bainivalu: But, like I said, that's how I see it. Maybe this is access to information to anybody, but to protect the independence of the Institutions, I have someone to answer to. So, I just left

²⁰¹ Transcript, Day 16, Session 1 – Mr. Bainivalu at 28-29.

it at that. Like I said, it's my first two years. I'm learning as I go along. And you said something this morning which I will take that on board.

Justice Ashton-Lewis: *Well, I commend you because not many people in high positions like yourself have the courage to admit something like that. So, I commend you. But, as you can see, Section 25, and this is not an Act of Parliament, this is the Constitution.*

CR Bainivalu: It is.

Justice Ashton-Lewis: *And that imposes, sadly, even more work on you and your office if someone uses this to ask a question.*

Ms. Mason: So, just going back to that email and this email address, do you all use the CR's office at Gmail address for all of the LPU work, for all of the JSC work, and for all of your Chief Registrar's work?

CR Bainivalu: We have a general LPU, it's Legal Practitioners Fiji Unit, but most of the emails that come before me is through that Gmail account, Madam.

Ms. Mason: Do you think it would be useful to separate that out and have separate email addresses, one for, I mean, still your role as the LPU personhead, one for the JSC, so those matters are separated out, and then one for the CR's office? Do you think that would be a good idea?

CR Bainivalu: It is a good idea.²⁰²

253. The decision, as CR, to block emails from a member of the public, is far from responsible. In any event, there is other evidence that demonstrates that the CR knew of the FICAC Malimali Investigation.
254. According to Ms. Malimali, the Chief Register, CR Bainivalu, and other unnamed "sources" had informed her that Ms. Puleiwai was trying to prevent her appointment as FICAC Commissioner.²⁰³
255. On 30 August 2024, Ms. Puleiwai wrote to the President and the PM informing them of the FICAC Malimali Investigation. According to Ms. Puleiwai, both hard copies and soft copies were sent to the President's office and the PM's office, receipt of which was acknowledged by both offices. CR Bainivalu was not sent a copy of this letter by Ms. Puleiwai.²⁰⁴ That letter states:

Your Excellency

²⁰² Ibid., 30-31.

²⁰³ Transcript, Day 23, Session 2 – Ms. Malimali at 77-81.

²⁰⁴ Affidavit of Francis Leba Puleiwai, dated 10 December 2024 at [43], FP3: Letter to PM and the President informing them of the FICAC Malimali Investigation.

FICAC ONGOING INVESTIGATION AGAINST MS BARBARA MALIMALI, CHAIRPERSON OF THE ELECTORAL COMMISSION

1. Greetings from the Fiji Independent Commission Against Corruption ('FICAC').
2. In line with the FICAC Act 2007 and 2013 Fijian Constitution on the appointment of FICAC Commissioner and reporting line of FICAC, this letter serves to notify your high office of an ongoing investigation against Ms. Barabara Malimali, the Chairperson of the Electoral Commission.
3. The Commission received a complaint on 8 April 2024 against Ms. Barbara Malimali for abuse of office in her capacity as the Chairperson for the Electoral Commission. In accordance with the FICAC Mandate, a legal opinion was sought to determine the gist of the complaint and if it is within the jurisdiction of FICAC to pursue further. The legal opinion noted criminal elements that may have been implicated by Ms. Barbara Malimali as the Chairperson of the Electoral Commission thus a preliminary inquiry has been investigate against Ms. Barbara Malimali and investigation is still ongoing.
4. For the information of your high office, FICAC investigations against high profile Honourable Ministers are on the verge of completion with likely formalizing of charging soon. To this effect, I respectfully seek advice on Ms. Barbara Malimali if she is appointed to the position of Commissioner considering the ongoing investigations and the probable decisions thereafter which may hinder the progress of these cases.
5. Furthermore, I wish to bring to the attention of your high office, grievances concerning the way the recruitment and selection is done for the mentioned appointment. From the onset of the appointment if considered, there is a misconception and prejudice on the part of the panel.
 - a. there was no interview carried out when the vacancy for Commissioner was initially advertised. Questions stem n the need to re-advertise when there were applications received and why there was no interview conducted;
 - b. the interviews were only carried out after the vacancy was re-advertised. The question of interest arises whether the intended applicant/appointee submitted expression of interest when the vacancy was initially advertised or the re-advertisement was called specifically for that purpose;
 - c. selection criteria and threshold when an applicant meets the requirements stated in the vacancy advertisement without being called for interview and was notified unsuccessful;
 - d. consideration for background check on appointee which may affect the decision making and hinder the work of FICAC in fulfilling its mandate.
6. The FICAC is very grateful for the financial support and assistance to carry out its mandate independently in its quest to assist Government and the people of Fiji to champion good governance fostering public trust and support.
7. The Commission under my leadership will continue to uphold integrity and independence in carrying out the functions and duties stipulated in the

FICAC Act 2007 and we look forward to the continuous support and guidance of your good office on the same.

Thank you.

Yours faithfully,
Francis Puleiwai (Ms.)
Acting Deputy Commissioner²⁰⁵

256. His Excellency, Ratu Katonivere gave evidence in his Affidavit dated 13 December 2024, that he was unaware of the FICAC Malimali Investigation until receiving the letter from Ms. Puleiwai informing him of the ongoing investigation on 30 August 2024.²⁰⁶

257. His Excellency states that, in the presence of the Official Secretary, Ms. Kiti Temo, that he asked CR Bainivalu the following in relation to the letter by Ms. Puleiwai, dated 30 August 2024:

“I have received a letter from the Acting Deputy Commissioner of FICAC Ms. Puleiwai and I wanted to ask you if the allegations against Ms. Malimali were true and if the JSC had considered the letter received on the allegations.

Also, we have submitted the letter to the Solicitor General’s office for an opinion or an advice to me.”²⁰⁷

258. His Excellency stated that CR Bainivalu responded as follows:

- a. that they are aware of the allegations, and it was nothing to be worried about as the appointment of Ms. Malimali was carried out with due diligence and she was the meritorious candidate;
- b. there was a number of applicants with around 6 or 7 short-listed and that due process was followed; and
- c. the JSC had consulted the Attorney General and that he concurred with the recommendation for appointment.²⁰⁸

259. When questioned about the above, CR Bainivalu gave viva voce evidence as follows:

Ms. Mason:	So, it says that He, His Excellency, awaited the arrival of the CR. He met the OS Official Secretary first, who received the recommendation documents with attachments on my behalf, and she advised the CR that I was waiting for him and needed to clear a few things with him first. Over the page, His Excellency says, upon their arrival in the morning room at the State House, I had a glance at the appointment and then asked the CR a question in the presence of the Official Secretary, making reference to the 30 August letter by Ms. Puleiwai, as follows. “I have received a letter from the Acting Deputy Commissioner of FICAC, Ms. Puleiwai, and I wanted to ask you if the allegations against Ms. Malimali
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²⁰⁵ Ibid.

²⁰⁶ Affidavit of Ratu Wiliame Maivalili Katonivere, dated 13 December 2024 at [9(b)].

²⁰⁷ Ibid., [9(h)].

²⁰⁸ Ibid., [9(g)].

were true and if the JSC had considered the letter received on the allegations. Also, we have submitted the letter to the Solicitor General's office for an opinion or advice to me". The CR replied as follows, "that they are aware of the allegations and it was nothing to be worried about, as the appointment of Ms. Malimali was carried out with due diligence and she was the meritorious candidate. There were a number of applications with around six or seven short-listed and that due process was followed, and the JSC had consulted the Attorney General and that he concurred with recommendation for appointment". Do you recall saying those things?

CR Bainivalu: I disagree with the former President, His Excellency, with respect that he said I mentioned nothing to be worried about. But I will agree with the sentiment of the words that said Ms. Malimali's Appointment Process, due diligence has been carried out, she is the meritorious candidate. Going back to the letter dated 30th August, whether His Excellency, the former President, showed me the letter during that day, I cannot recall, but I don't remember him showing me any letter. He must have said what he said, but I disagree with that, that I said nothing to be worried about.²⁰⁹

260. CR Bainivalu gave viva voce evidence that he was unaware of the 30 August letter sent by Ms. Puleiwai to the President:

Ms. Mason: So, this is an excerpt from something you had said. And if you go to the third paragraph, towards the end, you say to Ms. Puleiwai, I presume, when you send the letter direct to the President from you, why didn't you go through the JSC? Why does it just go direct to the President? See those types of questions? I'm just saying this as Secretary because it comes through my desk. So had you seen the letter to the President? This looks like you had. Can you recall that?

CR Bainivalu: No, I can't recall coming through the JSC.

Ms. Mason: Yes, the letter to the President. So what did you mean when you said those things?

CR Bainivalu: Like I said, the whole transcript, there was a missing part. We may have discussed from the beginning that Ms. Puleiwai must have informed His Excellency and I may have said through this, it didn't come through us.

Ms. Mason: Yes, and the Chief Justice was quite upset that the letter had gone to the President and not to the JSC. So my question is, can you remember when you found out about that letter? Was it before the appointment of after?

CR Bainivalu: I would assume it was during...I was not shown the letter during this meeting.

²⁰⁹ Transcript, Day 18, Session 2 – Mr. Bainivalu at 12-13.

Ms. Mason: You'd known about it before?

CR Bainivalu: It may have been discussed there that the President has been made informed of this. That's why I may have said this that it did not come through the JSC. I was just there, there's no very specific order in the way to address the situation on the ground. I was just told to go and see what has transpired.²¹⁰

261. Mr. Bainivalu's responses above make no sense. In the transcript of the meeting which followed Ms. Malimali's arrest, he had referred to Puleiwai's letter to the President as "it comes through my desk."²¹¹ He later denied that he had seen that letter. His denial lacks credibility.

262. A further reason to not believe Mr. Bainivalu when he says he did not know about the FICAC Malimali Investigation is the existence of an email sent at 4:49 pm on 3 September 2024 from Ms. Malimali complaining about a FICAC search warrant executed at the offices of the ECF. Mr. Bainivalu was copied into that email. In the email Ms. Malimali made a formal complaint against the actions of FICAC to the JSC.²¹² That email is replicated below in full:

Dear A/Commissioner FICAC,

It is with consternation that I write to because the Office of the Electoral Commission was served with a search warrant for a whole host of documents. The target of your search is obviously, me.

This allegation arose out of a letter dated 02/04/24 that I wrote as the Chairperson of the Electoral Commission to Mr. Lomavatu as the Secretary of the Constitutional Offices Commission. The letter was a follow up of my previous letters in relation to our request to be consulted when making the appointment of the Supervisor of Elections.

That letter was "leaked" within an hour of being delivered to Mr. Lomavatu's office.

An individual by the name of Ms. Alexandra Forewood proceeded to write to me and to hound me on social media about interfering with the process and that I had asked that Ms. Mataciwa be removed from office. She also threatened to write to FICAC to lodge a complaint about me. I did not respond to her emails nor to her social media posts. Ms. Forewood does not reside in Fiji nor is she a registered voter, as far as I am aware.

On Thursday, 09/04/24, Vijay Narayan of Fiji Village reported that "FICAC confirms that it has received a letter of complaint by a Alexandra Forewood against the Chair of the Electoral Commission, Barbara Malimali, yesterday."

Based on that news item, FICAC would have received the complaint from Ms. Alexandra Forewood on 08/04/24. Although FICAC informed the media that they had received a complaint against me, nobody from FICAC contacted me to seek an interview or to ask for my written response or to seek clarification. If you had,

²¹⁰ Ibid., 10-11.

²¹¹ Affidavit of Kuliniasi Saumi, dated 3 January 2025, at Annexure 14 – Transcript of the Arrest meeting.

²¹² Transcript, Day 16, Session 2 – Mr. Bainivalu at 2.

I would have shared with you the letter that I sent to the COC and it would have shown that the allegation against me was false. I would have also explained to you that as the Chairperson of the Electoral Commission of Fiji, the people that I wrote to in relation to the position of Supervisor of Elections are the members of the COC, which obviously includes Mr. Lomavatu.

I would have also asked FICAC to investigate how a non-resident of Fiji was able to access a confidential letter from the ECF to the COC.

Instead of speaking with me, FICAC chose to speak with the media.

I have checked through my electoral commission email and I have not seen nor received any email from you, Ms. Francis Puleiwai, the Deputy Commissioner of FICAC.

If FICAC had indeed analysed the complaint, they would have seen that there was nothing to it. There was no criminality involved. Using a common sense approach we could also ask the question: if Ms. Alexandra Forewood who is not a resident of Fiji can write to the Prime Minister, to the Constitutional Offices Commission, to the Electoral Commission and to FICAC to ask them to investigate people or to remove people, then why can't I as the Chairperson of the Electoral Commission write to the Constitutional Offices Commission to request consultation before the appointment of the Supervisor of Elections? I am a Constitutional Appointee and am well within my rights to make enquiries of the COC in relation to my subordinate.

If FICAC has been sitting with a complaint against me since 08/04/24, why have you waited until today, the 3rd of September 2024 to raid the offices of the Electoral Commission?

I am aware that you disagree with my appointment as Commissioner FICAC and that you wrote directly to the President to complain.

- 1 – Are you now doing this raid because of improper motives?
- 2 – Are you not abusing your authority by acting on a complaint from a non-resident against me?
- 3 – Are you not abusing your authority by conducting this raid, after you found out that my application for the position of Commissioner FICAC was successful?
- 4 – A look at the items listed in your search warrant shows that this is about more than Ms. Forewood's complaint about my letter to the COC. This is a fishing expedition to try and find something that will stick. You are now looking for any sort of information that, in your mind, may be indicative of abuse of office.
- 5 – Did you investigate how a letter from the ECF to the COC was leaked to a non-resident? In fact, you should have investigated how the letter that went from one Commission to another was leaked? It took less than an hour for the letter to go out – did you make any enquiries about that?
- 6 – Why are you denying me natural justice? You are putting the cart before the horse and denying me my rights under the Constitution. Due to the fact that I respect due process, I did not walk into the ECF Office with my lawyers to challenge your officers and to ask for the motive behind this raid.

Your motives are improper, and you have brought the office of the Acting Commissioner of FICAC into disrepute.

By a copy of this email, I am formally lodging a complaint of abuse of office against you to the Judicial Services Commission.

You have also brought the JSC into disrepute by disregarding their role as the appointing authority (via the President) and writing directly to HE the President. That is insubordination on your part.

I am copying my fellow Commissioners and the SOE on this email so that all are aware of what can only be termed as “stasi like” behaviour.

I ask that you desist immediately and ask you officers to leave our offices.

Yours sincerely,
Barbara Malimali²¹³

263. Mr. Bainivalu was questioned about this email, which included reference to Ms. Puleiwai’s 30 August 2024 letter to the President, and, would have been grounds to put the appointment of Ms. Malimali on hold:

Justice Ashton-Lewis: *The damage that was done. Where's Ms. Puleiwai now? She's sitting in New Zealand... But I want, you know, the evidence that's coming out, and I did ask Ms. Mason, she had a stop order on her, but she was wise because she left a day before, or the next day. So she was out of the country when the stop order was put on her. So they couldn't stop anyone. Now a stop order lasts for 30 days. Just only a week ago, when I asked, is that stop order still there? Yes. So Ms. Malimali left the courtroom and went immediately, and she came back after a short time and said, I've now contacted the appropriate authorities and Ms. Puleiwai is free to re-enter Fiji. So those are the type of things that cause me concern.*

Ms. Mason: That's not true. It's just slightly. All right, so CR Bainivalu, I'd like to now move, I actually have one final question on that whole process. So, and this is given the correspondence that has gone to you. So you've received this correspondence from Ms. Puleiwai, and, so, to Ms. Puleiwai, from Ms. Malimali, making really very clear that there's an active investigation. There is this issue of the letter to the President, which you have said you don't know. But looking at it now, with the correspondence that you had been made aware of, do you think that you should then have advised the Chief Justice to put the appointment on hold?

CR Bainivalu: Looking at it now, some of the contents are really serious. I would have.²¹⁴

264. According to CR Bainivalu, he did not read this email properly until it was presented to him during the CoI hearings. He said he may have seen this email

²¹³ Affidavit of Barbara Malimali dated 27 November 2024 at BM 4: Email from Ms. Malimali filing a complaint against the execution of the search warrant.

²¹⁴ Transcript, Day 16, Session 2 – Mr. Bainivalu at 20-21.

prior, but, according to him, as it was a complaint against a Legal Officer, he would have left it to the LPU to deal with:

Ms. Mason: Right. And then, if you go over the page, in the second paragraph, it says, If FICAC has been sitting with a complaint against me since 8.04.24, why have you waited until today, the 3rd of September, to raid the offices of the Electoral Commission?

CR Bainivalu: Yes.

Ms. Mason: So that is quite clear, that they've got a search warrant, and Ms. Malimali is under investigation. Would you agree?

CR Bainivalu: Yes.

Ms. Mason: And then if you go down, keep going down, to the fourth paragraph on that page 390, Sir, it says, by a copy of this email, I am formally lodging a complaint of abuse of office against you to the JSC. Do you see that?

CR Bainivalu: Yes, ma'am. Yes, Sir.

Ms. Mason: So, would you agree this is an indication, clearly, that Ms. Malimali is under active investigation by FICAC?

Justice Ashton-Lewis: *And what is the date of this one again?*

Ms. Mason: It's the 3rd of September.

Justice Ashton-Lewis: *Ah, yes.*

Ms. Mason: At 4.49pm.

Justice Ashton-Lewis: *At what time?*

Ms. Mason: At 4.49pm.

Justice Ashton-Lewis: *At what time was she appointed on the 4th? Can you recall?*

Ms. Mason: I think it was after lunch sometime.

Justice Ashton-Lewis: *And you said you received this and you read it at that time on the 3rd? Or was it just dismissed as an Alexandra Forwood nuisance email and therefore you didn't even get to see it?*

CR Bainivalu: That's right, Sir.

Justice Ashton-Lewis: *So you didn't see this on the 3rd?*

CR Bainivalu: Not on the 3rd, My Lord.

Justice Ashton-Lewis: *When did you see this?*

CR Bainivalu: Just now I'm reading it.

Justice Ashton-Lewis: *Pardon?*

CR Bainivalu: Just now I'm reading the contents of that.

Justice Ashton-Lewis: *So just now you've seen it?*

CR Bainivalu: I will see it, to understand what's the contents of it. Now I'm reading it. It may have come on my email but I have to be, as I'm on oath, I have to be sure. I was not really, because I saw it, maybe at that time I saw it, maybe it was the Constitutional Office.

Justice Ashton-Lewis: *Look, I'm going to ask a simple question.*

CR Bainivalu: Saw this issues but not JSC, that's why...

Justice Ashton-Lewis: *I'm going to ask that you saw this as from Ms. Forwood, didn't you?*

Ms. Mason: No, sir, it's not from Ms. Forwood, it's from Ms. Malimali.

Justice Ashton-Lewis: *This is from Ms. Malimali?*

Ms. Mason: Yes, it's not from Ms. Forwood.

Justice Ashton-Lewis: *I apologies, I've been completely wrong in my approach to it.*

Ms. Mason: So you just said before that you had received this, you saw it, but are you saying now you didn't really read it properly?

CR Bainivalu: I may have at that time, but I did not take really, because if it is a complaint against a Legal Officer, then they would know what to do to come through my LPU Unit. **But I have seen it and saw that it's something to do with the Constitutional Office's Commission's appointments, so I left it at that [emphasis added].**

Ms. Mason: Yes, and that paragraph I just read to you, it's actually a JSC email. So it says, by a copy of this email, I'm formally lodging a complaint of abuse of office against you, so that's against Ms. Puleiwai, to the JSC. Do you see that?

CR Bainivalu: Yes.

Ms. Mason: Now, did you do anything with that?

CR Bainivalu: No, the way I see it, Ma'am and Sir, this is not an allegation or complaint to be put before the JSC. If it's before the Legal Practitioners' Unit against a lawyer or Legal Practitioner, I would have...

Justice Ashton-Lewis: *But you're Secretary to the JSC.*

CR Bainivalu: Yes.

Justice Ashton-Lewis: *So you just walked away from this, it didn't...*

CR Bainivalu: Not really walked away like I said, I was not really... Maybe I overlooked it, I don't know, Sir, but the way I see it, it's just a complaint against... It's her concern, but I think maybe after that I received something from Ms. Malimali against Ms. Puleiwai as an LPU complaint. That I took on board.

Ms. Mason: Yes, so that was a different correspondence. Just sticking with this one, should you not have been worried because you knew on the 27th or 28th of August that Ms. Malimali was going to be appointed, that she'd been selected. And then you get this, and there's a search warrant by FICAC into some documents because there's an abuse of office allegation against Ms. Malimali. Should you not have seen this and thought, ooh, what's going on here, I need to take notice.

CR Bainivalu: It's an allegation, the way I see it. I don't know whether I should take that on board when it's an allegation.

Justice Ashton-Lewis: *Well, you should.*

Ms. Mason: Oh, it's a search warrant. It says, that's proceeded from an allegation and a search warrant has to be signed off by a Magistrate. So it's moved quite far from a complaint that could or could not be substantiated into the formal Court process now. Because Ms. Malimali's problem in this correspondence, and it seems she's quite angry about it, is that she objects to the search warrant. So it's actually become quite serious. Yes, so should you not have taken much more notice of this?

CR Bainivalu: Sorry, I can't understand the question now, Sir. To take much notice...

Ms. Mason: Of this issue, Sir. So what had happened was on the 27th, you knew this is the JSC's chosen person for FICAC Commissioner. And then you get this correspondence which tells you that she's got a FICAC complaint. It's more than an allegation because they've got a search warrant and they've taken the search warrant and picked up documents from the Electoral Commission. So it's an active FICAC investigation. Should you not have thought, I need to do something about this, like I need to really go and brief the Chief Justice about what the allegations are. And maybe we should put a hold on this appointment.

CR Bainivalu: Like I said, I did not see this on the 3rd. I'm seeing it now.²¹⁵

265. According to CR Bainivalu, he only became aware of the allegation against Ms. Malimali on 4 September 2024 after the selection process was complete, when he went to the FICAC offices to introduce her to the team:

Ms. Mason: So, I had asked you, CR Bainivalu, did you talk to Mr. Turaga or Mr. Green about any of the matters in this email?

²¹⁵ Transcript, Day 16, Session 2 – Mr. Bainivalu at 2-5.

Justice Ashton-Lewis: *Take your time to read it, Chief Registrar, please.*

CR Bainivalu: Not from them, but like I said, I wanted to complete one of my statements earlier. The first time I happened to learn this investigation and complaints, when I took Miss Malimali on the 4th of September.²¹⁶

266. When questioned CR Bainivalu agreed that Ms. Malimali should have informed the JSC of the FICAC Investigation against her:

Ms. Mason: And she should have disclosed it to the selection panel, shouldn't she, during the interview?

CR Bainivalu: Yes, My Lord.²¹⁷

...

Ms. Mason: Yes, knowing, in hindsight, having a look at the emails that had been sent to your Office and received by you, would you have, or should you have, advised the JSC that they should put Ms. Malimali's appointment on hold?

CR Bainivalu: I would have, but I don't know why I did not.

Justice Ashton-Lewis: *Well, you didn't know a lot of this.*

CR Bainivalu: Can you repeat the question?

Ms. Mason: So, having read the correspondence that was sent to you, that was received at your email address, in hindsight, should you have advised the JSC to put Ms. Malimali's appointment on hold?

Justice Ashton-Lewis: *That's a yes or no answer.*

CR Bainivalu: Hindsight, I would say I would have.²¹⁸

267. It is extremely concerning that someone who holds the position of CR, in relation to a very important email, saying in one statement that he had seen it, and in another that he had not seen it. CR Bainivalu's responses are not plausible. From the evidence, he was invested in Ms. Malimali's appointment. At this time he knew that he was also being actively investigated by FICAC under Ms. Puleiwai's leadership, and having Ms. Malimali appointed would mean he had a chance to have his investigation stopped and his complaint file closed:

Ms. Mason: Okay, so the question is, at paragraph 18 of your affidavit, you say, I reiterate that the JSC and I, as its secretary, were not aware of any complaint against Ms. Barbara Malimali. Now, is that statement correct?

²¹⁶ Transcript, Day 16, Session 1 – Mr. Bainivalu at 36.

²¹⁷ Transcript, Day 16, Session 2 – Mr. Bainivalu at 7.

²¹⁸ Ibid., 22.

CR Bainivalu: That statement is correct.

Justice Ashton-Lewis: So Ms. Malimali is lying?

CR Bainivalu: I don't know what she said, but if she said that in Court...

Justice Ashton-Lewis: Well, you can say something, because I said to you she has directly...

CR Bainivalu: Well, if she said that, My Lord, then maybe she's lying.²¹⁹

- 268.** Weighing up the evidence, the CoI concludes that CR Bainivalu did know about the the FICAC Malimail Investigation before Ms. Malimali was appointed. As the Secretary of the JSC he had a responsibility to alert the CJ and all of the other members of the JSC. He did not do so. Instead he assisted in pushing Ms. Malimali's appointment through, before she was arrested by FICAC.

5.12.3 Did the A-G Know?

- 269.** On 2 September 2024 at 1:27 pm, Mr. Saumi called A-G Leung and notified him of the pending search of the S-G's office for the COC documents. According to Mr. Saumi, during this phone conversation, he advised Mr. Leung that there was an ongoing investigation against Ms. Malimali and of FICAC's intention to execute the search warrant at the S-G's office.²²⁰

- 270.** On 3 September 2024, Mr. Leung called the Acting Deputy Commissioner of FICAC, Ms. Puleiwai. Ms. Puleiwai confirmed that there was an active investigation into Ms. Malimali's conduct. According to Mr. Leung, this conversation was brief, and he cannot recall whether the nature of the complaint against Ms. Malimali was disclosed:

On 3rd September 2024, I called the Acting Deputy Commissioner of FICAC Ms. Francis Puleiwai (Ms. Puleiwai) on mobile number 9905831 from my "Official" phone 9907305, and had a brief telephone call when she confirmed there was a complaint against Ms. Barbara Malimali, then Chairman of the Electoral Commission, and an applicant for the post of Commissioner FICAC. I cannot recall whether Ms. Puleiwai disclosed the nature of the complaint. This conversation was brief and took place more than 3 months ago. I did not keep a minute or record contemporaneously, the details of our conversation. I have not extracted the phone record of this telephone call.²²¹

- 271.** According to Ms. Puleiwai, she confirmed that there was an active FICAC complaint against Ms. Malimali to the A-G:

That on the same date around 8am, the A-G, Mr. Leung had contacted me via my official mobile phone asking me whether there was any complaint or pending investigation against Ms. Malimali to which it was affirmed. I informed him that the team are looking at completing the investigation this week and charge Ms. Malimali if there is any charge against her. A-G also asked whether I had applied

²¹⁹ Transcript, Day 37, Session 1 – Mr. Bainivalu at 3.

²²⁰ Affidavit of Kuliniyasi Saumi, dated 3 January 2025, at [20].

²²¹ Affidavit of Graham Leung, Attorney-General dated 11 December 2024 at [18].

for the post to which I stated that I did on both times it was advertised but I was never contacted but only received an email that it was unsuccessful. A-G stated to me that “the decision to appoint Malimali is done by JSC, and he has no part in it.” I further asked A-G whether the JSC had informed him that Ms. Malimali was under any investigation or there was a complaint against her that is pending with FICAC, to which he stated that he was not informed. However, he reiterated that he does not have a say in the appointment of Ms. Malimali except the JSC may only consult him should they wish to, to which I respectfully disagree, for why would they consult him if he does not have a say in the JSC recommendation. With respect, his views contradicted what the Constitution states.²²²

272. Mr. Leung’s evidence is that he did know of the FICAC Malimali Investigation.

5.12.4 Did the President Know?

273. His Excellency, Ratu Katonivere gave evidence in his Affidavit dated 13 December 2024, that he became aware of the FICAC Malimali Investigation when he received the letter from Ms. Puleiwai informing him of the ongoing investigation on 30 August 2024.²²³

274. The President has not denied knowledge of the FICAC Malimali Investigation. The evidence is clear that he did know about it. He did raise the matter with the CR and according to him, was told that it was nothing to be worried about as the “appointment” was carried out with due diligence.

5.12.5 Did the PM Know?

275. The Hon PM confirmed in his sworn affidavit of 29 December 2024, that he had been copied into Ms. Forwood’s 8 April 2024 email complaint against Ms. Malimali, and later was copied into a letter dated 30 August 2024 from Ms. Puleiwai to the President, informing him of the FICAC Malimali Investigation into abuse of office allegations related to her actions as the Chairperson of the ECF.²²⁴

276. On 1 September 2024, Ms. Puleiwai had a discussion with the Hon PM requesting an intervention to allow FICAC one week to complete the investigation into Ms. Malimali, and hold off on the appointment of Ms. Malimali until the investigation was complete.²²⁵ Ms. Puleiwai informed the PM that should FICAC determine there is no case against Ms. Malimali, then the President could proceed with the appointment accordingly, but if there were charges, FICAC would inform the PM’s office.²²⁶

277. Ms. Mason asked the PM whether he recalled this conversation he had with Ms. Puleiwai to which he responded that he did.²²⁷

²²² Affidavit of Francis Puleiwai, Former Acting Deputy Commissioner at [48].

²²³ Affidavit of Ratu Wiliame Maivalili Katonivere, dated 13 December 2024 at para [9(b)].

²²⁴ Affidavit Evidence, Sworn 29 December 2024, at [17]-[18].

²²⁵ Affidavit of Francis Leba Puleiwai dated 10 December 2024, at [45]-[46].

²²⁶ Ibid.

²²⁷ Transcript, Day 1, Session 1 – PM Rabuka at 35.

- 278.** In his viva voce evidence, Hon PM stated that following receipt of Ms. Puleiwai's 30 August letter, he had sought comment from the A-G, who replied that the Hon PM would need to go and discuss it with the President:

Ms. Mason: Yes, that's got the date on it. And so the letter was on the 30th of August. It was not to you, it was to the President, but you were copied into it.

Mr. Rabuka: Yes, I asked my Attorney General for his advice on the outstanding complaint.

Ms. Mason: All right, okay, that was my next question. So when you got this, you then passed it on to the Attorney, and you asked for his legal advice?

Mr. Rabuka: I did not pass it on to him. I said, I have report that there is an outstanding investigation against Barbara Malimali.

Ms. Mason: All right, and did he provide you with some advice on that?

Mr. Rabuka: He said that only you can go up to the President.²²⁸

- 279.** The Hon PM was not informed by the A-G of how long the investigation would take. The PM did not go to the JSC about the FICAC Malimali Investigation, on the understanding that the A-G would do this for him:

Ms. Mason: So when you spoke to the Attorney, did you ask him to find out how long the investigation into Ms. Malimali's allegations would take?

Mr. Rabuka: No, I did not. I did not. I do not have any direct contact with them. So I asked the Attorney General to do that for me.²²⁹

- 280.** The Hon PM did however approach the President. However, by the time he got an appointment on September 4th the President had already assented to Ms. Malimali's appointment:

Ms. Mason: And then did you contact the President about this letter and about the investigation?

Mr. Rabuka: I did, ma'am, My Lord.

Ms. Mason: All right. So how did you do that?

Mr. Rabuka: I went up and asked for an appointment, went up to His Excellency the President and advised him that there was an outstanding investigation on Malimali. He told me that, oh, I've just approved the appointment.

Justice Ashton-Lewis: Could you please give me the date of that, Mr. Prime Minister?

²²⁸ Ibid., 15.

²²⁹ Ibid., 16.

Mr. Rabuka: Can I be given time to?

Justice Ashton-Lewis: *Yes, by all means, take time because I'd like to know that date.*

Ms. Mason: Sir, if I could help, if it was the date that he had signed off on the appointment, it would have been the 4th of September. So was it the day that he had signed off on the appointment?

Mr. Rabuka: That would have been the date. And I think we were in Parliament at the time. And I had spoken by note to the Attorney General sitting immediately to my right. And he advised that only you can go up to the President. But when I went up, it was already done.²³⁰

281. The Hon PM confirmed that his intention had been to ensure the President knew that Ms. Malimali was under investigation:

Justice Ashton-Lewis: *So you felt that it was the 4th. You're not certain that you spoke to the President and advised His Excellency that Miss Malimali was under a complaint and investigation or just complaint?*

Mr. Rabuka: That was my intention, was to inform His Excellency that there had been a complaint against Miss Malimali, My Lord.²³¹

282. The PM's evidence is that he knew of the FICAC Malimali Investigation, and he did try to speak to the President about it but was just too late.

5.12.6 Did Justice Jitoko Know?

283. Justice Jitoko stated that he first became aware of the FICAC Malimali Investigation at the 5 February 2025 meeting of the JSC:

That I first came to learn of the existence of a complaint against Ms. Malimali at the of a complaint against Ms. Malimali at the special JSC Meeting of 5th September, 2024, convened at the request of the Acting Chief Justice and Chairman of the Commission, where the sole agenda was the issue of Ms. Malimali's detention by FICAC Acting Deputy Commissioner, Ms. Frances Pulewai.²³²

284. Justice Jitoko stated he did not have knowledge of the FICAC Malimali Investigation prior to the above meeting of the JSC:

I categorically swear and affirm that at no time I was aware that Ms. Malimali was being investigated by FICAC, nor was I aware as to the nature of the complaint and the investigation thereto.²³³

²³⁰ Ibid., 16-17.

²³¹ Ibid., 17.

²³² Affidavit of Filimone Jitoko, dated 7 January 2025 at [20].

²³³ Ibid., [22 (1d)].

285. The minutes of the 5th September JSC meeting indicated that Justice Jitoko was just learning about the FICAC Malimali investigation and getting to grips with the situation:

Chairperson: Item 1: The only agenda in this meeting is the concern of Commissioner FICAC Ms. Barbara Malimali being arrested by FICAC this morning whereby she had assumed the role of Commissioner FICAC from mid night of 4th September. The appointment has come into effect from 05th September 2024.

Ms. Malimali had gone through the interview process, position had been advertised, Hon. Attorney-General had been consulted and then appointment letter had been issued by His Excellency the President.

Attorney-General rang on 3rd to put the process on hold, JSC is independent. Barbara did the top, she fights for her clients. Later Attorney-General said to go ahead with the appointment

President COA: so there are no issues about the appointment of Ms. Malimali?

Did Ms. Malimali resign as Chair of the COC?²³⁴

286. Justice Jitoko was asked about whether he was aware of the reasons the A-G advised that the appointment be put on hold. He responded as follows:

Ms. Mason: Now, under the recording of what the Chairperson had said about item one. So that's in the third paragraph down. It says the Attorney General rang on third to put the process on hold. And we heard evidence yesterday from the Attorney General that when he found out about the investigation. He did call the Chief Justice and ask him to put the appointment on hold. Now, was that explained to you at the time prior to the appointment?

Justice Jitoko: *It was a very short explanation by the Chair to the effect that he had received the response from the Attorney General. And that was to put the appointment as far as the consultation process, to put the appointment on hold. That is, I think, as far as he could tell the rest of the Commission.*

Ms. Mason: Yes, Sir, was that on the 5th of September? Because it's mentioned in the minute on the 5th of September. But I, the phone call between the Attorney General and the Chief Justice occurred on the third. Sir, I'm just asking, was he, can you recall any mention of it on the third?

Justice Jitoko: *He may have mentioned something similar earlier to say that the consultation process had happened and this is the Attorney General has asked that the matters be on hold and we accepted that. And then this, I think on the 5th, it was made known through the full committee at each meeting.*

²³⁴ Affidavit of Filimone Jitoko dated 8th of January 2025 at Annexure VI: JSC meeting minutes.

Justice Ashton-Lewis: *Excuse me, Justice Jioko, could you pull the microphone just closer to you, please? Thank you.*

Ms. Mason: All right. So then did you know very much about why it was put on hold?

Justice Jitoko: *Not that I can remember.*²³⁵

287. Justice Jitoko gave clear and consistent evidence that supports the conclusion that he was unaware of the FICAC Malimali Investigation until 5 September 2024 at the JSC meeting.

5.12.7 Did Justice Temo Know?

288. According to Justice Temo, he was unaware of the FICAC Malimali Investigation prior to her appointment. He noted that regardless, he did not consider an allegation sufficient for Ms. Malimali to have stepped back from the process. Rather, that she should be presumed innocent, and that only when a charge was brought would there be sufficient grounds for Ms. Malimali to have stepped back from the process.

289. He further agreed that if there was a serious allegation that was being actively investigated it would be a red flag:

Ms. Mason: Right. Okay. All right. Just going back to that paragraph 21, Mr. Leung says that he explained to you that, faced with the views of five prominent citizens whose credibility I did not doubt against those of a well-known anti-government blogger, Alexander Forwood, I preferred to rely on the endorsement of the Electoral Commissioners. So, at that point, did you find out that Ms. Malimali had an active investigation against her at FICAC?

Chief Justice Temo: *During the whole interview process, the application, I'm not aware of any allegation against her.*

Justice Ashton-Lewis: *May I interrupt? During that interview, did Ms. Malimali not raise it herself, saying, look, I want you to know Chief Justice and President of the Court of Appeal? Because I think it was certainly the three who were interviewed, which was, I think, yourself, was the Chief Magistrate and the Solicitor General, was it?*

Chief Justice Temo: *No, no. The Chief Magistrate was Waqanivolavola.*

Justice Ashton-Lewis: *Ah, yes. Well, did she raise it there during being looked at as a potential candidate?*

Chief Justice Temo: *No.*

²³⁵ Transcript, Day 11, Session 1 – Justice Jitoko at 4-5.

Justice Ashton-Lewis: No. And as Ms. Mason has asked, did she, when you decided to appoint her, did you ever get information from her that she was under investigation with FICAC?

Chief Justice Temo: You see, I've heard that so-called issues about allegations against a person.

Justice Ashton-Lewis: Yes.

Chief Justice Temo: Been a criminal law magistrate for 15 years.

Justice Ashton-Lewis: Yes.

Chief Justice Temo: And been a punitive [sic] judge for 15 years.

Justice Ashton-Lewis: Yes.

Chief Justice Temo: And I specialize in criminal law. To me, an allegation is merely an allegation.

Justice Ashton-Lewis: Yes, that's right.

Chief Justice Temo: It doesn't become a fact until the Court says it is a fact.

Justice Ashton-Lewis: Yes.

Chief Justice Temo: So when someone applies for a job or for whatever, even if there is an allegation, to me, that person is still presuming a crime until proven guilty beyond reasonable doubt.

Justice Ashton-Lewis: I understand that, because I was a Director of Public Prosecutions for 10 years.

Chief Justice Temo: However, if it proceeds to the level of a charge being leveled against a particular person, then the charge becomes serious.

Justice Ashton-Lewis: Yes, certainly.

Chief Justice Temo: Even though he or she is presumed innocent until proven guilty, the fact that a charge has been laid against a person does elevate the allegation to a special status, which is a red flag for the person to stand back.

Justice Ashton-Lewis: Yes. What I really want to know, and I agree with you in that, as I said, you had a long, and will still have, in criminal law. I had a long career in criminal law, appearing in front of juries, which puts a greater burden. So putting that aside, because I agree, you're right, but if you hear of something, but there's no charge, do you dismiss what you've heard, or do you think, look, we should have a look at this? Even though there's no charge, the allegation is serious, and before we move forward, we should at least look at this.

Chief Justice Temo: If it's a serious allegation, even though it's an allegation stage, then it's a red flag for us to stand back, if it's an

allegation, a serious one because I know Fiji very well. This is a country which thrives on allegations. This is a country which thrives on gossips.

Justice Ashton-Lewis: Yes.

Chief Justice Temo: And I know Fiji, people are crucified because of allegations. To me, as a criminal lawyer, that is very unfair.

Justice Ashton-Lewis: Well, it's disgraceful.

Chief Justice Temo: I don't see a person's character to be maligned merely because there is an allegation.

Justice Ashton-Lewis: Yes.

Chief Justice Temo: To me, the issue of presumption until proven guilty beyond a reasonable doubt, in a court of law, not in the mass media.

Justice Ashton-Lewis: Yes, yes, for sure.

Chief Justice Temo: Very, very important.

Justice Ashton-Lewis: But I want to note, did I hear you say that if it's a serious allegation, we will still stand back and have a look? Thank you, Your Lordship.

Ms. Mason: So, Sir, if I could just pursue that line further. So, there's various stages in a complaint. So, there's a complaint, and then it goes to investigation, and then it goes to charge. If something is being actively investigated, would that also raise a red flag?

*Chief Justice Temo: If it's serious.*²³⁶

290. Justice Temo gave evidence that he did not reach out to FICAC to seek clarification, as he was concerned that this would be deemed interference with the investigation:

Ms. Mason: Can I also put to you that if you say you hadn't relied on his advice, would it have been appropriate for the JSC to contact FICAC directly to inquire about the details of the case and the details of the investigation? Would that have been appropriate or would you have thought that was not appropriate?

Chief Justice Temo: It's not for me to go to FICAC because that runs the risk of us interfering with FICAC.

Ms. Mason: Yes.

Chief Justice Temo: And then that runs the risk of us being accused of trying to pervert the course of justice. The former PM went down on

²³⁶ Transcript, Day 15, Session 1 – Chief Justice Temo at 12-14.

Section 190 of the Crimes Act. So it's very, very risky for office holders to try and step in and try and control FICAC or the Police in their investigation. You don't do that because you run the risk.

Ms. Mason: Yes.

*Chief Justice Temo: So I leave it to them to advise me.*²³⁷

291. Further Justice Temo gave evidence that while he had some understanding that there were allegations against Ms. Malimali, he ignored these as, in his experience, it was not unusual in Fiji for allegations to be made when someone gets promoted:

Ms. Mason: Yes, Sir. So at this stage, then you're talking to the rest of the JSC about some of the things that had preceeded the arrest. At what time, or was it at this meeting that the members found out about the FICAC investigation? Or did some of them know about it previously?

*Chief Justice Temo: To me, I didn't know, but there was a lot of talk about the allegations. But it wasn't spelled out to us, what to me, what the allegation is. And as I told you, in the context of Fiji, it's not unusual when someone is going to get promoted. All the brown clobbering machine springs into action.*²³⁸

292. He stated that because Ms. Puleiwai was an unsuccessful applicant for the FICAC Commissioner position he deemed that anything that came from her lacked credibility as he would consider it a case of “sour grapes”:

Ms. Mason: So the complaint that had been made was before FICAC. It had been made in April and this was now September and they were actively investigating in relation to whether or not that complaint was serious or whether it was vexatious or whether it was prima facie. Isn't that a decision for FICAC themselves to make?

Justice Ashton-Lewis: But it then has the corollary. If you knew, Chief Justice, that all the complaint, all the allegation was coming out of FICAC's investigators, would you give that credibility as you would give if it came from...? Because FICAC is the body that investigates, arrests, then charges and then carries out. There's nothing wrong with that. They're entitled to do that. But would that give you cause for thought seeing it's coming from FICAC? I'm a bit concerned about that.

Chief Justice Temo: If that is the position, I would appreciate the head of FICAC putting before the JSC some narrative on what is the allegation. What is the allegation they're talking about?

²³⁷ Ibid., 16.

²³⁸ Ibid., 59.

Justice Ashton-Lewis: And at that stage, that was the Acting Deputy, Ms. Frances Puleiwai.

Chief Justice Temo: And the problem is that she herself was an unsuccessful applicant for the Commissioner's Post. So if it comes from her, it appears the credibility of the complainant is affected. We, the decision makers, might think it is a case of sour grapes. But if it comes from someone who's credible within the organization and if they can spell it out to us, what is the allegation? Then we can make an assessment whether it's a serious allegation or it is the usual Fiji brown clobbering machine.²³⁹

293. Justice Temo was aware of the letter Ms. Puleiwai had sent to the President on 30 August. However, he considered that because she had gone to the President and had not directly written to the JSC it was an insult. Justice Temo did not follow up with the matter further:

Ms. Mason: Yes, and then the other thing is, and I noticed there was some comment made about it. On the other side, Ms. Puleiwai had written to the President to advise him of the investigation, and she had requested a further week, I think, or five days to complete it so that everything could be cleared for her appointment. Do you think that she should have written to you as well?

Chief Justice Temo: Well, you see, in the system of government, there's a thing called chain of command.

Justice Ashton-Lewis: Yes.

Chief Justice Temo: Ms. Puleiwai, the chain of command is first to us before you go to the President.

Justice Ashton-Lewis: Yes, yes.

Chief Justice Temo: By going direct to the President, that's like showing the fingers to us.

Justice Ashton-Lewis: Yes, by going to you first.

Chief Justice Temo: By not coming to us and going to the President, that's equivalent to fearing.

Justice Ashton-Lewis: Compare it like this. Going to the President, he has no power. He can only hand it on, usually, to the COC to have a look at it, and then they decide to come to you. But if she had written to you, you had power, so she wrote to the wrong body. That's her problem, because by writing to the President, it was courteous, it was informing, but as the Head of State in a matter like this, he has no power, and it's clearly spelled out that if you make a recommendation, he has to follow it, doesn't he? So you're right. She should have written to the JSC first. Chief Justice Temo: She

²³⁹ Ibid., 22.

should have. If she had to make a complaint, nothing wrong for her to make a complaint to us.

Justice Ashton-Lewis: Yes.

Chief Justice Temo: By writing to us.

Ms. Mason: Yes.

Chief Justice Temo: I know Fijian culture. Sometimes they are not up front. Sometimes they go through this way.

Justice Ashton-Lewis: Yes.

Chief Justice Temo: And it might be this was going through that way.

Justice Ashton-Lewis: Yeah.

Chief Justice Temo: But as lawyers, we know, either you come straight or you go that way.

Justice Ashton-Lewis: Yeah.

Chief Justice Temo: If you go that way, your character is exposed to the tribunal or the decision maker. You know very well. I was taught in our culture, when someone talks to you in authority, we don't look them in the eye. We look down. That's cultural. But when we go to the Western world and we are taught,

Justice Ashton-Lewis: You look eye to eye.

Chief Justice Temo: You got to look eye to eye.

Justice Ashton-Lewis: Yeah.

Chief Justice Temo: So constantly. So you look them in the eye. Yeah, so it's the same as this. They've studied law. As lawyers, they're going to know how to act. To me, when I heard that she has gone to the President, it was an insult to us. Because the President is so busy on other state matters, they want this kind of issues to be sorted out by the Commissioner before you go and take up that title.

Justice Ashton-Lewis: Yes. Yeah.

Chief Justice Temo: So we said nothing. I don't know what the allegation is. So that was it. And then if she knew, if I was in her shoes, I would instruct the one under me to write to the JSC. Because she was part of the applicant. For the post who was not considered. So it complicates the situation for her to write. Because it could be viewed as sour grapes.

Ms. Mason: Yes.

Chief Justice Temo: *If she had gone to her manager legal, and there's nothing to stop her from instructing manager legal to write a complaint to us, then that's a proper act.*²⁴⁰

294. Justice Temo's evidence demonstrates that, even if he was not aware of the specifics, he had an awareness that something serious was brewing at FICAC.
295. The notion that a courtesy email to FICAC notifying Ms. Puleiwai that the JSC had an intention to recommend Ms. Malimali as FICAC Commissioner, and enquiring into whether there was a case against her, could be considered interference with a FICAC investigation is far fetched and unwarranted. It would be no different from undertaking a police check.
296. With all due respect, a request for information from FICAC for candidate selection purposes is in no way comparable to the Bainimarama and Qiliho cases, in which they were convicted under ss190(e) and 139 of the Crimes Act, of an attempt to pervert the course of justice, and of an abuse of office. Actually interfering to stop an investigation, and requesting information for the purposes of due diligence conducted on a potential appointee to a senior position are nowhere near the same actions.
297. Further, the notion that a perception of "sour grapes" is sufficient to dismiss the serious problem of appointing a FICAC Commissioner with an ongoing investigation against her should find no purchase here. Justice Temo has shown a bias towards Ms. Malimali and a willingness to provide her with the benefit of the doubt and the presumption of innocence, in the face of overwhelming evidence as to why she should not have been appointed, quite unlike how Ms. Puleiwai was treated. Justice Temo's position is not defensible.

5.13: Was the Appointment Rushed?

298. According to CR Bainivalu, the process was not rushed, but that, on account of the FICAC Commissioner post being vacant for so long, the process was expedited:

Ms. Mason: Sir, my question was, there is an allegation that the process to appoint Ms. Malimali was rushed and should have taken longer. What do you say to that?

Justice Ashton-Lewis: *No, that's fair.*

CR Bainivalu: No, there's no rush to that, but I put it, what I wanted to say, it's been a long the Commissioner of FICAC's post been vacant. So the way I see that, it's about time. Thanks to the JSC members that have expedite on that. But rush, no, Sir.²⁴¹

299. Ms. Malimali was told by Justice Temo that she had to start right away, despite her requesting one month to allow her to do a handover in relation to her ECF

²⁴⁰ Ibid., 57.

²⁴¹ Transcript, Day 16, Session 2 – Mr. Bainivalu at 28.

work. According to Ms. Malimali, the very short notice period from resigning her position as ECF Chair, informing the ECF on 30 August 2024, and then on 2 September 2024, that it would be her last meeting, was normal practice in Fiji:

Ms. Mason: On Monday the 2nd of September at the EC. I told the Commissioners that I was still awaiting the President's signature, and this would be my last meeting. Now, you went with the Electoral Commission and then you're moving over to FICAC. Why did you not give the COC some time to find a new Chairperson? Normally, if you're leaving one employment place, you would sit down and talk to your employer and say, look, I've got this fantastic new job, not like yours, I'm going, but how much time would you need to replace me? And you'd have that kind of discussion because there's handovers, there's a whole lot of things that have to happen, especially with a responsible position like this as Chair. So why did you not do that?

Ms. Malimali: I agree. In a perfect world, that would be the way.

Ms. Mason: Not in a perfect world, in a normal world. That's what is expected of everybody, especially in a...

Ms. Malimali: Not in this country.

Ms. Mason: Well, I don't agree with that.

Ms. Malimali: All right, so this is how it happened. And this is, I know this is how it's happened with other people who have been given positions in government.

Justice Ashton-Lewis: *Yes.*

Ms. Malimali: It's like, you starting next week, come. This is it. I mean, I know it happened to a few colleagues in the legal profession. It's like, okay, you're going to be a Magistrate next week, leave everything you're doing now, come. Organize yourself now in the next few days. And so basically, when I was called, I think, by the Chief, I can't even remember who it was now. And I was told, your application has been successful, we're going through the stages of vetting and all of the other things that they do. They said, you have to, and I said, I actually asked for a month. I said, can I please, we're doing some really important stuff, we're just about to meet up with the law reform and take our law reform in a different direction, I'd asked for a month to sort out the movements, and I was told, well, actually, you have, I think, a few days.²⁴²

300. Ms. Malimali said she held another meeting with the JSC on 28 August 2024. At this meeting, or the previous meeting around 22 or 23 August 2024, Ms. Malimali gave evidence that she had requested a month for the transition from

²⁴² Affidavit of Ms. Malimali dated 27 November 2024 at [46] and [51]; Transcript, Day 23, Session 2 – Ms. Malimali at 64-65.

her previous role to FICAC Commissioner. According to Ms. Malimali, she was told by Justice Temo that she would need to start as soon as the recommendation was approved by the President. Ms. Malimali also said she was told, probably by the CJ, that her skill set would be more suited to FICAC than the ECF:

Ms. Malimali: But I did say I needed a month, we still have things to do.

Ms. Mason: Okay, and did you tell them why you wanted the month?

Ms. Malimali: I probably did. I would have said I need to work on electoral laws.

Ms. Mason: And tie up loose ends and do all of those handover things.

Ms. Malimali: With the Electoral Commission and with Mr. Dawai. You know, if I carry on, I'm going to end up lying or making things up is the problem. I think I said to them, look, I was also torn. I was really looking forward to the electoral reform. I wanted to do that, I was excited about it. But they said, well, balancing. This is also important, you're probably more needed here. And I said, well, yes, respectfully, but can I have a month? And they were like...

Justice Ashton-Lewis: *Who said you're probably more needed here? Do you remember?*

Ms. Malimali: One of them, I think maybe the Chief Justice.

Justice Ashton-Lewis: *Did that spark your mind to think, well, I'm needed at the Electoral Commission. Did you ask, what do you mean by that?*

Ms. Malimali: Well, I think in terms of my skills as a litigator.

Justice Ashton-Lewis: *Oh, yes.*

Ms. Malimali: A litigator is needed in FICAC, not at the Electoral Commission. I mean, I'm sorry, maybe that has come out wrong. But you know, my skill set is probably more suited here than here. At the Electoral Commission, I think you'd probably need more of a diplomat, a calmer, you know, not the fiery Barbara Malimali who's in Court all the time. I think. I think. This is me thinking.

Ms. Mason: So then when you asked for that one month and they came back and said no, did they say why? Why would there be such a rush? They didn't? They just said no, you have to start straight away.

Ms. Malimali: Just wait for your letter, when it comes, go. Wait for your letter when it comes, you go.²⁴³

²⁴³ Transcript, Day 23, Session 2 – Ms. Malimali at 70-71.

- 301.** It is obvious that there was a rush for Ms. Malimali to start immediately, even though there was no need for this. Ms. Pulewai was already at FICAC as Acting Deputy Commissioner and was able to execute all of the powers of the Commissioner. The recruitment process was itself rushed. No effort was put into choosing appropriate persons to be on the Selection Panel. No JSC Meeting was held to discuss the Selection Panel's recommendations, and process. No Police check was done. No FICAC check by the CR nor the A-G was done. The LPU check was rushed through. No written briefing was provided once they knew about the FICAC Malimali Investigation. No adequate response was provided to the President when he raised issues about the FICAC Malimali Investigation. No psychometric testing was done. No reference checks were done. One of the JSC members, Ms. Shoma Devan, was completely ignored in her request for a list of the applicants. Ms. Malimali's request for a month to tidy up her affairs before starting the position was rejected. For such an important and crucial position for Fiji, the entire recruitment process completely lacked integrity and was a shocking example of sheer negligence, and recklessness as to the consequences of the JSC's rush to put Ms. Malimali in the position.

5.143: Conclusion

- 302.** The ToRs ask whether the Appointment Process was conducted with integrity, fairness and transparency, according to law.
- 303.** The Appointment Process was tainted by the JSC's failures of basic recruitment processes, such as a failure to ensure conflicts of interest were declared and managed, a failure to undertake reference checks, a failure to undertake psychometric testing, and a failure to undertake Police and FICAC checks. Add to this a complete failure by Ms. Malimali herself to disclose that she had an active FICAC Investigation in relation to an abuse of office allegation, nor to disclose that she had lied on seven consecutive applications to the LPU for a Fiji PC about her misconduct in Tuvalu, and we have an Appointment Process that absolutely lacked integrity, lacked honesty, and was not fair.
- 304.** Above all of these administrative failures, sit two things.
- 305.** Firstly, a badly drafted Constitution which has led to a conclusion that the legislative provisions governing the Appointments Process, namely, s 5 of the FICAC Act are ultra vires s 82 of the Constitution. Put simply, because the appointment role of the JSC is set out in the FICAC Act and not in the Constitution itself, then s 5 is invalid. There is no role whatsoever for the JSC to be involved in the appointment of FICAC Commissioners, and/or, Deputy Commissioners. What this means is that Ms. Malimali's appointment was illegal, and ought to be immediately revoked.
- 306.** Secondly, there has been an abysmal failure of senior officials to act professionally and ethically. Multiple persons at the centre of the Appointment Process knew that Ms. Malimali was being actively investigated by FICAC. These included the A-G Mr. Leung, the Chief Registrar Mr. Bainivalu, the S-G

Mr. Green, and the Chief Justice and Chair of the JSC, Justice Temo. Individually and collectively, they had a responsibility to speak up and say, “it is absolutely not acceptable for someone with an active FICAC investigation against them to be appointed to head that very organisation.” This should have been obvious. It should not have been acceptable in any way, shape or form that Ms. Malimali be appointed while an active FICAC investigation into her actions was underway.

307. Every single one of the senior persons at the helm, when asked, whether, had they known about the FICAC Malimali Investigation, they still would have recommended her for appointment, said “No”. So, it is not as though they did not know at some level that her appointment was wrong, it is simply that they all said and did nothing, which indicates that her appointment may have been pushed through for some other reason.
308. The fact that those who knew about the FICAC Malimali Investigation continued on progressing her appointment puts them at risk of being charged with conspiring to pervert the course of justice under s 190 of the Crimes Act, or attempting to do so. All because, knowing that the appointment was wrong, they all said and did nothing, thus enabling Ms. Malimali to get into the seat of power at FICAC, and ultimately in doing so, allow her to escape being charged with abuse of office.
309. FICAC has never, since its inception in 2007, had both a Deputy Commissioner and a Commissioner serving at the same time. There has always been only one or the other. This was the first time ever that a government had wanted both a Commissioner and a Deputy Commissioner at the helm. No satisfactory explanations were provided as to why this should have changed. There were no policy papers, and no additional budget was set aside. The idea of having a new Commissioner to come in while Ms. Puleiwai remained Deputy Commissioner appears, on balance, to have to come from the previous A-G Hon Turaga. In other words, it was politically driven.
310. There was also a narrative doing the rounds, that under Ms. Puleiwai FICAC was wrongly focussed on “small issues”, those of Ministers and their assets and liabilities declarations under the PP Act, instead of going after the bigger fraud cases. Many of these fraud cases involved suspects appointed by, or associated with the previous Fiji First regime. Underlying this narrative was a grievance that Ms. Puleiwai should not have been going after government Ministers, but after the “real” criminals associated with the previous Fiji First regime. Ms. Puleiwai rejected the allegation that she was only focussed on the “small fry”. She had established a new specialist Economic Crime Unit at FICAC, and she operated under a dual prioritisation process, whereby cases on both political corruption, and economic corruption were prioritised.
311. The requirements for applications for the position of FICAC Commissioner were unduly narrow. There is nothing in the legislation stating that the FICAC Commissioner had to be a lawyer. Yet the JSC made it a requirement that

applicants had to be lawyers with at least 15 years post admission experience. The CJ said he had wanted someone with excellent prosecution skills. However, the Commissioner's role was much wider, and required someone with leadership skills, and also investigative skills, and/or, prosecutorial skills, and/or, community education and awareness skills. The role could also have suited a senior Police official with years of investigatory experience, especially in economic fraud. Even though the CJ had wanted someone with prosecutorial skills, Ms. Malimali had no prosecutorial skills whatsoever, as her background was as a criminal defence lawyer.

312. A Selection Panel had been established to short-list and interview the applicants. The Panel comprised Justice Temo, S-G Green, and Mr. Waqaivolavola. Mr. Waqaivolavola was a close colleague of Ms. Malimali, yet he failed to declare his conflict nor remove himself from any discussions in relation to Ms. Malimali. Overall, it was not appropriate that he should have remained on the Panel once he knew that Ms. Malimali had been shortlisted. The Selection Panel recommended Ms. Malimali.
313. The JSC made its decision to accept the recommendation of the Selection Panel via a Flying Minute. On 28 August 2024, Ms. Bi, the Assistant Secretary of the JSC circulated the Selection Panel Report along with Ms. Malimali's CV. A JSC meeting was scheduled for 2.30 pm on 4 September 2024 to discuss the Panel's recommendation. Ms. Shoma Devan, a JSC member, had asked for a list of all of the other applications, but she was not sent this. In addition the meeting to discuss the appointment was cancelled and the decision was made by "Flying Minute", without Ms. Devan's input. This was also a significant procedural failing. There was no meeting held. Approvals were obtained only from the CJ, the S-G, and Justice Jitoko. However, the vote of the S-G ought to have been discounted as he was conflicted because he himself had a pending FICAC case. If the S-G's "vote" is disregarded, the evidence before the CoI was that the decision was only approved by two out of the five JSC members, and is therefore invalid.
314. In relation to disclosure, the CoI found Ms. Malimali's ethical compass, and sense of what constitutes honesty, was woefully deficient. She failed not only to disclose the FICAC Investigation into her conduct for abuse of office, but she lied when asked by the S-G at her interview about whether she had any pending FICAC complaints.
315. There was also a serious issue related to an inappropriate encounter Ms. Malimali had in August 2016 with a High Court Judge presiding over a matter in Tuvalu, in which she was co-counsel for one of the parties. The Judge's decision had been in favour of her client and had subsequently been appealed by the Tuvalu State, who was the other party in the case. The appeal was on the basis that Ms. Malimali, in the middle of the hearing, engaged in a drinking session with the Judge, a late night swim with him, and spent the night in his room. Needless to say, the appeal court upheld the appeal on the grounds that the presiding Judge was tainted with a perception of bias. Ms. Malimali was

then on 23 March 2017 refused the ability to practice in Tuvalu on the basis of not being of fit and proper character.

316. In relation to the Tuvalu Issue, there are two prongs. The first is the obligation to disclose the Tuvalu Issue to the JSC. Ms. Malimali did not disclose the Tuvalu Issue to the JSC. An obligation to disclose arises if the conduct at issue is relevant to the position. Obtaining a benefit as a result of an inappropriate relationship with a Judge is significantly and materially relevant to the position of head of an anti-corruption agency. It goes towards Ms. Malimali's character and her integrity. The Tuvalu Issue was relevant and should have been disclosed to the JSC, regardless of the fact that it was nine or so years ago.
317. The second prong of the Tuvalu Issue is that Ms. Malimali had been dishonest in seven consecutive Fiji PC applications from 2018 until 2024. In those applications, she was legally required to have disclosed that she had been barred from practice in Tuvalu, and accurately explained the reason for this. She did not do so. Applications for a PC in Fiji have to be accompanied by a Statutory Declaration. For each of the seven PC applications, Ms. Malimali signed a Statutory Declaration. As she had been untruthful on those applications, she is now at risk of seven counts of making a false statutory declaration under s 180 of the Crimes Act, or making a false representation under the False Information Act 2016, or of forgery under s 156 or s 157 of the Crimes Act.
318. Part of the Selection Process was that the JSC had to consult the A-G. There are no guidelines or protocols developed to set out more clearly the nature and extent of this consultation. In this situation Mr. Leung was presented with the name of Ms. Malimali. He at first contacted Ms. Puleiwai at FICAC to ask her about the FICAC Malimali Investigation, and she advised him that it was serious and FICAC needed a little more time to complete the investigation. On that basis he advised the CJ to hold off on Ms. Malimali's appointment. This is exactly where things should have remained.
319. Instead, an ECF Commissioner, Dr. Atu Emberson-Bain sent Mr. Leung a copy of a letter of complaint from the ECF to the JSC about Ms. Puleiwai and her team at FICAC, and the fact that FICAC had, under the authority of a search warrant, removed documents from the ECF. Mr. Leung then changed his mind about his advice to the CJ to hold off the appointment, and called the CJ back to say it was okay to proceed.
320. He made that decision on the basis that the ECF Commissioners were prominent and credible people and the complainant, Ms. Forwood, was not, therefore, his train of thought went, the ECF Commissioners must be right, and Ms. Forwood must have submitted a vexatious complaint. The fact that the most senior lawyer for the government would even think this way is staggering. The institution which has been tasked with investigating, and if warranted, prosecuting corruption related offences is FICAC. They were the ones responsible for the FICAC Malimali Investigation. Not the ECF Commissioners and not Ms. Forwood. Whether these individuals were prominent, or were credible, or were

scurrilous is completely irrelevant. The only person he should have taken advice from was Ms. Puleiwai. The appropriate action for the A-G to have taken was to have asked Ms. Puleiwai for a confidential briefing on the case, for the purposes of the JSC making a hiring decision. The A-G should, in turn, have provided an aide memoire to the CJ about the situation, making clear that the appointment should not proceed.

321. Once the A-G advised the CJ that there was no longer any “rational” basis to withhold the appointment, it was then progressed. Papers were prepared by the CR, who went up to the President’s office at State House and presented the appointment papers for signature. The President has given evidence that he, at that juncture, asked the CR about the FICAC Malimali Investigation and the CR advised him that it was “nothing to worry about” as the JSC had selected the most meritorious candidate.
322. The only persons involved in the Appointment Process who admitted that they knew of the FICAC Malimali Investigation were the A-G, the President, and the PM. The only person who did not know of the FICAC Malimali Investigation was Justice Jitoko.
323. Everyone else including the S-G, CR, and the CJ denied any knowledge of the FICAC Malimali complaint and Investigation. However, the evidence shows that they all knew, or ought to have known. The S-G knew about the Investigation, including that it was for an abuse of office allegation. The CR and the S-G also knew that Ms. Forwood had lodged complaints against both of them at FICAC. The complaint against the CR was quite advanced and on 16 August 2024, the CR found out that FICAC was wanting to obtain a search warrant to obtain documents from his office for the purposes of their investigation. In this regard, both the CR and the S-G were conflicted, and had an interest in getting Ms. Malimali into the FICAC Commissioner position, in the hope that she would shut down their cases. They should not have been involved in the Appointment Process at all.
324. The evidence is clear that the Appointment Process was rushed. The rush contributed to multiple fundamental flaws. Ordinary recruitment processes around vetting candidates by doing reference checks, and background Police and FICAC checks, and psychometric assessments, were not undertaken. The entire process was driven by an unwarranted urgency.
325. For instance, pressure was put on the LPU to do background checks under urgency. A further example was that Ms. Malimali was told to start immediately even though she had asked for a month to allow her to tie up loose ends at the ECF. In reality there was no need for this. There was no justification whatsoever to expedite the Appointment Process. It was not as though there was no one at the helm. Ms. Pulewai was Acting Deputy Commissioner, and she was able to exercise all of the powers of the Commissioner.

- 326.** There was not one, but multiple background issues with Ms. Malimali's suitability for the role of FICAC Commissioner. Had the JSC not rushed its processes any one of these issues could have been discovered.
- 327.** Overall, the entire Appointment Process was not conducted with integrity, fairness or transparency. With the exception of the attempts by the PM and the President, no one questioned whether it was ever acceptable for a suspect in a case to be appointed as head of the very institution that was investigating her for abuse of office.



The background of the entire page is a warm, golden-brown image. It features several silhouettes of people, likely a group, standing and looking towards a very bright, central light source at the top. This light source creates a strong lens flare effect, with rays of light radiating downwards and outwards, illuminating the scene and creating a sense of depth and atmosphere. The overall color palette is dominated by warm tones like orange, yellow, and brown.

CHAPTER 6

Post Appointment Events

CHAPTER 6: POST APPOINTMENT EVENTS

6.1: Introduction

1. This Chapter outlines the specific events that took place after Ms. Malimali's appointment as the FICAC Commissioner.
2. The CoI's primary role is to assess whether the Appointment Process was conducted with integrity, fairness, transparency, and according to law, and to determine whether external influences or vested interests played a role in her appointment. Sub-section 1.6.2 of Chapter One explored the nature of the complaint made by some of the witnesses participating, that the scope of the CoI ought to be restricted to events prior to Ms. Malimali's appointment.
3. The CoI rejected these submissions for two reasons. Firstly, in order to enquire into whether there were undue influences, it was vital that events subsequent to Ms. Malimali's appointment were considered. Secondly, ordinarily the role of the JSC as the body who recommends Ms. Malimali's appointment is *functus officio* once she has been appointed to her position. However, in this case the JSC continued to be involved, having a hand in Ms. Malimali's release from arrest. Consequently, the Appointment Process continued until the day after Ms. Malimali had been arrested. The ToRs task the CoI with looking at the Appointment Process which we have defined liberally as including all of the events which the JSC involved itself in.
4. This Chapter is structured into the following subsections:
 - 6.2: Introduction to FICAC;
 - 6.3: Ms. Malimali's Arrest;
 - 6.4: Was Ms. Malimali's Arrest Legal?;
 - 6.5: Puleiwai's Meeting with the JSC;
 - 6.6: Hon. B Prasad File;
 - 6.7: Forwood's Complaints;
 - 6.8: Stop Departure Order Against Puleiwai;
 - 6.9: Hon. Kamikamica's file;
 - 6.10: Ms. Tabuya's file;
 - 6.11: Referral of Malimali's file to DPP and Police;
 - 6.12: Undue Influences; and
 - 6.13: Conclusion

6.2: Introduction to FICAC

5. Ms. Malimali was appointed on 4 September, effective on 5 September.¹ On 4 September 2024, CR Bainivalu contacted Ms. Lorraine Fesaitu, Manager Administration, to inform FICAC that he would be bringing the new FICAC Commissioner, Ms. Malimali, to the FICAC offices that afternoon.²
6. Ms. Puleiwai then attempted to contact CR Bainivalu to discuss the matter, but he did not pick up the phone and instead sent her a text message informing Ms. Puleiwai that he was in a meeting:

58. I then tried contacting the CR to discuss on the same to which he never picked up my phone call but texted informing me that he was in a meeting. I then responded to him stating whether he had informed our Manager Administration Ms. Fesaitu about coming to the office in the afternoon with the new Commissioner, to which he responded in the affirmative. I was quite disappointed and angry as to why CR had contacted Ms. Fesaitu at FICAC and what was his role in all of this when he is just the Secretary of the JSC. Neither he nor the JSC has any jurisdiction at FICAC.

59. I then received a text from CR that he was in a meeting. I then liaised with him via viber whether he wanted me to be present in the meeting in the afternoon after what he had told Ms. Fesaitu since I was not contacted of the meeting, to which CR had stated that I should be present in the meeting around 3pm since I am the head of the organisation and claimed that Ms. Fesaitu had twisted his words for he had told Ms. Fesaitu to inform me as well. I further enquired whether he would be bringing the new Commissioner to which he confirmed. I remember asking CR as to why did he contact Ms. Fesaitu and not me to which he stated that it was no disrespect, and he had her number, and she was also the person whom he had been in contact with to arrange for the meeting. (Viber messages and texts could be obtained from CR. I had used my official phone, so the phone was returned to FICAC upon my resignation).³

7. CR Bainivalu gave evidence that it was standard practice for him to introduce the FICAC Commissioner to staff:

Ms. Mason: All right. Okay, now to the 4th. So she's appointed on, what do you say, about lunch time on the 4th or the morning?

Mr. Bainivalu: To?

Ms. Mason: Appointed. Her appointment by the President. Appointment papers are signed.

Mr. Bainivalu: It was in the morning.

¹ Ms. Malimali Official Letter of Appointment dated 4 September 2024, attached as Annex WK6 of Ratu Wiliame Maivalili Katonivere Affidavit dated 13 December 2024.

² Affidavit of Francis Puleiwai dated 10 December 2024 at [56].

³ Ibid., [57]-[58].

Ms. Mason: In the morning. So then in the afternoon you take her up to FICAC. And you introduce her to the staff. And this is something that you normally do?

Mr. Bainivalu: Yes.⁴

8. Ms. Puleiwai then contacted the President's office to confirm the appointment of Ms. Malimali as FICAC Commissioner, and was informed by His Excellency's office to liaise with the JSC.⁵
9. Ms. Puleiwai, then directed Ms. Fesaitu to inform all the managers at the FICAC Suva office to be present during the meeting, and to be 15 minutes early in order to receive a briefing.⁶
10. The Level 4 Conference room was prepared for this meeting. In the period just prior to Ms. Malimali and CR Bainivalu arriving Ms. Puleiwai informed the Managers, except for Mr. Biutanaseva, that Ms. Malimali had been appointed FICAC Commissioner, and that she would be arriving shortly. Further, Ms. Puleiwai enquired into the status of the case against Ms. Malimali. Mr. Saumi informed her that they had received documentation and were just waiting to take statements from Ms. Mataciwa and others. Ms. Puleiwai directed Mr. Saumi, Mr. Wakanivesi, and Ms. Bokini-Ratu to be ready with the file in the afternoon after the meeting with Ms. Malimali and CR Bainivalu, so that they could together go through the evidence to ascertain what to do next.⁷
11. On 4 September at approximately 3 pm, CR Bainivalu escorted Ms. Malimali to the FICAC offices to formally introduce her to FICAC staff.⁸ Mr. Saumi was originally notified by Ms. Puleiwai via phone call that this meeting was scheduled for 2 pm on 4 September 2024.⁹
12. Upon arriving at the FICAC offices Mr. Bainivalu took Ms. Malimali up to the Executive floor. In attendance at the meeting were the following people:
 - a. Ms. Frances Puleiwai, Deputy FICAC Commissioner;
 - b. Ms. Kolora Naliva, Manager Corruption Prevention;
 - c. Mr. Umar Dean, Manager Finance;
 - d. Mr. Kuliniasi Saumi, Manager Investigations Central/Eastern;
 - e. Mr. Alivereti Wakanivesi, Assistant Manager Investigation, and head of the newly formed Economic Crimes Unit;
 - f. Ms. Lorraine Fesaitu, Manager Administration;
 - g. Ms. Laite Ratu-Bokini, Manager Legal; and

⁴ Transcript, Day 16, Session 2 – CR Bainivalu at 28.

⁵ Affidavit of Francis Puleiwai dated 10 December 2024 at [59].

⁶ Ibid., [61].

⁷ Ibid., [62]-[63].

⁸ Affidavit of Barbara Malimali dated 27 November 2024, at [4].

⁹ Affidavit of Kuliniasi Saumi dated 3 January 2025 at [28].

h. Mr. Uwate Biutanaseva, Manager Investigation West (via zoom).¹⁰

13. During this meeting, Mr. Wakanivesi, raised an objection about Ms. Malimali's appointment on the basis that she was a suspect in a FICAC investigation, stating that he would resign as he did not feel it was right to be working under a suspect.¹¹ He stated that he put his objections to Ms. Malimali as follows:

I proceeded by introducing myself and the unit I am heading which is the Economic Crime Unit (ECU). I then spoke by telling Ms. Malimali that there is an active investigation happening on her. At the same time, Chief Registrar asked if I could repeat myself. I repeated by stating that there is an investigation on Ms. Malimali and I'm not agreeable to the appointment. I then stated that if this is not done properly, I will submit my resignation as I cannot afford to be working or presenting myself in front of a suspect.

Ms. Malimali responded that she appreciated the way I had spoken. There were remarks given after me by Manager Legal and Manager Investigations before the *Chief Registrar proceeded talking stating that the recruitment process had been undertaken and at the end of the day, she (Ms. Malimali) won.*¹²

14. Mr. Saumi also raised an objection to Ms. Malimali's appointment.¹³ Various other introductions were made without issue and a number of administrative matters were discussed.¹⁴ Ms. Malimali addressed the meeting attendees and read out her appointment letter.
15. Each department head had been given the opportunity to speak, beginning with Ms. Puleiwai who started by congratulating Ms. Malimali.
16. When asked about her response to Mr. Wakanivesi, Ms. Malimali responded as follows:

Ms. Mason: All right. Okay, so then you say you're informed about this successful application. You then go to FICAC with the Chief Registrar and then you have a discussion with them. And then the Commission has heard before about Mr. Wakanivesi and what he had said. So he had then said to you that he didn't agree with the appointment and he would not accept a suspect at FICAC. So how did you respond to that?

Ms. Malimali: I said to Mr. Wakanivesi...

Justice Ashton-Lewis: *Come near the microphone.*

Ms. Malimali: I said to Mr. Wakanivesi, and Ms. Puleiwai is listening, so she can correct me if I'm wrong. I said, well, that's your views. Thank you very much for being honest. I'll take that.

¹⁰ Affidavit of Barbara Malimali dated 27 November 2024 at [6]-[7]; and Affidavit of Francis Puleiwai dated 10 December 2024 at [60].

¹¹ Affidavit of Barbara Malimali dated 27 November 2024 at [11].

¹² Affidavit of Alifereti Wakanivesi dated 12 December 2024 at [11].

¹³ Affidavit of Barbara Malimali dated 27 November 2024 at [12].

¹⁴ Ibid., [13]-[14].

I'll think about that but you wanting to stay or go, the decision is absolutely yours. I left it at that.

Ms. Mason: All right. And then you go on to talk about, and this is in the next few paragraphs, paragraph 13, some pleasantries. Mr. Bainivalu left and you talked to the HR people. You organized an ID and an email. You invited them to ask you questions. And you acquainted yourself with the PR. And then the FICAC IT people set up your email account and your ID and laptop. And then you sent an email to the Chief Registrar at 4:52 and then you left after 5:00 some time. So my question to you is that why did you not discuss what I would call the elephant in the room? You had this investigation there. You had time to talk about all these other things. But the one thing that you should have talked about is what is going to happen to this investigation that I have ongoing. So why did you not discuss that?

Ms. Malimali: Thank you for the question. After Mr. Bainivalu left, I was left alone with all of these people. So I said, look, I know there's a lot of social media postings about this. There are a lot of questions about my supposed relationships with Members of Parliament and all of that. And I said, all right, does anybody have anything to say? They didn't. I said, I'll start. I said, everyone talks about Linda Tabuya. Yes, I knew Linda. We broke up for the final time in 2019. You know we still have some mutual friends but Linda and I are no longer friends. We do not call each other, none of that stuff. We are no longer friends. Occasionally, I said to them, look, like all of us when we attend functions. We'll run into each other at certain functions and we'll do the hugs and kisses, hello, how are you? And I said, and Mr. Kamikamica, I know Mr. Kamikamica through his wife. His wife and I attended the same High School. I mean, of course, she was ahead of me but, you know, we fundraise and give money for the school athletics and things like that. She doesn't, she rarely attends our meetings. So I said, those are the two I can think of that I know. And I said, and of course, I think I also mentioned Fili Vosarogo. I think I mentioned my relationship with Fili because Mr. Vosarogo, before becoming an MP, was a criminal lawyer. So we did cases together we did cases against each other. And then I asked them, do any of you have anything to say to me? Let's deal with it now. And they all sat there and looked at me and then I said, oh, okay, well, since nobody has anything to say to me, I guess you guys can go. I'll just sort myself and go home.

Ms. Mason: But Mr. Wakanivesi had raised the matter, hadn't he? He'd already said that, I don't want to be here with a suspect.

Ms. Malimali: Yes.

Ms. Mason: So that was already opening the door to you to explain what it is you wanted done with that or how that was to be handled.

- Ms. Malimali: Yes, you know in hindsight, probably I should have said something more. I was the stranger in the room. I thought they might say something to me.
- Ms. Mason: Yes, but they did. They did. Mr. Wakanivesi did. He raised it.
- Ms. Malimali: When Mr. Bainivalu was there.
- Ms. Mason: Yes.
- Ms. Malimali: And then when he left, I said, right, now let's talk amongst ourselves, let's talk freely.
- Justice Ashton-Lewis:** *May I just interrupt? When Wakanivesi did this, the CR was with you, wasn't he?*
- Ms. Malimali: Yes.
- Justice Ashton-Lewis:** *So did the CR ask you about that?*
- Ms. Malimali: No.
- Justice Ashton-Lewis:** *It appears on all his evidence and everything, he was just, let it go over his head and he just kept going.*
- Ms. Malimali: I think he saw his role...
- Justice Ashton-Lewis:** *Did he ask you about it?*
- Ms. Malimali: No. I think he saw his role, my understanding, I could be wrong.
- Justice Ashton-Lewis:** *Yeah, no, no.*
- Ms. Malimali: He saw my role, he saw his role at the time as just delivering me there.
- Ms. Mason: Yes, I think he has said that.
- Justice Ashton-Lewis:** *Yes, I know he has said it, but we have another witness now who was there, and I've just asked Ms. Malimali, did he say to you, and you've said no. He delivered you and he went.*
- Ms. Malimali: Because again, he said the same story there. Oh, you people, you've now seen me for the third time in one year. I delivered Ms. Puleiwai, I delivered Mr. Toganivalu. I think I delivered Mr. Aslam, now I'm delivering Ms. Malimali.
- Justice Ashton-Lewis:** *Yeah.*
- Ms. Malimali: Then he gave his usual speech about what happened. He delivered the same thing at DPP's Office, so that's as far as I know.
- Ms. Mason: Well, Ms. Puleiwai gave evidence yesterday that when Mr. Wakanivesi had raised this issue, that the CR was on the

phone, and then he turned around and said, what did you say? In a bit of a tone to Mr. Wakanivesi. And then that was the only response that was made to Mr. Wakanivesi's really quite serious statement. Do you recall that?

Ms. Malimali: I think I heard him say, what did you say? And then I spoke and said, look, I respect your views, this is what you have to say. And I just left it at that then Mr. Bainivalu excused himself.

Ms. Mason: Yes. The staff had already raised it through Mr. Wakanivesi, and I think there was some statement that Mr. Saumi had supported him. It didn't say outright he had supported him. So I would have thought, coming in as the Commissioner with this, what I call the elephant in the room, that you would have wanted to discuss it with them and discuss a way forward. And I'll ask again, why did you not do that?

Ms. Malimali: I think in hindsight, you might be correct. But I think you know, the circumstances, I was coming with all the, before I even went to, what's the name of this place, FICAC,...

Justice Ashton-Lewis: *I think your answer is fair and that is in hindsight, I probably should have. But the only people who were there at that time is yourself and the others. But I think the answer, in hindsight, I should have, is fine.*

Ms. Mason: Right. And in your mind, what were you thinking in terms of how you would deal with the problem?

Ms. Malimali: I wasn't actually thinking about it, because I didn't even know what the allegation was. Because on my way to FICAC, Ms. Forwood had already posted I was going. So when I went to the Chief Registrar and he told me, okay, here's your letter, we're going. I said, oh, I've already read it on Facebook. Ms. Forwood has posted it. So the only thing that I knew at that time was that Ms. Forwood had lodged a letter of complaint, I think, in April.

Ms. Mason: Yes. Early April.

Ms. Malimali: Yes. And all of the other bits and pieces in the middle, I do not know, except what was posted on Facebook. Although I told people, please, my mental state is in a mess, please stop sending me stuff. Well-meaning friends would do screenshots and send it to me thinking they'd been helpful. They weren't. So, you know, to be honest, I wasn't even thinking about it. I was like, you know, I walked into a room where the palpable dislike, it was palpable, but I was like, you know what, I'm going to work with these people, I'm going to get through this, we're going to work through this together. So I was hoping they would tell me, but they didn't, and so I just thought, oh, gosh, I don't know what to do. So in my mind, I was like, Barbara, get in there, just start

working and see how you go. I'm sorry I can't answer it any other way.¹⁵

17. CR Bainivalu was questioned about his response to Mr. Wakanivesi and Mr. Saumi's statements:

Ms. Mason: And then when you introduced her, can you remember one of the FICAC staff members saying, I think I'm going to have to resign because this person who's now come in is a suspect and it's not proper that she should be appointed as Commissioner.

Mr. Bainivalu: Yes, yes, Ma'am.

Ms. Mason: Remember that that was Mr. Wakanivesi?

Mr. Bainivalu: Is that Alifereti?

Ms. Mason: Yes.

Mr. Bainivalu: Yes, yes, My Lord.

Ms. Mason: What did you say to that?

Mr. Bainivalu: Well, like I said earlier, that was the first time to hear first time from an investigator that there is an ongoing investigation. But that was said when they all went around the table to share their voice. And you see, I was appreciated he was up front and he said that

Justice Ashton-Lewis: *Yes.*

Mr. Bainivalu: That he's going to put his resignation because he cannot work with someone as his immediate officer, has current investigation ongoing against her.

Justice Ashton-Lewis: *Move on, Ms. Mason.*

Ms. Mason: All right. Did you ask Ms. Malimali about this? Did you say, Ms. Malimali, did you know about this?

Mr. Bainivalu: Well, I took it the conversation that afternoon that she was aware of it.

Justice Ashton-Lewis: *You took it?*

Mr. Bainivalu: I took the weird because she said...

Justice Ashton-Lewis: *No. What, what evidence, what happenings led you. I just took it. You've heard a good investigator say...*

Mr. Bainivalu: I think Ms. Puleiwai will agree with me here. This, I think her immediate response, I'm thankful that you are clear with that.

¹⁵ Transcript, Day 23, Session 2 – Ms. Maliamli at 7-9.

Justice Ashton-Lewis: *Yes.*

Mr. Bainivalu: If there's an investigation, it will take its course. I do not know what was on her mind at that time. But I was coming back to my role, introducing her, and allowing everyone around the table to share their views. It was only Mr. Alifereti Wakanivesi who said that. But starting from Ms. Puleiwai around, they all gave their piece to me. They said, we are going to support Ms. Malimali.

Justice Ashton-Lewis: *Yes, I'm glad to hear you say that because Ms. Puleiwai spoke well.*

Mr. Bainivalu: Yes.

Justice Ashton-Lewis: *And her words were marvelous. Well congratulations.*

Mr. Bainivalu: Of course.

Justice Ashton-Lewis: *If we, then later, we just need to complete this investigation and then the floodgates open after this. But here's a woman who's not been selected, her not acting nastily, not even refraining from speaking. She, in fact, congratulated, didn't she?*

Mr. Bainivalu: Yes. I remember she said.

Ms. Mason: So, did you ask Ms. Malimali after the meeting, why did you not tell me this?

Justice Ashton-Lewis: *Yes.*

Mr. Bainivalu: I did not have the moment with her after that because I left her there, and I came back. I came early and she was doing some paperwork with the accounts and the Secretary for password and emails and all that, all the administrative part.

Ms. Mason: Did you think about advising the Chief Justice and the JSC that you've got a really serious problem here because now you've got a person who's been appointed. They knew they were under investigation, and they didn't disclose it.

Mr. Bainivalu: I remember I came back and update the Chief Justice. That day that this has been taken its course, I've done what I used to do. Every JSC appointed appointees, so I also mentioned to His Lordship they all shared their views, most of the majority, except one who did say that there was an ongoing investigation. I did update His Lordship on that.

Ms. Mason: Did you feel disappointed with Ms. Malimali for not disclosing this earlier?

Mr. Bainivalu: I don't know, sorry I know I did not feel disappointed. Like I said, My Lord I was just doing what I was supposed to be doing.

Justice Ashton-Lewis: *Yeah.*

Mr. Bainivalu: But I did not have any moment after that to speak to her.

Justice Ashton-Lewis: *When you heard all of this from the different sources that Barbara Malimali was under investigation, yeah you probably knew, I've never heard of this until now, so she's never revealed it to anyone.*

Mr. Bainivalu: Well starting from that day that it's begin to ...

Justice Ashton-Lewis: *I haven't finished yet. You heard all of that?*

Mr. Bainivalu: Yes.

Justice Ashton-Lewis: *Did you at any time walk away or go away thinking, I haven't, this is a bit of a mess?*

Mr. Bainivalu: Yes, I agree with you.

Justice Ashton-Lewis: *Yes, I'd be surprised if you didn't and so, yes. Now I'm not saying it was your duty to go and speak to the Chief Justice or your duty to advise anyone. You did your job and you'd heard all of this. You were aware of this now and serious things. It must have left you with, oh golly, you know, it's not my job to fix it. Oh golly! Am I accurate in that?*

Mr. Bainivalu: Yes, My Lord, like I said, these are all learning exercises as I already stated what we are all planning to do for the JSC. This is something that really will assist me moving forward that all this has to be taken on board. I think it's a lesson as well that at times at least gives some, some, some, some sort of a room to the Secretary.

Justice Ashton-Lewis: *Yes.*

Mr. Bainivalu: To say something. I with utmost respect, I respect the JSC members.

Justice Ashton-Lewis: *You respect the?*

Mr. Bainivalu: I respect all JSC members and at times I know my line, I stay there.

Justice Ashton-Lewis: *Yes.*

Mr. Bainivalu: I cannot overstep to say you need to listen to me.

Justice Ashton-Lewis: *No, I understand.*

Mr. Bainivalu: That's who, that's me and I've been surviving that in the last two and a half years, My Lord,

Justice Ashton-Lewis: *One of the problems here, I've noticed, people like yourself, people who know their lines and respect them. Trouble is with that. That lets people of sneakiness and vindictiveness because they know our Bainivalu will only do this. He won't do anything else. And, and Chief Justice Temo will do this and only do anything else. And a person who made*

a very similar comment was Graham Leung that everyone sticks within their, within their designation. And then they know they can't be accused, they can't be criticized. But the trouble with that, given 16 years of a previous government, it leaves everyone frightened so that not to correct a wrong when they hear it or not to seek to go to an appropriate authority to correct that wrong because the attitude is it's not my problem or I'm not going to report it because I could get into trouble. And if you're going to restore proper parliamentary democracy to this country and the rule of law, yes, people should stay within their area of authority but not be afraid. To go and speak to a person who should deal with a particular interest and just say, look, I've heard A, B and C. Have you heard anything? No. To say, well, maybe you should have a look at this and then step out of it. So, I accept what you say.

Mr. Bainivalu: Thank you, Sir.

Justice Ashton-Lewis: *Yes, Ms. Mason.*

Ms. Mason: Now, do you accept now in hindsight that one of the options for dealing with essentially the lack of disclosure, even though Ms. Malimali had been appointed, was to go back to the President and rescind the appointment?

Justice Ashton-Lewis: *Yeah, or suspend it.*

Ms. Mason: Yeah.

Justice Ashton-Lewis: *Because she didn't offer at any stage to step down. Now...*

Mr. Bainivalu: Well, I look at the report of the interview I did not see anything of that sort.

... ...

Ms. Mason: So, in your discussion with the Chief Justice, you said you went back after the 4th and you said to him, well there's a staff member there who's not particularly happy, Ms. Malimali is under investigation. Did you discuss what options you had in terms of doing something about that?

Mr. Bainivalu: We did not discuss then but after the incident on the 5th, I remember vividly that there was some discussions along for not, not to revoke or may like, if there is an allegation, if there's an investigation, then Ms. Malimali must move that complaint and that file to DPP. I remember that.

Justice Ashton-Lewis: *Yeah.*

Ms. Mason: And that was after the meeting on the 5th?

Mr. Bainivalu: After the meeting, My Lord.¹⁶

¹⁶ Transcript, Day 16, Session 2 – CR Bainivalu at 28-33.

18. The events of 4 September 2024 surrounding the introduction of Ms. Malimali as FICAC Commissioner reveal a breakdown in process, communication, and institutional clarity regarding the role of key stakeholders in the appointment and onboarding of the Commissioner. While CR Bainivalu followed what he described as standard practice in introducing new Commissioners, the process was marred by a lack of prior consultation with FICAC leadership, particularly Ms. Puleiwai, and the abject failure to adequately address or acknowledge the existence of an active FICAC investigation involving Ms. Malimali.
19. This omission became the focal point of the meeting at FICAC, with staff raising serious concerns, most notably from Mr. Wakanivesi and Mr. Saumi, about the implications of having a suspect in an ongoing investigation appointed as Commissioner. Despite this objection, the introduction proceeded, with limited engagement or resolution of the underlying issue. Ms. Malimali, while acknowledging the concerns in hindsight, did not proactively address the FICAC Malimali Investigation at the meeting. Likewise, the CR did not consider it within his remit to escalate the matter beyond informing the CJ post-facto.
20. The CoI is left to conclude that this process lacked transparency and failed to uphold the high standard of integrity expected in such a critical appointment. The absence of clear communication, accountability mechanisms, and timely disclosure contributed to internal conflict, reputational risk, and compromised confidence in the leadership transition at FICAC.

6.3: Ms. Malimali's Arrest

21. On her first day of work, the 5th of September 2024, not long after she arrived at work, Ms. Malimali was arrested. From the Affidavits of Ms. Malimali and Mr. Saumi, along with the evidence that the witnesses provided at the hearing, the events of 5 September 2024 can be pieced together with a great deal of accuracy.
22. On 5 September 2024, Ms. Malimali arrived at work before 8 am.¹⁷ She instructed her PA to send out an invite for a Heads of Department meeting to be held at 9 am.¹⁸
23. Ms. Malimali was in the Conference Room at approximately 8.50 am, when Mr. Saumi, the Manager of FICAC Investigations, Mr. Wakanivesi, the Assistant Manager of FICAC Investigations, Milika Cakacaka and FICAC Officers, Jone Cama, Moses Matanisiga and Siraz Ali approached Ms. Malimali.¹⁹

¹⁷ Affidavit of Barbara Malimali dated 27 November 2024 at [71].

¹⁸ Ibid., [72].

¹⁹ Ibid., [74].

24. Mr. Saumi, in his Affidavit, states that upon approaching Ms. Malimali that morning in the Conference Room to advise her of his intention to conduct a Caution Interview, Ms. Malimali became confrontational and accused Mr. Saumi of insubordination.²⁰ At this point, Mr. Saumi deposed that he effected arrest and applied all procedures of arrest.²¹
25. Ms. Malimali states that Mr. Saumi and others listed above entered the room. Mr. Saumi subsequently sat in front of Ms. Malimali and advised that they were acting under the instructions of and direction of Ms. Puleiwai and were placing Ms. Malimali under arrest.²²
26. In relation to the arrest and detention of Ms. Malimali, Mr. Saumi stated:

Mr. Saumi: As I've said, I went up to her offices at Level building of the Commission. She was inside the conference room. So I went in, I spoke her, Madam, can we have a discussion she said, yeah, come in. So I went with some my other Chief Investigators, including my Assistant Manager. So we went, we sat down and I spoke to her. I asked, madam, you are aware that there is an investigation against you. We are intending to conduct a caution interview. When I uttered those words immediately she said no, this is an act of insubordination.²³

...

So when I said that, I that she would continue to bulldoze her way to us and said this, but I thought to control the situation so I effected arrest.²⁴

...

I actually stood up from where I was sitting and approached her, then applied the procedures of arrest, which touching her on the shoulder, then I told her, Madam, I'm formally arresting you with the administered the judge's rule number 2 that she's not obliged to say anything unless she wish to do so. Whatever you say will be taken down in writing and given in evidence. Then I continue to administer her rights. And I told her, madam, you have the right to remain silent. You also have the right to consult your solicitor. At that moment, she wanted to call the lawyer. So I told her, go ahead, Madam.²⁵

27. Mr. Wakanivesi deposed that at approximately 8.28 am "Mr. Saumi instructed that we (Alivereti Wakanivesi/Chief Investigators Jone Cama and Milika Cakacaka and Manager Investigations Mr. Saumi) visit Ms. Malimali at her

²⁰ Affidavit of Kuliniyasi Saumi dated 3 January 2025 at [35].

²¹ Ibid.

²² Affidavit of Barbara Malimali dated 27 November 2024 at [76].

²³ Transcript, Day 6, Session 2 – Mr. Saumi at 14.

²⁴ Ibid.

²⁵ Ibid., 15.

office at Level 4 Rev John Hunt Building to effect arrest on her for caution interviews”.²⁶

28. Mr. Wakanivesi stated that “In the presence of the team, Mr. Saumi explained to Ms. Malimali on the reason for our presence and the investigation on her case. He proceeded by tapping her shoulder and arresting her for the offence of abuse of office. Ms. Malimali responded by stating that this was an act of insubordination”.²⁷

29. Mr. Wakanivesi testified, of the arrest, that:

Mr. Wakanivesi: ...he [Mr. Saumi] advised Ms. Malimali that you would understand there's a case on you. And referring to the directives, if I'm correct, and then he proceeded with arresting her.²⁸

30. Ms. Malimali stated in her Affidavit:

I had asked if I could call my lawyer. The last person to call me was the President of the Fiji Law Society, Mr. Wylie Clarke.

Mr. Clarke had called me on a Digicell number beginning with 7 so I just called that number. Mr. Clarke answered the call and I told him that I had been arrested by my own officers and if he could call the Chief Registrar and I think I also said to call the Commissioner of Police. I asked Mr. Clarke to come over and assist me.²⁹

31. Mr. Clarke testified that he was not acting for Ms. Malimali following her arrest:

Ms. Mason: Now Ms. Malimali, intimates in her evidence that you were her lawyer. She says and Sir, for the record at page 99 of the affidavit paragraph 84 of Ms. Malimali's affidavit, I asked if I could call my lawyer. The last person to call me was the President of the Fiji Law Society, Mr. Wylie Clarke. Now it doesn't explicitly say that you were her lawyer, but it certainly implies. Did she ever at any stage during that conversation say I'm calling you as my lawyer?

Mr. Clarke: No.

Ms. Mason: Did you say to her, I'm not attending as your lawyer, just to be clear. I'm here in some other capacity.

Mr. Clarke: Well, Ms. Mason, no, I didn't say that but I think given just how well, it was a rather sort of frantic discussion, I think from Ms. Malimali. I think she was very upset and I think I was just trying to digest what she just told me. So no, it didn't come up in that way, but certainly in my mind what was

²⁶ Affidavit of Alifereti Winston Wakanivesi dated 12 December 2024 at [17].

²⁷ Ibid., [18].

²⁸ Transcript, Day 9, Session 2 – Mr. Wakanivesi at 3.

²⁹ Affidavit of Barbara Malimali dated 27 November 2024, at [84]-[85].

happening was of concern for us as the Law Society, that is.³⁰

32. Ms. Malimali's version of events in relation to the phone conversation with Mr. Clarke is as follows:

Ms. Mason: So where had you been when you were arrested? Did you call the Chief Registrar and all the others to come and save you? Why did you do that? If you were so aware of interference, well, you rang them, didn't you?

Ms. Malimali: No, I did not. I called the president of the Fiji Law Society.

Ms. Mason: Yes, and you told him to call the Chief Registrar.

Ms. Malimali: And everybody because...

Ms. Mason: Yes, that's what you said.

Justice Ashton-Lewis: *Why didn't you say then, look, it's all this conundrum, put me over to, or put the matter over to the police.*

Ms. Malimali: For me to say it on the phone?

Justice Ashton-Lewis: *No, no, when it all turned up and they're all running around. When Wakanavesi put his hand, I'm sorry, Saumi, why didn't you say, look, I'm now under arrest, can you put this please over.*

Ms. Malimali: My Lord, it all happened very quickly. I said to them, this is, you're acting illegally, and this is insubordination. And then they started to gather my things. So I said can I call a lawyer?

...

Ms. Mason: So did you not call Mr. Clarke and ask him to bring the CR and the other people?

Ms. Malimali: Yes, I did. I did not say bring, I said call.

Ms. Mason: Call, yes.

Ms. Malimali: Call.

Ms. Mason: But obviously they'd be calling them to do something about the situation.³¹

33. Mr. Saumi deposed that he had advised Ms. Malimali to call her lawyer, and given that she made the call within earshot, Ms. Malimali was overheard telling Mr. Clarke to "call the Chief Registrar and to call everybody".³²

³⁰ Transcript, Day 12, Session 2 – Mr. Clarke at 16 -17.

³¹ Transcript, Day 24, Session 2 – Ms. Malimali at 9-10.

³² Affidavit of Kuliniasi Saumi dated 3 January 2025 at [36].

34. Mr. Wakanivesi stated that “we were able to hear her mentioning and was talking to a Mr. Wylie Clarke. She informed Mr. Clarke in the same call to get Chief Registrar, get all the lawyers and the Commissioner of Police”.³³

35. Mr. Wakanivesi further testified as follows:

Mr. Wakanivesi: she said, Wylie, could you come, I’ve been arrested by my own officers, please get Chief Registrar, get the Commissioner of Police and get everybody.

Ms. Mason: All right. But before she made that call, did she say to you, I want to call my lawyer?

Mr. Wakanivesi: Yes, I remember she was saying that, well, can I call my lawyer and then she called.

Justice Ashton-Lewis: *And then did she use the words and Mr. Clarke was there and she says in the, sorry, in the call to him, she said, and get all the lawyers down. Did she use those words, get all the lawyers?*

Mr. Wakanivesi: No, no, My Lord, I’m sorry she said, get everybody.

Justice Ashton-Lewis: *Get everybody.*

Mr. Wakanivesi: Yes.³⁴

... ...

Ms. Mason: Did you or anyone else at that time say to her, you’re actually only entitled to have your lawyer present as you’re under arrest?

Mr. Wakanivesi: No, she was only speaking with Mr. Saumi.

Ms. Mason: Did you think it was wrong that she requested or got all these other people there?

Mr. Wakanivesi: Yes, My Lord.

Ms. Mason: Why did no one from FICAC say to her or to the lawyers when they arrived or to the Chief Registrar, you are not entitled to be here, she is entitled to have a lawyer and that’s it?

Mr. Wakanivesi: I was not around when Mr. Saumi met Mr. Clarke...³⁵

36. Mr. Saumi testified as to the events that occurred once Mr. Clarke arrived as follows:

Ms. Mason: Right. And then Mr. Clarke arrives after 9.30, is that correct?

³³ Affidavit of Alifereti Winston Wakanivesi dated 12 December 2024 at [18].

³⁴ Transcript, Day 9, Session 2 – Mr. Wakanivesi at 4.

³⁵ Ibid., 5.

- Mr. Saumi: Correct.
- Ms. Mason: And he then you say, told you to wait for the arrival of the Chief Registrar. Did he say why?
- Mr. Saumi: No, he didn't say any reasons. I approached him and asked, shall we proceed with the caution interview, and he said no we wait...³⁶
- ...
- Ms. Mason: So when he said, we will wait for the arrival of the Chief Registrar, did you ask him why?
- Mr. Saumi: My Lord, I first need to confirm that on the first time, I approached him two times. On the first time, he told me, can we just wait, he did not wait for CR. I thought he was waiting for his junior counsel or what. Then after, sometimes I saw the rest of the lawyers were coming Mr. Bale. At the same time, I was not always I just come ask, go back because were preparing for the caution interview. Then on the second occasion when I came in, he told me CR is coming, just wait he's just coming down the street close to our office. So that is what he told me.
- Ms. Mason: Right, so did you ask him why is the Chief Registrar here?
- Mr. Saumi: Yeah, I asked him and he said, he just said, wait, wait, wait, wait. I asked him why do you want the CR and he said, wait, wait, I don't really know. And on the second time, while I was still talking to him, CR's car came in the driveway.
- Ms. Mason: So did you object? Did you say no, no, I'm sorry, he can't be here?
- Mr. Saumi: No, I didn't object.
- Ms. Mason: Why did you not object?
- Mr. Saumi: Okay, my mind at that time, My Lord, I was thinking, no, maybe because maybe there are things that she wants to discuss and I want to know what they are after first. That is what was in my mind.³⁷
- ...
- Ms. Mason: When you say there were things she wanted to discuss, who do you mean? Who was she wanting to discuss? Do you mean Ms. Malimali wanted to discuss?
- Mr. Saumi: No, I am referring to Mr. Clarke.
- Ms. Mason: Right, okay. That he wanted to discuss.

³⁶ Transcript, Day 6, Session 2 – Mr. Saumi at 16.

³⁷ Ibid., 16-17.

Mr. Saumi: We wait for CR is coming. I do not really understand why he was telling me to wait for the CR. So when the CR came, he got out of the vehicle and asked me, where is Ms. Puleiwai?³⁸

37. Justice Ashton-Lewis asked Mr. Saumi about why the CR was back at FICAC that morning:

Justice Ashton-Lewis: Did you think to ask this Chief Registrar, why are you here? You already were here yesterday and introduced her around. What are you doing here again? Now I know that I would be pretty hard for a, if you know, you're responsible senior police officer. But again, you had every right.

Mr. Saumi: Exactly, My Lord, I don't want to do any confrontation there.³⁹

38. Following the arrival of the Chief Registrar "everybody" that Ms. Malimali had instructed Mr. Clarke to ask to come to FICAC, including two senior lawyers, Mr. Amani Bale, and Mr. Nemani Tuifagalele, and Ms. Laurel Vaurasi, a former President of the FLS, arrived.⁴⁰

39. Mr. Saumi further gave evidence that the only thing the CR said to Mr. Saumi was that he wanted to see Ms. Puleiwai:

Mr. Saumi: and when CR asked me that Ms. Puleiwai, I said she's here. And the CR told me, I want to see Ms. Puleiwai. That is the only thing that CR told me.⁴¹

40. As Mr. Saumi escorted the CR up to the Commissioner's Office where Ms. Puleiwai was, the rest of the lawyers all gathered in the lift with Mr. Saumi and the CR. At that point Mr. Saumi did not know why the lawyers were present, but that during the course of the meeting with Ms. Puleiwai and Ms. Bokini-Ratu, Mr. Saumi quickly realised that the main agenda of all present in that meeting, that arrived subsequent to Ms. Malimali's phone call, was to secure her release.⁴²

41. Counsel Assisting questioned Mr. Saumi as to whether or not he ever inquired as to what the other lawyers were doing there:

Ms. Mason: ...Did you ask them at any time, what are you doing here?⁴³

...

Mr. Saumi: No I did not. My apology, I did not ask, I did not ask.

³⁸ Ibid., 17.

³⁹ Ibid., 16.

⁴⁰ Affidavit of Kuliniyasi Saumi dated 3 January 2025 at [39].

⁴¹ Transcript, Day 6, Session 2 – Mr. Saumi at 19.

⁴² Affidavit of Kuliniyasi Saumi dated 3 January 2025 at [40].

⁴³ Transcript, Day 6, Session 2 – Mr. Saumi at 20.

Ms. Mason: Did they at any time tell you what they were doing there?

Mr. Saumi: Yes, My Lord.

Ms. Mason: Okay, so who said what?⁴⁴

42. Mr. Saumi later said that he formed the opinion that the CR and everyone else present were there for an unlawful purpose:

Mr. Saumi: That's the third question. Why are you doing it? I didn't want to speak because everybody was inside as we went up...

Justice Ashton-Lewis: *Who asked that question?*

Mr. Saumi: CR, fully on this the Chief Registrar was talking.

Justice Ashton-Lewis: *That's the CR.*

Mr. Saumi: Yes, yes, My Lord.

Ms. Mason: So you didn't answer that question?

Mr. Saumi: I didn't answer that question. I need to share my experience at that point in time. What went into my mind, it was a tough situation when that question was, when I was a question. When CR questioned me. When that question came, My Lord, in my own instinct, I know that they were here for an unlawful purpose.

Justice Ashton-Lewis: *They were there for an unlawful purpose.*

Mr. Saumi: Yes. I wanted to accommodate, to go in for her to meet Puleiwai. But when the CR questioned me, why, who did the arrest. That triggered an instinct in me that these people.

Justice Ashton-Lewis: *When you formed the view in your mind that these four lawyers were there plus the CR for an unlawful purpose, did you state that and ask what the purpose or did you just remain silent?*

Mr. Saumi: No, I remain silent. But this is the moment...

Justice Ashton-Lewis: *...You said you started to feel that they were there for an unlawful purpose. Did you have any idea what that unlawful purpose was?⁴⁵*

...

Mr. Saumi: They were trying to interfere into our investigations.⁴⁶

43. In the meeting that followed, after Mr. Saumi had led the CR and the group of lawyers to Ms. Puleiwai's office, there were ongoing discussions between the

⁴⁴ Ibid., 19.

⁴⁵ Ibid., 21-22.

⁴⁶ Ibid., 22.

FICAC officials in attendance, who were Ms. Puleiwai, Ms. Bokini-Ratu and Mr. Saumi, and the group which comprised the CR, Mr. Clarke, Ms. Vaurasi, Mr. Tuifagalele and Mr. Bale. Mr. Saumi recorded part of the meeting between the FICAC officials and the Malimali Rescue Party and was requested by the CoI to compile a transcript and attach that to his Affidavit.⁴⁷ The meeting had occurred in two parts. After the first session, FICAC officials left the room to have discussions. When they had finished they went back into the room for the second half of the meeting. Mr. Saumi only recorded the first session. A copy of the Saumi Transcript has been attached as Annex I.

44. The Saumi Transcript referred to in Mr. Saumi's Affidavit⁴⁸ reveals the following conversations:

Chief Registrar: Why so fast over-night that's my question? It is birth from bitterness, is it birth from who because you already told us, the Deputy Commissioner gave us the direction to make an arrest, I don't have an issue with that. I have no issue with that I'm not here to interfere with your work.

...

...I'm not here to stop the investigation, I'm not here to tell you what you do best, you all good at your own field of work and you know that and I know that.

Ms. Puleiwai: So under the Constitution the Commissioner and the Deputy Commissioner we both have the same powers. I'm exercising my right, my powers under the Constitution to for the Team to carry out their due diligence and the investigation to be completed against Ms. Malimali.

...

So it's unfortunate that the circumstances had to be done this way we were, that's why we wanted to see if there is a case against her if there was no case it would have been closed. We would have end this matter Ms. Malimali would have come on Board as the Commissioner, there is no bitterness, there's no animosity, we are doing our duty to the public and to our best of our ability as well and under the rule of law.

...

We are not doing this out of bitterness, this is simply we have the evidence and been in my role as the Deputy Commissioner. That is what I'm doing.

...

We are ready to answer to the JSC, to the President as well because this is, the this is nothing...against the law. This is

⁴⁷ Affidavit of Kuliniasi Saumi dated 3 January 2025 at [41].

⁴⁸ Saumi Transcript attached as Annex KVS-14 of Kuliniasi Saumi Affidavit dated 3 January 2025.

our interpretation of the law and this is what going to begin and our interest as well.

Mr. Clarke:

I think we all have to think very very carefully the work that you are doing, you going against the wishes of the President through due diligence that was the lawful process...

...

You have to be very careful in what you doing she has already said.. in Court so I think procedurally and legally this case is going no-where, I'm not saying that correct I'm not saying that wrong but that's what been made very clear right.. and with all due respect to all of you.. to do your job but you have to be very careful about the legality of what you doing.

...

She's been Barbara has appointed by...there is a big question mark...about mid-night last night as Acting Deputy Commissioner, my view would be legally that the Acting appointment lapse, okay at midnight last night so there's a big question about your authority.

...

...we also have to think very carefully about the fact that having detained her this morning...she is now...she is now the substantive Commissioner and all the powers of FICAC under the Constitution and under your own law destine her.

...

So I ask you to be very very careful of what you doing because I don't think it's that simple as you guys said...and with all respect it's not anyone of us around this table...what the President has decided and the JSC...not for us. We all our place in the system ah you verbally agree with it or not, it's either here or there it's done the appointment is done and you all have to respect it.

Ms. Vaurasi:

...it is our greatest concern that the rules of law is adhere and no one is trying to interfere and that is importantly clear, no one here is wanting to interfere with the work. Our greatest concern is about the rule of law and how do we ensure that the rule of law is upheld and also to hear what you saying about integrity. And so I hoping that we can finish this with a proper solution to this.

...

Mr. Bale:

I ask that you release her and she's be released immediately and the JSC go and convince and the JSC see fit to go to the President to revoke your appointment...that's so late because at the end of the day you all come under the AG.

...

...you all heard very clearly that Court would not accept it so this is an exercise to futility yes at the end of the day we are all answerable to the top...so everybody comes under the AG so I ask. I say this with all honesty I have 35 years – experience what you have done now this will spoil your careers but that's your choice.

...

So, I ask that common sense prevail you release her, let her go, let the JSC through the Secretary go and so that the tension is a and then like you like him you await what the AG's said because to if you keep her here this impasse won't go away because you want to understand what he said if you go to Court it won't accept your charges so what you gonna do come and keep her here.

- Chief Registrar: We have so much confidence even you have to take that to the Chief Justice advice...don't accept any charge...this is the beginning of that this dialogue eh there's a need to if Puleiwai wants to come over I will ask her...daru vei Talanoa. [lets discuss].
- Ms. Bokini Ratu: We also understand that the rule of law needs to be followed, needs to be done, we respect that but our dilemma Sir was how do we...and how, how do we ensure that the Commissioner's office stays independent and by if this comes to charging the Commissioner must sanction so how do I as Manager Legal who recommends the charges bring this to her and say this is your charge eh this charge is against you, how, how do I do that?
- Mr. Bale: But the problem your charges won't be accepted...
- Mr. Saumi: Its an Election related matters and we have the Law Enforcement agency that deal with that
- Mr. Bale: But remember you, you, you need the Court to accept it, if they say no then you...
- Mr. Saumi: No, I'm just I'm just saying in relation to that solution eh to hand over to the Police, we were of the view of that but the other issue is that the Law says that only FICAC is to deal with Election matters so we cannot leave it.
- Mr. Clarke: I think to just to...the situation you need to release Ms. Malimali now before this things worse okay you can arrest her later...there is a possibility you can do it later she got...this situation cannot be considered...while we sit here.
- Mr. Bale: Eh Ms. Puleiwai don't be scared...⁴⁹

⁴⁹ Ibid.

45. Counsel Assisting raised the point of the rule of law with Mr. Clarke during questioning. In response, Mr. Clarke stated the following:

- Ms. Mason: I didn't see any discussion or questions about the seriousness of the charges, what they were. I also didn't see much discussion about the process and the lawful authority because Ms. Puleiwai, she was saying what authority she had, but there wasn't a lot of discussion around those matters, which I thought that if people were talking about the rule of law, they would be discussing that in detail to ascertain if there really was a right, a power to arrest, if it really had been done properly. I really didn't see that. Would you agree?
- Mr. Clarke: I think the only person that was speaking with any real conviction about that point of power was Ms. Puleiwai. Of course, I think we could be, or certainly I think I could be forgiven for having some doubt about what she's saying. But look, I kept just outlining my concerns, and those were the sort of bigger picture concerns about what was going on. But yeah, I mean, as His Lordships already said, I didn't know what the answer to that question is at the time, you know, who's power it is.
- Ms. Mason: Yes, but those bigger picture concerns can only arise accurately if there's some considered opinion around the detail of what had happened, and I guess that's what I'm saying. There's no discussion about the detail as you would have in a negotiation meeting. You would be thrashing out the different legal opinions and the different processes and facts until you got to some outcome. But here, there was just that higher level Rule of Law, Rule of Law.
- Mr. Clarke: And perception, a good perception about perceptions.
- Ms. Mason: Yes, which could be argued on both sides. Anyone can say Rule of Law. But what it actually means in practice, that's another thing. So I just, just this lack of detail, and when this was put to the FICAC witnesses, one of them said, well, that's because they only came there for one thing, and that was Ms. Malimali's release. That's it. Simple as that. What do you say to that?
- Mr. Clarke: Look, I mean, I think you have to put yourself in our shoes on that day. It was terribly rushed. No one had, I didn't have any time to grab anything. I basically went as quickly as I could. So, I mean, I think that lack of careful analysis and study, I mean, it just wasn't, in those circumstances, it just wasn't going to happen. And, sorry, what was the other part of your question?
- Ms. Mason: That the terms rule of law were just bandied about, but actually there was no discussion about the detail or the laws that would lead to such conclusion.

Mr. Clarke: Well, I have to disagree with that, because, I mean, I thought I was very clear during our discussion about why these raised Rule of Law questions, you know, and...⁵⁰

46. The transcript captured a tense and urgent discussion between several senior officials regarding the arrest of Ms. Malimali. The conversation revolved around the legality, procedure, and motivations behind her detention, raising concerns about due process, constitutional authority, and institutional integrity.
47. The CR questioned the haste of the arrest, asking why it happened so quickly overnight and emphasizing that while Ms. Puleiwai had authority to act, there must be transparency and adherence to proper procedures. The CR insisted they were not interfering with the investigation but stressed the need for careful consideration.
48. Ms. Puleiwai defended the arrest by asserting her legislative and constitutional authority, which she shared equally with the Commissioner. She claimed the arrest was based on evidence and carried out in the public interest, not out of personal animosity or political bias. She emphasized that they were willing to answer to the JSC and the President and that the action aligned with their interpretation of the law.
49. Mr. Clarke and Ms. Vaurasi expressed their concerns as based, apparently, on the rule of law. Mr. Clarke pointed out that the arrest potentially contradicted the President's decision and undermined the official appointment process. He questioned the legitimacy of Ms. Puleiwai's authority, which he believed had lapsed at midnight. Ms. Vaurasi emphasized that upholding the rule of law was paramount and urged the immediate release of Ms. Malimali. She cautioned that proceeding further could be professionally damaging for those involved.
50. Several participants in the Malimali Rescue Party highlighted the importance of respecting the institutional hierarchy, referencing the roles of the President, A-G, and JSC. They believed the matter should be addressed through these established channels, not through alleged unilateral actions.
51. Ms. Bokini-Ratu and Mr. Saumi voiced practical and legal concerns. Ms. Bokini-Ratu, as FICAC Manager Legal, noted the ethical dilemma of requiring Ms. Malimali to sanction charges brought against herself. Mr. Saumi added that FICAC, having jurisdiction over election matters, were thereby constrained in handing the file to the Police who lacked the jurisdiction to deal with electoral matters. At that time, it was thought that only FICAC could deal with electoral related offences. The law has since been clarified.
52. Mr. Clarke and Ms. Vaurasi strongly advocated for "de-escalation". They urged the immediate release of Ms. Malimali and suggested that the issue be resolved through the JSC and the President. They warned that continued detention could

⁵⁰ Transcript, Day 12, Session 3 – Mr. Clarke at 14-15.

escalate tensions, damage institutional credibility, and lead to an impasse with no legal resolution.

53. Ms. Bokini-Ratu in her Affidavit gave her view that it was clear that the Malimali Rescue Party were present to secure Ms. Malimali's release.⁵¹ She did not recall in what capacity the other lawyers were there and what interest they had in that meeting but for Mr. Clarke, who was the President of the FLS, his view was that the rule of law needed to be upheld.⁵² However, upon being questioned about what the "rule of law" entailed, Mr. Clarke was not able to provide any detail about what exact law Ms. Puleiwai and the other FICAC officials had broken. None of the lawyers present acted for Ms. Malimali, so none of them had a right to be there.
54. Ms. Bokini-Ratu provided evidence in relation to that portion of the meeting which was not recorded in the Saumi Transcript, and recalled that the meeting at times had heated exchanges where on one occasion, the CR began yelling at Ms. Puleiwai "WHO ARE YOU?" when Ms. Puleiwai initially insisted that she would not instruct her officers to release Ms. Malimali. Mr. Bale had also stated that Ms. Puleiwai, Mr. Saumi and Ms. Bokini-Ratu were committing "career suicide".⁵³
55. Ms. Bokini-Ratu's Affidavit provides an important piece of context to the Saumi Transcript where there were discussions about charges not being accepted by the Court. She deposed in her Affidavit that the CR, after initially stating that Justice Temo had instructed all Court Registries not to accept any charges filed by FICAC, later stated that no charges would be accepted unless they were signed by Ms. Malimali as the Commissioner.⁵⁴
56. At the conclusion of the meeting, a decision was reached by the FICAC officials present at the meeting to release Ms. Malimali. It appears from the evidence of all parties, that the decision to release Ms. Malimali was not due to the FICAC officials realising that their actions contravened any laws, but primarily because of the information from the CR that the CJ had instructed all registries not to accept anything filed by Ms. Puleiwai, or anyone other than Ms. Malimali. Ms. Bokini-Ratu deposed that she advised Ms. Puleiwai to release Ms. Malimali based solely of the statement by the CR that the CJ had said that no Court Registry would accept charges filed by FICAC, because, in light of that statement, there would be no way to lay charges against Ms. Malimali or for FICAC to be allowed to have Ms. Malimali produced in Court.⁵⁵
57. Reading the Saumi Transcript, and the excerpts above, it is clear that the Malimali Rescue Party, whilst reiterating that they were not there to interfere

⁵¹ Affidavit of Bokini Ratu dated 12 December 2024 at [52].

⁵² Ibid.

⁵³ Ibid., [54].

⁵⁴ Ibid.,[55].

⁵⁵ Ibid., [58].

with FICAC's work, were in actual fact there, as Mr. Saumi had put it, for an unlawful purpose. The CoI reaches this conclusion based on the evidence that was heard and presented. Ms. Bokini-Ratu stated her concerns as follows:

I had also become personally concerned for Mrs. Puleiwai as, during the meeting, the CR Mr. Bainivalu had iterated that criminal charges were imminent against her if she insisted on holding Ms. Malimali in custody.

58. Mr. Saumi, testified in relation to the decision to release Ms. Malimali, as follows:

Ms. Mason: Okay. And in that meeting, who decided to agree to the release of Ms. Malimali?

Mr. Saumi: Mrs. Puleiwai. She decided.

Ms. Mason: Do you know why she made that decision?

Mr. Saumi: Because of the continuous threats.

Justice Ashton-Lewis: Threats?

Mr. Saumi: Threats.

Justice Ashton-Lewis: What threats?

Mr. Saumi: During our discussions, we were told, your career is on the line.⁵⁶

...

Mr. Saumi: We will be terminated.

Justice Ashton-Lewis: And who were saying that careers were on the line?

Mr. Saumi: I remember Mr. Bale was saying that.

...

Mr. Saumi: And also the Chief Registrar indicated that if you intend to file your charges, the Court will not accept your charges. That is the second one.⁵⁷

...

Mr. Saumi: Yes, and he was indicating, My Lord that it was the instruction from the Chief Justice that all registry around the country will not accept any, the filing of any FICAC charges, that is the second one. And the third one, I remember, Mr. Bale said, this is an exercise in futility. Whatever you do, you will not be accepted.

⁵⁶ Transcript, Day 6, Session 2 – Mr. Saumi at 26.

⁵⁷ Ibid., 27.

Justice Ashton-Lewis: *You will not what?*

Mr. Saumi: Whatever charges you do, or whatever investigation process you do, it will not go ahead.⁵⁸

...

Mr. Saumi: ...and I knew that they were interference and when they were talking individually, immediately after they were talking, they were telling us, no, this is...We are not interfering with your work, you need to consider but that is what they are saying. So I thought, after all discussion indirectly I told them. Sir, with due respect, we have a statutory role to perform. We have a responsibility to perform under the Act. I don't want to be questioned that I did not perform my role.⁵⁹

59. Mr. Saumi also testified that no one, questioned the legality of Justice Temo's instructions:

Ms. Mason: So when the Chief Registrar said, the CJ said that no courts in the country will accept the charges. Did anyone say, surely he didn't he can't have said that. Did anyone question that?

Mr. Saumi: Nobody questioned.⁶⁰

...

Ms. Mason: Did anyone at the meeting question this instruction, supposed instruction from the Chief Justice that no registries around the country will accept the charges?

Mr. Saumi: No, My Lord.

Ms. Mason: Did any of the lawyers raise an issue with the legality of that instruction?

Mr. Saumi: No, My Lord.⁶¹

60. The evidence of Ms. Bokini-Ratu in relation to the release of Ms. Malimali was as follows:

Ms. Mason: So overall, eventually you advised Ms. Puleiwai to release her. Is that correct?

Ms. Bokini-Ratu: Yes, I did, My Lord.

Ms. Mason: Why did you do that?

Ms. Bokini-Ratu: During the meeting, as I said earlier, My Lord, it became obvious to me that the CR and the four other senior

⁵⁸ Ibid., 28.

⁵⁹ Ibid., 28-29.

⁶⁰ Ibid., 29.

⁶¹ Ibid., 29-30.

practitioners were there for one thing, and that was to ensure that Ms. Malimali was released. They started with the arguments of rule of law. Then they quickly descended to, you have committed career suicide. At one point, the Chief Registrar was raising his voice and yelling at Ms. Puleiwai.

Justice Ashton-Lewis: *Yes.*

Ms. Bokini-Ratu: And as she was trying to reply that I have Constitutional Powers, I have powers under the FICAC Act, he would speak over her. So it quickly became from rule of law, it became to trying to force the issue. Yes.

Justice Ashton-Lewis: *Did it ever occur to you to say, and I realise this is hard, but you had the power to do it. If you all do not leave now, I will have you arrested. You're interfering in a process and I will ask Mr. Saumi to call the police. You are abusing your powers, now leave. Did it occur to you? I know that it'll be a hard one but you did have the power to do that and the authority to do that.*

Ms. Bokini-Ratu: No, no, My Lord. At that time, My Lord, no I did not think of it.

Justice Ashton-Lewis: *Just would you wait a bit. I just need to make a note. I just want to make sure I've got this note clear from you, that if these all came in first, you have to follow the rule of law. When that was met, it then becomes you have to release her. When that's not being acceded to quickly, you get a Chief Registrar yelling and I've got some statements, record of Mr. Amani Bale. Did it go like that? In that descending order of sensibleness?*

...

Ms. Mason: So she had said it started with rule of law and then it went to you're committing professional or career suicide. And then the shouting like, who are you?

Justice Ashton-Lewis: *Yes.*

Ms. Mason: And then the speaking over her, over Ms. Puleiwai, when Ms. Puleiwai tried to speak, speaking over her. And then you were going to say something else after that. Can you recall?

Ms. Bokini-Ratu: Yes. The Chief Registrar had also mentioned that we would not be allowed to file charges. The first time he said it, My Lord, he said, the Acting CJ has directed all Court Registries across Fiji not to accept any charges from FICAC. At that point, he, because he was sitting across the room from me. He looked over at me and I think Mr. Bale started saying something. The Chief Registrar looked across the room at me and I asked him, under what law, Sir? And he said, he is exercising his discretion.

Justice Ashton-Lewis: *Oh! He's exercising his discretion?*

Ms. Bokini-Ratu: Yes, My Lord.

Justice Ashton-Lewis: *To carry out something he doesn't have the power to do?*

Ms. Bokini-Ratu: He said the Acting Chief justice is exercising his discretion and he has directed the Courts in Fiji to do, the Court Registries in Fiji not to accept charges. Following that, we went to a break. As you can see in this transcript, we went to a break. Mr. Saumi, Ms. Puleiwai and myself walked out. We discussed with some of the other HOD's and we were of the view that, no, we have enough to charge her. Let's go back in and let's try to sort things out. We walked back into the meeting. Still we had more discussions, arguments. Then the Chief Registrar said, no charges will be accepted unless they are signed by the Commissioner, which is Ms. Malimali.⁶²

61. Mr. Saumi also testified as to the release of Ms. Malimali:

Ms. Mason: Okay. So at what point did Ms. Puleiwai agree to release Ms. Malimali from arrest?

Mr. Saumi: Okay, after we had a meeting, we came to level three at the legal board, legal at the office of the Manager Legal to come and discuss. And after that discussion, when we went back, Ms. Puleiwai insists that we will proceed. And there were to which CR replied with tone of voice that was a bit aggressive. And at that point in time we told, at that time we, we suggested to Ms. Puleiwai to consider. So...

Justice Ashton-Lewis: *So it was you who suggested to the acting Deputy Commissioner to consider releasing Ms. Malimali, was it? Was that the advice you gave?*

Mr. Saumi: Yes, because what he was saying is that they won't accept our charges.⁶³

62. The events of 5 September 2024 concerning the arrest and subsequent release of Ms. Malimali raise serious and substantive issues relating to the exercise of statutory powers, procedural propriety, the independence of investigatory bodies, and most importantly, the criminal issue of obstruction or perverting the course of justice.

63. The evidence presented to the CoI, including affidavits, transcripts, and oral testimony, establishes that there were two competing narratives concerning the circumstances of Ms. Malimali's arrest. While FICAC officers, led by Mr. Saumi, maintain that the arrest was lawfully executed following proper protocols, the Malimali Rescue Party that arrived uninvited, contend that the arrest was abrupt, unlawful, and politically or personally motivated.

⁶² Transcript, Day 11, Session 2 – Ms. Bokini-Ratu at 26-28.

⁶³ Transcript, Day 6, Session 2 – Mr. Saumi at 30.

64. Counsel Assisting put to the members of the Malimali Rescue Party the proposition as to whether Ms. Malimali was immune from arrest, and therefore above the law. Mr. Clarke responded as follows:

Ms. Mason: So do you think that the head of an organization like FICAC should never be subject to arrest or to charges?

Mr. Clarke: Oh no, I'm not saying that at all.

Ms. Mason: So why would there be a problem with the Commissioner being arrested and charged?

Mr. Clarke: Again for the reasons I just outlined. One was the fact that there would have been a question about whether it was properly, you know properly brought.

Justice Ashton-Lewis: *Where did you hear that question?*

Mr. Clarke: In my mind. This was a question to me in my own mind about Ms. Puleiwai as Acting Deputy Commissioner, I think. Whether it was appropriate in her situation having had an interest in the job herself and having had that...⁶⁴

65. Ms. Vaurasi said the following:

Ms. Mason: All right. Now I'm just looking at paragraph 14 of your affidavit. And in that paragraph, you say that you were advised that Ms. Malimali had been arrested by FICAC, and you used the word despite being recently appointed as its Commissioner. And I wanted to ask you, why would it be wrong for a FICAC Commissioner to be arrested? Is there something wrong with that?

Ms. Vaurasi: Well, the Act makes it clear, and I speak from experience as well, that once the Commissioner is appointed by the JSC, obviously the arrest by anyone in her team is quite clearly contrary to their own Act.

Justice Ashton-Lewis: *So you're not saying that that position is immune from arrest because no one is immune from arrest?*

Ms. Vaurasi: No. The police can arrest her. Anybody can get arrested. What I'm saying is that particular instance that we were going for.⁶⁵

66. CR Bainivalu stated the following:

Ms. Mason: All right. Now, Mr. Chief Registrar, what this document is, is a transcript of an audio recording that the FICAC, one of the FICAC Officers made, not of the whole meeting, but of part of it. So, the meeting was, there was a part and then there was a breakout where the FICAC staff went off and had a discussion and then they came back in. So, this recording is

⁶⁴ Transcript, Day 12, Session 2 – Mr. Clarke at 23-24.

⁶⁵ Transcript, Day 13, Session 1 – Ms. Vaurasi at 9.

only of that first part. Now, at page 671, you start off and you've just given evidence that you started off with a heartfelt prayer. Then here you say, this is an independent body and we're not here to be seen as interference of your own investigation. My concern, as a Secretary, why she has all the power right now signed by the President. I do not know what power you have to arrest your own Commissioner. So, do you recall saying these words?

Mr. Bainivalu: Yes.

Ms. Mason: And you recognize that under the Constitution, FICAC is an independent body?

Mr. Bainivalu: That's right.

Ms. Mason: And the problem that you had was that she had was that she had just been appointed? Now, do you think that a Commissioner of FICAC is immune from arrest and charges?

Mr. Bainivalu: I don't think so.⁶⁶

67. Mr. Bale said the following:

Ms. Mason: Yes, Mr. Bale, can you just go through why you think that the Deputy Commissioner, that Ms. Puleiwai, did not have legal authority to arrest Ms. Malimali?

Mr. Bale: Because in my view, under section 7(1).

Justice Ashton-Lewis: Of what?

Mr. Bale: Of the FICAC.

Justice Ashton-Lewis: Yes, thank you.

Mr. Bale: The Commissioner was not absent from duty. She was in the.

Justice Ashton-Lewis: Yes.

Mr. Bale: Yes, so she had the powers of the Commissioner. And remember, in my view, she was the acting Deputy Commissioner. So that means her acting ceased automatically at midnight.

Ms. Mason: Yes but she was still the Deputy Commissioner.

Mr. Bale: Yes.

...

Ms. Mason: So are you saying that she couldn't be charged?

⁶⁶ Transcript, Day 16, Session 2 – CR Bainivalu at 35-36.

Mr. Bale: The President can then charge the JSC.⁶⁷

68. Mr. Tuifagalele stated the following:

Ms. Mason: Did you think it was FICAC's business and FICAC's business alone to decide whether she should be arrested or not?

Mr. Tuifagalele: I've attended a lot of FICAC interviews for suspects and accused persons and ended up being my clients. So I know the business of FICAC in apprehending people and for me it's very clear. When I come in, I will have to ask, have you arrested? Yes, we've arrested. Number two, have you interviewed? No. Then most of the time, probably 95%, I will ask, is there any opportunity for my client who's now been arrested for us to go back with?⁶⁸

69. Counsel Assisting put the question to the FICAC officials about whether they felt they were intimidated and bullied. Ms. Bokini-Ratu responded as follows:

Ms. Mason: And then I have some questions to put to you in relation to the presence of those individuals. And I put the same questions to Mr. Saumi because he was present at the meeting. Did you feel intimidated and or threatened by those present at the 5 September arrest meeting and by what they did and said?

Ms. Bokini-Ratu: Yes, My Lord.

...

Ms. Mason: Did you feel intimidated and or threatened by the Chief Registrar's presence, words and actions?

Ms. Bokini-Ratu: Yes, I did, My Lord.

Ms. Mason: Did you feel intimidated and or threatened by Mr. Bale's presence, words and actions?

Ms. Bokini-Ratu: Yes, My Lord. He was the one talking the most. And he was the one who told us, Ms. Puleiwai, Mr. Saumi and myself, that we were committing career suicide while pointing at each of us.

...

Ms. Mason: Okay. Did you feel intimidated and or threatened by Ms. Vaurasi's presence, words and actions?

Ms. Bokini-Ratu: My Lord, for Ms. Vaurasi, I did not. Because for me, I think Mr. Saumi had mentioned that she spoke about the Writ of Habeas Corpus. That was probably the only time that she

⁶⁷ Transcript, Day 13, Session 3 – Mr. Bale at -22-23.

⁶⁸ Ibid., Mr. Tuifagalele at 50.

actually spoke. And I felt like she sort of defused the situation a little bit because...

Justice Ashton-Lewis: *Oh, good.*

Ms. Bokini-Ratu: Yes, because she spoke very calmly and it sort of made everyone simmer down a bit. So for her, no, I didn't feel threatened.

Ms. Mason: Did you find Mr. Clarke's presence, words and actions intimidating and threatening?

Ms. Bokini-Ratu: Yes, My Lord. If I may, My Lord, I had mentioned that we had taken two breaks. After the first, for the first break, when we went back in and Ms. Puleiwai informed everyone present that we would continue with the arrest and go through our process, Mr. Clarke sort of turned and said, you know, I wasn't angry before. Now I'm very angry. I'm really angry about this. He started raising his voice from that point.⁶⁹

70. The issue of the bullying and intimidation by the Malimali Rescue Team towards the FICAC officials was put to Mr Clarke, and he was asked whether his behaviour in being silent and not intervening in the bullying was acceptable. He denied that proposition. He stated the following:

Ms. Mason: My friend, Mr. Chaudhry, can attest to this. If, say, the President of the Law Society was in a meeting and staff were getting yelled at like this and threatened and you didn't do anything, you actually would receive quite likely a finding of misconduct. The Law Society is very serious about bullying and threats and they actually have a bullying register, just like a sexual harassment register. So does it, I mean, occur to you now, after we have heard evidence from Ms. Bokini Ratu who seemed quite upset at the whole ordeal and saying she had never before been subjected to such behaviour, do you think that perhaps you should have said something?

Mr. Clarke: I think at the time, and you can see from my comments that I was really just sort of trying to calm the situation down and try and help in some way to resolve the impasse. Whilst I found Mr. Bale's comments unhelpful in trying to resolve it, like I said earlier in my testimony before lunch, if they were intimidated, I didn't see that. Although in hindsight, I mean, in retrospect, I hear what you're saying, Mrs. Mason, but at the time, it didn't strike me like that.

Ms. Mason: Well, it's a bit more than merely unhelpful, that conduct. It's actually threatening, really, isn't it? You have to agree to that.

Mr. Clarke: Intimidatory. Bullying. I can't disagree with that.

⁶⁹ Transcript Day 11, Session 2 – Ms. Bokini-Ratu at 33-35.

Ms. Mason: Yes, particularly in Fiji, when people say, who are you? What they mean is you are nobody, don't they? That's what they mean.

Mr. Clarke: Well, they had a substantial amount of power in our minds.

Ms. Mason: They didn't.⁷⁰

71. Mr. Saumi stated the following:

Ms. Mason: Mr. Saumi, prior to the lunch adjournment, you said that as a result of the interference by the Chief Registrar and other senior lawyers, you felt demoralized? Can you recall that?

Mr. Saumi: Yes, My Lord.

Ms. Mason: So, in relation to the conduct of the Chief Registrar and the other senior lawyers, did you write and notify anyone in government like the Prime Minister or the Attorney General about your view that they had interfered in the work of the Commission?

Mr. Saumi: No My Lord.

Ms. Mason: Did you say no?

Mr. Saumi: No, My Lord.

Ms. Mason: Is that because, again, you felt demoralised?

Justice Ashton-Lewis: *Well, can I just ask a question? Did you think that you'd all had this interference and in times I think I should have raised these questions with authorities? Did you?*

Mr. Saumi: Yes.

Justice Ashton-Lewis: *So why didn't you? Because you felt demoralised, I tell you.*

Mr. Saumi: Yeah, that's one. And also, since Madam Commissioner is working, she's with us. And I have the view that if I may have raised it, I may be subject to being victimised. So that was what I have. Because the first few days was not of working with the Commissioner was not easy.⁷¹

72. Mr. Wakanivesi stated the following:

Ms. Mason: Okay. Is it of greater concern to you that there was not a negotiation but a demand in a threatening and intimidating manner, as Mr. Saumi agreed to yesterday that led to Ms. Malimali's release?

Mr. Wakanivesi: Yes, My Lord, it's concerning. It's tantamount to obstructing.

⁷⁰ Transcript, Day 12, Session 3 – Mr. Clarke at 6.

⁷¹ Transcript, Day 6, Session 3 – Mr. Saumi at 2-3.

Justice Ashton-Lewis: *I meant I was going to, but in a demand by whom?*

Ms. Mason: A demand by the Chief Registrar and the four lawyers present?

Mr. Wakanivesi: Yes, My Lord.

Ms. Mason: And you were about to say it amounts to...

Mr. Wakanivesi: It tantamount to interfering with our work.⁷²

...

Ms. Mason: And do you think there is a culture within the Public Service in Fiji where senior members can intimidate or victimize junior members of the Public Service to get what?

Mr. Wakanivesi: Yes, My Lord, we've seen this in cases that we've done. It's not actually sometimes its not direct in terms of communicating, but it's through the work that they do in terms of promotion. They don't actually move up the ladder even though they're performing through those processes they've been victimised.

...

Ms. Mason: So, I'd asked you just a question before about senior people victimizing junior people, and the question that I'm asking you now is more specific to lawyers. Do you think that there is a culture of lawyers bullying and intimidating people who don't know the law so well to get what they want?

Mr. Wakanivesi: Yes, I believe so, My Lord.⁷³

73. Crucially, the CoI finds that the presence of the CR and those senior members of the legal profession who were present at FICAC on the morning of 5 September 2024, and their tactics of intimidation and bullying to secure the release of Ms. Malimali, constituted an obstruction into an ongoing investigation. While those individuals repeatedly asserted that they were not seeking to interfere, the cumulative effect of their conduct, particularly the shouting, and use of threats regarding professional consequences, and judicial non-cooperation, amounted to precisely that.

74. The CoI is particularly concerned by the repeated reference to an instruction allegedly issued by the CJ, directing that no charges laid by FICAC be accepted by court registries. This was put to the CJ when he testified before the CoI and this was his response:

Ms. Mason: Right. And when he was at that meeting, as had occurred by FICAC, and Ms. Malimali wasn't in the room. And in the room were the Chief Registrar, the two lawyers, Mr. Amani

⁷² Transcript, Day 9, Session 2 – Mr. Wakanivesi at 11-12.

⁷³ Ibid., 35-36.

Bale and Mr. Tuifagalele. And also the two Fiji Law Society persons, Mr. Wylie Clarke and Ms. Laurel Vaurasi. And the evidence is that the Chief Registrar said to everyone at the meeting, which included the three FICAC people, that the Chief Justice has said that no charges from FICAC will be accepted for filing at any registry in Fiji.

Chief Justice Temo: *Well, I was informed that a coup d'etat was happening in FICAC, right.*

Ms. Mason: So who informed you of that?

Chief Justice Temo: *CR.*

Justice Ashton-Lewis: *Yes, he would have.*⁷⁴

...

Chief Justice Temo: *Let me finish what I've started off with, yeah. Now, section 7 shows the powers of the Acting Commissioner and the Commissioner of the FICAC case, right? And Section 7(1) says, if the Office of the Commissioner is vacant, number one, is vacant, in this particular case, it's not vacant, or the Commissioner is absent from duty, second option, he's not absent from duty, he's right there in his workplace, her workplace, the Deputy Commissioner shall act as the Commissioner, except as otherwise directed by the President, right? So we interpreted that the Commissioner has come to his place, for work. Therefore, the Commissioner's power, Deputy Commissioner's power is no longer there.*

Justice Ashton-Lewis: *Where does it say that?*

Chief Justice Temo: *Well, section 7(1).*

Justice Ashton-Lewis: *If you go to the other section.*

Chief Justice Temo: *If the office of the commissioner is vacant.*

Justice Ashton-Lewis: *Yes, I know that.*

Chief Justice Temo: *Which is not vacant in this case.*

Justice Ashton-Lewis: *Well, how do you read that against 12? Where?*

Chief Justice Temo: *12, subsection?*

Justice Ashton-Lewis: *It says quite clearly, that both the Commissioner and the Deputy Commissioner. So no one had dismissed Ms. Puleiwai at that time. So what the evidence I can see, is there was a Commissioner, a Deputy Commissioner. Now, I think you're saying, so Ms. Puleiwai had no powers of arrest. If she was the Deputy Commissioner, she clearly had the power of arrest. And so the question that we've got*

⁷⁴ Transcript, Day 15, Session 1, CJ Temo at 45-46.

to grapple with, I'm satisfied that she was still Deputy Commissioner. No one had dismissed her, and you had a Commissioner. Now, if someone needs to arrest someone, the Commissioner's not immune from arrest. A Commissioner can be arrested. And in this Act, it sets out that if that has to happen, which is a highly, nearly impossible to happen, but it happened here. There was a Commissioner that was arrested by a Deputy Commissioner and was under arrest. And I think that's what brought the four lawyers and the CR very quickly to make sure this didn't get out of hand. But clearly, Ms. Puleiwai, under this Act, had the power to arrest Ms. Malimali. Clearly, in the evidence and under this Act, there was a Deputy Commissioner present or an Acting Deputy Commissioner.

Chief Justice Temo: *Well, the Act in itself, there's so many Sections that sort of run counter to each other. Section 7, Section 10.*

Justice Ashton-Lewis: *But when you're Acting in a position, you had the same powers of a Chief Justice when you were acting Chief Justice. Took a long time to correct this, but you had the same powers.*

Chief Justice Temo: *Whichever viewpoint you are advocating. The Act in itself is a lot of the Provision there sort of clashing against each other. Your interpretation, my interpretation, all running against each other. Purpose of the court is to try and harmonize it within the contextual meaning of that. And then the way we see it, the President has made an order that the Commissioner has been appointed. And the President has also made an order that the Deputy Commissioner has been appointed. Both were officers appointed by His Excellency, the President. One would assume that a streetwise and experienced counsel would work with the incoming Commissioner.*

Justice Ashton-Lewis: *Definitely.*

Chief Justice Temo: *Yeah. And then sort out the mess later.*

Justice Ashton-Lewis: *I think*

Chief Justice Temo: *Because there are two, two both officers appointed by the President. Now what I was hoping for is that those two ladies work together, complement each other.*

Justice Ashton-Lewis: *Yes.*

Chief Justice Temo: *For the benefit of*

Justice Ashton-Lewis: *Well, the CR sought to, he stated that, Mr. Wiley-Clarke stated that, Ms. Vaurasi stated that, Mr. Bale stated that. So that the reason why they were there, let's calm this down, let's have 24 hours, and then we'll come back together to resolve it.*

Chief Justice Temo: *Yes, see, lawyers are like this. When you are a lawyer, whatever Act you take, you must live to the legal consequences of the Act that you take. Now, if I was in Puleiwai's shoes at the time, right?*

Justice Ashton-Lewis: *Yes.*

Chief Justice Temo: *Incoming Commissioner comes, chain of commander, Commissioner there, Deputy Commissioner there. Chain of command, I would refrain from taking that drastic action.*

Justice Ashton-Lewis: *Well, she didn't, you're right. She didn't refrain from arresting.*

Chief Justice Temo: *Deal with it later.*

Justice Ashton-Lewis: *But she did deal with it.*

Chief Justice Temo: *In a more mature way.*

Justice Ashton-Lewis: *She asked all of them, including the CR, this, to complete this investigation will take another 24 hours. So can we put this on hold? And complete the investigation and then follow. Now she ultimately did do what you're suggesting because she ultimately made the decision to release Miss Malimali. And so she did do the right thing. It took a bit of pushing, but she did. And she followed really what you have, I think, rightly said and what you would do. The difficulty is, is how it all played out. But she did release Miss Malimali at the request of the CR.*

Chief Justice Temo: *Thank you.*

Ms. Mason: So back to the question that I had asked was, had you or do you recall telling the chief registrar that no charges would be accepted for filing at any court in Fiji?

Chief Justice Temo: *Well, it was like this. I saw a rebellion going on at FICAC*

Justice Ashton-Lewis: *Yes.*

Chief Justice Temo: *Rebellion against the Commissioner that was being appointed.*

Justice Ashton-Lewis: *By the president.*

Chief Justice Temo: *By the president.*

Justice Ashton-Lewis: *Yes.*

Chief Justice Temo: *So in my mind, presidential order has to be implemented.*

Justice Ashton-Lewis: *Yes.*

Chief Justice Temo: *And seeing what was unfolding at FICAC, they were rebelling against their head. I instructed all the courts in Fiji.*

Justice Ashton-Lewis: *Yes.*

Chief Justice Temo: *To only receive a charge from the Commissioner.*

Justice Ashton-Lewis: *From the Commissioner?*

Chief Justice Temo: *Yeah, nobody else.*

Justice Ashton-Lewis: *Did you have authority? And if you did, could you tell me where the authority is for a Chief Justice to direct registries around the country not to accept process? You will remember.*

Chief Justice Temo: *What I'm trying to say is to introduce some order in the fight from top to bottom through the chain of command, for them to instil some order, because it was in disorder. By going through their chain of command machinery before they file in the Courts.*

Justice Ashton-Lewis: *Look, I have no doubt knowing you as of now.*

Chief Justice Temo: *I wanted, because of the presidential order, which is to the Commissioner and the Deputy Commissioner, both appointed by His Excellency, to instil some kind of order in the system, they listen to the Commissioner on the filing of charges.⁷⁵*

...

Ms. Mason: Now, I'm sorry to have to repeat the question because I didn't get a yes.

Justice Ashton-Lewis: *Did I cut your question off?*

Ms. Mason: Well, I've asked it, and there's been a lot of discussion, and you can imply that the answer is yes, but I apologize in advance. For the record, I'll have to put the question again. Did you issue, or did you tell the Chief Registrar that he should tell the meeting that no charges filed by Ms. Puleiwai would be accepted?

Chief Justice Temo: *I didn't. To the best of my recollection, I'm trying to recollect, I, in order to stop the rebellion that's going on in FICAC, directed all the Magistrate Court.*

Ms. Mason: Oh, you did that?

Chief Justice Temo: *Yes, administratively.*

Justice Ashton-Lewis: *And I think that...*

⁷⁵ Ibid., 46-50.

*Chief Justice Temo: Yeah. To wait for charges to come from the Commission. And what I was hoping for is Deputy Commissioner and Commissioner to work together.*⁷⁶

75. The directive to all registries not to accept documents from FICAC for filing unless they were signed by Ms. Malimali represents an encroachment on the investigative and prosecutorial independence of FICAC and undermines public confidence in the justice system. The fact that this instruction was not questioned by any of the members of the Malimali Rescue Team, who were senior lawyers is troubling and points to a broader issue of collusion and conspiracy to pervert and obstruct the course of justice.
76. The evidence of Mr. Saumi and Ms. Bokini-Ratu was that the decision to release Ms. Malimali was not based on a legal reassessment of her arrest but rather on a strategic decision made in the face of intimidation and bullying, including the assertion that any charges laid would be futile. The decision was made in the context of an environment that had become increasingly hostile and coercive, marked by repeated warnings that continuing with the arrest would jeopardise the careers of those involved.
77. This incident underscores the critical importance of safeguarding the independence guaranteed under the Constitution of investigative and prosecutorial institutions such as FICAC. It was evident from Mr. Clarke's statements in the Saumi Transcript that his understanding of the constitutional requirements in terms of institutional integrity and independence was extremely limited. His focus was about being subservient to the "hierarchy". The CoI implores all those who read this Report to recognise and understand what the Constitutional guarantee of the independence of FICAC means in real world operational terms. Section 115(6) of the Constitution states:

In the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law.
78. If anyone, including those senior lawyers, had an issue with Ms. Malimali's arrest they should have all piled down to the court once charges were filed and had their say there. It was absolutely inappropriate to interfere in FICAC's work in the manner that they did. Justice Temo's instruction that no charges would be accepted for filing was also absolutely inappropriate. Their collective actions allegedly, amount to a conspiracy to obstruct and pervert the course of justice. Potentially, a direction like the one purported to be issued by the CJ could have come from a Judge, **but not** without a court hearing the arguments of both sides. It is the Courts who dispense justice. They are the guardians of justice. Court processes and procedures are a fundamental part of the justice system. It is there that natural justice allows everyone with a demonstrable interest to have their say, for arguments to be made, and for a judge or

⁷⁶ Ibid., 51-52.

magistrate to consider the evidence and submissions before making a determination. For a Chief Justice to issue a “direction” outside of the court process is highly irregular, and when considered in the current circumstances arguably amounts to an obstruction of justice.

79. Statutory bodies such as FICAC must be allowed to carry out their functions without undue external influence or a fear of retaliation. At the same time, those holding positions of legal authority have an obligation to act with integrity, to uphold the rule of law, and to avoid conduct that may subvert legal processes.

6.4: Was Ms. Malimali’s Arrest Legal?

80. Those who acted in concert to have Ms. Malimali released from arrest did so on the basis that FICAC’s arrest of Ms. Malimali was a breach of the FICAC Act, and/or, an abuse of office contrary to s 139 of the Crimes Act. Their argument was that Ms. Puleiwai did not have the legal authority to authorise the arrest of Ms. Malimali because by that time Ms. Malimali was the Commissioner, and Ms. Puleiwai was her subordinate.

81. When Ms. Malimali was arrested, the events of her arrest and subsequent release were covered widely in SM and MSM outlets. At that time Justice Temo issued a press release which stated:

There was nothing untoward in the appointment of Barbara Malimali as Fiji Independent Commission Against Corruption (FICAC) commissioner.

The JSC heard that on orders of Ms. Puleiwai, Ms. Malimali had been arrested and detained at FICAC headquarters. [Mr. Temo] said the JSC called for a meeting to discuss the issue at 2.30pm on September 5 because in their view, Section 7(1) and 10(1) of the FICAC Act had appeared violated.

The fact that Ms. Malimali’s arrest and detention had been orchestrated by Ms. Puleiwai – an unsuccessful candidate for the commissioner’s post – “makes the whole allegation suspect.”⁷⁷

82. In addition, A-G Graeme Leung held a press conference and issued a press release stating as follows:

Public Officials Must Uphold Law, Says Attorney-General Following FICAC Commissioner Arrest

I have noted with deep concern the developments at the Fiji Independent Commission Against Corruption (FICAC) this morning.

⁷⁷ Felix Chaudhary “‘Allegation suspect’ says Temo, September 9 2024” *Fiji One News*, (online ed, Fiji, 9 September 2024) <https://fijionenews.com.fj/allegation-suspect-says-temo/>.

As I understand it, the Acting Deputy Commissioner of FICAC, Ms. Francis Puleiwai, appears to have sanctioned the arrest of, and executed powers of arrest against, the newly appointed Commissioner, Ms. Barbara Malimali.

I understand Ms. Malimali was physically detained. FICAC is constitutionally independent of the office of the Attorney-General.

However, it is legally obliged to update and advise me from time to time on its activities under s.115(9) of the Constitution and I am the Cabinet Minister with responsibility for FICAC.

I am not prevented from expressing my opinion on these events, given the central role of the Attorney-General in ensuring that the rule of law is followed in our country.

Central to rule of law is that all public officials must respect the law and abide by it, and use their powers for proper purposes.

First and foremost, Ms. Malimali was duly appointed yesterday by His Excellency the President, on the advice of the Judicial Services Commission, as the law requires. Due process under the constitution has been followed. Ms. Puleiwai must respect that appointment.

This matter is particularly sensitive since Ms. Puleiwai was herself an applicant for the position of Commissioner. She was unsuccessful.

As Acting Deputy Commissioner, Ms. Puleiwai has no role in the appointment of the Commissioner. If Ms. Puleiwai has a problem with the appointment, then, like every other public official or citizen, she has the right of access to the Courts.

Yesterday, I received a copy of a complaint to the Judicial Services Commission from the Electoral Commission.

This concerned the execution by FICAC of a search warrant against the Electoral Commission two days ago, which FICAC, in a media release, said was in relation to investigations against Ms. Malimali.

First, it is unclear why FICAC thought it fit to make a public statement on an ongoing investigation into a named individual, with the obvious reputational consequences for Ms. Malimali.

Second, it is difficult to believe that FICAC could have taken all necessary steps to complete its investigations against Ms. Malimali in this two-day period.

In view of the events I have referred to, this morning's actions of FICAC, directed by Ms. Puleiwai, in purporting to arrest the Commissioner, her superior, on the Commissioner's first day in office, are severely open to question.

On its face, this action is extreme. The powers of FICAC are broad.

FICAC's actions can restrict citizens' liberty and severely impact individuals' personal reputations and good standing.

So FICAC powers must always be exercised carefully and deliberately and not reactively. They must not be exercised in circumstances in which FICAC's motives are open to question.

Accordingly, it is difficult to believe that this morning's actions are coincidental.

If they are not coincidental then there must be a question about whether, in taking them, FICAC, under the direction of Ms. Puleiwai, has exercised its powers for proper purposes.

I am aware that all 5 members of the Electoral Commission have written to the JSC expressing full confidence in the integrity to Miss Malimali, and explained the context of the complaint against her for abuse of office. They say the complaint has no basis. The Commissioners are persons of high repute and integrity.

I believe it arose out of a misunderstanding of the Electoral Commission's duty to be consulted by the Constitutional Offices Commission on the appointment of the Supervisor of Elections.

I am concerned with a worrying trend in this country of maligning people based on rumours and innuendo.

Trial and conviction by whispers are wrong and must stop. They run against the very grain of decency and fairness which is the foundation of a society ruled by law. This is not who we are.

At this point, Ms. Malimali is the Commissioner of FICAC and has the responsibilities and powers of Commissioner.

She is entitled to the presumption of innocence. She may now be placed in the unfortunate position where, to deal with the current impasse, she has to make decisions in her own interest.

But if the actions of Ms. Puleiwai have led to FICAC taking decisions for improper purposes, then as Commissioner Ms. Malimali has no choice in that. Questions of conflict of interest – including those which pertain to Ms. Puleiwai - may have to be resolved later, perhaps through the Courts.

This unseemly and unbecoming saga is the ultimate legacy of laws made many years ago for questionable purposes and, in my opinion, exercised in a sometimes questionable manner. These are matters that will have to be addressed as a matter of urgency by the government in due course. I am considering what is the best way forward.

However, as Attorney-General, I remind all public officials that they are expected at all times to act lawfully, to respect the rule of law and not, in the exercise of the legal powers of which they are possessed, pursue personal or political agendas.⁷⁸

- 83.** The press release of the A-G is extraordinary. It was done without the A-G even ascertaining what the actual allegations were, nor what the FICAC Malimali Investigation procedure had been. Without any evidence, the A-G had implicated Ms. Puleiwai as an embittered sore loser, who was acting for an improper purpose because she was not successful in her application for FICAC Commissioner. Once again, the A-G relied on the views of the other ECF Commissioners because they were “people of high repute and integrity”. Again he had not grasped that the reputations and integrity of the ECF Commissioners were completely irrelevant. The key point was that under Fiji’s Constitution,

⁷⁸ Office of the Attorney-General “Public Officials Must Uphold Law, Says Attorney-General Following FICAC Commissioner Arrest” (press release, 9 September 2024) <https://www.facebook.com/permalink.php/?story_fbid=824047649885529&id=100068409051367>

FICAC is guaranteed its independence, and if anyone had issues with what FICAC had done, or was doing, then they should have filed the relevant urgent applications in court so as to have their grievances heard there. Also, rather cynically, attributing blame towards Ms. Puleiwai deflected attention away from the JSC and the A-G in relation to the key issue here, which was why had they appointed someone with an active FICAC investigation into the role of FICAC Commissioner.

84. The CoI considers, contrary to the views of both the A-G, Mr. Leung, and Justice Temo, and the cabal of lawyers who went to rescue Ms. Malimali when she was arrested, that Ms. Puleiwai and her team *did have the legal authority to arrest Ms. Malimali*.

85. Section 10(1) of the FICAC Act states:

An officer authorised in that behalf by the Commissioner may, without warrant, arrest a person if he or she reasonably suspects that such person has committed an offence to which this Act applies, provided that, in respect of the offences under the Crimes Act 2009 or any law repealed by the Crimes Act 2009, the power of arrest without warrant is limited to indictable offences.

86. Ms. Malimali's arrest was based on an investigation into an abuse of office allegation under s 139 of the Crimes Act, which is an indictable offence.

87. Mr. Saumi provided evidence that he was issued with a warrant card which gave him blanket authority to arrest a suspect. His warrant card was produced in evidence, and sighted by all parties. He did not need to go to the Deputy Commissioner or the Commissioner, to be given an authority to arrest a suspect, each and every time he wanted to arrest someone. His warrant card gives him blanket authority to make arrests.

88. Consequently, Mr. Saumi, acting upon his own powers, had the authority to arrest Ms. Malimali so long as he "reasonably suspected" she had committed an offence. He did not need anyone's authority. The investigation had been completed. The charge sheet had been drafted. Legal advice had been obtained and provided that he "reasonably suspected" that Ms. Malimali had committed an offence, he had the power to arrest her. In the circumstances, the usual FICAC investigation procedure had been followed, with advice from the Legal Division. This was more than adequate to satisfy the condition that he "reasonably suspected" Ms. Malimali had committed an offence.

89. Even if one considered that Mr. Saumi needed the approval of "the Commissioner", it still does not follow that Ms. Puleiwai could not have authorised the arrest. In the FICAC Act, in the interpretation section, which is s 2:

Commissioner means the Commissioner of the Fiji Independent Commission Against Corruption appointed under s 5 and includes the Deputy Commissioner and the acting Commissioner appointed under sections 6 and 7.

90. Consequently, as a matter of basic statutory interpretation, whenever the word “Commissioner” is used in the FICAC Act, it also means Deputy Commissioner, unless the context otherwise requires. Therefore, in interpreting the power of arrest in s 10(1), the word “Commissioner” can be interchanged with “Deputy Commissioner”.
91. There is then the argument referred to in Justice Temo’s press release. Namely, that Ms. Puleiwai acted outside of her authority because of s 7(1) of the FICAC Act. That section states:
- If the office of the Commissioner is vacant or the Commissioner is absent from duty, the Deputy Commissioner shall act as Commissioner, except as otherwise directed by the President on the recommendation of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General.
92. So, the argument goes, the office of the Commissioner was not vacant, nor was the Commissioner absent from duty, and this means that the Deputy Commissioner cannot act as the Commissioner, unless directed by the President on the recommendation of the JSC after consulting the A-G.
93. The CoI does not agree with this argument. Section 7(1) is *permissive*. It allows the Deputy Commissioner to step in if the Commissioner is absent from duty or the office of Commissioner is vacant. It is not *prohibitive*. It does not prevent the Deputy Commissioner from exercising functions and duties that the Commissioner can exercise. If it was prohibitive, the section would say “Where a Commissioner is in office, and is not absent from duty, the Deputy Commissioner must not exercise any of the powers of the Commissioner”. But it does not do this. Moreover s 7(1) must be read alongside s 2 which stipulates that “Commissioner” also includes Deputy Commissioner. This definition means that all of the powers of the Commissioner can be exercised by the Deputy Commissioner.
94. Moreover, Mr. Saumi gave evidence that it is FICAC practice and policy that where a FICAC employee is being investigated by FICAC and is treated as a suspect then that person would either step aside from his or her duties, or step aside from any role in the case, and the next person in line would take over his or her duties. Applying this practice to the current circumstances, it was the Deputy Commissioner who then should have been in charge of the investigation not the Commissioner:

Ms. Mason: ...did this confirm for you that there was no way Ms. Malimali could ever have been involved in her own case?

Mr. Saumi: Yes, My Lord.

Ms. Mason: And in this situation, it was appropriate that the arrest and charges proceed on Ms. Puleiwai’s instructions.

Mr. Saumi: Yes, My Lord.

- Ms. Mason: Now, how does FICAC normally deal with conflicts of interest?
- Mr. Saumi: For any conflict of interest matter, probably the person implicated may be put aside. For example, if there is any one of the officer within FICAC is subject of a complaint or subject of an allegation, there is normally a directive issued that he proceed on leave or go on leave or set aside from his work area to allow the internal investigation to proceed. That's what I can recall for any FICAC Officer.
- Ms. Mason: And so would a person of equivalent status or close to them take control of that investigation or of that matter?
- Mr. Saumi: Correct, My Lord.
- Ms. Mason: All right. Is this written down in a staff policy or is it just something that you all know?
- Mr. Saumi: I need to confirm that, My Lord, but it's a practice that we normally do that. There are number of investigations of our staff that we normally conduct and that is the case.
- Ms. Mason: And so in this instance, where Ms. Malimali was conflicted, Ms. Puleiwai stepping in is completely consistent with FICAC's policies and practices, is that correct?
- Mr. Saumi: Correct.⁷⁹

95. The need to step down when under investigation was put to Ms. Malimali:

- Ms. Mason: Okay, so we'll go on, carry on with Ms. Malimali. And so, Ms. Malimali, just confirming the discussion just now, there is no legal authority that prevents, no law that prevents Ms. Puleiwai as Deputy Commissioner, Acting Deputy Commissioner, from arresting you. You agree with that?
- Ms. Malimali: I suppose.
- Ms. Mason: You just thought you didn't, it was not good.
- Ms. Malimali: I can't remember what I said.
- Ms. Mason: You just said that you didn't think that it was appropriate.
-
- Ms. Mason: Okay. So then I just want to put another thing to you because you might not have heard it before. So the evidence from the FICAC officials was, say Mr. Wakanivesi had a complaint and was under investigation. He would step aside and the investigation would be done by someone else in the team, say Mr. Saumi. Right, so you'd get the situation where if he hadn't stepped aside, he was there, he'd be eating his lunch or something, Mr. Saumi would come up and arrest him.

⁷⁹ Transcript, Day 9, Session 1 – Ms. Malimali at 10.

Right, that's their standard practise. But normally he said that they would step aside. So where someone was conflicted in the organisation, because obviously they couldn't arrest themselves or carry out their own case or investigate, they stepped down and the next person took carriage of the case and took it through to whatever charge or non charging. So that was standard practise. So as well as no law preventing Ms. Puleiwai from arresting you and Mr. Saumi from arresting you, it was also standard practise in FICAC. Do you accept that?

Ms. Malimali: It's not as simple as that, Madam, no.

Ms. Mason: All right. Why not?

Ms. Malimali: Well, what happens if there's a complaint and it's put to the person in the office? Okay, disciplinary aside, that's different.

Ms. Mason: A FICAC type complaint.

Ms. Malimali: Yes, if somebody is just, okay.

Ms. Malimali: Right. As far as I know, from my time at FICAC, there's one case of a former officer who was charged. He'd left FICAC, he'd disclosed some information or something, and he was charged. In terms of people who are within, I think there have been some disciplinary cases for sexual harassment and things like that. Whilst they were under disciplinary investigation, they were asked to step aside. From my experience in the last five months, I was five months old yesterday, that's the only one that I know of...

Ms. Mason: Right, so this was evidence of Mr. Saumi who'd been there, I think, for 15 or 20 years. And it was confirmed by Mr. Wakanivesi and Ms. Bokini.

Ms. Malimali: They could be right.

Ms. Mason: Yes, and it makes sense, doesn't it?

Ms. Malimali: Yes.

Ms. Mason: I mean, you're not going to arrest yourself, are you? Somebody else in the organisation would have to do it.

Ms. Malimali: Yes.⁸⁰

- 96.** Ms. Malimali herself accepted that there was no law which prevented Ms. Puleiwai and Mr. Saumi from arresting her. It would indeed be an absurdity for Ms. Malimali to arrest herself. The procedure embarked upon by Ms. Puleiwai, Mr. Saumi, Ms. Bokini-Ratu and Mr. Wakanivesi was procedurally consistent with FICAC's usual practices. Ms. Malimali was not immune from arrest just

⁸⁰ Transcript, Day 23, Session 3 – Ms. Malimali at 64-65.

because she was the Commissioner. It is trite law, but certainly needs repeating in this case – no one is above the law.

6.5: Puleiwai's Meeting with the JSC

97. At approximately 2.40 pm on 5 September 2025 Ms. Malimali directed Ms. Bokini-Ratu to send out an email informing all relevant officers that no charges were to be laid against any suspect that day without Ms. Malimali's express approval.⁸¹ The FICAC team had intended to also file charges against Hon. Biman Prasad that day.

98. In light of this, Ms. Puleiwai arranged a meeting with the JSC via text to the CJ:

That given the above email from Ms. Bokini on the directive of Ms. Malimali, I texted CR and informed CR that I will need to speak to JSC, since the email above confirmed to me that Ms. Malimali is still coming in as the Commissioner irrespective of the case against her and would be resuming office tomorrow and unfortunately I would not be able to work with her given the current circumstances. I informed CR that the office for the Commissioner was ready, and I have cleared my office as well.⁸²

99. An urgent meeting of the JSC was convened for that same day by the CJ,⁸³ and was held at the Courthouse and over zoom. It was attended by the following members of the JSC:

- a. Acting Chief Justice;
- b. Justice Jitoko;
- c. Mr. Ropate Green; and
- d. Ms. Vani Catanasiga.⁸⁴

100. Additionally, it was attended by CR Bainivalu, as Secretary of the JSC, and Ms. Bi as Assistant Secretary. Ms. Puleiwai would later join the meeting, and Ms. Shoma Devan Singh passed along her apologies, due to the short notice, she could not extract herself from existing commitments.⁸⁵

101. Ms. Puleiwai was not initially in attendance. She instead had to wait before being invited in:

That at about 1630 hours, I left for the courthouse to meet the JSC members. CR came to meet me just outside the corridor of ACJ's office, before I was taken in to meet the JSC. CR waited with me outside the corridor for about 30 minutes and he informed me to try and negotiate for my payout since that was what the former Acting DPP, Mr. John Rabuku had done and was paid a good amount. I informed CR that I

⁸¹ Affidavit of Francis Leba Puleiwai dated 10 December 2024 at [101].

⁸² Ibid., [103].

⁸³ Affidavit of Filimone Jitoko dated 8 January 2025 at [20] referring to Meeting No.10/24.

⁸⁴ Judicial Services Commission Minutes, dated 5 September 2024, attached as Annex VI of Filimone Jitoko Affidavit dated 8 January 2025.

⁸⁵ Ibid.

was entitled to a month's pay, but I am not there for the money, but I am merely doing what I think was right.⁸⁶

102. It was at this JSC meeting that Justice Jotiko deposed that he first became aware of the FICAC Malimali Investigation:

That I first came to learn of the existence of a complaint against Ms. Malimali at the special JSC Meeting of 5th September, 2024, convened at the request of the Acting Chief Justice and Chairman of the Commission, where the sole agenda was the issue of Ms. Malimali's detention by FICAC Acting Deputy Commissioner, Ms. Francis Puleiwai.⁸⁷

103. Justice Jitoko provided the minute for the 5 September meeting of the JSC, which reflects the discussion of the agenda prior to Ms. Puleiwai joining the meeting. That minute is set out here in full:

Confidential

**Judicial Services Commission
Meeting No. 10/24
05th September 2024**

Present:

Hon. Acting Chief Justice	-Chairperson JSC
Hon. Justice Jitoko	-President Court of Appeal, Member]
Mr. Ropate Green	-A/Permanent Secretary for Justice
Ms. Vani Catanasiga	-Lay Member [attended via zoom]

Secretariat:

Mr. Tomasi Bainivalu	-Secretary JSC
Zarina Bi	-Assistant Secretary JSC

Apology

Ms. Shoma Devan Singh	-Legal Practitioner Member
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Chairperson: Welcomed members and thanked them for attending the short notice meeting.

Chairperson: Item 1: The only agenda in this meeting is the concern of Commissioner FICAC Ms. Barbara Malimali being arrested by FICAC this morning whereby she had assumed the role of Commissioner FICAC from mid night of 4th September. The appointment has come into effect from 05th September 2024.

Ms. Malimali had gone through the interview process, position had been advertised, Hon. Attorney-General had been consulted and then appointment letter had been issued by His Excellency the President.

Attorney-General rang on 3rd to put the process on hold, JSC is independent. Barbara did the top, she fights for her clients. Later Attorney-General said to go ahead with the appointment

President COA: so there are no issues about the appointment of Ms. Malimali?

Did Ms. Malimali resign as Chair of the COC?

⁸⁶ Affidavit of Francis Puleiwai dated 10 December 2024 at [105].

⁸⁷ Affidavit of Filimone Jitoko dated 8 January 2025 at [20].

Mr. Green: Yes she has tendered her resignation.

Chairperson: She resigned on 4th September and had been appointed as Commissioner FICAC from 5th September 2024.

Chief Register took Ms. Malimali to FICAC office, it was the Presidential appointment.

Ms. Malimali goes to work to day and had been ordered by Ms. Puleiwai to get her arrested and confine in FICAC office for investigation.

Four [4] defence lawyers of Ms. Malimali were at the FICAC office, Mr. Wylie Clarke, Mr. Amani Bale, Mr. Nemani Tulfagalele and Ms. Laurel Vaurasi

I propose that we take urgent measures and for Ms. Puleiwai be suspended with immediate effect on the following three [3] allegations:

1. Unlawfully assuming the Commissioner's power pursuant to section 7 (1) of FICAC Act 2007, on 5/9/24, when the Commissioner was present, in ordering the arrest and detention of the Commissioner, at FICAC headquarters.
2. Wrongfully assuming the Commissioner's power in authorizing the arrest without warrant of the Commissioner at FICAC headquarters, on 5/9/25, pursuant to s.10 (1) of the FICAC Act 2007.
3. Insubordination. Failing to listen to the Commissioner on 5/9/24, as the Deputy Commissioner in carrying out her function at FICAC headquarters.

President COA: I suggest that there should be a body who filters all the complaints in FICAC. Can see that there are weakness in the FICAC system. It must be stated who is making the complaint.

Chairperson: In-experience prosecutors come in. I brought Ms. Puleiwai from Nauru to test her potentials, I thought she would be a changed person, it is seen that her traits have not changed.

Chairperson: We do not want FICAC to be weaponised. Ms. Puleiwai abused her authority as Deputy Commissioner.

Chairperson: Or alternatively we revoke the acting appointment and issue a press statement.

Mr. Green: JSC had not received any complaints. Ms. Puleiwai can be given the allegations to respond within 7 days.

Ms. Catanasiga: Ms. Puleiwai successfully created doubt in JSC's integrity.

Ms. Puleiwai willingly attended the JSC meeting through communication with the Secretary, JSC. Meeting stood down for 15 minutes whilst waiting for Ms. Puleiwai.

Chairperson: Welcomed Ms. Puleiwai. State that the JSC members have been briefed on the arrest of Ms. Malimali by FICAC. It is apparent that you and Ms. Malimali cannot work together.

The JSC has 2 options available for you:

- 1- You can resign voluntary, JSC can pay you one month's salary and will not take the matter further;
- 2- You will be given 7 days to respond to the three [3] allegations. After the seven days, JSC will have its meeting and will elaborate on further actions to be recommended to His Excellency the President after having consulted the Hon. Attorney-General.

Ms. Puleiwai: I take the first option to resign voluntary.

Ms. Puleiwai used the Secretaries Computer to type her resignation effective from 05th September 2024 and handed to the JSC.

Ms. Puleiwai further stated to the JSC, that the arrest of Ms. Malimali was her directive, and she takes ownership of the arrest. I knew this will happen, unfortunately this has happened. I was only upholding the Rule of Law.

Further requested for the JSC to ensure that none of the staff at FICAC are victimised by the Commissioner due to her arrest.

I also want to apologise to the Commission for not following the communication channel and writing direct to His Excellency the President. I had a duty to inform His Excellency hence the reporting line was not followed.

In addition, I would have appreciated if I had been informed on the appointment of the Commissioner.

President COA: why you did not inform the chair about the case with FICAC? If Commission would have been asked then we would have given that information. You directly notified the President.

Ms. Puleiwai: My only intention was to let the President know.

Mr. Green: Resignation to be handed today.

Secretary: Ms. Puleiwai, I thank you for coming over. I had raised my voice several times. When I came to FICAC office, I was there on behalf of the JSC.

Chairperson: You said a complaint is with FICAC, who is the complainant Ms. Puleiwai. Throughout no information had been seen about who the complainant was.

Ms. Puleiwai: I am sorry, I cannot disclose that information.

Resolution: All members unanimously accepted the resignation of Ms. Francis Puleiwai as Acting Deputy Commissioner, FICAC with effect from 05th September 2024. Ms. Puleiwai will be accorded with one month's salary and any other leave entitlements due to her.

Chairperson: Concluded the meeting and thanked Ms. Puleiwai and the JSC members for attending.⁸⁸

⁸⁸ Judicial Services Commission Minute of Meeting Number 10/24 a Special Meeting Concerning the Resignation of Ms. Puleiwai dated 5 September 2024 attached as Annex VI of Filimone Jitoko Affidavit dated 8 January 2025.

104. Ms. Puleiwai in her affidavit evidence elaborated on some of the above discussion during the meeting with the JSC:

THAT I had then informed the ACJ Temo that I will be taking option one and will be resigning. I also confirmed that I cannot work with Ms. Malimali since she is a suspect, and it undermines the very rule of law we hope to protect. Thereafter the floor was given to the members if any questions to which Justice Jitoko posed this question to me stating:

- a. Why did you write to his excellency the President and not to the JSC regarding this issue of Ms. Malimali?*

I then responded saying that my appointing authority is His Excellency the President, and my reporting line is to the President apart from JSC under my Job description. I explained that I did what I did because I was informed that Ms. Malimali had already been interviewed and was waiting on the endorsement of the President, thus I decided to write to his Excellency the President and had copied the Honourable Prime Minister. I had hoped that we would be allowed to be given at least a week to be able to complete our investigation and if she was clear, then we do not have any objection to the appointment but since she had a pending case with our office, I had a duty to inform his Excellency before he made his decision.

IN ADDITION, I added that the President's office had responded to my letter on the 02 September 2024, but we did not receive any other information nor further update that the decision was still proceeding until Mr. Bainivalu had contacted our office on the 04 September 2025

I further added that I would have hoped the due diligence to be done by JSC and contact our office to verify if Ms. Malimali has any pending case or not so we could work together on this, but unfortunately, I was not contacted. I also added that I do not have any ill will against the appointment of Ms. Malimali but I am disappointed with the appointment when Ms. Malimali has a pending investigation.

THERE was no further questions, and I was asked to type my resignation there at the Personal Assistant officer office and the same was submitted to the JSC Chairperson., ACJ Temo to which I had then typed it out and handed it to the members thereafter. The members then wished me luck and I left the JSC back to the FICAC office to collect my personal belongings.⁸⁹

105. In reply evidence Mr. Green provided the following response to Ms. Puleiwai's account of the JSC meeting:

In response to paragraphs 105 to 112 (inclusive) of Ms. Puleiwai's affidavit, I acknowledge that a meeting took place involving Ms. Puleiwai, the Chief Registrar, and other members of the JSC. If Ms. Puleiwai was aware as early as 28 August 2024 that Ms. Malimali was the intended appointee for FICAC Commissioner, it is unclear why she did not raise her concerns directly with the JSC. With all due respect, I do not support Ms. Puleiwai's decision to address the President directly as His Excellency only acts on the advice of the JSC. It would have been more appropriate for Ms. Puleiwai to officially inform JSC of any FICAC Investigations related to Ms. Malimali.⁹⁰

⁸⁹ Affidavit of Francis Puleiwai dated 10 December 2024 at [108]-[113].

⁹⁰ Affidavit of Mr. Green in Reply to Affidavit of Francis Leba Puleiwai dated 23 January 2025, at [32].

- 106.** In his oral evidence CJ Temo raised a similar argument for why the JSC should have been contacted. Ms. Puleiwai in failing to go to the President had failed to follow the “Chain of Command”:

Ms. Mason: Yes, and then the other thing is, and I noticed there was some comment made about it. On the other side, Ms. Puleiwai had written to the President to advise him of the investigation, and she had requested a further week, I think, or five days to complete it so that everything could be cleared for her appointment. Do you think that she should have written to you as well?

Justice Temo: Well, you see, in the system of government, there's a thing called chain of command.

Justice Ashton-Lewis: Yes

Justice Temo: Ms. Puleiwai, the chain of command is first to us before you go to the President.

Justice Ashton-Lewis: Yes, yes

Justice Temo: By going direct to the President, that's like showing the fingers to us.⁹¹

- 107.** It appears that the JSC, slighted by Ms. Puleiwai’s decision to bypass them, and alert the President directly of the need for more time to conclude the FICAC Malimali Investigation, took a punitive approach towards Ms. Puleiwai, without carefully considering the situation, and coming up with their approach at the 5 September meeting of the JSC without any outside input.

- 108.** Ms. Puleiwai was accused by the JSC of the following:

- a. unlawfully assuming the Commissioner’s powers pursuant to section 7(1) of the FICAC Act, on 5 September 2024, when the Commissioner was present, in ordering the arrest and detention of the Commissioner, at FICAC headquarters;
- b. wrongfully assuming the Commissioner’s powers in authorizing the arrest without warrant of the Commissioner at FICAC headquarters, on 5 September 2024, pursuant to s 10(1) of the FICAC Act; and
- i. insubordination, failing to listen to the Commissioner on 5 September 2024, as the Deputy Commissioner in carrying out her functions at FICAC headquarters.⁹²

⁹¹ Transcript, Day 15, Session 1 – CJ Temo at 56.

⁹² See Judicial Services Commission Minute of Meeting Number 10/24 a Special Meeting Concerning the Resignation of Ms. Puleiwai dated 5 September 2024 attached as Annex VI of Filimone Jitoko Affidavit dated 8 January 2025.

- 109.** The CJ in his viva voce evidence confirmed that the minutes of the 5 September JSC meeting were a true and correct reflection of what was said at the meeting, in relation to the allegations levelled against Ms. Puleiwai by the JSC:

Ms. Mason: All right, so at page two of that minute, there are three allegations that are set out there. Is that an accurate reflection?

Justice Ashton-Lewis: *Could you give me the words where you're starting from?*

Ms. Mason: Sir, page two. Sir, right at the top.

Justice Ashton-Lewis: *I propose.*

Ms. Mason: I propose that we take urgent measures and for Ms. Puleiwai to be suspended with immediate effect on the following three allegations.

Justice Ashton-Lewis: *Yes.*

Ms. Mason: And I'm just checking with His Lordship. Is this record in the minute an accurate reflection of what was decided to be the three allegations?

Chief Justice Temo: Correct.

Justice Ashton-Lewis: *Correct.*

Ms. Mason: And these allegations, were they based on anyone's advice?

Chief Justice Temo: *No, interpretation of FICAC*

Ms. Mason: So the whole meeting discussed it and came up with these?

Chief Justice Temo: *Yes.*⁹³

- 110.** Ms. Puleiwai was then presented with only the two following options, predetermined, without any formal advice or legal analysis and prior to her even being able to present her side of the story:

- a. you can resign voluntary, JSC can pay you one month's salary and will not take the matter further; or
- b. you will be given seven days to respond to the three allegations. After the seven days, JSC will have its meeting and will elaborate on further actions to be recommended to His Excellency the President after having consulted the Hon. Attorney-General.⁹⁴

- 111.** Essentially the JSC presented Ms. Puleiwai with an ultimatum. She could either resign, or potentially face further "actions" if her response was not

⁹³ Transcript, Day 15, Session 1 – CJ Temo at 61-62.

⁹⁴ See Judicial Services Commission Minute of Meeting Number 10/24 a Special Meeting Concerning the Resignation of Ms. Puleiwai dated 5 September 2024 attached as Annex VI of Filimone Jitoko Affidavit dated 8 January 2025.

considered satisfactory. It was not clear what those “actions” would be. They could either be the removal for cause process set out at s 112 of the Constitution, or the matter could have been referred to the CID for investigation and for charges to be laid, if the evidence and analysis warranted this. Although Ms. Puleiwai was not a “judicial officer” as defined in s 163 of the Constitution, the process contained at s 112 of the Constitution had been incorporated in her terms of appointment.

- 112.** At the time Ms. Puleiwai thought these further “actions” would be charges based on the allegations presented by the JSC. However, it is unclear how this would have worked, as the JSC did not have the power to decide to formally charge Ms. Puleiwai, or alternatively stop any charges against her:

Ms. Mason: Now, when you say that you would be charged, what did that mean to you? Were they going to put a report in to the Police or to FICAC? What was your understanding of that?

Ms. Puleiwai: My understanding is that they will be the one putting the charges on me and it was written in a piece of paper and then when it was given to me, what was going in my head is that they will be the people that will be charging me.

Ms. Mason: When you say they, did you mean FICAC?

Ms. Puleiwai: The JSC.

Ms. Mason: But they don't have any powers to charge you. How would they be charging you?

Ms. Puleiwai: Um, I mean when they said those things to me, I thought they will be the one charging me. As to how it was going to work, I think the things that was happening on the particular day, I wasn't thinking as to who will be the people that'll be laying charges. Whether it'll be the Police or whether it'll be FICAC.⁹⁵

- 113.** Ms. Puleiwai testified that she had felt bullied by the JSC to take the option to resign:

Ms. Mason: All right. And the other option was to resign. And you said you took option two, the resignation option. Why did you do that?

Ms. Puleiwai: I felt that, not only with what the Chief Registrar that the charges, even if we lay charges against Ms. Malimali, the Court will not accept it and then facing, these are the senior High Court Judges and not only that the Acting Hon. Chief Justice, the President of the Court of Appeal, the Chief Registrar and I think that whatever I'm going, given that explanation that I was going to give in option one, they will still terminate me. On that particular day I felt that no one is going to listen or no one is going to be bothered with what

⁹⁵ Transcript, Day 21, Session 1 – Ms. Puleiwai at 19.

explanation I was going to give. Whether it's lawful or not, the way they were looking at me and the way that those things were put to me, I felt that the only option, the best option for me to take was to resign.

Ms. Mason: Did you feel bullied into resignation?

Ms. Puleiwai: Oh yes, definitely. That's how I felt going up against the senior lawyers.⁹⁶

- 114.** The CoI does not believe that the options presented to Ms. Puleiwai were fair and reasonable in the circumstances. Not only were the allegations she was called to answer prepared in a rush without legal advice, but the “charges” she would have to answer were unclear and nebulous. The JSC also had no way of ensuring that if Ms. Puleiwai did resign under option one, that charges would not be separately filed anyway by the DPP or by FICAC, as the JSC was not a charging body, nor did it have direct authority over the DPP or the Police or FICAC to prevent any potential future prosecutions. Ms. Puleiwai was pressured by the JSC into an immediate decision that compelled her to capitulate her position immediately, without any legal advice or support.
- 115.** The way that she was treated by the JSC was unfair, and unprofessional. What is striking is that, when it came to suspending Ms. Malimali for witness interference, or terminating Ms. Malimali for non-disclosure of crucial information, the JSC purportedly had “no powers” to do anything. However, with Ms. Puleiwai, the JSC was happy to bully and coerce her into resigning with the threat of “charges” if she did not resign.

6.6: Biman Prasad File

- 116.** In relation to assessing undue influences in relation to Ms. Malimali's appointment, the CoI has found it important to assess and examine what Ms. Malimali did with certain files and complaints. One of these was the file of Hon. Biman Prasad.
- 117.** Deputy PM, Hon. Biman Prasad, deposed that he was not personally acquainted with Ms. Malimali and that the only time Hon. Prasad had met Ms. Malimali was in their official capacities when Ms. Malimali was the Chair of the ECF.⁹⁷ Hon. Prasad further deposed that to his knowledge he had not had any other direct oral or written communication with Ms. Malimali, apart from their one official meeting as stated above.⁹⁸
- 118.** Complaints were lodged against Hon. Prasad in relation to alleged breaches of the PP Act, for which FICAC had concluded their investigations and were, on

⁹⁶ Ibid.

⁹⁷ Affidavit of Biman Chand Prasad dated 23 December 2024 at [5].

⁹⁸ Ibid., [6].

5 September, to bring Hon. Prasad in for a caution interview, and to file charges against him.⁹⁹

- 119.** The CoI was provided with evidence with respect to the FICAC investigation against Mr. Prasad, and Ms. Malimali's willingness to have a "big one" charged to silence her critics. A text message exchange between Mr. Saumi and Ms. Malimali had been introduced as Exhibit 8. That exchange was as follows:

(MalimaliB)	I need a big one charged... to shut the Critics up! But it has to be proper... no charging wily nilly.
(Mr. Saumi)	Madam the investigation & legal assessment for Hon. Biman is done. Recommend that we proceed with next week. That will shut all the critics against you.
(MalimaliB)	Well, I was after people who abused funds NOT the elections ones!
(Mr. Saumi)	Ok. ¹⁰⁰

- 120.** In his viva voce evidence, Mr. Saumi explained it is as follows:

Ms. Mason:	The first text in Exhibit 8 says "I need a big one charged to shut the critics up." Is that from Ms. Malimali?
Mr. Saumi:	Yes, My Lord.
Ms. Mason:	And then the next one says, "But it has to be proper. No charging wily nilly." Is that from Ms. Malimali?
Mr. Saumi:	Yes, My Lord. ¹⁰¹
	...
Ms. Mason:	And then you say to her in response to "I need a big one charged." "Madam, the investigation and legal assessment for Hon. Biman Prasad is done. Recommend that we proceed with next week. That will shut all the critics against you." Can you confirm that this is what you wrote?
Mr. Saumi:	Yes, My Lord.
Ms. Mason:	And then Ms. Malimali replied saying, well, I was after people who abused funds. Not, and the 'not' is capitalized, 'NOT' the election ones. Can you confirm that that was the reply?
Mr. Saumi:	Yes, My Lord. ¹⁰²

⁹⁹ Ibid., [7].

¹⁰⁰ Exhibit Eight – Text messages between Mr. Saumi and Ms. Malimali dated 24 December 2024.

¹⁰¹ Transcript, Day 9, Session 1 – Mr. Saumi at 15.

¹⁰² Ibid.

121. When questioned as to what Mr. Saumi made of the instruction given by Ms. Malimali regarding the fact that she was after people who abused funds, and not election ones, Mr. Saumi stated the following:

Mr. Saumi: My Lord, we were talking on Biman's case. I take it as this is only for Biman's case. Because the rest of the investigation we were still proceeding. Even though the, even the election ones. Well, I, after people who not abuse. Oh, yes, with that context of the second part of it not, with a capital 'NOT' capital letters, and the election ones may indicate the rest of the election cases that we will be submitting.¹⁰³

122. Mr. Saumi had given evidence earlier, that when he had completed his investigations against Mr. Prasad, he believed there was sufficient information to charge Mr. Prasad:

Ms. Mason: So it says. And it's dated the third and it says the file is submitted herein for further tasking, Memo is attached. I agree with PSC Mausio in that these documents would strengthen the case as per Rabuka. I note though, that charges are possible once these documents have been uplifted. Respectfully submitted for your further directions, please. So that's on the third. And then there's another entry on the third. And this is by Ms. Puleiwai. Can you confirm that's her signature?

Justice Ashton-Lewis: That is one that says ML?

Ms. Mason: Yes, that one. So it says, I concur with the recommendation and the opinion submitted. Please work with the investigation team in getting these documents ASAP. So we could expedite the charging if possible this week. Forward the draft charges when done for my perusal, so the investigation team could plan on the next way forward as well. Thank you to the team for the efficient and thorough opinion, which is well researched and analyzed. Let's get ready for the charging please. Thank you. And it's dated 3rd of the 9th.

Okay, and then, we go to the 4th of the 9th. And Mr. Saumi, who would this be to? PSC?

Mr. Saumi: I believe it's Ms. Mausio.

Ms. Mason: Okay. And it's from Ms. Bokini-Ratu, that's correct?

Mr. Saumi: Correct.

Ms. Mason: And it's dated the 4th and it says. And as per ADC's instructions above, please forward the draft changes as discussed to me today. Also work with EO. Who is the EO?

¹⁰³ Ibid.

Mr. Saumi: Executive Officer.

Ms. Mason: To inform the investigating officers, is that correct?

Mr. Saumi: Yes.

Ms. Mason: Were you to charge him?

Mr. Saumi: Yes, My Lord.

...

Ms. Mason: And then it says attach the charges as had been approved by the Former ADC earlier for onward submission to the Commissioner. So this is after Ms. Puleiwai had left and Ms. Malimali was in?

Mr. Saumi: Correct, My Lord.

...

Ms. Mason: Were you involved in these, drafting these charges or in this file?

Mr. Saumi: No, My Lord.

Ms. Mason: But as the Manager Investigations you would have been involved in this issue?

Mr. Saumi: No, the investigations. And as soon as we submit the file to legal.

Ms. Mason: Right. So you had done your investigations completed?

Mr. Saumi: Completed, minuted and submit.

Ms. Mason: When you completed your investigations, did you think there was sufficient information to charge Honourable Mr. Prasad?

Mr. Saumi: Yes, My Lord.

Ms. Mason: And then it had been submitted to legal to work out if legally that this would fly so to speak?

Mr. Saumi: Yes, My Lord. Okay, so then this next note is to the Commissioner, and it says, Madam, please find draft charges against the suspect attached herein. I agree with the legal opinion and the recommended charges as there is a prima facie case against the suspect, the charge attached or the charges attached reflect the evidence collated respectfully submitted for your further directions please.¹⁰⁴

123. Ms. Malimali then issued two further lots of instructions requesting further analysis to be undertaken. Given a thorough investigation had already

¹⁰⁴ Transcript, Day 6, Session 3 – Mr. Saumi at 31-33.

occurred, and two legal opinions had been received, her continued requests for further analysis were not appropriate and could be seen to be stalling the charges against Hon. Prasad:

Ms. Mason: ...So Mr. Saumi, do you think that the failure to progress the charges against Mr. Prasad was an act of stalling by Malimali?

Mr. Saumi: Yes, My Lord.¹⁰⁵

- 124.** When questioned by Counsel Assisting, Mr. Wakanivesi, gave evidence similar to Mr. Saumi's evidence in relation to Ms. Malimali not wanting to proceed with the charges against Hon. Prasad and ultimately stalling:

Ms. Mason: All right, and then you say, according to discussions with Manager Legal, the case of Dr Prasad was sent a few times with recommendations for charges but she replied that she is still not convinced...

Mr. Wakanivesi: Yes, My Lord.¹⁰⁶

- 125.** Ms. Malimali's defence of not proceeding with the charges was simply that she wanted her investigative officers to double and triple check the evidence before FICAC laid charges against Hon. Prasad. This, in her view was why she kept referring the file back to her officers asking more questions of them:

Ms. Mason: ...Now this was put to both Mr. Saumi and Ms. Bokini that these questions that you ask are so trivial because it's obvious from the Act that Mr. Prasad or Minister Prasad has not declared or not properly declared his assets and liabilities. What do you say to that?

Ms. Malimali: I would say they're incorrect. I wanted them to go and check again.

Ms. Mason: Why? Was it conflicting to you those sections in the Act? Were you confused by them?

Ms. Malimali: No, the evidence. I wanted them to go and double check triple check, go and check with the laws check with the Level 2, Level 2 house.

Ms. Mason: Can I just go to the first one?

...

Ms. Mason: So if you go to section 24 (2A)

Justice Ashton-Lewis: 24 (2A)?

¹⁰⁵ Ibid., 37.

¹⁰⁶ Transcript, Day 9, Session 2 – Mr. Wakanivesi at 33.

Ms. Mason: Yes, and you go down to... there's Roman numerals 1, 2, 3, 4. It says what they have to declare.

...

Ms. Mason: Okay, so if you go to Roman Numerals 3, part of what they have to declare is any directorships or other office in a corporation or other organisation, whether in Fiji or abroad, as at the date of nomination. So it says directorships or other office in a corporation or other organisation. That's very wide and of course that would include trusteeship of an NGO. Isn't that clear to you?

Ms. Malimali: No, I want to. What I want them to do.

Ms. Mason: Sorry, can we just answer the question? Is that not clear to you?

Ms. Malimali: No.

Ms. Mason: That that would include trusteeship of an NGO. That's not clear?

Ms. Malimali: No.

Ms. Mason: Okay, that's fine. What part of that is confusing for you?

Ms. Malimali: This was based on an opinion I suppose.

Ms. Mason: No, no, no. I'm just asking, let's focus on what you have said, does an officeholder have to declare board membership or trusteeship of an NGO? And I'm putting to you that when you go to the section that I've just read out, it's very clear that the answer is yes.

Ms. Malimali: Is it? I don't think so.

Ms. Mason: Okay, well you tell me why. What's confusing about that?

Ms. Malimali: What kind of other organisation?

Ms. Mason: Well, that's statutory interpretation 101 when you have directorships or a corporation or other organisation. It's any other organisation. It's very wide.

Justice Ashton-Lewis: *It's a private corporation, a public corporation, a government corporation, a statutory provider. It's everything. It covers everything.*

Ms. Malimali: It's wide. It's wide. I think this is why I wanted it to be specific. Tell me what it is. This is based on this and an opinion that they had.

Ms. Mason: Let's not talk about the opinion for the moment. So, let's stick with the issue. These directorships and other office and corporation or other organisation, is that confusing at all? I

understand that, that includes by the leadership or the trusteeship of an NGO.

Justice Ashon-Lewis: *Read the section again Miss Malimali. And I'll read it as you read it. Any directorship or other office in a corporation or other organisation, whether in Fiji or abroad held by each of them or other organisation, that's so wide it would cover exactly what Ms. Mason is saying. Did you understand this? Did you understand? I realise you're not a DIL and I realise you're legally trained but I think, I've borrowed yours but do you remember it or do I need to give it back to you?*

Ms. Malimali: No, that's fine. There was a case on this.

Justice Ashton-Lewis: *Yes.*

Ms. Malimali: Rabuka's case

Justice Ashton-Lewis: *Yes.*

Ms. Malimali: It was held he was not an office holder.

Justice Ashton-Lewis: *Pardon?*

Ms. Malimali: It was held he was not an office holder. I'll put it to her. He was a party leader.

Ms. Mason: Sorry, I've not gone to the party leader. This one is about an MP. I will get to that. Okay. So, what about this do you think is confusing or how does it not include board membership or trusteeship of an NGO?

Ms. Malimali: Alright, so I've read it. Yes, alright, I agree with you. It includes an NGO but if I ask my legal people to tell me, I expect them to tell me.

Ms. Mason: Yes, but they say it's already clear. They say this is not a difficult issue and it's already clear. And I'll just tell you they say that you're asking all these nonsensical questions because you are stalling and don't want the Biman Prasad charge, which has been approved by (0.29.11.8) go through the processes to proceed. And that's where you are stalling.

Ms. Malimali: They said it here. They didn't come here.

Ms. Mason: Yes, they did. Well, it doesn't matter. I'm asking you now. Okay. So, the first one yes, that's easy. The second one, it has declared that his shareholding in office isn't that sufficient and in that matter, he did not declare his dividends. So, let's go to 2B of the Political Parties Act.

Justice Ashton-Lewis: *You're happy for me to keep your Act?*

Ms. Malimali: Yes My Lord.

Ms. Mason: I'll read it out so that...

Justice Ashton-Lewis: *Yes, please read it out.*

Ms. Mason: I'll wait until Ms. Malimali finds it. Okay. So, if you look at 2B, it says any candidate, whether elected to Parliament or not, must, no later than the 60th day after polling, provide to the registrar the following information in writing. The amount of any; any money received by him or her as at the 30th day after polling day, the amount and source of any donation received by him or her as at the 30th day, and income and expenditure. So, this requires the word any means everything. Everything you earn has to be declared. Right? Is that clear?

Ms. Malimali: Yes.

Ms. Mason: Okay. So, when you say here he has declared his shareholding, isn't that sufficient? In Bainimarama's matter, he did not declare his dividends but his bank account showed that he did. But, to me, that's quite clear and this question, number two, didn't really need to be asked, did it?

Ms. Malimali: Actually, it did.

Ms. Mason: Okay.

Ms. Malimali: I'll tell you why.

Ms. Mason: Yes, sure.

Ms. Malimali: Because in the Bainimarama, I think Ms. Forwood made a similar complaint with Mr. Bainimarama in relation to his Fijian holdings dividends. I think Mr. Bainimarama, this is working off memory, because I remember I'd gone through the files. Mr. Bainimarama hadn't written it down but in his bank account, it appeared. This is what the investigators report. In his bank accounts, he declared the Lotus I mean, not the Lotus, the dividend payments. He declared it. So they'd said, well, he may have not written it down but it's accounted for in his bank account.

Ms. Mason: Did he attach his bank account statements?

Ms. Malimali: I have no idea. I mean, I can't remember what was in the file. Even if he didn't, they would have gone and checked.

Ms. Mason: Yes. But it's clear that it had to be declared.

Ms. Malimali: Yes. But, as I was saying, guys, go and check.

Ms. Mason: That was a factual matter though, not a, this question of if he's declared his shareholding. Isn't that enough? He doesn't have to declare dividends or income. That's what your question is. But actually, when you read the Act, of course you've got to declare what dividends you're receiving.

Ms. Malimali: Yes.

Ms. Mason: Alright. So I'll put to you that these 10 questions here were just stalling the file because you didn't want Mr. Prasad charged.

Ms. Malimali: That's incorrect. I deny that.

Ms. Mason: Okay. That's fine. That's your answer. Okay. And there are other things on the statement which I don't think we need to go to. But I'd like to go to the second issue of Mr. Prasad. And he had started to say it. And your counsel, Ms. Waqanika, had started to say it. And this was the argument from his lawyer. That Mr. Prasad was not an office holder. And that appears to be completely a red herring. Because that's if he's charged under 24-1A. But of course you should know that MP's also have to make declarations, not just the office holders. So this discussion that was lengthy that went on for some time was completely irrelevant. Did you all know that?

Justice Ashton-Lewis: *It's a forceful argument. But were you aware of it?*

Ms. Malimali: The way I've dealt with these things since I've been there, including Professor Prasad's matter, is the letters come from the lawyers. I actually most of the time don't read them. I send them off to the investigators and to the legal people and say, you people deal with it. And then advise me.

Justice Ashton-Lewis: *I don't mean this in a rude way or a discourteous way. But I'm skilled in these type of auditing. I know you're experienced in crime. Are you experienced in this commercial corporations which attaches to these declarations?*

Ms. Malimali: A little bit.

Justice Ashton-Lewis: *Can you read audited financial statements and understand what they're saying?*

Ms. Malimali: Yes. Because I have to have my accounts audited too.

Justice Ashton-Lewis: *Yes, I know. So you're a little bit acquainted with these type of questions.*

Ms. Malimali: The way I deal with these things is when lawyers write to us, I send them to the people who need to deal with them. I do not wish, even with meetings, I do not wish to insert myself.

Justice Ashton-Lewis: *Especially as you're not really conversant with it. So at FICAC, do you have really good accountant type, economist staff who deal with all of these type of...*

Ms. Malimali: We do.

Justice Ashton-Lewis: *Thank you.*

Ms. Mason: Alright, so just back to that. A person who is an office holder, but also a person who's been nominated by a political party

as a candidate, they also have to make these declarations. So the discussion around Mr. Prasad being an office holder or not being an office holder, that's just a red hearing. And you might say, well, I don't know about that file. Do you agree?

Ms. Malimali: That it's a red hearing? Yes. I cannot say that.

Ms. Mason: Because you don't know enough about the file?

Ms. Malimali: I don't know enough. These people send me their opinions and their things. What happens is an opinion comes along as a minute attached to it. I read it and we write on these things.

Justice Ashton-Lewis: *And if you don't understand it, what do you do? I write back to them. Or I call them and say what do you mean? Oh, you do ask that.*

Ms. Malimali: I do ask.

Justice Ashton-Lewis: *In other words, put it into simple English. I'm not an accountant. Or I'm not an auditor.*

Ms. Malimali: I say, I always, I want things in writing. So that we can always come back to it. And this is why I wrote it out. I'm not stupid. I know what these things mean. But I need them to put it in writing. Because we are having problems with different cases that we're going through. Because we've rushed certain aspects.

Justice Ashton-Lewis: *But I want to be clear too. Do you understand what, it's all this focus on if you're an office holder or not. You have to. But as Ms. Mason says, every Member of Parliament has to declare things. MPs. It doesn't matter whether you're an office holder in Sodelpa. You can just be an ordinary Member and a Member of Parliament. You've got to declare these things.*

Ms. Mason: Yes, even if they don't get in. It's every candidate. Yes, it's 60th day after polling day.

Ms. Malimali: It's after General Election. Everybody has to. But otherwise, it's just the office holder that well had to see.¹⁰⁷

126. Ms. Malimali's responses are evasive, and at times nonsensical. It is unacceptable if, as she claims, she does not read the files or legal opinions prepared, especially with high profile, high risk files such as Hon. Prasad's file. How can she make decisions on files if she does not read the advice, or if she does not have the capacity to understand the issues. The questions she has raised with this file only require a rudimentary knowledge of statutory interpretation to understand. One can only conclude that she is not competent for the position, or that she is stalling Hon. Prasad's case from progressing because she does not want the charges filed, or a combination of both.

¹⁰⁷ Transcript, Day 24, Session 3 – Ms. Malimali at 11-18.

127. Given the evidence from FICAC officers, that Ms. Malimali had been reluctant to proceed with charges against Hon. Prasad, Ms. Malimali, in her evidence stated the following:

Ms. Mason: So why has Mr. Prasad not been charged? Because [you] haven't completed all [your] assessments?

Well, FICAC officers have said that you have completed all of the assessments. And their evidence is that the questions, two questions that you raised there were not credible and they were just a stalling mechanism.

Ms. Malimali: Well, I would have to respectfully disagree with that Madam and My Lord. I'm not stalling. I need to check. And if me checking takes a bit longer to where we need to go and if they disagree with it then I'm sorry, but I'm going to get things right.

Ms. Mason: So you don't say that in the text there. You don't say, oh, well, actually we haven't completed that because Mr. Saumi says the investigation and legal assessment is done. Recommend that we proceed. You don't say, well, actually, Mr. Saumi it's not done and I'm not happy with it. You go back and you say, I'm not after them. I am after people who abused funds, not the election ones. That's really clear language. What about that? What about that is not...

Ms. Malimali: Again, its taken out of context. We've been having conversations over a few months and text messages going back and forth. I think I sent to Ms. Waqanika a whole bunch of text messages before and after this in relation to this. I am not saying I'm not going to charge Dr. Prasad. I am saying get it right.

Ms. Mason: That's not what you're saying, You're saying, not just Dr. Prasad, but the elections. You say, I was after people who abused funds and the not is capitalised. So, not the election ones exclamation mark. That seems to me quite clear that you don't want the election people charged.

Ms. Malimali: That would be your view madam.

Ms. Mason: That's a plain English language reading of this text.

Ms. Malimali: I'm the writer of this, my intention is different from your interpretation.

Ms. Mason: Do you often write in a way that does not reflect your intention?

Justice Ashton-Lewis: *I'm sure you're having difficulty is I need a big one charged to shut the critics up. So not worry, certainly in this, not Fiji first, Fiji people out. I just want to shut the critics up. I need a big one, but it has to be proper. No charging willy nilly.*

Ms. Malimali: Yes.

Justice Ashton-Lewis: *And then he comes back and says, Madam, the investigation and legal assessment for Biman is done. Recommend that we proceed with next week. This will shut the critics up. Well, I was after people who abused funds, not election ones. Now, I accept this is a document that is a snapshot, but snapshots can be damaging. Unless a whole lot. Now, you're saying it's out of context, so please keep explaining.*

Ms. Malimali: We can print out the rest of the messages.

Ms. Mason: Yes, but you knew about this when Mr. Saumi filed it. Because you said you were here. Why did you not file the rest of it, the context?

Ms. Malimali: Sorry, when he said it, I wasn't here.¹⁰⁸

- 128.** As set out above, a thorough investigation into Hon. Prasad's case had already been conducted, and legal analysis and advice had been obtained, and FICAC was poised to charge Hon. Prasad prior to Ms. Malimali being appointed. However, once she started, Ms. Malimali began requesting for further analysis and checks to be obtained. FICAC officials were of the view that she was merely stalling the case as she did not want to have Hon. Prasad charged. When Ms. Bokini-Ratu and the Investigation team confirmed their initial advice, after Ms. Malimali's numerous requests for more information, she then gave Hon. Prasad's file to a FICAC employee who did not have the expertise to review the Prasad file. Mr. Reddy, who was asked to review the file, testified as follows:

Ms. Mason: So it's just that one page. Hopefully we won't be long. So, Mr. Reddy, what is your professional background?

Mr. Reddy: Good afternoon, Your Lordship.

Justice Ashton-Lewis: *I cannot hear you.*

Mr. Reddy: Good afternoon.

Justice Ashton-Lewis: *Good afternoon. Thank you for being here.*

Mr. Reddy: Okay. My professional background...I am a graduate bachelor... I did my education in Bachelors of Commerce and Finance and during my tenure at FICAC, I am also a certified Fraud Examiner as well. And I've been with the Commission for almost six years, ten months.

Ms. Mason: All right. And what is your role at the Commission?

Mr. Reddy: My current role at the Commission is that I am the Senior Auditor and the Discipline Officer for the Commission.

¹⁰⁸ Ibid., 19-21.

Justice Ashton-Lewis: *The senior what?*

Mr. Reddy: Senior Auditor.

Justice Ashton-Lewis: *Oh, Auditor. All right.*

Ms. Mason: So, in your role as Senior Auditor, what do you audit?

Mr. Reddy: Some of my roles in the Commission as a Senior Auditor is that I do audit for all the policies that the Commission has. In terms of finance, the operational, all the compliance checks, the internal controls and also any special audits that are being assigned by the Commissioner and also any other duties that I'm being assigned by my supervisor, which is the Commissioner.

Justice Ashton-Lewis: *Yes. So, am I clear in that you audit when members of Parliament or whoever have to make declarations about their earnings, what they're holding, what they're not? You audit that, do you?*

Mr. Reddy: No, Sir.

Ms. Mason: No. Sir, he audits the policies and compliance of the organisation with its policies.¹⁰⁹

...

Ms. Mason: Yes. All right. So, Mr. Reddy, who asked you to do this review of the Biman Prasad file?

Mr. Reddy: It was the Commissioner, Ms. Barbara Malimali.¹¹⁰

...

Ms. Mason: Right. Now, have you ever worked as an investigator for FICAC?

Mr. Reddy: Yes. My previous role in the Commission was as an investigator.

Ms. Mason: Okay.

Justice Ashton-Lewis: *Oh, you were an investigator?*

Ms. Mason: Yes. How long were you an investigator for?

Mr. Reddy: For more than five years.

Ms. Mason: Have you had any legal training?

Mr. Reddy: Any?

¹⁰⁹ Transcript, Day 36, Session 5 – Mr. Reddy at 13.

¹¹⁰ Ibid.

Ms. Mason: Have you got a law degree?

Mr. Reddy: No.

Ms. Mason: Okay. So, when she asked you to do this, did you think that it might not be appropriate for you to audit a file that had already gone through the Investigations Manager and the Legal Manager?

Mr. Reddy: Yes. At first, I was very reluctant, but secondly, I didn't have any option just to say no, but it was since Miss Barbara Malimali was my boss and she is the Commissioner, and as part of my job description is that if she assigns anything to me...

Justice Ashton-Lewis: *Did you ask her why she wanted you to audit it?*

Mr. Reddy: She asked me just to go through it and give my observations on the file before she makes some decisions. That's what she told me.¹¹¹

...

Mr. Reddy: She just asked me to go through the file...

Justice Ashton-Lewis: *Yes.*

Mr. Reddy: And give my observations, since before that she did ask me how long I've been an investigator and asked me to go through the file as an investigator.

Justice Ashton-Lewis: *And she wanted you to give her your observations rather than your opinion, is that right?*

Mr. Reddy: Yes.

Justice Ashton-Lewis: *What were the observations she wanted you to look for?*

Mr. Reddy: She asked me to just go through the file in terms of observation, like if we have covered everything or some things that we still can cover in the investigation.

Justice Ashton-Lewis: *Yes, all right, thank you, Mrs. Mason.*

Ms. Mason: And so then did you tell her that you were reluctant to do it because you weren't qualified?

Mr. Reddy: I didn't tell her that I was reluctant.¹¹²

...

Ms. Mason: Right, okay. All right, I'll just turn to the document. Have you got it before you? No. Okay, I'll give you this copy. So the first problem that you've raised there is the investigating

¹¹¹ Ibid., 14.

¹¹² Ibid.

officer did not record the witness statement from the practitioner who witnessed the statutory declaration forms. Now why would they need to do that?

Mr. Reddy: This observation that I made was clearly from my background that I did some of the investigations. Most of the investigations and the way we are taught in investigations that you have to complete the whole, like do a thorough investigation in terms of... So all these points that I violated in this minute, these are my observations that the investigators could have recorded these further statements just to complete the whole.

Ms. Mason: But was it relevant? Was it relevant?

Mr. Reddy: At this stage I was not sure whether it was relevant or not but when I saw these individuals' names and signatures on those forms, so in my point it was relevant for the investigators to record it.

Ms. Mason: Why would it be relevant?

Mr. Reddy: Since those forms are being endorsed by, before it was presented.

Ms. Mason: Did you, okay, did you know that, did you read the letter from Mr. Prasad's lawyers?

Justice Ashton-Lewis: *Sorry, did I read the letter?*

Ms. Mason: The letters from Mr. Prasad's lawyers.

Mr. Reddy: I think it was part of the file.

Ms. Mason: Yes, well they didn't dispute that this wasn't signed by Mr. Prasad. Did you know that?

Mr. Reddy: No.

Ms. Mason: Okay, so do you accept now that if it wasn't in dispute that this is not relevant?

Mr. Reddy: I'm not sure here but...

Ms. Mason: Would you say that you're really not qualified to answer that question?

Mr. Reddy: Yes.¹¹³

...

Ms. Mason: Yes, I think rather than go through each one, Sir, because they're all pretty much the same and I looked at all of them and having looked at the file and what issues, what the issues were, and the main issue was to do with whether the

¹¹³ Ibid., 16-17.

Honourable Prasad was an officeholder. That was the issue. None of these things here were at issue. Now, do you accept that none of these issues that you've identified were actually relevant to the charges?

Mr. Reddy: I really can't confirm.

Ms. Mason: You can't say. So do you accept that you weren't qualified to undertake a review of this file in the first place?

Mr. Reddy: Yes. I did this review of this file as my experience in investigation. I just went through it. If I was the investigator, I think I would have recorded these statements before handing over to legal for further...

Ms. Mason: Yes, but they didn't. You weren't qualified to make any assessment as to whether the information that you said wasn't there was relevant to the charges?

Mr. Reddy: Yes.

Ms. Mason: Okay. All right. That's all I have. Thank you very much.¹¹⁴

129. At the time of writing this Report, the CoI was made aware via a press release issued on 24 April 2025, that FICAC had closed the file against Hon. Prasad:

The Commissioner of the Fiji Independent Commission Against Corruption (FICAC) authorizes the release of the following statement concerning the closure of the complaint against the Honourable Deputy Prime Minister, Dr. Biman Prasad.

The Fiji Independent Commission Against Corruption (FICAC) has formally responded to Ms. Ana Mataiciwa, Supervisor of Elections, regarding a complaint alleging that the Honourable Dr. Biman Prasad, Deputy Prime Minister and leader of the National Federation Party (NFP) had committed an offence for failing to comply with the declaration requirements under Section 24 of the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013.

The initial complaint was lodged with the Supervisor of Elections by one Alexander Forwood of Sydney, Australia. The complaint alleges that the Honourable Dr. Prasad, submitted false information in his declaration of income, assets and liabilities for the years 2014 – 2020, 2022 and 2023 to the Fijian Elections Office in his capacity as Party Leader of the National Federation Party.

FICAC initiated a comprehensive investigation that included an in-person interview with the Honourable Dr. Prasad and a detailed review of documentary evidence and legal submissions provided by his counsel. Although the Political Parties Act does not explicitly list “party leader” among those required to declare, the Commission concluded that the Honourable Dr. Prasad’s role qualifies him as an “office holder” under section 24 and therefore subject to its declaration obligations.

The complaint that the Honourable Dr. Prasad should have disclosed his superannuation is debatable. Since 2014, the Honourable Dr. Prasad has provided his declaration to the Fijian Elections Office without including superannuation information, and there is no evidence before FICAC that the Supervisor of Elections

¹¹⁴ Ibid., 18.

or the Electoral Commission ever advised Honourable Dr. Prasad that his declarations were insufficient or requested that superannuation information be included in the declaration form.

As there were no grievances raised in almost a decade, any ordinary person in the Honourable Dr. Prasad's position might think that the declarations provided were sufficient. Furthermore, the forms required the Honourable Dr. Prasad or any other office holder to declare their assets and did not specifically require information pertaining to superannuation.

Allegations regarding his spouse's ties to FEM Link Pacific and the Global Girit Institute (GGI), as well as his professional association with Dr. Ganesh Chand, were similarly reviewed and dismissed, as none involved reportable business transactions. Under section 24 (1A) and (1B) of the Political Parties Act 2013, an office holder must disclose business interests and transactions but does not require the disclosure of personal connections.

In relation to Lotus Construction and Lotus Tours and Travel; the form requires that declarants are to declare any dividends received and directorships. Honourable Dr. Prasad declared his shares in two companies, the value of one company and the loan obtained from the bank. Honourable Dr. Prasad also declared that he did not receive any dividends. So, whilst the Honourable Dr. Prasad declared his shares, no income in the form of dividends were received from the companies.

If an office holder under section 24 of the Political Parties Act 2013 commits a technical breach in their declaration, that person can still be prosecuted because it is a strict liability offense. FICAC appreciates the objective of the declaration requirement which is to promote transparency and accountability. However, it is a provision which generates disputes (whether made in good faith or not) between political parties, opposition and their supporters, which in turn has the potential to weaponise FICAC disproportionately against certain individuals.

In this light, in its prosecutorial discretion, FICAC will examine all electoral cases referred to it closely to identify cases of a trivial nature or is a technical breach versus those who wilfully flout the declaration requirements.

FICAC will not be prosecuting Dr. Prasad.¹¹⁵

130. Quite concerning is the statement that s 24 of the PP Act is a provision that generates disputes between political parties, opposition and their supporters, which in turn has the potential to weaponise FICAC disproportionately against certain individuals. Essentially, Ms. Malimali is saying that s 24 of the PP Act breaches in relation to politician's assets and liabilities declarations are "technical" and cause too many political disputes, so, despite the fact that they are strict liability offences, FICAC will not be prosecuting them. This is quite frankly outrageous. The law exists for a reason and must be followed by those who have been entrusted with the responsibility to ensure it is followed.
131. There appears to be a real lack of understanding on Ms. Malimali's part about anti-corruption law. Declarations of assets and liabilities are so important in

¹¹⁵ FICAC "FICAC Closes Complaint Against Honourable Deputy Prime Minister Dr. Biman Prasad" (press release, 24 April 2025) <https://www.ficac.org.fj/pr412025.html>.

this specialist field of law that they are included in the UN Corruption Convention at Article 8(5):

Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investment, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.¹¹⁶

- 132.** It is not merely the requirement for MPs to make declarations of income, assets and liabilities that is important. Taking action for breaches is also important. Article 8(6) highlights this:

Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.¹¹⁷

- 133.** In addition, the UN Corruption Convention also states at Article 30(3):

Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.¹¹⁸

- 134.** Ms. Malimali's decision not to prosecute for "technical" breaches is contrary to what is expounded in the UN Corruption Convention, which advocates that discretionary powers are to be "exercised to maximise the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences".
- 135.** The CoI finds that the conduct of Ms. Malimali, in relation to the investigation and recommended prosecution of Hon. Prasad raises serious concerns. The CoI heard compelling evidence from more than one senior FICAC officer indicating that, in their professional assessment, there was a case warranting charges against Hon. Prasad under the PP Act. These officers affirmed that both investigative and legal assessments had been completed, and that draft charges had been prepared, and they were ready to proceed with the caution interview.
- 136.** Despite this, the evidence suggests a pattern of obstruction on the part of Ms. Malimali. Her directions to delay, or not pursue charges, expressed through text messages and inconsistent reasoning, and numerous requests for further reviews appear to have undermined the impartial execution of FICAC's statutory obligations. Her shifting justifications for returning the file to

¹¹⁶ United Nations Convention against Corruption, opened for signature 9 December 2003, 2349 UNTS 41 (entered into force 14 December 2005), Article 8(5).

¹¹⁷ Ibid., Article 8(6).

¹¹⁸ Ibid., Article 30(3).

investigators, juxtaposed with clear internal recommendations to proceed, give a strong impression of politically driven motives.

137. Although FICAC has since issued a press release stating that the file against Hon. Prasad has been closed, the CoI remains extremely troubled by the decision-making process that led to this outcome. The CoI is of the view that public confidence in the independence, objectivity, and integrity of FICAC has been significantly eroded.
138. Accordingly, the CoI recommends that Ms. Malimali's handling of the Hon. Prasad's file is reviewed to ascertain whether her handling of this file amounts to abuse of office or perverting the course of justice, and that the file itself is reviewed by someone independent.

6.7: Malimali's Dealings with Forwood Complaints

139. As mentioned earlier in this Report at Chapter 4, several witnesses that appeared before the CoI spoke disparagingly about Ms. Forwood and stated that she was a "serial complainer" and simply put, an anti-government keyboard warrior. A detailed exposition of who held this view is articulated in full in Chapter 4, at subsection 4.3. The focus of subsection 4.3 was an analysis of whether Ms. Forwood, who is not a Fiji taxpayer, should be allowed to be a complainant.
140. For the purposes of this sub-section, the way that Ms. Malimali dealt with Ms. Forwood will be analysed.
141. At the outset, the CoI reiterates that despite the fact that Ms. Forwood was an Australian citizen, it did not remove her right to lodge FICAC complaints. In sub-section 4.3, the CoI concluded that Ms. Forwood has every right to make complaints to FICAC, and also, she had a legitimate expectation that her complaints would be processed in accordance with FICAC policies. This right does not hinge upon a person's residency or taxpayer status.
142. What is of concern is that upon Ms. Malimali taking the helm at FICAC, one of her first directives to her staff was that they should ignore all complaints made by Ms. Forwood. Complaints investigated by FICAC were complex cases and cost the taxpayer a lot of money, and as Ms. Forwood was not a taxpayer she was merely wasting the tax dollars of the Fijian people. According to Ms. Malimali, a number of Ms. Forwood's complaints were "so far fetched, they should not have even reached FICAC".
143. This was all set out in an email from Ms. Malimali sent on 8 October 2024 at 3.35 pm, to Mr. Saumi, Mr. Wakanivesi, Ms. Bokini-Ratu and copied to Mr. Dean, Ms. Qionibaravi, Ms. Fesaitu, and Ms. Lomaivuna. That email stated:

Lady and Gents,

I've done a quick analysis of the FEO files that have been closed.

For all of these cases, the genesis of the complaints lies with a Ms. Alexandra Forwood.

Ms. Forwood lives in Australia. She does not live here and does not pay VAT here.

Whether she pays Income Tax here is unknown but given that she has not resided here in a number of years it is highly unlikely that she does.

Her complaints cause the SOE to refer the complaints to FICAC in a very public manner. These referrals were made public before and I think in most of them, the "suspects" did not know beforehand that there was an investigation. They found out through the SOE's announcements.

A non-taxpayer has complained and the resources of the taxpayers of Fiji have been used to investigate these complaints. Some of her complaints are so farfetched, that they should not have even reached FICAC.

For these 7 files, I would like to know how much it cost FOR EACH FILE in terms of time used by the investigator, the time and money used to do the searches, to interview people and to write reports. For example, if an investigator spent 100 hours on a file, I would like to know what it cost so it would be 100 hours x whatever their hourly rate is.

I want to know how much it cost us in fuel and time for a driver to drive the investigator to a certain location – that means that even the hourly rate of the driver will have to be calculated.

Mr. Dean – we spoke briefly a few weeks ago. I want to know how much it costs to complete a particular file!

ALL of these cases were classified as COMPLEX. However, at least 3 of them were not. Hon. Tabuya is divorced so there was nothing to that case. For the allowances, if someone had quickly looked at Exempt Income in the ITA and its successors, they would have figured it out very quickly.

I am not sure how many FEO files are left with us. I saw Hon. Dr Prasad's file briefly a couple of weeks ago and I have asked Miri to find it for me.

Ms. Forwood continues to make allegations on SM that I have closed Dr Prasad's file. She continues to email me daily about these cases and so does Dr Victor Lal. I don't read their emails but I find it distressing that these folks continually make accusations against me.

Can I have the costings of these individual investigation files please?

These costing will direct my decisions on where to go next and how best to allocate our resources.

Vinaka.

Kind regards

Barbara Malimali¹¹⁹

- 144.** When Mr. Saumi appeared before the hearing, he testified that it is not a usual FICAC process to do a cost analysis of each complaint/complainant:

Mr. Dawai: And further down she mentions can I have the costings of this individual investigation files, please? These costings will direct my decisions on where to go next and how best we allocate our resources. Now, Mr. Saumi, for complaints that are filed with FICAC, is this a normal process? Is this a normal process that's always been done to do a cost analysis of each complaint?

Mr. Saumi: No, My Lord.

- 145.** This directive was met with a carefully worded reply from Mr. Saumi, who reminded Ms. Malimali of FICAC's statutory obligations under section 12 of the FICAC Act 2007. He noted that the FICAC Act mandates the Commission to receive and consider any complaint of alleged corrupt practice, regardless of the complainant's residency or tax status. He cautioned that refusal to investigate complaints purely on the basis of the complainant's identity could amount to an omission of duty and undermine the integrity of FICAC. He further noted that Ms. Forwood may fall under the category of a "whistleblower" as defined in the CSO Investigators Manual and pointed out that many of her complaints had been formally assessed and classified as warranting investigation. The contents of this email can be found at paragraph 16 in Chapter 4.
- 146.** Despite the fact that after Mr. Saumi wrote a detailed email to Ms. Malimali noting that Ms. Forwood might fall under the category of "whistleblower" and stating explicitly in his email referred to above, that "the whistleblower system is crucial for anti-corruption detection and enforcement", Ms. Malimali persisted with her views.
- 147.** The CoI finds that although Ms. Malimali's reply email below may show that she was somewhat accepting of Mr. Saumi's email, the fact of the matter was that Ms. Malimali was firm in her view in not wanting to allocate FICAC resources to Ms. Forwood's complaints and still cited concerns about the costs in relation to Ms. Forwood's complaints:

I hear you.

I wish those behind Ms. Forwood would stop being cowards and show their faces.

The challenge for us should we take any of these cases to court is WHO is going to be the complainant who comes forward to give evidence?

¹¹⁹ Affidavit of Alifereti Winston Wakanivesi, dated 12 December 2024, Annex AW – 17: Email chain between Mr. Saumi and Ms. Malimali regarding the direction of stopping investigation into all Ms. Forwood's complaints.

In relation to the 7 cases, they proved to be false claims. The allegations were false and people like HE The President were publicly dragged through the mud.

If Ms. Forwood had made an actual statement in relation to the 7 cases, we would probably be prosecuting her now for giving us false information... BUT we cannot as she did not make a statement nor is she in the country.

I would still like a monetary value places on the investigation of each of those cases.

Thank you for giving me your views and I expect you to keep giving me your views. I don't mind if any of you disagree with me. It's healthy and it means that all our cases are properly ventilated in-house.

We shall talk more about these cases.

Kind regards

Barbara Malimali¹²⁰

- 148.** On 14 October 2024, in a follow-up exchange regarding quarterly updates on case completion, Ms. Malimali explicitly stated: “note that anything that originated from Alexandra Forwood is not going to be given any more resources.” This was not a mere deprioritisation. It was a categorical directive that cases linked to Ms. Forwood were to be effectively halted, regardless of legal merit or investigative progress:

Thank you.

I will review these.

BUT note that anything that originated from Alexandra Forwood is not going to be given any more resources.

Kind regards

Barbara Malimali¹²¹

- 149.** The FICAC witnesses affirmed that they understood this to be a direction to stop investigations into complaints that had originated from Ms. Forwood, many of which related to Ministers' declarations under the PP Act.
- 150.** Mr. Saumi testified as follows when asked what he understood about what Ms. Malimali was saying in her email:

Mr. Dawai:	Now at the top the Commissioner says, ‘thank you’. She responds to your email and says thank you. I will review this but note that anything that originated from Alexandra Forwood is not going to be given any more resources. Now, Mr. Saumi, as a Manager Investigation, what does that line mean?
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Mr. Saumi:	My Lord...
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¹²⁰ Ibid.

¹²¹ Ibid.

Justice Ashton-Lewis: I think, Mr. Dawai's question was what does that mean?

Mr. Saumi: Ms. Forwood, is a complaint to majority of the Election related case that involves our Ministers and Politicians. And over the period she has been reporting the matter. My understanding this email from Madam, she is indicating that all complaints lodged by Alexandra Forwood because she put all emails on those Politicians and Ministers will not be made even anymore resources.

Mr. Dawai: So this is the directive from the Commissioner?

Mr. Saumi: Yes, the email require to me but I have suggested to her in my previous email, the updates about cases of those Politicians and Ministers.¹²²

151. Ms. Bokini-Ratu's evidence corroborates Mr. Saumi's evidence. She responded as follows:

Ms. Mason: Okay, and then in paragraph 15, you say that, well, before that, you talk about the email that we've gone through. There were some emails, I think, attached to Mr. Saumi's affidavit and they were from Ms. Malimali saying, I don't want you to do any more work on these files. And when the questions were put to you, you all said, yeah, we took that as an instruction to stop work on those files. When this matter was put to Ms. Malimali, she said that she had instructed staff that investigations were still ongoing and you say that you're not aware of any further instructions regarding investigation of complaints. So, I just want to clarify, you have not received any emails or any other instructions, saying, despite what I told you when I first started, I'd like you to start working on those MP files or Ms. Forwood's complaints again. Is that correct?

Ms. Bokini-Ratu: That's correct.

Ms. Mason: All right, and you're not aware of any of the other FICAC officials progressing those complaints?

Ms. Bokini-Ratu: No, Your Lordship.¹²³

152. Mr. Wakanivesi responded as follows:

Ms. Mason: Okay. And then you go on and in paragraph 37 you talk about the possible attempts to influence the process of appointing a new Commissioner who would further attempt to stop investigations against members of Parliament. And then you go on to say that the activities of Ms. Malimali as Commissioner after her appointment was the fulfilment of stopping complaints investigations and charges. And you back up your view by listing on page eight of your affidavit. Three things that lead you to form this view, that post the

¹²² Transcript, Day 7, Session 1 – Mr. Saumi at 11-12.

¹²³ Transcript, Day 34, Session 1 – Ms. Bokini-Ratu at 15-16.

appointment, she started stopping complaints and things. So the first one is the email on the 8th October about staff analysing and costing resources for the complaints by Ms. Forwood.

...

Ms. Mason: Now can you please explain for his Lordship how you think that this email is really an attempt to stop those complaints by Ms. Forwood?

Mr. Wakanivesi: Yes, My Lord. This is an analysis of everything beginning from the 2nd of April, the meeting on the 2nd of April.

Justice Ashton-Lewis: *Please just wait.*

Mr. Wakanivesi: Yes, My Lord. Yes, from the 2nd of April the issue that had been brought all along was firstly the complaints by Ms. Alexandra Forwood. This had actually caused the directives to be given to Ms. Mataciwa to stop or not to send the complaints directly to FICAC, which is again section 18, and to send the complaints across to the Electoral Commission. Those which I consider were the first attempts to stop the complaint by Ms. Forwood with respect to this particular Point. And then when those attempts were not successful, Ms. Mataciwa continued to lodge complaints at FICAC. And then the case actually came to FICAC. We did our investigations with all the evidences that was available and then came along an instruction to stop to cut off the complaint. In order to cut off the complainant this has to, this sort of instruction has to come to us. When I got this particular email, My Lord, firstly, it's quite, it's very new to cost an investigation. My view at this time when I got this instruction is that there is something being lined up against Ms. Forwood. It could be lining up an offence against her with a cost, causing a loss or something to stop her from him from reporting to FICAC. That's how I had thought of when I when I received this kind of instruction. So how the events unfolded over time actually reached to the time when Ms. Malimali came in and the instructions that she was giving was actually a fulfilment of what was, what had begun from the second.

Justice Ashton-Lewis: *Yes, thank you.*

Ms. Mason: And then the second thing you say is that there was also an email from Ms. Malimali on the 14th of October and it says, note that anything that originated from Alexandra Forwood is not going to be given any more resources. Now, is that tantamount to closing those cases?

Justice Ashton-Lewis: *And it's also tantamount to this, isn't it, saying directly, do not investigate anything of hers throw them in the bin.*

Mr. Wakanivesi: Yes My Lord.

...

Ms. Mason: Yes, and tantamount to an instruction to not do any more work on those cases?

Mr. Wakanivesi: Yes, My Lord.¹²⁴

153. Most of the cases on false MP declarations of income, assets and liabilities, had emanated from complaints lodged by Ms. Forwood. The effect of Ms. Malimali's decision was to halt investigations into potentially false declarations of assets and liabilities by sitting Ministers, resulting in these complaints against Ministers being left to languish in obscurity.

154. When it was put to Ms. Malimali that she was whistled in as Commissioner for the purpose of closing down complaints relating to false or incorrect declarations by MPs she stated the following:

Ms. Malimali: I didn't make any changes when I went in. Whatever system was there I did not change.

Ms. Mason: Except you were saying don't deal with the Alexandra Forwood complaints. That's a big change because those are all the MP complaints.

Ms. Malimali: What I have said is ask her to make a statement.

Ms. Mason: No, you said don't deal with them. I'll take you to it.

Ms. Malimali: Yes, I may have written it there but you see I'm also having conversations with these people.¹²⁵

...

Ms. Mason: Yes, have you got it? So it says there, it's from you but note that anything that originated from Alexandra Forwood is not going to be given any more resources. Now, isn't that clearly saying throw those in the back room and don't worry about them now.

Ms. Malimali: No, I'm not saying that.

Ms. Mason: Okay, so what are you saying there?

Ms. Malimali: Emails, conversations, meetings. What I was, what we did was right, I said look all of these people are making allegations that I'm here, I'm here to close the files and do all of these things. Let's have a look at the complaints. So we brought some of the complaints and we said right, quantify it, put a cost to it. How much money, how much of the money of the people of Fiji, the taxpayers of Fiji, are spending.

Ms. Mason: On MP complaints?

¹²⁴ Transcript, Day 9, Session 2 – Mr. Wakanivesi at 29-31.

¹²⁵ Transcript, Day 24, Session 3 – Ms. Malimali at 26.

Ms. Malimali: No, on chasing Ms. Forwood's complaints that are with us.

Ms. Mason: Those are MP complaints.

Ms. Malimali: If you want to say that, alright.

Justice Ashton-Lewis: *I'm not aware of any complaints really is not MP.*

Ms. Mason: There are some others but these ones that have come from the FEO are the MP complaints.

Ms. Malimali: No, there are others. But from Ms. Forward, a couple of them, one of them was she'd made allegations and it went to FEO and they sent it to FICAC and I think that file's closed against Mr. Saneem.

Ms. Mason: Okay. But most of them are MP complaints.¹²⁶

155. The CoI finds that the response of Ms. Malimali in relation to what she meant by anything that originates from Ms. Forwood to not be given any resources is not credible. Her email sent on 14 October 2024 was clear, no more work was to be done on Ms. Forwood's complaints. It was received and understood by FICAC staff as a clear directive.
156. Ms. Bokini-Ratu, in her supplementary affidavit, annexed a table which outlined the number of MP complaints FICAC received in 2024.¹²⁷ Of note is that FICAC received a total of 13 complaints against MPs and former MPs, and off the 13, aside from, one complaint from Mesake Dawai, one complaint from Tarisi Shaw, one complaint from Victor Lal, and one complaint from a concerned citizen, Ms. Forwood was responsible for the remaining nine complaints.
157. The CoI finds that the blanket stance of Ms. Malimali to ignore all complaints from Ms. Forwood and thereby remove resources from them sets a dangerous precedent, especially for an anti-corruption agency.
158. It is the view of the CoI that whilst Ms. Forwood may have at times got things wrong, ignoring all of her complaints could lead to a situation where some credible corruption offence has gone un-investigated or not prosecuted because FICAC failed to review all of the complaints it receives.
159. Furthermore, what is telling is the Viber message which was Exhibit 8 which was presented before the CoI when Mr. Saumi gave evidence. The CoI finds that, in fact, Ms. Malimali had a very clear intention of not wanting to prioritise MP complaints, despite the fact that she stated that she only wanted to stop effectively wasting money on Ms. Forwood's complaints. The fact is as

¹²⁶ Ibid., 27.

¹²⁷ Table of Complaints Against Members of Parliament and Former Members of Parliament attached as Annex LBR-1 of Adi Laite Nariu Baleisuvu Affidavit dated 25 February 2025.

discussed above in subsection 6.6,¹²⁸ Ms. Malimali wanted to prosecute a “big case” to silence her “critics” but “NOT the election ones!”.

160. The implications of this policy direction are significant. By targeting the identity and status of the complainant rather than the content and merits of the allegations, Ms. Malimali arguably introduced an arbitrary threshold for determining which complaints FICAC would investigate. The decision to cease resourcing Ms. Forwood’s complaints not only cut short several ongoing investigations but also shielded politically exposed MPs from scrutiny under the PP Act. This decision was made unilaterally, despite internal resistance, without recourse to FICAC’s formal complaint review processes, and contrary to the clear principles set out at Articles 8(5) and (6), and 30(3) of the UN Corruption Convention.
161. The actions of Ms. Malimali raise critical concerns about independence, transparency, and adherence to the statutory mandate of FICAC. By refusing to assess complaints because of a complainant’s identity and presumed motives, rather than considering and assessing evidentiary sufficiency or public interest, Ms. Malimali’s decision has undermined the objectivity and credibility of the institution she leads. Ms. Malimali’s actions against Ms. Forwood appear also to have been fuelled by Ms. Malimali’s ill feeling toward Ms. Forwood based on the abuse of office complaints Ms. Forwood lodged against Ms. Malimali when she was Chair of the ECF.
162. This directive not only contravened FICAC’s statutory obligations under s 12 of the FICAC Act, but it appears also to be an abuse of office.
163. The CoI finds that the conduct of Ms. Malimali, in relation to the complaints submitted by Ms. Forwood, represents a significant departure from the statutory obligations and ethical standards expected of someone in a leadership position in an independent anti-corruption body.
164. By issuing explicit directives to deny further resourcing to complaints solely on the basis of the complainant’s nationality, residence, or perceived credibility, Ms. Malimali contravened the principles of impartiality, non-discrimination, and procedural fairness that ought to underpin FICAC’s mandate. This sets the scene for an extremely bad precedent. Her actions created an informal and unlawful filter through which complaints are assessed, with a resulting chilling effect on whistleblowing and legitimate public accountability.
165. Ms. Malimali’s approach not only curtailed investigations into potentially serious allegations of misconduct by high-ranking public officials but also eroded the internal integrity and morale of FICAC staff, several of whom raised legitimate statutory concerns. Despite being cautioned, Ms. Malimali

¹²⁸ See paragraphs 117 and 118.

persisted in her position and failed to appropriately reassess her course of action, thereby further compromising the institution's credibility.

166. The CoI finds that Ms. Malimali's justification for her conduct, citing resource allocation and complainant identity, was not consistent with the provisions of the FICAC Act, nor with best practices in public integrity systems established in leading anti-corruption agencies around the world. Her email correspondences and subsequent attempts to recast or minimise their implications lacked credibility and transparency.
167. The CoI concludes that this episode exemplifies a broader risk to institutional independence and highlights that Ms. Malimali's motivation had little to do with the fight against corruption, and more to do with closing current cases against MPs, and other senior public figures.

6.8: Stop Departure Order Against Puleiwai

168. On 7 September 2024, two days after her resignation, Ms. Puleiwai left Fiji for Australia.¹²⁹
169. On 11 September 2024 Ms. Malimali issued an SDO against Ms. Puleiwai:

STOP DEPARTURE ORDER

Section 13 (1) (e) of the Fiji Independent Commission Against Corruption Act 2007

The Director Immigration

Pursuant to Section 13 (1) (e) of the *Fiji Independent Commission Against Corruption Act 2007*, NOTICE is hereby given that **FRANCIS LEBE PULEIWAI** of **LOT 240 QARI PLACE, NARERE, SUVA (Date of Birth: 07/04/1984)** holding **PASSPORT NUMBER 1051634** against whom an investigation by the Fiji Independent Commission Against Corruption has commenced, is prohibited from leaving the jurisdiction of the Republic of Fiji from **11 SEPTEMBER 2024** to **10 OCTOBER 2024** (Maximum of 30 days).

...

Barbara Malimali

Commissioner

11 September 2024¹³⁰

¹²⁹ Affidavit of Francis Leba Puleiwai dated 10 December 2024 at [112]-[114].

¹³⁰ Stop Departure Order Against Ms. Puleiwai dated 11 September 2024 attached as Annex KVS-17 of Kuliniyasi Saumi Affidavit dated 3 January 2025.

170. This SDO was served by Mr. Savenaca Ratu¹³¹ and received by the Fiji Immigration Agency on 11 September 2024.¹³²

171. On 11 September 2024 at 5:12 pm Mr. Saumi notified Ms. Malimali by email, with Ms. Qionibaravi copied in, that the SDO had been served on the Director of Immigration, and noted that a formal complaint and directive needed to have been done prior to serving the SDO on Ms. Puleiwai:

Subject: Service of SDO of Former ADC Puleiwai to The Director Immigration

COM

Good Afternoon Madam

Reference to above subject, please kindly advise that we have served Ms. Puleiwai's SDO to Director Immigration this afternoon and a copy is attached. Please confirm the preferable date and time you want us to serve a copy to Ms. Puleiwai.

Madam, also advise that before we serve her a copy of SDO, we need to register a formal complaint against her at FICAC and followed by a formal directive for investigation from your office (Pursuant to Section 13 (1) (3e) and Section 12 (a) & (b).

Kindly awaiting for your confirmation on preferred date and time of service

Thankyou

Kuliniasi Saumi¹³³

172. Mr. Saumi deposed that he did not receive a response to his email.¹³⁴

173. Section 13(1)(e) of the FICAC Act states:

13(1) For the purpose of the performance of his or her functions under this Act the Commissioner through the Deputy Commissioner and/or through his or her officers, may—

...

(e) prohibit any person against whom an investigation in respect of an offence to which this Act applies has commenced, from leaving the jurisdiction of the Republic of Fiji for a period of up to 30 days and may give the necessary instructions in writing to the Director of Immigration to enforce the order, provided that the power under this paragraph must only be exercised by the Commissioner and a copy of the order must be served on the suspect or at his or her last known residential address within 24 hours of the issuance of the order.

174. Ms. Malimali was questioned as to why she had issued the SDO, to which she responded as follows:

¹³¹ Affidavit of Kuliniasi Saumi dated 3 January 2025 at [50].

¹³² Stop Departure Order Against Ms. Puleiwai dated 11 September 2024 attached as Annex KVS-17 of Kuliniasi Saumi Affidavit dated 3 January 2025.

¹³³ Email from Mr. Saumi to Ms. Malimali dated 11 September 2024 attached as Annex KVS-18 of Kuliniasi Saumi Affidavit dated 3 January 2025.

¹³⁴ Ibid., [52].

Justice Ashton-Lewis: *Can I just ask one question and I will, I do need to stay up. Why did you put the stop order on Ms. Puleiwai?*

Ms. Malimali: I think I put it a week later.

Justice Ashton-Lewis: *Had she gone?*

Ms. Malimali: Yes.

Justice Ashton-Lewis: *But why did you do it?*

Ms. Malimali: I, at the time, we thought that, look, you've made all these allegations of all of these criminal activities by me and all of these other people and then you've run away. If you come back, stay, come in, give a statement or go to the police station or come in and give a statement. We, you know, this sort of activity, making accusations, running out of the country and then being shielded outside of the country. If you're going to make an accusation about me, face me. And this is one of the fundamental rights I think we have. But I, it's this, that's why, that was the main reason and I thought, you know.¹³⁵

175. When questioned about whether a complaint had been formally registered Ms. Malimali responded as follows:

Ms. Mason: Okay, so if you have a look at it, it says in the third line, against whom an investigation by the Fiji Independent Commission against Corruption has commenced. But that's not true, is it?

Ms. Malimali: Why not?

Ms. Mason: Because there was no investigation against Ms. Puleiwai.

Ms. Malimali: There was.

Ms. Mason: Yeah, so what was that?

Ms. Malimali: I see where you're coming from. All right. Look, I had instigated the complaint.

Justice Ashton-Lewis: *The what?*

Ms. Malimali: I instigated it.

Justice Ashton-Lewis: *The what?*

Ms. Malimali: The complaint.

Justice Ashton-Lewis: *Against?*

Ms. Mason: Against Ms. Puleiwai.

¹³⁵ Transcript Day 24, Session 2 – Ms. Malimali at 16-17.

- Ms. Malimali: Yes.
- Ms. Mason: When?
- Ms. Malimali: I think around this time.
- Ms. Mason: Around this time?
- Ms. Malimali: Yes, because of the unlawfulness of the...
- Ms. Mason: Who was it registered with?
- Ms. Malimali: In our CMS.
- Ms. Mason: So, there is a complaint, investigation?
- Ms. Malimali: There is a complaint.
- Ms. Mason: Yes.
- Ms. Malimali: It's registered, it's got an ID number with FICAC. But then I said, look, we've just issued this, just leave it. Just leave it. Don't go any further with it. It's with the police. But it's registered in our system.
- Ms. Mason: So, when was it registered?
- Ms. Malimali: It would have been around the same time. I think around the 10th, 11th, 12th.
- Justice Ashton-Lewis:** *The 11th? Was it the 11th of September?*
- Ms. Mason: It was the 11th. So, how come Mr. Saumi didn't know about it?
- Ms. Malimali: I don't report to Mr. Saumi, Madam. I am the Commissioner, not Mr. Saumi.
- Ms. Mason: Yes, but he knows what...
- Ms. Malimali: He might like to think he's the Commissioner.
- Ms. Mason: So, when complaints are registered, he knows what they are and so does Ms. Bokini. So, how come they didn't know?
- Ms. Malimali: Not necessarily. A complaint is registered in the CMS... Sorry, the Complaints Management System, sorry. It's registered, it comes to the Commissioner.
- Ms. Mason: Yes.
- Ms. Malimali: Then it goes on to the legal people for their assessment and all of that. In this case, I had instructed, leave it at the registration stage because it's being dealt with the police. So, let's just leave it at that. I spoke with Mr. Saumi about this.

...

- Ms. Mason: So let's go back to this email that has been provided by Mr. Saumi. He says that and this email says that after the stop departure order was signed and given to the Director of Immigration, there was no investigation and no formal complaint registered. Do you agree with that or not?
- Ms. Malimali: I disagree.
- Ms. Mason: Yes. Because?
- Ms. Malimali: There is a complaint lodged and registered. But we haven't carried on with the investigations because it's with the police.
- Ms. Mason: So on this trial...
- Ms. Malimali: We haven't carried on with the investigations because it's with the police.
- ...
- Ms. Mason: Yeah, Okay. So the complaint was at- So when Mr. Saumi sent you this email, September 11/5/12, you say a complaint had already been registered.
- Ms. Malimali: By me, yes.
- Ms. Mason: Okay. So what was the process that you used to register it? Did you send an email to someone?
- Ms. Malimali: I think I wrote a minute in our green instruction sheet.
- Ms. Mason: Yes.
- Ms. Malimali: And then he came up and then I think I said to Ms. Bulai, okay, enter it into the system, but then just leave it.
- Ms. Mason: To Ms. who?
- Ms. Malimali: Our senior complaints officer who enters...
- Ms. Mason: Yes, what's her name?
- Ms. Malimali: Bulai.
- Ms. Mason: Okay.
- Ms. Malimali: I'm the complainant. I was the one who wrote the note. He came up and saw me. You must remember also, I've been in the job like a week or five days or something. And I think at the time, I wasn't fully cognisant of all the-¹³⁶

176. Ms. Malimali did not appear to be at all cognisant of the inappropriateness of initiating a FICAC complaint, and ordering an SDO, against Ms. Puleiwai, in

¹³⁶ Ibid., 18 -23.

which she, Ms. Malimali, was central to the relevant events, and then continuing to be the decision maker in relation to that complaint. The SDO legally requires there to be an investigation. However there was no investigation into Ms. Malimali's complaint against Ms. Puleiwai.

177. Consequently, her signing the SDO was illegal. The SDO said "... Frances Leba Puleiwai... against whom an investigation by Fiji Independent Commission Against Corruption has commenced..." However, no investigation had commenced. Mr. Saumi was the Manager of the Investigations Division and all investigations went through him. If he did not know about it, then there is almost certainly no investigation.
178. Counsel Assisting asked Mr. Saumi, Mr. Wakanivesi, Ms. Bokini-Ratu whether the SDO was illegal. Mr. Wakanivesi said the following:

Ms. Mason: All right, I'd like to then go to the Stop departure or you say you against this. Sorry, I'll be clearer. The stop departure order against Ms. Puleiwai. So you contacted the Immigration Department and they responded that Ms. Puleiwai had left already. And then you say at paragraph 41, in your opinion a stop departure towards someone who is not under investigation is wrong, but it's actually more than wrong, isn't it? Isn't it also illegal?

Mr. Wakanivesi: Yes, My Lord. It's illegal.¹³⁷

179. Ms. Bokini-Ratu said the following:

Ms. Mason: OK, on the stop departure order, and this is a document dated 11 September, signed by Ms. Malimali. It says, pursuant to Section 131A of the FICAC Act, notice is hereby given that Frances Leba Puleiwai and her address, against whom an investigation by the Fiji Independent Commission against Corruption has commenced, is prohibited from leaving. So given that there was only a complaint, no commencement of investigation, and the date was before the complaint was registered, this is a false document? Would you, if you had a FICAC complaint, would you see this as a false document?

Ms. Bokini-Ratu: Yes, Your Lordship.

Ms. Mason: And dishonest and abuse of office?

Ms. Bokini-Ratu: Yes, Your Lordship.

Ms. Mason: Thank you.¹³⁸

180. Mr. Saumi said the following:

Ms. Mason: So it says in the third line, against. So it's issued against Ms. Puleiwai, against whom an Investigation by the FICAC

¹³⁷ Transcript, Day 9, Session 2 – Mr. Wakanivesi at 33.

¹³⁸ Transcript, Day 34, session 2 – Ms. Bokini-Ratu at 35.

Independent Commission against Corruption has commenced. Now is that a true statement?

Mr. Saumi: No, My Lord.

Justice Ashton-Lewis: *Okay, stop there. I just want to read. It's not a true statement. You just said.*

Ms. Mason: Yes. Why? Why do you say it's not true.

Mr. Saumi: On this particular day, the 11th of September, there was no registered or active investigations.¹³⁹

- 181.** Further, Ms. Malimali appeared to suggest that the documents relevant to the SDO would have been withheld from the CoI had she been aware that FICAC staff intended to include them in their affidavits:

Ms. Mason: Right. So, he's got an over the page at 751. So, the next one. And this is what he says. September the 11th. Good afternoon, Madam. Reference to above subject. Please kindly advice that we have served Ms. Puleiwai's SDO to Director Immigration this afternoon and a copy is attached. Please confirm the preferable time and date and time you want us to serve it. Also be advised that before we serve her a copy of SDO, we need to register a formal complaint against her and followed by a formal directive for your investigation from your office. And he says kindly awaiting your confirmation on preferred date. So, on this day at the 11th, he'd already served the stop departure order, but according to him in this email, there is no investigation.

Ms. Malimali: Can I just say that I never gave permission for Mr. Saumi to include this in his affidavit?

Ms. Mason: Why would you need to give permission?

Ms. Malimali: Because any correspondence or documents belonging to FICAC to be released outside of FICAC needs the Commissioner's...

Ms. Mason: Oh, no, it doesn't. Not under the Commission of Inquiries Act. And you just said before that you were so open with your staff that you told them to do whatever the commission wanted and you were staying out of it. And now you're telling me that he should not have given us this because it didn't have your approval. That's right.

Ms. Malimali: No, you are twisting my words. I did say in relation to the politicians and all of the FEO files, I said, give them over to the COI, leave me out of it. Documents like this, I wouldn't have said no.

Ms. Mason: But they didn't need to come to you for approval.

¹³⁹ Transcript, Day 6, Session 3 – Mr. Saumi at 14-15.

- Ms. Malimali: Well, if you say so, alright, no one's arguing with you.
- Ms. Mason: Well, have you read the Commissions of Inquiry Act?
- Ms. Malimali: I have.
- Ms. Mason: Right. The Commissioner has a right to ask for any document from any government entity and it has to be provided.
- Ms. Malimali: I have read the Act, but I can't remember.
- Justice Ashton-Lewis:** *No, no, I understand.*
- Ms. Malimali: Just started remember it.
- Ms. Mason: And I'm really quite concerned about the fact that you think an enquiry that is pretty much centred on you and your behaviour and your appointment that you should be involved in a decision as to what documents your staff give to us and what they don't. That's quite concerning that even after all this questioning, that you still think that.
- Ms. Malimali: Well, add that to your list of dishonest conduct if you want, Ms. Mason.
- Ms. Mason: Well, not dishonest. It's inappropriate. It's a lack of understanding is what it is for someone in such a senior position.
- Ms. Malimali: I disagree with you, but carry on.

Justice Ashton-Lewis: *Again, it's for me to decide what I want and you have no say in it. And if you interfere, you're committing obstruction of justice. You're committing contempt to the power of the commission. Now, you have read it and I do understand you can't remember it in chapter and verse because you need to refresh. But the point that Mr.s. Mason is making is absolutely 100% juridically, jurisprudentially correct. So should I deal with you for contempt? Forget what this commission is trying to find out as these are separate issues. Should I deal with you for contempt? Should I deal with you for attempted obstruction of justice? I'll tell you the answer. I'm not going to. Yes, Mrs. Mason.¹⁴⁰*

- 182.** The evidence shows that Ms. Malimali's placement of the SDO on Ms. Puleiwai was illegal. It was a breach of s 13(1)(e) of the FICAC Act. In addition Ms. Malimali signed a false document when she signed the SDO saying that an investigation had commenced against Ms. Puleiwai when it had not. All together, Ms. Malimali, in signing a false SDO and breaching s 13(1)(e) of the FICAC Act, has also abused her powers. She has used them arbitrarily to punish someone she considers to be a foe. Her actions render her scathing

¹⁴⁰ Transcript, Day 24, Session 2 – Ms. Malimali at 20-21.

comments, about FICAC being “weaponised” by the previous Fiji First regime, extremely hypocritical.

6.9: Hon. Kamikamica

183. Hon. Ravu was the Minister for Fisheries from 24 December 2022 to 28 June 2024. He resigned and became a backbencher in Parliament when he was charged by FICAC for an offence in relation to an alleged arbitrary interference in a fisheries regulatory matter.¹⁴¹
184. Hon. Ravu gave evidence that on 8 July 2024 Hon. Kamikamica enquired as to the status of his FICAC case.¹⁴²
185. Hon. Ravu further stated that on 5 August 2024 Hon. Kamikamica again enquired about the status of his FICAC case, and informed him that Ms. Malimali would be appointed as FICAC Commissioner.¹⁴³
186. He was asked about events involving Mr. Kamikamica intervening with Ms. Malimali in a case against him at FICAC:

Ms. Mason: Okay, so, on the 8th of July, you say that Deputy Prime Minister Mr. Kamikamica enquired about the status of your case. Do you know why he asked you about your case?

Mr. Ravu: No, Your Honour.

Justice Ashton-Lewis: *May I remind you, though, you have nothing to be nervous about. But you're aware, and your counsel will have told you, what this tribunal is all about. And you only have to do really one thing. You have to answer questions from Ms. Mason honestly, to the best of your knowledge and your understanding. So, if you will please do that, you will be helpful.*

Ms. Mason: So, did many people ask you about your case?

Mr. Ravu: Yes, Your Honour.

Ms. Mason: So, most of the MPs would ask you about your case?

Mr. Ravu: Yes, Your Honour.

Justice Ashton-Lewis: *And then Mr. Prasad, you said in the same day, asked you about your case?*

Mr. Ravu: Yes, Your Honour.

Ms. Mason: And then you say that on the 5th of August, this is in paragraph 8, during the morning break, Minister

¹⁴¹ Affidavit of Kalaveti Vodo Ravu dated 13 December 2024 at [1]-[3].

¹⁴² Ibid., [6].

¹⁴³ Ibid., [8].

Kamikamica approached you and again asked about the status of your case. And then you go on to say that he told you that Barbara Malimali would be appointed the new Commissioner. Do you know why he was telling you that?

Mr. Ravu: Yes, based on the first question he asked me on the 5th, I realised that the need of this question is that he wants to refer that Ms. Malimali will be appointed as Commissioner.

...

Ms. Mason: So, yes, paragraph 8, it says, on the 5th of August, do you see there? And then it says, he later told me that Barbara Malimali would be appointed the new Commissioner.

Mr. Ravu: Yes.

Ms. Mason: And did he say that she would, once she was appointed, she would try to close your case?

Mr. Ravu: That's what he told me. If Barbara Malimali is appointed Commissioner, he will talk to Barbara regarding to my case.

Ms. Mason: Right. And that all these problems would go away?

Mr. Ravu: Yes.

Ms. Mason: Did he tell you that she would close any other cases?

Mr. Ravu: No, Your Honour.

Ms. Mason: Did you know that Mr. Kamikamica and Mr. Prasad also had cases?

Mr. Ravu: Yes, Your Honour.

Ms. Mason: Yes. And, because you had a question, didn't you? You thought, why did they prosecute yours first, when some of the other complaints were there before yours? Was that an issue for you?

Mr. Ravu: No, Your Honour. I understand that I am the 8th, that's what I heard, but coming at a time, I knew that I'm the first one to be...

Ms. Mason: You were the first one to be charged? But when you say you were the 8th, were there other complaints that had been filed before you?

Mr. Ravu: Yes, I read through papers, in social media, that some of the Ministers are in this... Yes.

Ms. Mason: Okay.

Justice Ashton-Lewis: *And the complaint against you was over the sales of Beche-deMer, sea cucumbers, was it?*

Mr. Ravu: It's the interference of...

Justice Ashton-Lewis: *Oh, yes.*

Ms. Mason: Yes, wasn't there an investigation into illegal sales and allegedly you interfered, that's the case?

...

Ms. Mason: So, Mr. Ravu, it's the part where you say, after the Prime Minister left the room, DPM Kamikamica asked about my counsel's letter that was written to FICAC. So, that's Ms. Rokoika had written to FICAC. And you say, I told him that it was still with the legal division of FICAC and they would respond once they've done their research. DPM Kamikamica then told me to give a copy of the letter so he could follow it up with Ms. Malimali. Now, was that an indication to you that he was trying to get your case dismissed or closed?

Mr. Ravu: Yes. Sir.¹⁴⁴

187. Hon. Ravu consulted with his Counsel who had advised against providing a letter that she had written to Ms. Malimali, dated 12 October, to Hon. Kamikamica, as she was handling the case and awaiting a response from FICAC.

188. Counsel Assisting questioned Hon. Kamikamica about his ability to recall this conversation with Mr. Ravu:

Ms. Mason: Paragraph 13. So, he says that his lawyer has sent some correspondence to FICAC. And this is in February, so we know that he's had his case heard already. And then Ms. Malimali advised she is waiting on analysis from her legal section. And then he goes on in paragraph 14 to say that he had a discussion with the Prime Minister. So, it's Mr. Deputy Prime Minister, it's toward the end of paragraph 14. And he says, after the Prime Minister left the room, DPM Kamikamica asked about my counsel's letter that was written to FICAC. I told him that it was still with the legal division of FICAC, and that they would respond once they've done their research. DPM Kamikamica then told me to give a copy of the letter, so he could follow it up with Ms. Malimali. Now, do you remember this conversation?

Mr. Kamikamica: Yeah, again, like I said, Your Worship, I have got zero recollection of what he's saying here. But, like I said, on quite a number of occasions, I actually asked him about his case, but he was really coming from more an empathy type of perspective more than anything.

Ms. Mason: Well, that's not what he says. He has said that you had offered to help him, and by that help, as he said there, it was getting in touch with Ms. Malimali to help him, so that

¹⁴⁴ Transcript, Day 25, Session 2 – Mr. Ravu at 10-14.

there's a letter, and you could follow it up with Ms. Malimali.

Mr. Kamikamica: To be honest with you, I don't even recall that part of the conversation. Like I said, other than sympathizing with him, with his case, I don't ever recall. Like I've been very careful, even post the appointment of Ms. Malimali, to be very careful with my communications. So, I've only communicated with her once, which was about Walesi, and I've never communicated since. So, yeah, it surprises me, but that's what he's decided to put down in his affidavit. Yeah.¹⁴⁵

189. As set out earlier in this Chapter, the most troubling concern is the instruction from Ms. Malimali to actively suppress any further work related to Ms. Forwood's complaints, by instructing FICAC officials to stop allocating resources to those files. This directive not only contravened FICAC's statutory obligations under s 12 of the FICAC Act, but it appears very much to be an abuse of power.

190. One of the complaints for which Ms. Malimali had instructed staff to cease work on, was a complaint dated 5 May 2025 by Ms. Forwood against Hon. Kamikamica for non-declaration of income, assets and liabilities.¹⁴⁶

191. Ms. Malimali admitted in evidence that she knew Hon. Kamikamica through his wife:

Ms. Malimali: ... And I said, and Mr. Kamikamica, I know Mr. Kamikamica through his wife. His wife and I attended the same High School. I mean, of course, she was ahead of me but, you know, we fundraise and give money for the school athletics and things like that. She doesn't, she rarely attends our meetings. So I said, those are the two I can think of that I know. And I said, and of course, I think I also mentioned Fili Vosarogo. I think I mentioned my relationship with Fili because Mr. Vosarogo, before becoming an MP, was a criminal lawyer. So we did cases together we did cases against each other.¹⁴⁷

192. However, when asked whether she thought she was conflicted, Ms. Malimali responded as follows:

Ms. Mason: Who was that?

Ms. Malimali: Maybe Mr. Kamikamica is one of the complainants. Kamikamica? Yes, Mr. Kamikamica. I think one of the files against him that came through FEO which Ms. Forwood was

¹⁴⁵ Transcript, Day 31, Session 4 – Hon. Kamikamica at 13.

¹⁴⁶ FICAC Table of Allegations attached as Annex LBR-5 of Adi Laite Nariu Baleisuvu Bokini-Ratu Affidavit dated 12 December 2024.

¹⁴⁷ Transcript, Day 23, Session 2 – Ms. Malimali at 7.

- the original the complainant? Yes. I think maybe three weeks ago.
- Ms. Mason: Now do you, should you be dealing with that file? Isn't there a conflict? Why are you dealing with that file?
- Ms. Malimali: There is no conflict.
- Ms. Mason: Oh, so you being a very good friend of his wife is not a conflict?
- Ms. Malimali: We went to the same school, madam.
- Ms. Mason: No, you gave us evidence yesterday that you are good friends
- Ms. Malimali: I said we are friends, we went to the same school, we both give towards the Jasper Williams Coca-Cola games and a few other things, and we see each other occasionally socially.
- Ms. Mason: Yes, you're friends. So, should you be having anything to do with this Kamikamica file? Yes. Yes, you think that's appropriate.?
- Ms. Malimali: Madam, I think, you know when you reach certain position you are able to separate things, I'm not there just to give my friends or supposed friends or alleged friends a free pass. I think that would be unfair.
- Ms. Mason: But what I'm saying I'm not saying that I'm putting to you that you have a conflict, you are friends, and you should not be dealing with this file.
- Ms. Malimali: I disagree.¹⁴⁸

- 193.** Evidence was heard from multiple sources of Ms. Malimali's association and friendship with Hon. Kamikamica. The assertion by Hon. Ravu that Hon. Kamikamica was trying to persuade him to allow Hon. Kamikamica to close Hon. Ravu's case by going through Ms. Malimali was denied by Hon. Kamikamica. However, Hon. Ravu's accounts were corroborated by Hon. Ravunawa and Hon. Koroilavesau. On the balance of probabilities, and weighing up all of the evidence before the hearing, the CoI concludes that it is more likely than not that Hon. Ravu's account of events is accurate. He has no reason to concoct such a story. In fact, it has disadvantaged him to speak out. Hon. Kamikamica is at risk of having committed the serious offence of attempting to pervert the course of justice.

¹⁴⁸ Ibid., 29 - 30.

6.10: Hon. Tabuya

194. On 23 May 2024 Ms. Forwood made a complaint to the SoE alleging that Hon. Tabuya did not declare her husband's shares in the company Furivai Pte Limited.¹⁴⁹ An investigation was carried out and the investigation team found there was no requirement for Ms. Tabuya to disclose her partner, Mr. Semaan's directorship of Furivai Pte Limited because they were legally divorced. Therefore, a recommendation was eventually made by FICAC that the file be submitted for closure.¹⁵⁰

195. The Tabuya case was one of the matters forwarded by Ms. Mataiciwa as SoE to FICAC for investigation:

Ms. Mason: All right, Ms. Puleiwai, we're on the final page. So page 115 of your affidavit, you say that there were a few cases that were due for completion, either for legal opinion or due for closure prior to your leaving, and the list could be obtained from Mr. Saumi or Wakanivesi or Ms. Bokini-Ratu. Now, can you recall what some of these cases were that were due for completion? I know that we've talked about the Tabuya case. Was that one of them?

Ms. Puleiwai: Um, no. The Tabuya matter was pending my decision in terms of whether it should go for closures or the investigators looking to get the angle regarding her disclosing the fact that Seeman was still the husband or spouse in the application form. But for the matters, when I mean that there were a few matters, these were the matters that was referred by the Supervisor of Elections that was pending investigation and they were near completion and it was awaiting decision with me and also we had the, I believe the Rewa Dairy case.¹⁵¹

196. The Tabuya case was one of those that the ECF Commissioners had wanted to stop from being passed directly to FICAC. Counsel Assisting asked Ms. Malimali about her relationship with Hon. Tabuya:

Ms. Mason: There's a directive. So it was on the same day that all of that happened on the 2nd April and that directive, so there was the one about... Oh, yeah. So the 13th of June and it's Ms., I'll just read it out. It's easier. It's for the record AM7 of Ms. Mataiciwa's affidavit. It says in view of the resolutions made in ECF meeting number 10, 2024 on 2 April 2024, please explain your failure to table with us the complaint you received against Hon. Linda Tabuya. And that's a directive to Ms. Mataiciwa.

Ms. Malimali: Yes.

¹⁴⁹ FICAC Legal Opinion dated 30 May 2024 Concerning an Investigation into Ms. Tabuya at 1.1-1.2.

¹⁵⁰ FICAC Minute Sheet FEP 94/24 concerning an investigation into Ms. Tabuya at [7], and [4].

¹⁵¹ Transcript, Day 21, Session 1 – Ms. Puleiwai at 26.

- Ms. Mason: And you signed that. Now, in hindsight, do you think you should have signed that?
- Ms. Malimali: I was the Chairperson at the time, yes. And I did not think there was a conflict with Ms. Tabuya. We were not friends.
- Ms. Mason: But you had been friends for a long time and you were still associates.
- Ms. Malimali: No, not associates. We weren't. We knew each other at school. She went off, got married, ran off to America. I never saw her for years. And then I think we reconnected, I think, in 2014, 18 or something. Then we disconnected again. So, you know, we saw each other and we used to see each other at rugby matches. But there was really nothing to declare. The issue was not that you didn't give us Ms., the issue was, one, you tell the world that you referred a complaint about Ms. Tabuya, but you forgot to tell Ms. Tabuya and the others. And, two, why didn't you table it with us, especially as we had agreed? We had agreed with Ms. Mataiciwa on the 2nd of April. And this is why we didn't issue her with a written directive on the 2nd of April. Because she had agreed with us at the end. We're not unreasonable people. She gave her Section 18. I think Mr. Jokhan and Dr. Atu gave their explanations. In the end, I summarized everything. And she agreed, yes, I will do this. As I've said before, I did not know she thought it was unlawful. But I did not think there was a conflict with Ms. Tabuya. We were not friends. We are not friends today.¹⁵²

197. Despite Ms. Malimali's insistence that they were not friends, this was not supported by statements from others who had worked with her at the ECF, including Mr. Tudonu, who stated:

- Ms. Mason: And can you recall any discussions about close relationships with other ministers?
- Mr. Tudonu: Just with Honorable Tabuya, and if I may add, when she mentioned her friendship with or when they have grog sessions with Honorable Vosarogo, that wasn't in the meeting, that was our casual conversation outside of the office where she had mentioned that she had kava sessions with Honourable Vosarogo.¹⁵³

198. This was further supported by Mr. Jokhan in his viva voce evidence where he had heard Ms. Malimali mention Hon. Tabuya in friendly terms:

- Ms. Mason: Okay. Now, I have had some questions about conflicts of interest, and [indiscernible 1.16.32.4...] questions to the Honorable Tabuya. Some witnesses have given evidence, so Mr. Tudonu and Ms. Mataiciwa that Ms. Malimali had spoken of her relationships with certain Ministers, like Ms.

¹⁵² Transcript, Day 23, Session 2 – Ms. Malimali at 75-76.

¹⁵³ Transcript, Day 2, Session 1 – Mr. Tudonu at 9.

Tabuya like Mr. Turaga, and like Mr. Kamikamica. Had you heard this before?

Mr. Jokhan: Repeat the question.

Ms. Mason: Had you heard Ms. Malimali discuss her friendships with Ms. Tabuya, firstly?

Mr. Jokhan: Yes, My Lordship.

Ms. Mason: Okay. So then, were you aware that they were friends?

Mr. Jokhan: It was just a casual conversation.

Ms. Mason: All right. And a friendship with Mr. Turaga?

Mr. Jokhan: Another casual conversation, nothing...

Justice Ashton-Lewis: *But do you remember the name Turaga?*

Mr. Jokhan: A few names, probably, like we all discuss who we sort of know of, and she said she knows of this person.

Justice Ashton-Lewis: *So do you remember the name Turaga?*

Mr. Jokhan: My Lordship, I can't clearly pick the name out. That will be an honest answer.

Justice Ashton-Lewis: *No, it's alright.*

Mr. Jokhan: I can't say Turaga, but I do remember Tabuya, because its name came out.¹⁵⁴

199. Evidence was heard from multiple sources of Ms. Malimali's association and friendship with Hon. Tabuya, despite Ms. Malimali's denials to the contrary.
200. Hon. Tabuya's file was eventually closed by Ms. Malimali, on the basis that that Hon. Tabuya and Mr. Semaan were divorced, despite there being existing evidence of forms completed by Hon. Tabuya in which she had stated that Mr. Semaan was her spouse, and new evidence of Hon. Tabuya stating that she made an intimate video for "her husband" therefore demonstrating that she was still engaging in an intimate relationship with her husband, thus raising the possibility of a sham divorce. Hon. Tabuya lives with Mr. Semaan, and there was evidence that she was in an intimate relationship with him. This was certainly not the simple matter Ms. Malimali made it out to be.

¹⁵⁴ Transcript, Day 14, Session 1 – Mr. Jokhan at 33-34.

6.11: Referral of Malimali File to DPP and Police

- 201.** On or about 18 September 2024, after Ms. Malimali was released from arrest and resumed her position and role as Commissioner of FICAC, she queried whether her file had been transferred to the DPP or not:

That on 18 September 2024, Commissioner Malimali sent an email to the HODs to enquire whether we have sent the Investigation File on her abuse of office case to DPP. On the following day 19 September 2024, Manager Investigations Mr. Saumi instructed that Senior Registry Officer Waisea Bati to dispatch the file to Acting DPP Mr. John Rabuku.¹⁵⁵

- 202.** A copy of the email from Ms. Malimali dated 18 September 2024 at 9:15 pm was presented in evidence:

Good evening,

Just checking to see if you've sent my file to the ODPP.

If it hasn't been sent, can you please send it first thing in the morning?¹⁵⁶

- 203.** Mr. Saumi stated that on 19 September 2024, he advised Ms. Malimali that the Acting DPP was away in Dubai and sought her confirmation about whether it would be appropriate to have her file sent to the Deputy DPP Mr. John Rabuku. Ms. Malimali confirmed that her file should be sent to Mr. Rabuku.¹⁵⁷ At no stage did Ms. Malimali say that she was friends with Ms. Tikoisuva and Mr. Rabuku.

- 204.** Various communications occurred between Mr. Saumi and the Senior Registry Officer on 19 September 2024 ultimately resulting, in the FICAC file against Ms. Malimali, being transferred to the Deputy DPP by 12.37 pm that day.¹⁵⁸

- 205.** On 19 September 2024 at 1:18 pm Mr. Rabuku acknowledged receipt of the files with the following email:

Dear Mr. Saumi,

I have received the file in relation to FICAC Commissioner Malimali.

As you would know, the majority of our analysis work comes directly from the Police. There is no MOU between us and FICAC on the sharing or exchange of files where a conflict of interest subsists.

¹⁵⁵ Affidavit of Alifereti Winston Wakanivesi, dated 12 December 2024 at [42].

¹⁵⁶ Ibid., Email from Ms. Malimali to Senior FICAC Officials dated 19 September 2024 attached as Annex AW-15.

¹⁵⁷ Affidavit of Kuliniyasi Saumi dated 3 January 2025 at [43]; See also Email Chain Between Ms. Malimali and Mr. Saumi attached as Annex AW--15 of Alifereti Winston Wakanivesi Affidavit dated 12 December 2024.

¹⁵⁸ Ibid.

As such I will await the return of our Acting DPP Nancy Tikoisuva from Dubai to discuss what we would do with it.¹⁵⁹

206. On September 2024 at 2:02 pm Mr. Saumi replied as follows:

Deputy Dir. DPP

Good Afternoon Sir

We acknowledge receipt of your email.

Please kindly advise that we are fully aware of the system in place as you have indicated in your email. However the directive to handover our Investigation File to the Office of DPP comes from the Office of our Commissioner – Ms. Malimali.

We are also of the understanding that necessary arrangement could have undertaken already between the office of DPP and the Office of the Commissioner of FICAC before we received the instruction from her to handover the file to DPP.

We will also notify the Commissioner and we'll await for whatever decision for our way forward.

Vinaka

Kuliniasi Saumi¹⁶⁰

207. Mr. Rabuku gave viva voce evidence regarding the transfer of Ms. Malimali's file from FICAC to the DPP. He testified as follows:

Ms. Mason: ...We're also of the understanding that necessary arrangements could have been undertaken already between the Office of the DPP and the Office of Commissioner of FICAC before we received the instruction from her to hand over the file to DPP. So had Ms. Malimali been in contact with you in person prior to you getting the file?

Mr. Rabuku: I can't really recall whether she had contacted me in person, but I think by the time I received the file, I had already been expecting it because I'd already heard that there was an investigation.

Ms. Mason: Right.

Mr. Rabuku: You know, things had come out, I think, in the media or something, and that's where I got my information from.

Ms. Mason: Right. Yes. So was there something in there about this will be handed over to DPP?

Mr. Rabuku: Yes, something to that extent. You know, I think to try and put it into chronology, when Ms. Malimali got appointed. I had no idea at all that there was even a FICAC investigation. When it hit the media, that's when I knew. And I think that's when the information then started to seep into, I think, into the public that the file would have to be referred to the DPP's

¹⁵⁹ Ibid., Email From Mr. Rabuku to Mr. Saumi dated 19 September 2024 attached as Annex AW-15.

¹⁶⁰ Ibid.

office. So to be honest, I was expecting it at that point. And only because I was Deputy DPP then, the acting DPP was out of the country in the UK, so the file would naturally come to me.¹⁶¹

208. Mr. Rabuku, provided evidence on the transfer of the Malimali file to the Police:

Ms. Mason: [In reference to Annexure A found in the letter from Nancy Tikoisuva] So it says here, after looking through it, I realised the investigation was not complete. This is from you. I had a conversation with you on Viber. It was decided to have the FICAC file sent straight to the police. You were in the UK. I sent it straight away to the Director CID and to make a decision whether an investigation was warranted, and if so, to complete the investigation, but not to lay charges until we have done a proper advice on it. Now, so when you got the file from FICAC, do you think you should have got them to brief you?

...

Mr. Rabuku: When the file was brought to me, it was brought to me by an officer of FICAC.

Ms. Mason: Yes.

Mr. Rabuku: Usually files would come and go straight to the registry, but this was a bit different. He came with the file and he was at the counter, and I asked the, I think my secretary at that point, to send him in, to send him in, because naturally I thought that the file should really have gone to the police, because it's from investigator to investigator, and when the file is ready, then it comes to us for advice, or to, for advice as to whether the investigation should go some other way, or whether they should, they can proceed with charges. But that file came straight to us, and so he didn't know anything about the file.¹⁶²

209. Counsel Assisting put questions to Mr. Rabuku about conflict of interest:

Ms. Mason: Right, okay. Now, Ms. Tikoisuva and Ms. Malimali as well, they have both said that you were friends with Ms. Malimali.

Mr. Rabuku: Yes.

Ms. Mason: Do you think you should have declared that as a conflict of interest, when the file was received?

¹⁶¹ Transcript, Day 31, Session 5 – Mr. Rabuku at 4-5.

¹⁶² Ibid., 6-7.

Mr. Rabuku: Yes, I think in hindsight, at that point, so this is the extent to which I handled the file. It came to me, I flipped it open. I looked for the interview, the caution interview.¹⁶³

210. This was acknowledged by Ms. Tikoisuva, who in her oral evidence also discussed the processes of the DPP in, declaring conflicts of interest:

Ms. Mason: Right. Now, Ms. Malimali said that she was friends with you.

Justice Ashton-Lewis: *She was what sorry?*

Ms. Mason: She was a friend of yourself and Mr. Rabuku. Shouldn't you both have stepped aside and just sent this to the Police?

Ms. Tikoisuva: We did. We did send it to the Police. So our processes, we have clear processes on the conflict of interest.

Justice Ashton-Lewis: *Yes.*

Ms. Tikoisuva: For example, some of the files that would come, we also have allegations against Ms. Puleiwai with us in the office.

Ms. Mason: She is, yeah.

Ms. Tikoisuva: And because of the proximity of the, let's say the friends, because I also know Ms. Puleiwai, we've given it to our other senior officers who have no connections to them. And so we have the other assistant DPP's.

Ms. Mason: Right.

Ms. Tikoisuva: So they are the ones handling that. So if we are in a situation like this, we have to declare our conflict. In our legal opinions, we have to declare at the very first paragraph, whether we have any conflict by way of any relationship, whether it's family or friends and before the officer analyses. And so this, if it does come to our office, will be given immediately to one of the assistant DPP that has no connection to Ms. Malimali.

...

Justice Ashton-Lewis: *Did Mr. Rabuku declare a conflict?*

Ms. Tikoisuva: He would have if he was allocated the file to do the legal analysis. In this case, if it does come, it would have just gone to one of our assistant DPP for the legal analysis.¹⁶⁴

211. Mr. Rabuku had a conflict, but he did not declare that conflict, and should have, in all the circumstances, stayed away from the FICAC Malimali Investigation.

¹⁶³ Ibid., 7.

¹⁶⁴ Transcript, Day 26, Session 1 – Ms. Tikoisuva at 25-26.

- 212.** Furthermore, when Ms. Tikoisuva appeared before the CoI, she admitted that given her and Mr. Rabuku's friendship with Ms. Malimali, the normal process would have been for the DPP to transfer the file to Police:

Ms. Tikoisuva: So they are the ones handling that. So if we are in a situation like this, we have to declare our conflict. In our legal opinions, we have to declare at the very first paragraph, whether we have any conflict by way of any relationship, whether it's family or friends and before the officer analyses. And so this, if it does come to our office, will be given immediately to one of the assistant DPP that has no connection to Ms. Malimali.

Ms. Mason: And in fact, it really should stay with the Police, shouldn't it? They should make the decision about whether there should be charges laid because it's quite difficult with the two top people of friends for the members of that organization.

Ms. Tikoisuva: Yes, that is correct. If they do come, for example, here, again, we've referred files back to the Police. We've got files where our officers have been charged for stealing in the office and that's gone back right to Police. We've got files where the Police have been charged, but that file remains with us. So there is already a system in place to address conflict of interest, where if this is the situation here, we'll declare conflict of interest. We might make recommendations. We'll give it right back to Director Prosecutions, Police prosecutions to handle the file and hands off from us.¹⁶⁵

- 213.** Ms. Tikoisuva also had a conflict, but did not declare that conflict, and should have in all circumstances stayed away from the FICAC Malimali Investigation.

- 214.** Mr. Rabuku then stated that he would not have touched the file once the file came back with the investigation being completed:

Mr. Rabuku: And when it would have hit the office, I certainly would not have looked at it. It would have gone to somebody else who was not a friend.¹⁶⁶

- 215.** The evidence presented before the CoI by Mr. Rabuku, was that he had reached the view that the investigation was not complete, and the file needed to be sent to the Police to complete the investigation:

Mr. Rabuku: ...What I saw were only witness statements. There was no interview, which means the interview process has not been completed. Usually, the police can just conduct an interview, and then send it to us to make a decision on the charge. So it might have taken only about, say, three minutes, when I flipped through, and then I contacted Ms. Tikoisuva, to say, look, the file is here, it's incomplete, I think it really should

¹⁶⁵ Ibid., 24-25.

¹⁶⁶ Transcript, Day 31, Session 5 – Mr. Rabuku at 8.

go to the police to complete the investigations, then come back for our advice.¹⁶⁷

- 216.** Mr. Rabuku provided an explanation, including the constitutional limitations in place in relation to the working relationship between the DPP and the Police, in regards to the respective roles that each party had in investigations:

Ms. Mason: Right, so normally with the police, they make the decision to lay the charge, and then the file comes to DPP?

Mr. Rabuku: They can do that.

...

Ms. Mason: And sometimes they ask the DPP for...advice.

...

Ms. Mason: They ask the DPP for advice. So if they're not certain about whether charges should be laid, they will then say, okay, Mr. DPP, we're really unsure, have a look at this, what do you think?

...

Ms. Mason: But that decision is made by, whether to seek legal advice or your advice, is made by the police. Is that correct?

Mr. Rabuku: *Yes, it's made by them. We can't call them up and say, look, we want to provide legal advice to you on that matter. We can't do that. Unless they seek our advice, because constitutionally they have the mandate to investigate and to decide on a charge. We basically just give them guidance. But once they lay a charge, then automatically the file becomes ours.* [emphasis added].¹⁶⁸

- 217.** The CoI has carefully reviewed the circumstances surrounding the transfer of Ms. Malimali's file from FICAC to the DPP. In the first instance, Ms. Malimali did not declare any conflict with Ms. Tikoisuva nor Mr. Rabuku, nor make clear that her file should not have gone to these two individuals.
- 218.** Ms. Malimali took steps to ensure that her file was forwarded to the DPP, in line with her directive of 18 September 2024.
- 219.** The file was subsequently delivered to the Assistant DPP, Mr. John Rabuku, on 19 September 2024. At this stage, Mr. Rabuku should have declared a conflict of interest and stepped away from having anything to do with the Malimali file. Instead, he accepted the file and undertook an initial review. Upon finding that the file lacked a caution interview and was therefore

¹⁶⁷ Ibid.

¹⁶⁸ Ibid., 8-9.

incomplete, Mr. Rabuku contacted the Acting DPP and initiated the referral of the file to the Police for further investigation.

220. In his memo to the Police, Mr. Rabuku had stated:

**Re: Investigations of FICAC against Ms. Barbara Malimali
- Commissioner FICAC**

1. The above subject matter refers.
2. Yesterday, the 19th of September 2024, FICAC via a minute from the Manager Investigation Central/Eastern I received a file on the investigations that FICAC had carried out in the above matter.
3. I was told the Commissioner herself had ordered that the file be brought to the Office of the DPP.
4. Section 55(3) of the Criminal Procedure Act 2009 reads as follows:

(3) The Director of Public Prosecutions and the Commissioner of Fiji Independent Against Corruption may at any time transfer to each other the conduct of any prosecution at time before the close of the prosecution case. In such a case the public prosecutor or Fiji Independent Commission against Corruption prosecutor as the case may be, is deemed to have been appointed by the Director of Public Prosecutions or Commissioner of Fiji Independent Commission Against Corruption to prosecute.

5. The complainant on the file is one Alexandra Forwood who in two separate emails on 9th April 2024 and 30 August 2024 certain allegations against the Commissioner of abusing her authority in her then position as Chairperson of the Fiji Electoral Commission.
 6. Alexandra Forwood has not given a formal statement, and it is not clear how she became aware of issues of supposed abuse within the Fiji Electoral Commission or the Fiji Elections Office for that matter in order for her to have sent those emails.
 7. Be that as it may be, there has been no charges laid against the Commissioner arising out of the investigations and therefore section 55 (3) above cannot be invoked to have the Commissioner's file sent to us. The file is still in its investigations stage and is incomplete and no prosecutions have commenced to warrant the transfer of the file to the Office of the DPP.
 8. Given that the Office of the DPP relies on complete investigations from the Fiji Police Force in order to commence prosecutions, I am therefore enclosing the above file for your consideration.
 9. Respectfully, you will need to decide whether your esteemed office will continue and complete the investigations commenced by FICAC under the leadership of Ms. Puleiwai the former Acting Deputy Commissioner.
 9. If you decide to complete the investigations, we respectfully request that you attend to the following:
 - a. That a formal statement be record from Alexandra Forwood;
 - b. That all facets of the investigations be completed.
 - c. ***That the Commissioner FICAC not be caution interviewed yet.***
 - d. ***That the file be returned to our office for our final analysis depending on which a decision whether to interview and charge the Commissioner FICAC will then be made.*** [emphasis added].
 10. Please do not hesitate to contact me or the Acting Director if you wish to clarify any issues.
-

Sincerely,
John M Rabuku
[Deputy DPP]¹⁶⁹

221. The request at paragraph 9.d above to the Police to return the file to the DPP for the DPP's "final analysis depending on which a decision whether to interview and charge the Commissioner FICAC will then be made" has overstepped the jurisdiction of the DPP. The decision as to whether to charge Ms. Malimali, ought to have been made by the Police **and not** by the DPP, and certainly not by Mr. Rabuku, nor Ms. Tikoisuva. Mr. Rabuku himself had stated in his testimony:

Mr. Rabuku: Yes, it's made by them. We can't call them up and say, look, we want to provide legal advice to you on that matter. We can't do that. Unless they [the Police] seek our advice, because constitutionally they have the mandate to investigate and to decide on a charge. We basically just give them guidance. But once they lay a charge, then automatically the file becomes ours.¹⁷⁰

222. Consequently, the instruction above was highly inappropriate, and possibly illegal.
223. The instruction from Mr. Rabuku to the Police, especially given his undeclared conflict of interest, could amount to an attempt to pervert the course of justice. Mr. Rabuku's own testimony is contrary to what he has instructed the Police to do.

6.12: Undue Influences

224. The evidence before the CoI raises serious questions about whether there were undue political influences that contributed to the selection of Ms. Malimali as FICAC Commissioner. Her close personal connections with Hon. Kamikamica, combined with the allegation that she was rushed through the Appointment Process so she could close complaints and investigations into high ranking politicians and senior public servants, suggests that her appointment was orchestrated by external influences.
225. In particular, the relationship that Ms. Malimali has with Hon. Kamikamica and Hon. Turaga suggests that they were invested in getting her in as the FICAC Commissioner to close these complaints. Hon. Ravu testified that on 5th August, Hon. Kamikamica had told him that Ms. Malimali would be appointed the new Commissioner.¹⁷¹ This was prior to the JSC Selection Panel interviews even taking place.

¹⁶⁹ Letter of Nancy Vosa Tikoisuva dated 20 December 2024, Annex C – Memorandum of John Rabuku sent to *Fiji Police containing FICAC Malimali Investigation file for review and further investigation*.

¹⁷⁰ Transcript, Day 31, Session 5 - Mr. Rabuku at 8-9.

¹⁷¹ Transcript, Day 25, Session 2 – Hon. Ravu at 11.

226. Ms. Forwood states in her affidavit:

On 30 August 2024 at 3:53PM (AEST time) I emailed Mr. Manoa Kamikamica requesting confirmation if he had instructed Mr. Turaga to have Ms. Malimali appointed as FICAC Commissioner and copied the Chief Registrar and the Solicitor General into my communication. I annex hereto and mark as “31” relevant communication in this regard.¹⁷²

227. The email discussed in the above is as follows:

Bula Vinaka Co-Chair of MK,
Written without prejudice

Pursuant to my right to information under section 25 of the Constitution I am seeking the following answers.

I note that you had instructed the interviewing panel via Chief Registrar and your Masipolo Minister of Justice Malua Doko Siromi to appoint one Ms. Malimali as Fiacac Commissioner.

Can you confirm or deny that you instructed the Chief Registrar via Doko to re apply re advertise the position so that Ms. Malimali can apply and be selected?
Can you confirm or deny that you instructed CR via Doko to bury Ms. Puleiwai’s application so that she is not called in for an interview and selected?

Can you confirm or deny that within the PAP party you had stated and defended that Ms. Malimali will be the Fiacac Commissioner and that Salesi Temo will approve it?

Can you confirm or deny that you have already briefed Ms. Malimali that she will be the Fiacac Commissioner and she should bury the complaints?? She has already informed her associates of this instruction and that she will be The new Fiacac Commissioner and is just awaiting the Presidential letter.

Can you confirm or deny that Ms. Malimali was instructed by you to delay the FFP appeal into mini hearings and that the next hearing is on the 19th and 21st of September 2024? Do you know that she abused office and did not publish the decisions taken at the EC meetings as required by law under section 5 of the Electoral Act as it must be published within 5 days of that decision being made.

Are you aware that she didn’t publish within 5 days pursuant to section 5 of the Electoral Act 2014 in relation to the working order of the deregistration of FFP and as such the appeal process of FFP and these hearings is invalid and unlawful?? This working order is pursuant to section 30 of the electoral Act 2014 pertaining to the deregistration and as one is not done, it needed to be discussed in a meeting and that decision of how it was going to proceed needed to be published prior to section 5 of the electoral Act.

Can you confirm or deny that last weekend around the grog bowl while Grog Dope you openly stated that you will be taking over the PM and PL of PAP. Saying “I am Manoa Kamikamica and will be the Prime Minister.”

I look forward to your response and I do what I do with a clear conscience as I sleep well at night.

P.S I have copied in ACJ Temo as you are claiming he will endorse Ms. Malimali as Fiacac Commissioner on your orders. The ACJ is extremely stubborn and I am aware that he doesn’t take orders from anyone. Let’s see if he bends and you have your way on the appointment Ms. Malimali to protect you from any investigation.

¹⁷² Affidavit of Alexandra Forwood, dated 4 December 2024, at [66].

With regards,
Alexandra Forwood.¹⁷³

- 228.** The evidence before the CoI reveals several conflicts of interest that have contributed to a background of politicians influencing and manipulating outcomes in relation to complaints investigated by FICAC. One notable example is Ms. Malimali being family friends with Hon. Kamikamica through his wife. Hon. Kamikamica was questioned on his relationship with Ms. Malimali:

Ms. Mason: Now, in there you say that you had not been given any information relating to the complaints by FICAC at servants or agents and the former Deputy FICAC Commissioner and the current Commissioner. Now, I wanted to ask you, are you a friend of Ms. Malimali?

Mr., Kamikamica: I suppose by association, my wife is a friend of hers, so I know of her, yes.

Ms. Mason: So do you have a friendship with her? So it's both you and your wife, friends of Ms. Malimali?

Mr. Kamikamica: I think it would be probably fair to say that she's more my wife's friend. Because I'm the husband, I'm there by association.¹⁷⁴

- 229.** Hon. Ravunawa, was questioned about Hon. Kamikamica saying that it was good that Ms. Malimali was appointed:

Ms. Mason: Yes, okay. And so then Mr. Ravu was the one who spoke to you and saying that, so this bit here about that Ms. Malimali will ensure that the allegations against the Ministers will be squashed, that was what Mr. Ravu is said to have said to you.

Justice Ashton-Lewis: *I want you to think really carefully about this.*

Ms. Mason: Or words to that effect.

Mr. Ravunawa: Yeah, if I can recall, my conversation with Honourable Semi Koroilavesau was in the opposition chamber.

Ms. Mason: Yes.

Mr. Ravunawa: It was maybe a day after or a few days after our conversation in the big committee room where we always have our meals.

Justice Ashton-Lewis: *And what did he say to you?*

Mr. Ravunawa: Honourable Ravu?

¹⁷³ Email sent from Ms. Forwood to DPM Kamikamica requesting confirmation that he instructed Hon. Turaga to have Ms. Malimali appointed as FICAC Commissioner attached as Annex 31 to the Affidavit of Alexandra Forwood dated 4 December 2024.

¹⁷⁴ Transcript, Day 31, Session 4 – DPM Kamikamica at 2.

Justice Ashton-Lewis: *Yes.*

Mr. Ravunawa: He did mention that he was happy to appear before the Commission. And he felt good after talking to the Commission of Inquiry. And beside Honourable Ravu was Honourable Kamikamica.

Justice Ashton-Lewis: *Yes.*

Mr. Ravunawa: And it was Honourable Kamikamica that did mention it's good that Barbara Malimali be appointed so that she can assist.

Justice Ashton-Lewis: *So she can what?*

Mr. Ravunawa: So that she can assist with the case for Honourable Ravu.

Justice Ashton-Lewis: *Did he use the word assist?*

Mr. Ravunawa: I'm not quite sure with the word that he used, but he did say that it's important that Barbara Malimali be appointed on that position.

Justice Ashton-Lewis: *And did he give reason why it was important?*

Mr. Ravunawa: Not really, but he did say that it would help with the case.

Ms. Mason: What did you take that to mean? That the case would be closed or dismissed?

Mr. Ravunawa: Yeah, probably.

Ms. Mason: That was the intent of what they were saying?

Mr. Ravunawa: Yeah, that is the intention that I would believe that Barbara would assist in this case.

...

Justice Ashton-Lewis: *That's not what I'm asking. I'm asking how you took, you're a responsible man and you're mature, whether it was over a meal or a grog session. Did he speak in the way that if Barbara Malimali is in, not assist, but she will close cases or pull them out?*

Mr. Ravunawa: I would say yes.¹⁷⁵

- 230.** The CoI concludes on the balance of probabilities that it is more likely than not that Hon. Ravu's account of events is accurate. He has no reason to concoct such a story. In fact, it has disadvantaged him to speak out. Further, multiple sources confirmed Ms. Malimali's association and friendship with Hon. Kamikamica. Accordingly, the CoI finds, on the balance of probabilities, that

¹⁷⁵ Transcript, Day 25, Session 2 - Hon. Ravunawa at 5-6.

Hon. Kamikamica was persuading Hon. Ravu to let him close Hon. Ravu's case through Ms. Malimali, thus attempting to pervert the course of justice.

6.13: Conclusion

231. After her appointment Ms. Malimali was taken to be introduced to FICAC senior staff on the afternoon of the 4th of September by the CR, Mr. Bainivalu. It was at that meeting that Mr. Wakanivesi, a Senior FICAC Investigator, and the head of the new Economic Crimes Unit stated that he would resign as he did not think it was proper that he work for a suspect. Mr. Saumi, the Manager of the FICAC Investigations Department agreed.
232. Ms. Malimali thanked Mr. Wakanivesi for his views, but did not address any of the issues in relation to the FICAC Malimali Investigation again during that meeting. Neither did the CR. Both of them had an obligation to, at this stage, address and discuss what needed to be done about Ms. Malimali's case. Instead, they did nothing at all.
233. Ms. Malimali commenced work at FICAC on the morning of 5 September 2024. She had only been at work for half an hour or so before she was arrested by the FICAC Manager of the Investigations Division, Mr. Saumi. Ms. Puleiwai, Mr. Saumi, and Ms. Bokini-Ratu, the Manager of the Legal Division, had together followed the usual FICAC processes, and had collectively agreed that there was sufficient evidence to charge Ms. Malimali with abuse of office.
234. Once arrested, Ms. Malimali called Mr. Wylie Clarke, the President of the FLS, and asked him to call "everyone". Mr. Clarke then called the CR, and Ms. Laurel Vaurasi, a former President of the FLS. The CR then asked a senior lawyer, Mr. Amani Bale to attend, and Mr. Bale asked another lawyer, Mr. Nemani Tuifagalele to attend. The CR and all four lawyers, none of whom acted for Ms. Malimali then went to FICAC and intimidated, bullied, and harassed the FICAC officials who were involved in the arrest of Ms. Malimali into releasing her. The main obstruction that led to the FICAC officials releasing Ms. Malimali was the information from CJ Temo, communicated via the CR, that the CJ had instructed all the registrars in Fiji not to accept any FICAC charges that were filed by anyone other than Ms. Malimali.
235. The CoI has assessed the arguments and viewpoints of all witnesses party to the CoI, and has concluded that Ms. Puleiwai and her team did have the legal authority to arrest Ms. Malimali. Section 10(1) of the FICAC Act allows an officer authorised by the Commissioner to arrest a person without a warrant, if the officer suspects that that person has committed an indictable offence. The offence for which Ms. Malimali was arrested was abuse of office, which is an indictable offence.
236. Mr. Saumi produced evidence that he had been issued a warrant card that gave him blanket powers of arrest. In other words, he did not need to return to a

Commissioner or Deputy Commissioner each and every time he wished to arrest someone. He reasonably suspected Ms. Malimali of an offence as his investigations and advice from the FICAC Manager Legal had been that the evidentiary threshold to charge Ms. Malimali had been reached.

237. Even if Mr. Saumi did need approval, he could obtain that approval from Ms. Puleiwai regardless of Ms. Malimali being the Commissioner. The definition of “Commissioner” in s 2 of the FICAC Act includes “Deputy Commissioner”. This means that any power that sits with the Commissioner is also able to be exercised by his or her Deputy.
238. Moreover, FICAC policy and practice is that where a FICAC employee is under investigation, he or she is suspended, and is never allowed to have anything to do with his or her case. It is for another official to take over that role. In the current circumstances, it was proper for Ms. Puleiwai to oversee Ms. Malimali’s case. It would have been absurd to think that Ms. Malimali would be the one to issue her own arrest orders.
239. In these particular circumstances, the arrest of Ms. Malimali was legal. The CoI carefully considered the arguments that Ms. Puleiwai had been motivated by “sour grapes” because she had lost out on the FICAC Commissioner role, and concluded that the evidence did not bear this narrative out. Ms. Puleiwai, by and large, acted on the advice of Mr. Saumi and Ms. Bokini-Ratu. She was not pressuring them to concoct trumped up charges to throw at Ms. Malimali. Ms. Puleiwai, Mr. Saumi, Ms. Bokini-Ratu and Mr. Wakanavesi were simply trying to do their jobs.
240. All of those persons who were involved in pressuring the FICAC officials to release Ms. Malimali, appear to have been behaving unlawfully, in that they were, together, conspiring to obstruct and pervert the course of justice. The persons involved were, Mr. Clarke, Ms. Vaurasi, Mr. Bale, Mr. Tuifagalele, Mr. Bainivalu and Justice Temo.
241. Their actions, while couched in language promoting legality and restraint, amounted in practice to harassment, bullying, coercion, and/or, a conspiracy to obstruct the work of FICAC. Their sole purpose in attending FICAC that day was to get Ms. Malimali released. The Saumi Transcript revealed a lot of “big talk” and bravado about the “rule of law”, in particular from Mr. Clarke, but very little substance in relation to what exact law was supposedly being broken.
242. Also on 5 September 2024, the FICAC officials were prepared to arrest and charge Hon. Prasad.
243. The directive from Justice Temo that no FICAC charges filed by Ms. Puleiwai would be accepted by the courts, poses a grave risk to the independence of prosecutorial institutions and the rule of law. The CoI notes with concern that none of the senior lawyers present who came to rescue Ms. Malimali questioned the propriety of this instruction. Such silence in the face of judicial

overreach compromises both the perception and the reality of institutional and judicial integrity.

- 244.** After Ms. Malimali was released Ms. Puleiwai was called to a meeting with the JSC at which she was coerced into resigning. She was given an ultimatum, either she resigned or she would be met with charges of:
- a.** unlawfully assuming the Commissioner’s power pursuant to s 7(1) of the FICAC Act, on 5 September 2024, when the Commissioner was present, in ordering the arrest and detention of the Commissioner at FICAC headquarters;
 - b.** wrongfully assuming the Commissioner’s power in authorising the arrest without warrant of the Commissioner at FICAC headquarters, on 5 September 2024, pursuant to s 10(1) of the FICAC Act; and
 - c.** insubordination, by failing to listen to the Commissioner on 5 September 2024, as the Deputy Commissioner in carrying out her function at FICAC headquarters.
- 245.** Ms. Puleiwai was uncertain whether the threat from the JSC related to the establishment of a Disciplinary Tribunal to hear the charges, or whether the JSC would lodge a complaint with the Police, or both.
- 246.** Once Ms. Malimali started back at work again, she proceeded to question the conclusion which FICAC officials had arrived at to charge Hon. Biman Prasad with several counts of breaches of the PP Act, in an effort to stall, and/or, close Hon. Prasad’s case. The CoI finds her conduct in the numerous attempts to have Hon. Prasad’s file closed concerning and is recommending a thorough review of that file to ascertain if Ms. Malimali had abused her office. Eventually, on 24 April Ms. Malimali did close Hon. Prasad’s case.
- 247.** Ms. Malimali also instructed FICAC officials to stop work on all of Ms. Forwood’s complaints. The CoI concludes that this instruction itself was arbitrary and illegal, as there is no ability in the FICAC Act to allow complaints to be ignored on the basis of the complainant being a non-taxpayer, or a non-resident.
- 248.** The instruction to stop work on Ms. Forwood’s complaints meant that work on most of the complaints against MPs for false declarations on income, assets, and liabilities, including against Hon. Kamikamica, and Hon. Turaga, who are friends of Ms. Malimali’s, was stopped. In addition, work on the cases of the S-G, Mr. Green, and the CR, Mr. Bainivalu had stopped.
- 249.** The CoI heard from Hon. Ravu, the former Fisheries Minister, who had been charged by FICAC. He testified that Hon. Kamikamica had approached him twice offering to “help” with his case, and saying that he could get Ms. Malimali to squash the charges. Hon. Kamikamica stated that he could not recall these conversations. The CoI has concluded, on the balance of

probabilities, that Hon. Kamikamica did approach Hon. Ravu seeking to “assist” him by passing information onto Ms. Malimali, and asking her to close his case.

250. Eventually, Ms. Malimali instructed FICAC officials to transfer her file to the ODPP. Ms. Malimali, Mr. Rabuku, the Deputy DPP, and Ms. Tikoisuva, the DPP, are all friends. Ms. Malimali did not disclose a conflict of interest in relation to the transfer of her file to the ODPP. Neither did Mr. Rabuku, nor Ms. Tikoisuva. Ms. Malimali’s file should have been transferred to the Police, not transferred to the ODPP. Mr. Rabuku wrote a Memorandum to the Police requesting that they undertake investigations on the Malimali file, and to make no decision on charging, but to get back to him before then. According to Mr. Rabuku’s own testimony, this was overstepping his role, as the DPP has no role in decisions about whether someone should be charged *unless* the Police request them to be involved.
251. Ms. Tikoisuva accepted that the conflict between herself and Mr. Rabuku and Ms. Malimali was such that it was not ideal for the ODPP to be handling Ms. Malimali’s file. The CoI is extremely concerned that a file this important is being passed around amongst friends. Neither Mr. Rabuku nor Ms. Tikoisuva should have been handling the Malimali file. Yet they were. Mr. Rabuku went so far as to attempt to control what is normally a decision for the Police, namely, the decision as to whether a suspect should be charged. These actions, including Ms. Malimali referring her file to the ODPP instead of to the Police, and neither Ms. Malimali, nor Mr. Rabuku, nor Ms. Tikoisuva declaring a conflict of interest, and Mr. Rabuku proceeding to direct the Police not to make a decision in relation to charging Ms. Malimali, but to get back to him first, all go towards demonstrating a conspiracy to attempt to, and/or, to pervert the course of justice.
252. Ms. Malimali also illegally issued an SDO over Ms. Puleiwai, which prevented Ms. Puleiwai from leaving Fiji for 30 days. However, by the time the SDO was issued, Ms. Puleiwai had already left the country. Section 13 (1)(e) of the FICAC Act allows an SDO to be imposed on a person, but only if there is an investigation being conducted on that individual. No such investigation into Ms. Puleiwai had commenced, yet Ms. Malimali signed the SDO which clearly stated that an investigation was in train.
253. Overall, the CoI finds, after weighing up all of the evidence obtained during the Inquiry, that Ms. Malimali’s appointment was influenced by political and other interests. Hon. Kamikamica’s actions demonstrated an involvement in her appointment, and an involvement in cases before FICAC in an attempt to pervert the course of justice. Hon. Turaga’s initial announcement that a new FICAC Commissioner was required was an attempt to get someone else into the top position.

- 254.** The CoI has carefully considered and weighed up all relevant testimonies, affidavits, transcripts, and records presented during this Inquiry, and has concluded that the events that unfolded immediately following the appointment of Ms. Malimali as Commissioner of FICAC cumulatively demonstrate that there were undue influences in her appointment. Those influences came from the CR, Mr. Bainivalu, the S-G Mr. Green, Justice Temo, Mr. Clarke, Ms. Vaurasi, Mr. Bale, Mr. Tuifagalele, Hon. Kamikamica, and Hon. Turaga, and perhaps unwittingly, the A-G.



The background of the entire page is a photograph showing the silhouettes of a group of people walking away from the camera towards a bright, glowing light source at the top center. The light creates a strong lens flare and illuminates the scene with a warm, orange-gold hue. The people are mostly seen from behind, their forms dark against the bright background.

CHAPTER 7

Possible Offences

CHAPTER 7: POSSIBLE OFFENCES



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CHAPTER 8

Conclusions and Recommendations

CHAPTER 8: CONCLUSION AND RECOMMENDATIONS

8.1: Introduction

1. This final Chapter brings together the conclusions from each of the main Chapters of this Report into one place. Together they provide a complete response to the ToRs.
2. This Chapter is divided into the following subsections:
 - 8.2: Chapter One – Issues and Processes;
 - 8.3: Chapter Three – FICAC History, Principles and Future;
 - 8.4: Chapter Four – Malimali Investigation;
 - 8.5: Chapter Five – Selection & Appointment;
 - 8.6: Chapter Six – Post Appointment Events; and
 - 8.7: Recommendations.

8.2: Chapter One – Issues and Process

3. The Inquiry into the Appointment Process of the FICAC Commissioner has been carried out with a focus on determining the integrity, fairness, transparency, and lawfulness of the process. The ToRs provided a clear framework for assessing the legality and appropriateness of the appointment, ensuring that the Inquiry remained focused on whether the Appointment Process adhered to the relevant laws, particularly section 5 of the FICAC Act 2007. The CoI has sought to identify any undue influences, improper involvement by individuals, or conflicts of interest that may have affected the Appointment Process.
4. Throughout the investigation, the SoI provided guidance on key areas of concern, including the Appointment Process, the individuals involved, and whether there were any external pressures or biases influencing the selection of Ms. Malimali. This comprehensive Inquiry aimed to ensure that all actions taken during the Appointment Process complied with principles of good governance and legal standards and that no individual misused their position to interfere with the process.
5. The Commissioner has gone to great lengths to ensure that natural justice has prevailed. Ms. Malimali, Ms. Puleiwai, and Ms. Forwood were given every opportunity to put questions to witnesses, both in writing and in person. They were also able to file reply evidence and attend the entirety of the witness sessions, with the exception of a few “closed sessions.”

6. The CoI met with several obstacles along the way, including objections related to the scope of the Inquiry, the late gazettal, efforts to undermine the integrity of the CoI by casting aspersions against Counsel Assisting, discriminatory attacks against His Lordship and Counsel Assisting, intimating that, as foreigners, they had no right to question Ms. Malimali, an i‘Taukei, and sadly, the instant dismissal of Mr. Saumi, the FICAC Manager of Investigations who was an excellent witness, providing valuable information for the CoI.
7. Despite the many challenges, His Lordship and Counsel Assisting have diligently and faithfully continued in an effort to fulfil the duties bestowed upon them by the President in this appointment.

8.3: Chapter Three – FICAC History, Principles and Future

8. FICAC was established soon after the illegal overthrow of the democratically elected Qarase government in a 2006 coup d’etat. The perpetrator of that act was Frank Bainimarama who went on to rule Fiji for a further 16 years. One of his mantras during the period leading up to the coup was that he would rid the country of the corruption supposedly rampant within the Qarase government. Consequently, the establishment of FICAC became intertwined with that illicit ruse of Mr. Bainimarama that there were “real” and genuine reasons to overthrow the democratically elected government.
9. The illegality which gave birth to the Fiji First regime continued to permeate its operations, and its institutions throughout its 16 long years. Little wonder that FICAC is still seen a valuable tool to silence one’s opponents. The findings and analysis in this Report show that that attitude and conduct that was a key aspect of the Fiji First regime has continued to infect the new coalition government. The CoI has found that the “weaponizing” of FICAC is still occurring. To move away from this, the CoI is recommending substantive changes to the way in which the FICAC Commissioner and Deputy Commissioner are appointed.
10. Testimonies before the CoI, particularly those of former Deputy Commissioner George Langman and other senior stakeholders, illustrate a pattern of blurred lines between political authority and institutional autonomy. While the FICAC Act and subsequent amendments sought to expand its jurisdiction and codify its prosecutorial powers, the appointment processes, lack of procedural safeguards, and operational leadership have undermined its credibility. The use of FICAC as a political weapon, whether to shield allies or target opponents, has further deepened public distrust and compromised its legitimacy.
11. The leadership vacuum and politicisation of key appointments, most, notably the appointment of Ms. Malimali, underscore how FICAC’s independence has been eroded. Concerns regarding the JSC’s role in appointing the Commissioner, and the conflicts of interest embedded within that process, highlight the need for urgent legal and structural reforms. Comparative models from New Zealand, Australia, the US, Singapore and the UK demonstrate that anti-corruption

agencies function best when leadership is appointed through bipartisanship, and politically accountable and transparent processes, without any role whatsoever for senior members of the judiciary.

12. The CoI also heard credible concerns that some actors may have viewed the appointment of Ms. Malimali to the position of FICAC Commissioner as a strategy to obstruct ongoing investigations and shield politically exposed persons. These developments run counter to the agency's constitutional mandate and the spirit of the UN Corruption Convention, which calls for impartiality, transparency, and a clear separation from political interference.
13. In New Zealand, Australia, the UK, the USA, Singapore, and Hong Kong the judiciary has no role whatsoever in the appointment of the head of their anti-corruption organisations.
14. In a few of the jurisdictions, multi-party bipartisan bodies are involved in the appointment process. In Fiji, the COC constitutes members from both sides of the House, and therefore would be consistent with those countries which have selected a bipartisan approach.
15. The CoI is recommending that the PM, with the concurrence of the COC, recommends to the President the appointment of the Commissioner and Deputy Commissioner of FICAC.
16. FICAC is unusual compared to the other law enforcement agencies in Fiji, the DPP and the Police, because it has both investigative and prosecutorial powers. The DPP only has prosecutorial powers, and the Police, apart from the power to prosecute minor offences, has only investigatory powers.
17. Given these very wide powers it is extraordinary that FICAC does not appear to have detailed reporting functions. The CoI Report will recommend that the FICAC Act be reviewed so that FICAC's powers can be streamlined to focus on corruption offences, and to ensure there is some oversight in relation to its policies and the prioritisation of cases, without of course, intruding into its independence.
18. The future of FICAC must be reimagined. Key reforms should include transferring appointment powers from the JSC to an alternative body, such as the COC, reinforcing operational independence, and embedding rigorous safeguards against political manipulation.
19. This Chapter has also highlighted the importance in fighting corruption, of MP's declarations on income, assets and liabilities. Whilst incorrect disclosures may seem like a technical and minor matter, this sort of declarative corruption is common in cases where non-disclosure is undertaken so MPs can conceal improper benefits or influence. To think that MP's failures to accurately declare income, assets and liabilities do not constitute "real cases of corruption" is to completely misunderstand what anti-corruption regimes are all about.

Recommendations will be made in relation to FICAC arranging for regular education and awareness workshops for all MPs.

20. Ultimately, FICAC's effectiveness hinges on public confidence. To restore that confidence, the Government must prioritise legislative and structural changes that realign FICAC with the values and principles espoused in the UN Corruption Convention.
21. If the current government is serious about anti-corruption measures, then it really needs a new broom to sweep FICAC clean.

8.4: Chapter Four – Malimali Investigation

22. The evidence examined in this Chapter demonstrates that the FICAC Malimali Investigation was not borne out of a personal vendetta or bias, but rather FICAC followed proper legal and investigative procedures, consistent with its own processes and policies. FICAC was duty bound to register and assess the two Complaints lodged by Ms. Forwood. There is nothing in the FICAC Act which bars overseas citizens, or anybody for that matter, from lodging complaints with FICAC. Ms. Forwood did not lodge any statement along with her complaints. This was seen as problematic because there would not be any consequences for those filing vexatious complaints. However, there was no requirement for her to lodge a statement. Going forward, it would not be unreasonable for FICAC, to adopt a policy to the effect that all complaints, with the exception of whistleblower complaints, must be accompanied by a complainant statement in a specified form, or an affidavit.
23. The Forwood complaints resulted in three allegations:
 - a. the First Malimali Allegation related to an alleged abuse of office, whereby Ms. Malimali, along with other ECF Commissioners, had endorsed a resolution to adopt an unlawful process of handling election related complaints;¹
 - b. the Second Malimali Allegation was that an ECF letter, dated 2 April 2024, written to the Secretary of the COC was falsified in that it was dishonestly formulated by Ms. Malimali, without the knowledge and consent of the other ECF Commissioners; and
 - c. the Third Malimali Allegation related to an unlawful use of the National Register of Voter Information whereby Ms. Malimali had requested the voter status of Ms. Forwood, which ended up being released to the Minister for Women, Hon. Lynda Tabuya.²
24. The usual FICAC process is that complaints are registered, then sent to the Legal Division for an initial legal assessment, then sent to the Investigations Division

¹ Annexure 6 of Sworn Affidavit of Alexandra Forwood dated 11 December 2024 – Letter of Complaint to SoE Mataiciwa.

² Ibid.

for further investigation. These procedures were followed. Two search warrants were obtained. One for the uplift of documents from the ECF. The other for the uplift of documents from the COC which were held at the S-G's office.

25. From 2 to 4 September 2024 FICAC investigators made multiple attempts to execute the COC search warrant, but were stonewalled by the S-G who advanced numerous excuses as to why the search warrant could not be executed. At the hearing, new excuses not advanced at the time were put forward by the S-G. One was that the search warrant was too broad, allegedly, there being no specific time frame. However, this was clearly wrong as a timeframe had been set out in the search warrant. The S-G also stated that he had wanted to discuss matters with Mr. Saumi. However, in the multiple text and email exchanges there was not a shred of evidence substantiating this claim. Mr. Saumi's attempts to work respectfully with the S-G's office were met with fob-offs.
26. Over these three or so days, the S-G knew, because he was a member of the JSC, that Ms. Malimali was imminently about to be appointed to the position of FICAC Commissioner. Mr. Green also knew that Ms. Forwood had lodged a complaint about his conduct with FICAC. It appears to the CoI, on the balance of probabilities, that the S-G was deliberately stalling the execution of the search warrant until Ms. Malimali was appointed, and by doing so was obstructing justice. He knew that the search warrant related to an investigation into an allegation of abuse of office against Ms. Malimali, because Mr. Saumi communicated this to him via text message.
27. A decision was made collectively by Ms. Puleiwai, Ms. Bokini-Ratu, Mr. Wakanivesi, and Mr. Saumi that the evidential threshold to lay charges had been reached on 4 September 2024 in relation to the First Malimali Allegation.
28. There is no doubt that the FICAC Malimali Investigation was rushed. However, the rush did not result in flaws which tainted the Investigation, or the evidence collected. The CoI accepts that the motivation behind the expediting of the FICAC Malimali Investigation was because the FICAC team wished to clear up the allegations prior to Ms. Malimali being appointed. Ms. Puleiwai had asked the President and the PM to give them a week to do so.
29. The CoI has carefully considered the allegation that Ms. Puleiwai was motivated by ill feelings towards Ms. Malimali, and finds on the balance of probabilities, that this was not so. Mr. Saumi was a senior experienced investigator having spent 10 years as a Police Investigator and 15 years at FICAC. He came across as a credible witness who was focussed on the task at hand, namely, gathering evidence to see if there were grounds for charges to be laid. Likewise, Mr. Wakanivesi was also a credible witness, again an experienced investigator whose motivation was to do his job well. Ms. Bokini-Ratu was also a credible witness. She had been with FICAC as a Legal Officer and now the Manager of the Legal Division, for 10 years. Ms. Puleiwai's evidence was also credible, consistent and detailed. Ms. Puleiwai led the team in a way in which decisions

were made collectively by them, thus sheltering her from the accusation that she had herself led and driven the investigation towards a negative outcome for Ms. Malimali. The evidence before the CoI did not bear this narrative out.

30. The CoI has concluded that the FICAC Malimali Investigation was conducted in good faith, fairly, and in accordance with FICAC's normal policies and processes, despite the short timeframe in which it was finalised.

8.5: Chapter Five – Selection & Appointment

31. The ToRs ask whether the Appointment Process was conducted with integrity, fairness and transparency, according to law.
32. The Appointment Process was tainted by the JSC's failures of basic recruitment processes, such as a failure to ensure conflicts of interest were declared and managed, a failure to undertake reference checks, a failure to undertake psychometric testing, and a failure to undertake Police and FICAC checks. Add to this a complete failure by Ms. Malimali herself to disclose that she had an active FICAC Investigation in relation to an abuse of office allegation, nor to disclose that she had lied on seven consecutive applications to the LPU for a Fiji PC about her misconduct in Tuvalu, and we have an Appointment Process that absolutely lacked integrity, lacked honesty, and was not fair.
33. Above all of these administrative failures, sit two things.
34. Firstly, a badly drafted Constitution which has led to a conclusion that the legislative provisions governing the Appointments Process, namely, s 5 of the FICAC Act are ultra vires s 82 of the Constitution. Put simply, because the appointment role of the JSC is set out in the FICAC Act and not in the Constitution itself, then s 5 is invalid. There is no role whatsoever for the JSC to be involved in the appointment of FICAC Commissioners, and/or, Deputy Commissioners. What this means is that Ms. Malimali's appointment was illegal, and ought to be immediately revoked.
35. Secondly, there has been an abysmal failure of senior officials to act professionally and ethically. Multiple persons at the centre of the Appointment Process knew that Ms. Malimali was being actively investigated by FICAC. These included the A-G Mr. Leung, the Chief Registrar Mr. Bainivalu, the S-G Mr. Green, and the Chief Justice and Chair of the JSC, CJ Temo. Individually and collectively, they had a responsibility to speak up and say, "it is absolutely not acceptable for someone with an active FICAC investigation against them to be appointed to head that very organisation." This should have been obvious. It should not have been acceptable in any way, shape or form that Ms. Malimali be appointed while an active FICAC investigation into her actions was underway.
36. Every single one of the senior persons at the helm, when asked, whether, had they known about the FICAC Malimali Investigation, they still would have

recommended her for appointment, said “No”. So, it is not as though they did not know at some level that her appointment was wrong, it is simply that they all said and did nothing, which indicates that her appointment may have been pushed through for some other reason.

37. The fact that those who knew about the FICAC Malimali Investigation continued on progressing her appointment puts them at risk of being charged with conspiring to pervert the course of justice under s 190 of the Crimes Act, or attempting to do so. All because, knowing that the appointment was wrong, they all said and did nothing, thus enabling Ms. Malimali to get into the seat of power at FICAC, and ultimately in doing so, allow her to escape being charged with abuse of office.
38. FICAC has never, since its inception in 2007, had both a Deputy Commissioner and a Commissioner serving at the same time. There has always been only one or the other. This was the first time ever that a government had wanted both a Commissioner and a Deputy Commissioner at the helm. No satisfactory explanations were provided as to why this should have changed. There were no policy papers, and no additional budget was set aside. The idea of having a new Commissioner to come in while Ms. Puleiwai remained Deputy Commissioner appears, on balance, to have to come from the previous A-G Hon Turaga. In other words, it was politically driven.
39. There was also a narrative doing the rounds, that under Ms. Puleiwai FICAC was wrongly focussed on “small issues”, those of Ministers and their assets and liabilities declarations under the PP Act, instead of going after the bigger fraud cases. Many of these fraud cases involved suspects appointed by, or associated with the previous Fiji First regime. Underlying this narrative was a grievance that Ms. Puleiwai should not have been going after government Ministers, but after the “real” criminals associated with the previous Fiji First regime. Ms. Puleiwai rejected the allegation that she was only focussed on the “small fry”. She had established a new specialist Economic Crime Unit at FICAC, and she operated under a dual prioritisation process, whereby cases on both political corruption, and economic corruption were prioritised.
40. The requirements for applications for the position of FICAC Commissioner were unduly narrow. There is nothing in the legislation stating that the FICAC Commissioner had to be a lawyer. Yet the JSC made it a requirement that applicants had to be lawyers with at least 15 years post admission experience. The CJ said he had wanted someone with excellent prosecution skills. However, the Commissioner’s role was much wider, and required someone with leadership skills, and also investigative skills, and/or, prosecutorial skills, and/or, community education and awareness skills. The role could also have suited a senior Police official with years of investigatory experience, especially in economic fraud. Even though the CJ had wanted someone with prosecutorial skills, Ms. Malimali had no prosecutorial skills whatsoever, as her background was as a criminal defence lawyer.

41. A Selection Panel had been established to short-list and interview the applicants. The Panel comprised CJ Temo, S-G Green, and Mr. Waqaivolavola. Mr. Waqaivolavola was a close colleague of Ms. Malimali, yet he failed to declare his conflict nor remove himself from any discussions in relation to Ms. Malimali. Overall, it was not appropriate that he should have remained on the Panel once he knew that Ms. Malimali had been shortlisted. The Selection Panel recommended Ms. Malimali.
42. The JSC made its decision to accept the recommendation of the Selection Panel via a Flying Minute. On 28 August 2024, Ms. Bi, the Assistant Secretary of the JSC circulated the Selection Panel Report along with Ms. Malimali's CV. A JSC meeting was scheduled for 2.30 pm on 4 September 2024 to discuss the Panel's recommendation. Ms. Shoma Devan, a JSC member, had asked for a list of all of the other applications, but she was not sent this. In addition, the meeting to discuss the appointment was cancelled and the decision was made by "Flying Minute", without Ms. Devan's input. This was also a significant procedural failing. There was no meeting held. Approvals were obtained only from the CJ, the S-G, and Justice Jitoko. However, the vote of the S-G ought to have been discounted as he was conflicted because he himself had a pending FICAC case. If the S-G's "vote" is disregarded, the evidence before the CoI was that the decision was only approved by two out of the five JSC members, and is therefore invalid.
43. In relation to disclosure, the CoI found Ms. Malimali's ethical compass, and sense of what constitutes honesty, was woefully deficient. She failed not only to disclose the FICAC Investigation into her conduct for abuse of office, but she lied when asked by the S-G at her interview about whether she had any pending FICAC complaints.
44. There was also a serious issue related to an inappropriate encounter Ms. Malimali had in August 2016 with a High Court Judge presiding over a matter in Tuvalu, in which she was co-counsel for one of the parties. The Judge's decision had been in favour of her client and had subsequently been appealed by the Tuvalu State, who was the other party in the case. The appeal was on the basis that Ms. Malimali, in the middle of the hearing, engaged in a drinking session with the Judge, a late night swim with him, and spent the night in his room. Needless to say, the Appeal Court upheld the appeal on the grounds that the presiding Judge was tainted with a perception of bias. Ms. Malimali was then on 23 March 2017 refused the ability to practice in Tuvalu on the basis of not being of fit and proper character.
45. In relation to the Tuvalu Issue, there are two prongs. The first is the obligation to disclose the Tuvalu Issue to the JSC. Ms. Malimali did not disclose the Tuvalu Issue to the JSC. An obligation to disclose arises if the conduct at issue is relevant to the position. Obtaining a benefit as a result of an inappropriate relationship with a Judge is significantly and materially relevant to the position of head of an anti-corruption agency. It goes towards Ms. Malimali's character

and her integrity. The Tuvalu Issue was relevant and should have been disclosed to the JSC, regardless of the fact that it was nine or so years ago.

46. The second prong of the Tuvalu Issue is that Ms. Malimali had been dishonest in seven consecutive Fiji PC applications from 2018 until 2024. In those applications, she was legally required to have disclosed that she had been barred from practice in Tuvalu, and accurately explained the reason for this. She did not do so. Applications for a PC in Fiji have to be accompanied by a Statutory Declaration. For each of the seven PC applications, Ms. Malimali signed a Statutory Declaration. As she had been untruthful on those applications, she is now at risk of seven counts of making a false statutory declaration under s 180 of the Crimes Act, or making a false representation under the False Information Act 2016, or of forgery under s 156 or s 157 of the Crimes Act.
47. Part of the Selection Process was that the JSC had to consult the A-G. There are no guidelines or protocols developed to set out more clearly the nature and extent of this consultation. In this situation Mr. Leung was presented with the name of Ms. Malimali. He at first contacted Ms. Puleiwai at FICAC to ask her about the FICAC Malimali Investigation, and she advised him that it was serious and FICAC needed a little more time to complete the investigation. On that basis he advised the CJ to hold off on Ms. Malimali's appointment. This is exactly where things should have remained.
48. Instead, an ECF Commissioner, Dr. Atu Emberson-Bain sent Mr. Leung a copy of a letter of complaint from the ECF to the JSC about Ms. Puleiwai and her team at FICAC, and the fact that FICAC had, under the authority of a search warrant, removed documents from the ECF. Mr. Leung then changed his mind about his advice to the CJ to hold off the appointment, and called the CJ back to say it was okay to proceed.
49. He made that decision on the basis that the ECF Commissioners were prominent and credible people and the complainant, Ms. Forwood, was not, therefore, his train of thought went, the ECF Commissioners must be right, and Ms. Forwood must have submitted a vexatious complaint. The fact that the most senior lawyer for the government would even think this way is staggering. The institution which has been tasked with investigating, and if warranted, prosecuting corruption related offences is FICAC. They were the ones responsible for the FICAC Malimali Investigation. Not the ECF Commissioners and not Ms. Forwood. Whether these individuals were prominent, or were credible, or were scurrilous is completely irrelevant. The only person he should have taken advice from was Ms. Puleiwai. The appropriate action for the A-G to have taken was to have asked Ms. Puleiwai for a confidential briefing on the case, for the purposes of the JSC making a hiring decision. The A-G should, in turn, have provided an aide memoire to the CJ about the situation, making clear that the appointment should not proceed.

50. Once the A-G advised the CJ that there was no longer any “rational” basis to withhold the appointment, it was then progressed. Papers were prepared by the CR, who went up to the President’s office at State House and presented the appointment papers for signature. The President has given evidence that he, at that juncture, asked the CR about the FICAC Malimali Investigation and the CR advised him that it was “nothing to worry about” as the JSC had selected the most meritorious candidate.
51. The only persons involved in the Appointment Process who admitted that they knew of the FICAC Malimali Investigation were the A-G, the President, and the PM. The only person who did not know of the FICAC Malimali Investigation was Justice Jitoko.
52. Everyone else including the S-G, CR, and the CJ denied any knowledge of the FICAC Malimali complaint and Investigation. However, the evidence shows that they all knew, or ought to have known. The S-G knew about the Investigation, including that it was for an abuse of office allegation. The CR and the S-G also knew that Ms. Forwood had lodged complaints against both of them at FICAC. The complaint against the CR was quite advanced and on 16 August 2024, the CR found out that FICAC was wanting to obtain a search warrant to obtain documents from his office for the purposes of their investigation. In this regard, both the CR and the S-G were conflicted, and had an interest in getting Ms. Malimali into the FICAC Commissioner position, in the hope that she would shut down their cases. They should not have been involved in the Appointment Process at all.
53. The evidence is clear that the Appointment Process was rushed. The rush contributed to multiple fundamental flaws. Ordinary recruitment processes around vetting candidates by doing reference checks, and background Police and FICAC checks, and psychometric assessments, were not undertaken. The entire process was driven by an unwarranted urgency.
54. For instance, pressure was put on the LPU to do background checks under urgency. A further example was that Ms. Malimali was told to start immediately even though she had asked for a month to allow her to tie up loose ends at the ECF. In reality, there was no need for this. There was no justification whatsoever to expedite the Appointment Process. It was not as though there was no one at the helm. Ms. Puleiwai was Acting Deputy Commissioner, and she was able to exercise all of the powers of the Commissioner.
55. There was not one, but multiple background issues with Ms. Malimali’s suitability for the role of FICAC Commissioner. Had the JSC not rushed its processes any one of these issues could have been discovered.
56. Overall, the entire Appointment Process was not conducted with integrity, fairness or transparency. With the exception of the attempts by the PM and the President, no one questioned whether it was ever acceptable for a suspect in a

case to be appointed as head of the very institution that was investigating her for abuse of office.

8.6: Chapter Six – Post Appointment Events

57. After her appointment Ms. Malimali was taken to be introduced to FICAC senior staff on the afternoon of the 4th of September by the CR, Mr. Bainivalu. It was at that meeting that Mr. Wakanivesi, a Senior FICAC Investigator, and the head of the new Economic Crimes Unit stated that he would resign as he did not think it was proper that he work for a suspect. Mr. Saumi, the Manager of the FICAC Investigations Department agreed.
58. Ms. Malimali thanked Mr. Wakanivesi for his views, but did not address any of the issues in relation to the FICAC Malimali Investigation again during that meeting. Neither did the CR. Both of them had an obligation to, at this stage, address and discuss what needed to be done about Ms. Malimali's case. Instead, they did nothing at all.
59. Ms. Malimali commenced work at FICAC on the morning of 5 September 2024. She had only been at work for half an hour or so before she was arrested by the FICAC Manager of the Investigations Division, Mr. Saumi. Ms. Puleiwai, Mr. Saumi, and Ms. Bokini-Ratu, the Manager of the Legal Division, had together followed the usual FICAC processes, and had collectively agreed that there was sufficient evidence to charge Ms. Malimali with abuse of office.
60. Once arrested, Ms. Malimali called Mr. Wylie Clarke, the President of the FLS, and asked him to call "everyone". Mr. Clarke then called the CR, and Ms. Laurel Vaurasi, a former President of the FLS. The CR then asked a senior lawyer, Mr. Amani Bale to attend, and Mr. Bale asked another lawyer, Mr. Nemani Tuifagalele to attend. The CR and all four lawyers, none of whom acted for Ms. Malimali then went to FICAC and intimidated, bullied, and harassed the FICAC officials who were involved in the arrest of Ms. Malimali into releasing her. The main obstruction that led to the FICAC officials releasing Ms. Malimali was the information from CJ Temo, communicated via the CR, that the CJ had instructed all the registrars in Fiji not to accept any FICAC charges that were filed by anyone other than Ms. Malimali.
61. The CoI has assessed the arguments and viewpoints of all witnesses party to the CoI, and has concluded that Ms. Puleiwai and her team did have the legal authority to arrest Ms. Malimali. Section 10(1) of the FICAC Act allows an officer authorised by the Commissioner to arrest a person without a warrant, if the officer suspects that that person has committed an indictable offence. The offence for which Ms. Malimali was arrested was abuse of office, which is an indictable offence.
62. Mr. Saumi produced evidence that he had been issued a warrant card that gave him blanket powers of arrest. In other words, he did not need to return to a Commissioner or Deputy Commissioner each and every time he wished to arrest

someone. He reasonably suspected Ms. Malimali of an offence as his investigations and advice from the FICAC Manager Legal had been that the evidentiary threshold to charge Ms. Malimali had been reached.

63. Even if Mr. Saumi did need approval, he could obtain that approval from Ms. Puleiwai regardless of Ms. Malimali being the Commissioner. The definition of “Commissioner” in s 2 of the FICAC Act includes “Deputy Commissioner”. This means that any power that sits with the Commissioner is also able to be exercised by his or her Deputy.
64. Moreover, FICAC policy and practice is that where a FICAC employee is under investigation, he or she is suspended, and is never allowed to have anything to do with his or her case. It is for another official to take over that role. In the current circumstances, it was proper for Ms. Puleiwai to oversee Ms. Malimali’s case. It would have been absurd to think that Ms. Malimali would be the one to issue her own arrest orders.
65. In these particular circumstances, the arrest of Ms. Malimali was legal. The CoI carefully considered the arguments that Ms. Puleiwai had been motivated by “sour grapes” because she had lost out on the FICAC Commissioner role, and concluded that the evidence did not bear this narrative out. Ms. Puleiwai, by and large, acted on the advice of Mr. Saumi and Ms. Bokini-Ratu. She was not pressuring them to concoct trumped up charges to throw at Ms. Malimali. Ms. Puleiwai, Mr. Saumi, Ms. Bokini-Ratu and Mr. Wakanivesi were simply trying to do their jobs.
66. All of those persons who were involved in pressuring the FICAC officials to release Ms. Malimali, appear to have been behaving unlawfully, in that they were, together, conspiring to obstruct and pervert the course of justice. The persons involved were, Mr. Clarke, Ms. Vaurasi, Mr. Bale, Mr. Tuifagalele, Mr. Bainivalu and CJ Temo.
67. Their actions, while couched in language promoting legality and restraint, amounted in practice to harassment, bullying, coercion, and/or, a conspiracy to obstruct the work of FICAC. Their sole purpose in attending FICAC that day was to get Ms. Malimali released. The Saumi Transcript revealed a lot of “big talk” and bravado about the “rule of law”, in particular from Mr. Clarke, but very little substance in relation to what exact law was supposedly being broken.
68. Also on 5 September 2024, the FICAC officials were prepared to arrest and charge Hon. Prasad.
69. The directive from CJ Temo that no FICAC charges filed by Ms. Puleiwai would be accepted by the courts, poses a grave risk to the independence of prosecutorial institutions and the rule of law. The CoI notes with concern that none of the senior lawyers present who came to rescue Ms. Malimali questioned the propriety of this instruction. Such silence in the face of judicial overreach

compromises both the perception and the reality of institutional and judicial integrity.

70. After Ms. Malimali was released Ms. Puleiwai was called to a meeting with the JSC at which she was coerced into resigning. She was given an ultimatum, either she resigned, or she would be met with charges of:
 - a. unlawfully assuming the Commissioner's power pursuant to s 7(1) of the FICAC Act, on 5 September 2024, when the Commissioner was present, in ordering the arrest and detention of the Commissioner at FICAC headquarters;
 - b. wrongfully assuming the Commissioner's power in authorising the arrest without warrant of the Commissioner at FICAC headquarters, on 5 September 2024, pursuant to s 10(1) of the FICAC Act; and
 - c. insubordination, by failing to listen to the Commissioner on 5 September 2024, as the Deputy Commissioner in carrying out her function at FICAC headquarters.
71. Ms. Puleiwai was uncertain whether the threat from the JSC related to the establishment of a Disciplinary Tribunal to hear the charges, or whether the JSC would lodge a complaint with the Police, or both.
72. Once Ms. Malimali started back at work again, she proceeded to question the conclusion which FICAC officials had arrived at to charge Hon. Biman Prasad with several counts of breaches of the PP Act, in an effort to stall, and/or, close Hon. Prasad's case. The CoI finds her conduct in the numerous attempts to have Hon. Prasad's file closed concerning and is recommending a thorough review of that file to ascertain if Ms. Malimali had abused her office. Eventually, on 24 April Ms. Malimali did close Hon. Prasad's case.
73. Ms. Malimali also instructed FICAC officials to stop work on all of Ms. Forwood's complaints. The CoI concludes that this instruction itself was arbitrary and illegal, as there is no ability in the FICAC Act to allow complaints to be ignored on the basis of the complainant being a non-taxpayer, or a non-resident.
74. The instruction to stop work on Ms. Forwood's complaints meant that work on most of the complaints against MPs for false declarations on income, assets, and liabilities, including against Hon. Kamikamica, and Hon. Turaga, who are friends of Ms. Malimali's, was stopped. In addition, work on the cases of the S-G, Mr. Green, and the CR, Mr. Bainivalu had stopped.
75. The CoI heard from Hon. Ravu, the former Fisheries Minister, who had been charged by FICAC. He testified that Hon. Kamikamica had approached him twice offering to "help" with his case, and saying that he could get Ms. Malimali to squash the charges. Hon. Kamikamica stated that he could not recall these conversations. The CoI has concluded, on the balance of probabilities, that Hon.

Kamikamica did approach Hon. Ravu seeking to “assist” him by passing information onto Ms. Malimali and asking her to close his case.

76. Eventually, Ms. Malimali instructed FICAC officials to transfer her file to the ODPP. Ms. Malimali, Mr. Rabuku, the Deputy DPP, and Ms. Tikoisuva, the DPP, are all friends. Ms. Malimali did not disclose a conflict of interest in relation to the transfer of her file to the ODPP. Neither did Mr. Rabuku, nor Ms. Tikoisuva. Ms. Malimali’s file should have been transferred to the Police, not transferred to the ODPP. Mr. Rabuku wrote a Memorandum to the Police requesting that they undertake investigations on the Malimali file, and to make no decision on charging, but to get back to him before then. According to Mr. Rabuku’s own testimony, this was overstepping his role, as the DPP has no role in decisions about whether someone should be charged *unless* the Police request them to be involved.
77. Ms. Tikoisuva accepted that the conflict between herself and Mr. Rabuku and Ms. Malimali was such that it was not ideal for the ODPP to be handling Ms. Malimali’s file. The CoI is extremely concerned that a file this important is being passed around amongst friends. Neither Mr. Rabuku nor Ms. Tikoisuva should have been handling the Malimali file. Yet they were. Mr. Rabuku went so far as to attempt to control what is normally a decision for the Police, namely, the decision as to whether a suspect should be charged. These actions, including Ms. Malimali referring her file to the ODPP instead of to the Police, and neither Ms. Malimali, nor Mr. Rabuku, nor Ms. Tikoisuva declaring a conflict of interest, and Mr. Rabuku proceeding to direct the Police not to make a decision in relation to charging Ms. Malimali, but to get back to him first, all go towards demonstrating a conspiracy to attempt to, and/or, to pervert the course of justice.
78. Ms. Malimali also illegally issued an SDO over Ms. Puleiwai, which prevented Ms. Puleiwai from leaving Fiji for 30 days. However, by the time the SDO was issued, Ms. Puleiwai had already left the country. Section 13 (1)(e) of the FICAC Act allows an SDO to be imposed on a person, but only if there is an investigation being conducted on that individual. No such investigation into Ms. Puleiwai had commenced, yet Ms. Malimali signed the SDO which clearly stated that an investigation was in train.
79. Overall, the CoI finds, after weighing up all of the evidence obtained during the Inquiry, that Ms. Malimali’s appointment was influenced by political and other interests. Hon. Kamikamica’s actions demonstrated an involvement in her appointment, and an involvement in cases before FICAC in an attempt to pervert the course of justice. Hon. Turaga’s initial announcement that a new FICAC Commissioner was required was an attempt to get someone else into the top position.
80. The CoI has carefully considered and weighed up all relevant testimonies, affidavits, transcripts, and records presented during this Inquiry, and has concluded that the events that unfolded immediately following the appointment

of Ms. Malimali as Commissioner of FICAC cumulatively demonstrate that there were undue influences in her appointment. Those influences came from the CR, Mr. Bainivalu, the S-G Mr. Green, CJ Temo, Mr. Clarke, Ms. Vaurasi, Mr. Bale, Mr. Tuifagalele, Hon. Kamikamica, and Hon. Turaga, and perhaps unwittingly, the A-G.

8.7: Recommendations

81. The CoI makes the following recommendations:

- a. that Ms. Malimali and Mr. Fotofili's appointments be revoked immediately;
- b. that Ms. Puleiwai be either reinstated to her position as Acting Deputy Commissioner, and/or, compensated for constructive/unfair dismissal, and/or, hurt and humiliation. That any reinstatement be on the basis of the PM's advice to the President under s 82 of the Constitution;
- c. should Ms. Puleiwai not accept reinstatement, that a suitable person be appointed in an acting role until a fulsome recruitment process can be undertaken. That the appointment be on the basis of the PM's advice to the President under s 82 of the Constitution;
- d. that the FICAC Act be amended immediately, so that the JSC is removed as the appointing body;
- e. that the FICAC Act be amended immediately, so that the PM, with the concurrence of the COC, is responsible for recommending to the President, the appointments of the FICAC Commissioner and Deputy Commissioner;
- f. that the PM consider advising the President, under s 111(3) of the Constitution, to instigate the removal of the Chief Justice for misbehaviour on account of his actions in the appointment of Ms. Malimali, and the removal of Ms. Puleiwai, including obstructing and perverting the course of justice, and abuse of office;
- g. that Ms. Malimali's file be transferred back to FICAC for investigation and, if warranted, prosecution, because the DPP and the Deputy DPP are conflicted, and have already demonstrated a lack of impartiality, and objectivity, and a disregard for proper professional standards;
- h. that none of the FICAC officials involved in Ms. Malimali's file prior to her arrest are to be involved in any way in investigating, or prosecuting any matters in relation to Ms. Malimali. They are expected to be involved as witnesses;
- i. that the COC immediately, once the FICAC Act is amended, begin a recruitment process to locate a suitably experienced Commissioner from an overseas jurisdiction who will be expected to mentor the Deputy Commissioner;
- j. that Mr. Saumi be re-instated, and/or, compensated for unfair dismissal, and/or, hurt and humiliation;

- k.** that all of the potential offences in the events described in this Report be investigated by FICAC, and/or, the Fiji Police, and then, if the evidence warrants this, prosecuted, so long as no evidence taken under the CoI is admissible against any person who may be so charged;
- l.** that all of the files that have been closed under Ms. Malimali's tenure, including the files of Hon. Prasad and Hon. Tabuya, are reviewed by independent senior Counsel;
- m.** that the handling of Ms. Malimali's file by the ODPP and the Police is reviewed by independent senior Counsel;
- n.** that the FICAC Act is reviewed to ensure that the accountability of FICAC to government is increased, and the wide powers it has are reviewed;
- o.** that the FICAC advocacy division be requested to arrange workshops for all MPs to discuss the importance of combatting corruption both within government and in the private sector;
- p.** that this Report is to be made available to the public, with the appropriate redactions; and
- q.** should the Report not be made available to the public, that the Report be made available to each of the witnesses on a confidential basis, with the appropriate redactions.





ANNEXURES





ANNEX A

Letter to PM dated 13 November 2024



COMMISSION OF INQUIRY

In the Commission of Inquiry issued under the Commissions of Inquiry Act 1946 to enquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission against Corruption (FICAC)

13 November 2024

Honourable Sitiveni Ligamamada Rabuka
 Prime Minister
 Republic of Fiji
 Office of the Prime Minister
 Government Buildings New Wing
SUVA

Dear Mr Prime Minister,

1. I write further to my appointment as the sole Commissioner on the Commission of Inquiry established by His Excellency the President to inquire into the processes surrounding the appointment of Ms. Barbara Malimali, as Commissioner of the Fiji Independent Commission against Corruption (FICAC).
2. A copy of a **Statement of Issues** ("Sol") consistent with the Inquiry's Terms of Reference is attached as **Annex A**.
3. I write to you in your capacity as the Chairperson of the Constitutional Offices Commission ("COC") to request:
 - a. disclosure of the information which the COC has in its possession, as listed in **Annex B**; and
 - b. an affidavit from you providing any evidence relevant to all, or any, of the issues in the attached Sol, by 22 November 2024.
4. You may be aware that section 8 of the Commissions of Inquiry Act 1946 provides me, as the Commissioner, with the power to make rules for the conduct and management of the proceedings as I think fit. You will also be aware that commissions of inquiry are conducted in an inquisitorial or investigatory manner, and not in an adversarial manner.

5. Consequently, I have determined the manner in which the Inquiry will proceed will be as follows:
- a. natural justice and procedural fairness will be adhered to;
 - b. the Commission of Inquiry is independent from all arms of government;
 - c. the normal rules of evidence will not apply;
 - d. all witnesses are entitled to be represented by a barrister or solicitor at the whole of the Inquiry;
 - e. once the Commission is in receipt of all of the information, and all of the affidavit evidence it has requested, those documents will be examined and a determination made about which witnesses will be called for questioning at the oral inquiry. Not all witnesses will need to be called for questioning;
 - f. the oral inquiry will be conducted at an appropriate time, in private;
 - g. at the oral inquiry, Ms. Janet Mason, who is Counsel Assisting, and myself will question the witnesses, after which Counsel for a particular witness, if there is one, will be permitted to re-examine his or her witness;
 - h. Counsel for a particular witness will not be permitted to question any of the other witnesses. Their sole function will be to represent their client;
 - i. any affidavit evidence which contradicts the affidavit evidence of another witness will be provided to the deponent of the contradicted evidence, and that deponent will be entitled to submit reply evidence; and
 - j. I reserve the right to issue further procedural directions should the need to do so arise.
6. Under the terms of my Commission, I am required to report to His Excellency the President, in writing, no later than the 31st day of January 2025 as to my findings and opinion, together with any recommendations I may make.
7. I am therefore obliged to conduct the Inquiry in as efficient and expeditious a manner as possible, always bearing in mind natural justice and procedural fairness. Consequently, the ongoing co-operation of COC officers in relation to the provision of the information requested will be appreciated.
8. I look forward to receiving the documents requested in paragraph 3 above.

Sincerely,



**His Lordship Justice David Ashton-Lewis LLB/SC
Commissioner**

Annex A: Statement of Issues

1. Was the appointment process of Ms Barbara Malimali to the position of Commissioner of the Fiji Independent Commission against Corruption (FICAC) conducted with integrity, fairness and transparency, according to the law?

In particular,

- a. What was the manner and process by which Ms Malimali was appointed?
- b. Was Ms Malimali's appointment in accordance with section 5 of the FICAC Act 2007?
- c. Who were the individuals involved in the decision to appoint Ms Malimali? and if so:
 - i. were the actions of those involved appropriate?
- d. What was Ms Malimali being investigated for at the time, and how did that investigation arise?
- e. Were the processes followed by the Supervisor of Elections Ms Mataciwa, in referring matters under section 18 of the Electoral Act 2014 to FICAC for investigation appropriate, and/or, lawful?
- f. Was it appropriate or lawful to appoint Ms Malimali to the role of Commissioner whilst she was still under investigation for an abuse of office allegation?

2. Were there inappropriate or unlawful influences and bias in the processes leading to and surrounding the appointment of Ms Malimali?

In particular,

- a. Was there any inappropriate involvement by any individual(s) in the appointment of Ms Malimali?
- b. Did any individual(s) use their public office to improperly influence the selection and appointment of Ms Malimali?
- c. Did the active investigations on high profile individuals by Ms Mataciwa, including Members of Parliament, Ministers, and senior public servants in any way influence the process and appointment of Ms Malimali?

Annex B

The information requested from you includes all correspondence, whether by way of email or letter, all text messages, and all file notes or records of meetings ("Information").

We request the following:

- a. all Information from Ms Malimali to COC about Ms Mataiciwa;
- b. all Information from Ms Mataiciwa to COC in response, and/or, about Ms Malimali;
- c. all Information from and between COC members about Ms Malimali and Ms Mataiciwa;
- d. all Information from and between COC members, and persons associated with other agencies or offices, including, the Judicial Services Commission, the Electoral Commission, the Elections Office, FICAC and the President's Office;
- e. all Information from and between COC members, and Members of Parliament; and
- f. any other Information relevant to the Statement of Issues.





ANNEX B

Letter to PM dated 2 January 2025



COMMISSION OF INQUIRY

In the Commission of Inquiry issued under the Commissions of Inquiry Act 1946 to enquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission against Corruption (FICAC)

2 January, 2025

Hon. Sitiveni L. Rabuka
Prime Minister
Office of the Prime Minister
Government Buildings
SUVA

Dear Honourable Prime Minister,

1. Happy New Year to you and your family.
2. Thank you for providing the Commission with your Affidavit dated 29 November 2024.
3. The Commission of Inquiry hearing will begin on 6 January 2025 and is expected to continue for two weeks.
4. I have enclosed:
 - a. a summons requiring you to attend the hearing on 6 January to give evidence at 9.45am;
 - b. a copy of the opening address of the Commissioner, His Lordship Justice Ashton-Lewis; and
 - c. a copy of the timetable for the hearing.
5. Please read each of the enclosed documents carefully, along with the original letter sent to you from the Commissioner dated 13 November 2024.
6. The hearing is to be conducted in-camera, that is, the public and media will not be present. You will need to be at the hearing at 9.30am on Monday 6 January to hear His Lordship's opening statement. You are entitled, at your discretion, to retain Counsel.
7. The affidavit you have already submitted will be taken as read. Once you are sworn in, you will be questioned, first by myself, on any matters arising from your affidavit, and from the affidavits of other witnesses, followed by Counsel for any of the witnesses mentioned below in paragraph 8. After these questions have

concluded, questions may be put to you by your Counsel, if any, followed by any re-examination from me.

8. You, and/or, your Counsel are entitled to remain to hear the evidence of ~~the~~ Ms. Mataiciwa, Mr. Jokhan, Ms. Emberson Bain, Mr. Tudonu, Mr. Turaga and Mr. Seruiratu, scheduled for the 6th and 7th, and Ms. Forwood scheduled for Monday 13 January. In addition, your Counsel will be able to put questions to any of the above witnesses.
9. Note that the attached timetable is indicative only and is therefore a guide. If the Commission's hearing gets ahead of, or behind, in the timetable, then you will be notified in advance, and will be expected to attend the hearing at that time. Consequently, please keep the days on either side of your scheduled hearing time free.
10. Should you have any questions, please do not hesitate to contact me. Thank you, and we look forward to hearing your evidence.

Sincerely,



Janet Mason *LLM, LLB, BSocSci*
Counsel Assisting

**COMMISSION OF INQUIRY**

In the Commission of Inquiry issued under the Commissions of Inquiry Act 1946 to enquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission against Corruption (FICAC)

SUMMON TO WITNESS**UNDER SECTION 9 OF THE COMMISSIONS OF INQUIRY ACT 1946**

To Honourable Sitiveni Ligamamada Rabuka, Prime Minister of the Republic of Fiji of 70 Muanikau Road, Suva. You are hereby summoned to appear before the Commissioner, His Lordship Justice David Edward Ashton-Lewis, appointed by the President to inquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission against Corruption (FICAC) at **Court No. 1, Old Parliament Complex, Veiuto** on the **6th day of January 2025** at **9.30 am**, or such other time as may be advised by the Commission's Secretary, to give evidence in respect of the Inquiry. You are required to bring with you your affidavit dated **25 November 2024**.

Given under my hand this 2nd day of January 2025.

A handwritten signature in blue ink, appearing to read 'Ashton-Lewis'.

His Lordship David Edward Ashton-Lewis
Commissioner



COMMISSION OF INQUIRY

In the Commission of Inquiry issued under the Commissions of Inquiry Act 1946 to enquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission against Corruption (FICAC)

OPENING STATEMENT OF HIS LORDSHIP Justice David Ashton-Lewis LLB/SC Commissioner

Welcome to the hearing of the Commission of Inquiry appointed by the former President, Ratu Viliame Maivilili Katonivere on 29 October 2024.

The Commission of Inquiry will consider and determine whether the appointment process of Miss Barbara Malimali as Commissioner of the Fiji Independent Commission against Corruption (FICAC) was conducted with integrity, fairness and transparency, according to law.

It will also review and consider whether there were improper or unlawful influences in the process leading to the appointment of Ms. Malimali.

In particular the Commission is to inquire into the following:

- a. the manner and process by which Ms. Malimali was appointed;
- b. whether her appointment was in accordance with section 5 of the Fiji Independent Commission against Corruption Act 2007;
- c. which individuals were involved in the decision to appoint the Commissioner, and the extent and appropriateness of their involvement;
- d. whether, and to what extent, there was any inappropriate involvement by any individuals in the appointment;
- e. whether, and to what extent, any individuals used their public office to improperly influence the selection and appointment process; and
- f. whether or not the process and the appointment of the Commissioner was unlawfully or improperly influenced by

vested interests, including current FICAC cases or investigations on high profile individuals, including Members of Parliament, Ministers, and senior public servants.

There are 35 witnesses ranging from the Prime Minister, two Deputy Prime Ministers, senior Cabinet Ministers, prominent Members of Parliament, civil servants, senior legal practitioners, and prominent businessmen who have provided affidavits and will be called upon to give oral testimony under oath to the Commission.

It is important to bear in mind that the Commission of Inquiry is an investigative body and not an adjudicative body. As such it is not a trial at law.

The Commissioner is empowered to regulate the Commissions proceedings, is not bound by the rules of evidence, can accept hearsay evidence, and makes findings on the balance of probabilities.

The findings of the Commission are final and are not appealable in a court of law

The Commission will be guided by the rules of natural justice and procedural fairness.

The Commission's hearings will be held in camera. His Lordship's Report is to be submitted to the President and the Prime Minister on 31 January 2025. The publishing of the Report is at the discretion of His Excellency, Ratu Naiqama Lalabalavu.

Where evidence is contested, the contesting witness, and/or, their Counsel will be entitled to be present to hear the evidence against them, and then his or her Counsel will be able to question the witness.

Counsel Assisting the Commissioner will have the right to re-examine on any matters arising from such questioning.

Timetable for Commission of Inquiry Hearing

Hearing: Monday 6 January 2025

9.30 am – 9.45 am	Justice Ashton-Lewis addresses witnesses.
9.45 am – 10.30 am	Prime Minister (CoC Chair): 45 mins
10.30 am – 1.00 pm	Ana Mataciwa (SoE): 2 hours 30 mins
1.00 pm – 2.30 pm	Lunch.
2.30 pm – 3.30 pm	Reginald Jokhan (EC Commissioner): 1 hour
3.30 pm – 4.00 pm	Atu Emberson Bain (EC Commissioner): 30 mins
4.00 pm – 5.00 pm	Sefanaia Tudonu (ECF Secretary): 1 hour

Hearing: Tuesday 7 January 2025

9.30 am – 10.00 am	Siromi Turaga (CoC Member): 30 mins
10.00 am – 10.45 am	Inia Seruiratu (CoC Member): 45 mins
10.45 am – 11.00 am	Justice Ashton-Lewis addresses witnesses
11.00 am – 1.00 pm	Kulianiasi Saumi (FICAC Manager Investigations): 2 hours 30 mins
1.00 pm – 2.30 pm	Lunch.
2.30pm – 3.00pm	Kulianiasi Saumi (FICAC Manager Investigations): continued
3.00pm – 4.00pm	Alifereti Wakanivesi (FICAC Investigator): 1 hour
4.00 pm – 5.00 pm	Laite Bokini (Manager Legal, FICAC): 1 hour

Hearing: Wednesday 8 January 2025

9.30 am – 12.30 am	Francis Pulewai (Former Acting Deputy Commissioner, FICAC): 3 hours
12.30 am – 1.00 pm	Barbara Malimali (Commissioner, FICAC): 3 hours
1.00 pm – 2.30 pm	Lunch
2.30 pm – 5.00 pm	Barbara Malimali: continued

Hearing: Thursday 9 January 2025

9.30am – 10.30am	Wylie Clarke (Lawyer): 1 hour
10.30am – 11.00am	Amani Bale (Lawyer): 30 mins
11.00am – 11.30am	Laurel Vaurasi (Lawyer): 30 mins
11.30am – 12.00pm	Nemani Tuifagalele (Lawyer): 30 mins
12.00pm – 12.15pm	Justice Ashton-Lewis addresses witnesses
12.15pm – 1.00pm	Hon. Filimoni Jitoko (JSC): 1 hour 30 mins
1.00 pm – 2.30 pm	Lunch

2.30pm – 3.15pm	Hon. Filimoni Jitoko: continued
3.15pm – 4.15 pm	Ropate Green (JSC Selection Panel Member): 1 hour
4.15pm – 5.00pm	Josaia Waqaivolavola (JSC Selection Panel Member): 45 mins

Hearing: Friday 10 January 2025

9.30 am – 10.30 am	Right Hon. Chief Justice Salesi Temo (JSC Chair): 1 hour
10.30am– 11.45am	Graham Leung (Attorney General): 1 hour 15 mins
11.45am– 12.30pm	Wiliame Katonivere (Former President of Fiji): 45 mins
12.30pm– 1.00pm	Kiti Temo (Former Official Secretary, Office of the President): 30 mins
1.00 pm – 2.30 pm	Lunch.
2.30pm– 5.00pm	Tomasi Bainivalu (Chief Registrar): 2 hours 30 mins

Hearing: Monday 13 January 2025

9.30am– 9.45am	Justice Ashton-Lewis addresses witnesses
9.45am– 10.30am	Nancy Tikoisuva (Acting DPP): 45 mins
10.30am– 11.30am	Juki Fong Chew (Deputy COMPOL): 1 hour
11.30am– 12.00pm	John Rabuku (Deputy DPP): 30 mins
12.00pm– 1.00pm	Alex Forwood (Complainant): 2 hours
1.00 pm – 2.30 pm	Lunch.
2.30pm– 3.30pm	Alex Forwood (Complainant): continued
3.30pm– 3.45pm	Justice Ashton-Lewis addresses witnesses
3.45pm– 4.30pm	Kalivati Ravu (MP with a FICAC Case): 45 mins
4.30pm– 5.00pm	Semi Koroilavesau (MP with a FICAC Case): 30 mins

Hearing: Tuesday 14 January 2025

9.30am– 10.00am	Penioni Ravunawa (MP): 30 mins
10.00am– 10.40am	Manoa Kamikamica (MP with a FICAC Case): 40 mins
10.40am– 11.30am	Lynda Tabuya (MP with a FICAC Case): 50 mins
11.30am– 12.45am	Biman Prasad (MP with a FICAC Case): 45 mins
1.00pm– 2.30pm	Lunch.
2.30pm– 2.45pm	Justice Ashton-Lewis addresses witnesses
2.45pm– 3.30pm	George Langman (Former FICAC Deputy Commissioner): 45 mins



ANNEX C

Counsel Assisting MoC dated
27 January 2025

IN THE COMMISSION OF INQUIRY

IN THE MATTER OF

The Commission of Inquiry issued under the Commissions of Inquiry Act 1946 to enquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission Against Corruption

**MEMORANDUM OF COUNSEL ASSISTING
THE COMMISSION**

Dated 27 January 2024

Email: mason@phoenixlaw.expert

Counsel Assisting: Janet Mason

MAY IT PLEASE THE COMMISSIONER:

1. This Memorandum of Counsel (“MoC”):
 - a. is filed on behalf of Janet Mason, Counsel Assisting the Commission of Inquiry (“CoI”) into the appointment process of Ms. Barbara Malimali as Commissioner of the Fiji Independent Commission Against Corruption (“FICAC”); and
 - b. responds to submissions made by certain witness parties questioning whether the scope of the Inquiry is venturing beyond the Col’s Terms of Reference (“ToR”).
2. On the morning of 13 January 2025 an issue was raised verbally by Mr. Singh, Counsel for Mr. Wylie Clarke and Ms. Vaurasi, and supported by Ms. Waqanika, Counsel for Ms Malimali, that the actions of Ms. Malimali after her appointment as FICAC Commissioner, which took effect on 5 September 2024 are outside the scope of the ToR.
3. A copy of the ToR provided to the Commission is attached as **Annex A**. The substantive parts of the ToR were included in the Opening Statement of His Lordship (“the Opening Statement”), a copy of which is attached as **Annex B**. A copy of the Opening Statement was enclosed in the correspondence to each witness, which also attached the summons requiring them to attend the hearing, and which was sent out prior to the beginning of the hearing on 6 January 2025.
4. In addition, at the outset of this Inquiry, when each witness was initially informed of the CoI, a Statement of Issues (“SoI”), a copy of which is attached as **Annex C**, was provided to each witness. The purpose of the SoI was to provide a framework setting out the substantive issues to be enquired into. The Opening Statement and the SoI are both consistent with the ToR.

5. The CoI is guided by the Commissions of Inquiry Act 1946 (“CoI Act”). Under s 5, the Commission’s task is expressed as making a “*full, faithful and impartial*” inquiry in accordance with the terms of the Commission and to report the result of the inquiry to the President accordingly”. Section 8 of the CoI Act stipulates that the Commissioner may make such rules for the conduct and management of the proceedings as he may think fit. Finally, under s 9(b) the Commissioner has the power to admit any evidence, whether written or oral and whether or not such evidence would be admissible in civil or criminal proceedings.
6. It is submitted that it was well within the discretion accorded to the Commissioner under s 8 to regulate the proceedings as he sees fit, to issue the SoI and the Opening Statement. Both the ToR and SoI refer to inappropriate and unlawful influences in relation to Ms. Malimali’s appointment. As I had submitted in court on 13 January when this matter was raised, in order to fully explore whether there were inappropriate and unlawful influences in Ms. Malimali’s appointment process, it is necessary to examine her conduct post appointment. That conduct will give the CoI some insight into whether the allegations of influence, whether political or otherwise, are borne out.
7. Consequently, it is my considered submission that the conduct of Ms. Malimali, and other witnesses, subsequent to her appointment falls squarely within the scope of the ToR.
8. On a related matter, the Honourable Attorney-General Mr. Graham Leung provided a statement which he read out at the end of his testimony stating, inter alia, that the scope and ToR of the CoI is specific and narrow, and encourages the CoI to “ground itself on the ToR and nothing else – not to be distracted by the noise and the politics which are outside the scope of the ToR”. A copy of that statement is attached as **Annex D**’.
9. With the greatest of respect, I disagree. As set out above, s 5 of the CoI Act requires a full, faithful and impartial inquiry, not a specific and narrow

inquiry. The ToR themselves are not “specific and narrow”. They are wide, requiring an “in-depth account and analysis to determine whether or not there were outside influences”, and stating that the investigation be of “the full circumstances of appointment of Ms. Barbara Malimali... including, *but not limited to*..... whether or not the process and choice of the candidate was influenced by vested interests, such as cases and investigations currently underway at FICAC on prominent individuals, including Hon. Members of Parliament, Hon. Ministers, and Senior Public Servants...”;

10. The Col has always faithfully adhered to the ToR, and has undertaken its work with a firm eye on the constitutional and statutory legal framework from which spring the legal obligations and responsibilities of MPs, Ministers, and Senior Public Servants.
11. The Hon A-G has been present at not more than two days out of the four hearing weeks undertaken thus far, and unfortunately appears to have formed a view of the work of the Col, based on inaccurate, and highly questionable second hand information, which is far removed from the reality of what is actually taking place in the hearings.

Dated: 27 January 2025



Janet Mason

Counsel Assisting The Commission

ANNEX A

Terms of Reference

This Commission of Inquiry is confined to specific allegations pertaining to due process involving appointment of Ms. Barbara Malimali as FICAC Commissioner. It will determine whether or not there was fairness, transparency and good Governance in all aspects of the appointment process. There will also be in-depth examination and analysis to determine whether or not there were outside influences in the process of appointment. All the above will need to be accomplished without having a bearing on the independence of the Constitutional Offices and the processes. The specific Terms of Reference will be as follows,

- Investigate the full circumstances of appointment of Ms. Barbara Malimali as FICAC Commissioner, including but not limited to:
 - a) The manner and process by which she was appointed;
 - b) Whether her appointment was in accordance with section 5 of the *Fiji Independent Commission against Corruption Act 2007*;
 - c) Who were the individuals involved in the decision to appoint and the extent and appropriateness of their involvement;
 - d) whether, and to what extent, there was any inappropriate involvement by any individuals in the appointment;
 - e) Whether, and to what extent, any particular individuals used their public office to influence any decisions made at any stage of the selection and appointment process;
 - f) Whether or not the process and the choice of the candidate was influenced by vested interests such as cases and investigations currently underway at FICAC on prominent individuals, including Hon. Members of Parliament, Hon Ministers and Senior Public Servants; and
 - g) Whether or not the final processes leading to submission of the name of Barbara Malimali to His Excellency the President for endorsement was in any way influenced or expedited.

In undertaking the above tasks, the Commission is expected to be provided all relevant information in terms of papers and files pertaining the appointment. The secretariat support for the Commission of Enquiry will be independently provided by the Office of the Prime Minister.

ANNEX B

Opening Statement of His Lordship Justice David Ashton-Lewis
LLB/SC Commissioner

The Commission of Inquiry will consider and determine whether the appointment process of Miss Barbara Malimali as Commissioner of the Fiji Independent Commission against Corruption (FICAC) was conducted with integrity, fairness and transparency, according to law.

It will also review and consider whether there were improper or unlawful influences in the process leading to the appointment of Ms. Malimali.

In particular the Commission is to enquire into the following:

- a. the manner and process by which Ms. Malimali was appointed;
- b. whether her appointment was in accordance with section 5 of the Fiji Independent Commission against Corruption Act 2007;
- c. which individuals were involved in the decision to appoint the Commissioner, and the extent and appropriateness of their involvement;
- d. whether, and to what extent, there was any inappropriate involvement by any individuals in the appointment;
- e. whether, and to what extent, any individuals used their public office to improperly influence the selection and appointment process; and
- f. whether or not the process and the appointment of the Commissioner was unlawfully or improperly influenced by vested interests, including current FICAC cases or investigations on high profile individuals, including Members of Parliament, Ministers, and senior public servants.

ANNEX C

Statement of Issues

1. Was the appointment process of Ms Barbara Malimali to the position of Commissioner of the Fiji Independent Commission against Corruption (FICAC) conducted with integrity, fairness and transparency, according to the law?

In particular,

- a. What was the manner and process by which Ms Malimali was appointed?
 - b. Was Ms Malimali's appointment in accordance with section 5 of the FICAC Act 2007?
 - c. Who were the individuals involved in the decision to appoint Ms Malimali? and if so:
 - i. were the actions of those involved appropriate?
 - d. What was Ms Malimali being investigated for at the time, and how did that investigation arise?
 - e. Were the processes followed by the Supervisor of Elections Ms Mataciwa, in referring matters under section 18 of the Electoral Act 2014 to FICAC for investigation appropriate, and/or, lawful?
 - f. Was it appropriate or lawful to appoint Ms Malimali to the role of Commissioner whilst she was still under investigation for an abuse of office allegation?
2. Were there inappropriate or unlawful influences and bias in the processes leading to and surrounding the appointment of Ms Malimali?

In particular,

- a. Was there any inappropriate involvement by any individual(s) in the appointment of Ms Malimali?
 - b. Did any individual(s) use their public office to improperly influence the selection and appointment of Ms Malimali?

- c. Did the active investigations on high profile individuals by Ms Mataiciwa, including Members of Parliament, Ministers, and senior public servants in any way influence the process and appointment of Ms Malimali?

ANNEX D

Statement By The Attorney General Graham Leung at The Col

1. The scope and TOR of the Commission is specific and narrow essentially confined to the process that led to the appointment of Ms Malimali as Commissioner FICAC, ie under section 5 of the FICAC Act of 2007.
2. Appointment is undoubtedly controversial. There are those that support it. There are others that don't.
3. Miss Malimali has her admirers and she has her critics.
4. The TOR is not about whether she was the best person for the job or whether she has the right skill set – that is within the scope of the JSC.
5. This COI has heard or will hear from a number of individuals in senior and key positions in government institutions – some of whom get on, and some of whom cant stand each other.
6. It has heard or will hear from some witnesses who support the government and from others who think it is doing a terrible job.
7. This COI is not about resolving personality conflicts or deciding on the government's effectiveness and credibility.
8. While I suspect some witnesses have given interesting “background testimony” which may or may not provide some context, I would respectfully suggest and encourage the COI to ground itself on the TOR and nothing else – not to be distracted by the noise and the politics which are outside the scope of the TOR.





ANNEX D

Letter from Col to JSC re Saumi Dismissal



COMMISSION OF INQUIRY

In the Commission of Inquiry issued under the Commissions of Inquiry Act 1946 to enquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission against Corruption (FICAC)

30 January 2025

His Lordship Salesi Temo
Chief Justice
Government Buildings
SUVA

Dear Chief Justice,

1. Thank you for your letter dated 29 January 2025. A copy has been provided to His Lordship the Commissioner, and we have discussed its contents.
2. At the outset I wish to convey that we accept that any suspension of the FICAC Commissioner is solely a matter for the JSC, after consultation with the Attorney-General, to recommend such suspension to His Excellency the President. I have written to the JSC on behalf of the Commission of Inquiry (“CoI”), not to usurp the powers and functions of the JSC, but to request that the FICAC Commissioner be suspended because of the effect of her conduct on the work of the CoI.
3. We acknowledge the views of the JSC, as conveyed in your 29 Jan Letter. It appears that the view of the JSC is that, as powers for the suspension and removal of “judicial officers” are set out clearly and explicitly in s 112 of the Constitution, and there are no explicit provisions in the Constitution giving the JSC the power to suspend or dismiss the FICAC Commissioner, then the JSC has no power to do so. This is especially the case given the independence afforded to FICAC under s 115(b) of the Constitution.
4. If the view is taken that the lack of any explicit powers in the Constitution relating to the suspension, and/or, dismissal of the FICAC Commissioner, read together with the independence provided for under s 115(6) of the Constitution, prevents the JSC from suspending the FICAC Commissioner, then it follows that the JSC ***cannot ever suspend or dismiss*** the FICAC Commissioner, regardless of how unseemly, or unprofessional, her conduct may be.
5. With the greatest of respect, we do not accept such an interpretation of s 115(6) of the Constitution. For ease of reference, s 115 (6) states:

In the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law ***or as otherwise prescribed by written law*** [emphasis added].

6. The opinion of the CoI is that the words “or as otherwise prescribed by written law” allow the “written law” of s 44 of the Interpretation Act 1967, to come into play. As per

my letter to the JSC dated 26 January 2025, that section provides that a statutory power to appoint includes an equivalent power to suspend or dismiss the appointee.

7. To clarify, the position of the CoI is as follows:

- a. under the Constitution, the FICAC Commissioner is not a “judicial officer”, as defined in s 163(1) of the Constitution;
- b. unlike the provisions in s 112 of the Constitution, explicitly setting out the processes for suspension and removal of “judicial officers”, the Constitution is silent as to processes for the suspension and dismissal of the FICAC Commissioner;
- c. the appointment of the FICAC Commissioner is not set out in the Constitution. Instead, it was set out in ordinary legislation, namely, s 5(1) of the Fiji Independent Commission Against Corruption Act 2007 (“the FICAC Act”);
- d. the FICAC Act is silent as to the requisite processes needed to suspend or dismiss the FICAC Commissioner;
- e. section 115(6) of the Constitution stipulates that FICAC, in the performance of its functions or the exercise of its authority and powers, shall be independent and shall not be subject to the direction or control of any person or authority, *except* by a court of law or “*as otherwise prescribed by written law*”;
- f. section 44 of the Interpretation Act 1967 comes within the exception to the independence afforded to FICAC under s 115(6) of the Constitution, as it is a “written law”;
- g. section 44 of the Interpretation Act provides that a statutory power to appoint someone includes an equivalent power to suspend or dismiss that appointee;
- h. therefore the JSC does have the power to, after consulting the Attorney-General, recommend to His Excellency that the FICAC Commissioner be suspended or dismissed;
- i. it would be extraordinary indeed if a statutorily appointed office holder was not ever able to be suspended or dismissed, regardless of unprofessional or inappropriate behavior;
- j. just because the Constitution provides detailed and explicit provisions at s 112, for the suspension and removal of “judicial officers”, it does not automatically follow that if the Constitution is silent as to suspension and removal powers in relation to the FICAC Commissioner, then there is no power to suspend or remove;
- k. likewise, just because the FICAC Act is silent as to suspension and dismissal powers in relation to the FICAC Commissioner, then it does not automatically follow that there is no power to suspend or remove her; and
- l. consequently, as set out above, s 44 of the Interpretation Act provides the JSC with the power to, after consultation with the Attorney-General, recommend the suspension or dismissal of the FICAC Commissioner to the President.

8. The CoI is concerned to obtain a correct interpretation of the interface between s 115(6) of the Constitution, and the provisions in the Fiji Independent Commission Against Corruption Act 2007 (“the FICAC Act”), in the current circumstances, so that, together, the Office of His Excellency the President, the CoI, and the JSC are all undertaking our respective functions with an agreed interpretation of the relevant law.

9. To this end, we have written to His Excellency the President to ask that he request the Honourable Attorney-General to work jointly with me to produce a legal opinion as to what the correct lawful process is, if any, to suspend, and/or, dismiss the FICAC Commissioner (“the Joint Opinion”).
10. As set out above, the appointment provisions for the FICAC Commissioner are not set out in the Constitution. They are instead set out in the FICAC Act, which, having the status of ordinary legislation, can be amended by a simple majority of MPs in Parliament.
11. If the outcome of the Joint Opinion is that there is no lawful way to suspend, and/or, dismiss the FICAC Commissioner, then it may well be that a recommendation is then made to government that the FICAC Act be amended to stipulate processes to suspend, and/or, dismiss the FICAC Commissioner.
12. We will provide the JSC with a copy of the Joint Opinion as soon as it has been finalised. In the interim, we remain happy to meet with you, should you consider that would assist.

Humbly and respectfully,



Janet Mason *LLM, LLB, BSocSci*
Counsel Assisting the Commissioner



ANNEX E

Letter from Col to Professor Joseph
requesting advice dated 10 February 2025



COMMISSION OF INQUIRY

In the Commission of Inquiry issued under the Commissions of Inquiry Act 1946 to enquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission against Corruption (FICAC)

9 February 2025

Professor Philip Joseph KC
University of Canterbury
Private Bag 4800
Christchurch 8140
NEW ZEALAND

Dear Professor Philip Joseph KC,

1. I write to request an urgent legal opinion from you in relation to a matter that has arisen during the course of a Commission of Inquiry (“CoI”) hearing in Fiji. The CoI was established to inquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission against Corruption (“FICAC”).
2. On 29 October 2024, the President of Fiji, His Excellency Ratu Naiqama Tawakecolati Lalabalavu (“HE”), appointed Justice Ashton-Lewis, a Supreme Court Judge, as the sole Commissioner, and I, as Counsel Assisting the CoI.
3. I have attached copies of the following documents:
 - a. a letter from myself to the Chair of the Judicial Services Commission (“JSC”), Chief Justice Salesi Temo (“CJ”), dated 13 December 2024 (“13 Dec JSC Letter”);
 - b. a letter from myself to the Chair of the JSC, dated 26 January 2025 (“26 Jan JSC Letter”);
 - c. a letter from myself to HE, dated 30 January 2025 (“30 Jan HE Letter”), which also attaches a further letter from myself to the JSC, dated 30 January 2025 (“30 Jan JSC Letter”); and
 - d. the Letter of Appointment (“LoA”), containing the terms of appointment (“ToA”) for the current FICAC Commissioner.
4. As all of the attached letters, and in particular the 26 Jan JSC Letter, clearly set out the sequence of events, along with the core issues, we have not provided you with a background setting out the relevant circumstances.
5. Please note that the attached letters do not refer to the removal procedure of the FICAC Commissioner (“the Removal Process”), which was set out in the ToA.

6. Clause 7 of the ToA states:

Removal for Cause: Procedure for removal of Commissioner shall be same as what is prescribed for removal of Judges in Section 112 of the Constitution of the Republic of Fiji.

7. The CoI considered the Removal Process, and decided it was not relevant to the CoI's request, as the CoI merely wanted to *suspend* the FICAC Commissioner on an interim basis for the duration of the CoI, because of the effect which her continued presence would have on the ability of the FICAC witnesses to freely provide evidence and information to the CoI. This was seen as quite distinct from a request to remove the FICAC Commissioner for alleged misbehaviour.
8. We acknowledge that even though s 112 of the 2013 Constitution of the Republic of Fiji ("the Constitution") can be validly incorporated into the ToA, it is a process which relates to allegations of misbehaviour. The reason for the CoI's request for the FICAC Commissioner's suspension was not "misbehaviour". It was to retain the integrity of the CoI process. As such the CoI considered that the Removal Process was not applicable. You will see from the 26 Jan JSC Letter, the 30 Jan HE Letter, and the 30 Jan JSC Letter, that the CoI's view was that s 44 of the Interpretation Act 1967 would permit the JSC, after consulting the Attorney-General ("AG"), to recommend to HE that the FICAC Commissioner be suspended on an interim basis.
9. As an alternative mechanism for suspension, the CoI is of the view that s 82 of the Constitution may be invoked to allow the Prime Minister, Right Honourable Major General(rtd) Sitiveni Rabuka ("PM") to advise HE to suspend the FICAC Commissioner. The CoI was established by HE at the request of the PM.
10. Section 82 of the Constitution states:

In the exercise of his or her powers and *executive authority*, the President acts *only on the advice of* Cabinet or *a Minister* or of some other body or authority prescribed by this Constitution for a particular purpose as the body or authority on whose advice the President acts in that case [emphasis added].
11. Section 81(2) of the Constitution states that the President is the Head of State, and the *executive authority of the State is vested in the President* [emphasis added].
12. The CoI was established by HE at the request of the PM.
13. It appears entirely legitimate that it would be well within HE's executive authority, acting upon the advice of the PM, to suspend the FICAC Commissioner for the duration of the CoI. The CoI does not consider the role of the JSC in relation to either, any removal of the FICAC Commissioner for misbehaviour, or, any suspension as requested by the CoI, would, in any way, be usurped, should the HE suspend the FICAC Commissioner, on the basis of the advice of the PM.

- 14.** The CoI is seeking your opinion on the following issues:
- a.** in the current circumstances, does the JSC, after consulting the Attorney-General (“AG”), have the power, under s 44 of the Interpretation Act 1967, to recommend to HE, that the FICAC Commissioner be suspended, on an interim basis, for the duration of the CoI? and
 - b.** in the current circumstances, does HE have the power, under s 82 of the Constitution, acting on the advice of the PM, to suspend the FICAC Commissioner on an interim basis, for the duration of the CoI?
- 15.** I have also enclosed copies of the following:
- a.** the Constitution;
 - b.** the Commissions of Inquiry Act 1946;
 - c.** the FICAC Act 2007; and
 - d.** the Interpretation Act 1967.
- 16.** Fiji Government procurement rules require that the CoI obtain two quotes from suitable providers. Consequently, in the first instance, we would be grateful to receive an estimate of your fees, and your CV. The matter before us is of high public interest and is urgent. The CoI would be looking to receive your opinion by 5 pm on Wednesday 12 February 2025.
- 17.** I am available to have an AVL meeting with you at an agreed time on Monday 10 February 2025.
- 18.** Thank you, and I look forward to hearing from you.

Yours respectfully,



Janet Mason
Counsel Assisting the Commissioner

**IN THE COMMISSION OF INQUIRY
AT SUVA**

IN THE MATTER OF	the Commission of Inquiry issued under the Commissions of Inquiry Act 1946 to enquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission Against Corruption (FICAC)
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**INDEX OF ENCLOSURES TO
LETTER DATED 9 FEBRUARY 2025**

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ANNEXURES OF WITNESSES AFFIDAVIT			
1.	13/12/2024	J Mason letter to Chair of the JSC, Chief Justice Salesi Temo, dated 13 December 2024.	0001
2.	26/01/2025	J Mason letter to Chair of the JSC, Chief Justice Salesi Temo, dated 26 January 2025.	0003
3.	30/01/2025	J Mason letter to the President of Fiji, His Excellency Ratu Naiqama Tawakecolati Lalabalavu, dated 30 January 2025, including a further J Mason letter to the JSC, dated 30 January 2025 at page 0018.	0008
4.	04/09/2024	Letter of Appointment containing the terms of appointment for the current FICAC Commissioner, dated 4 September 2024.	0021



COMMISSION OF INQUIRY

In the Commission of Inquiry issued under the Commissions of Inquiry Act 1946 to enquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission against Corruption (FICAC)

13 December 2024

Justice Salesi Temo
Acting Chief Justice
Government Buildings
SUVA

Dear Justice Temo,

1. Thank you for meeting with us on Tuesday 10 December. Our discussion was helpful.
2. You will recall that I, requested that Ms. Malimali be temporarily suspended pending the outcome of the investigation. It was explained to Your Lordship that, despite being asked to do so some two weeks earlier, Ms. Malimali had not provided the Commission of Inquiry with the requested files.
3. It is also apparent to us that current FICAC staff whom the Commission requires to give evidence are being affected by Ms. Malimali's continuing role as the Commissioner of FICAC. Fundamentally, it is a long-held convention that senior public servants, and/or, Ministers who are under investigation should step down from their positions for the duration of any investigation into alleged misconduct, and/or, criminal behaviour, to allow the investigation to be undertaken with procedural propriety.
4. You will be aware that the Honourable Pio Tikoduadua has stepped down from his roles in relation to the Police and Immigration pending the outcome of the investigation into the illegal issuance of certain passports. In addition, Mr. Pryde was suspended as DPP, pending the outcome of the inquiry into his alleged misconduct.
5. I therefore, once again, ask you, as the Chair of the JSC, to recommend to the President that Ms. Malimali is immediately suspended on an interim basis until the Commission of Inquiry has been completed, and the President, and/or, the Prime Minister have decided on the actions which should follow.

6. Thank you and we look forward to your co-operation.

Sincerely,

A handwritten signature in blue ink, appearing to be 'JM' followed by a flourish.

Janet Mason
Counsel Assisting



COMMISSION OF INQUIRY

In the Commission of Inquiry issued under the Commissions of Inquiry Act 1946 to enquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission against Corruption (FICAC)

26 January, 2025

His Lordship Salesi Temo
Chief Justice
Government Buildings
SUVA

Dear Chief Justice,

1. You may recall that I wrote to you on 13 December 2024, requesting that Ms. Malimali be temporarily suspended while the Commission of Inquiry (“Col”) was undertaking its work, due to the risk that Ms. Malimali could interfere with witnesses employed by the Fiji Independent Commission Against Corruption (“FICAC”).
2. That request was not acceded to.
3. Regretfully, we have now been advised that on Friday 24 January 2025, Ms. Malimali summarily dismissed one of the key FICAC witnesses to the Col, the Manager of Investigations, Mr Kuliniasi Saumi. A copy of Ms Malimali’s dismissal letter is enclosed. Two weeks ago Mr. Saumi was on the witness stand for four days providing the Col with lengthy and detailed evidence, which was extremely helpful to our work.
4. You will recall that Ms. Malimali had been arrested by Mr. Saumi on 5 September 2024. The affidavit which Mr. Saumi provided the Col attached a transcript (“the Transcript”) of an audio recording (“the Recording”) which Mr. Saumi had taken during a meeting on 5 September 2024 (“the Arrest Meeting”), attended by the Chief Registrar, Mr. Bainivalu, Mr. Wylie Clark, Ms. Laurel Vuarasi, Mr. Amani Bale, and Mr. Nemani Tuifagalele, and at which those attendees had secured the release of Ms. Malimali from arrest.
5. Mr. Tuifagalele had learnt of the Recording when he saw the affidavit which Mr. Saumi had submitted to the Col. Upon learning of the Recording, Mr Tuifagalele complained to Ms. Malimali about Mr. Saumi recording the dialogue which occurred at the Arrest Meeting (“the Complaint”).

6. Mr Saumi has advised me that the Complaint was that Mr Tuifagalele had consented, neither to the Recording, nor to the provision of the Transcript to the CoI. Firstly, it is inappropriate of Ms Malimali to appoint herself the decision-maker of the Complaint when she obviously has an interest in Mr Saumi's dismissal. Secondly, as a key part of the Complaint was the provision of the Transcript to the CoI, Ms Malimali's dismissal of Mr Saumi amounts to an interference with a CoI witness.
7. The issue of the admissibility of the Transcript was considered early on in the CoI proceeding. His Lordship, relying upon the very wide powers of the CoI to admit evidence not normally admissible in a court of law under s 9(b) of the Commissions of Inquiry Act 1946, made a decision to admit it. Relevant case law was considered but found not to apply to the circumstances in which Mr. Saumi had made the Recording.
8. In relation to Mr. Saumi's dismissal, we refer Your Lordship to sections 190(e) and 194(1)(j) and (k) of the Crimes Act 2009, as offences which may have been committed by Ms. Malimali in her dismissal of Mr. Saumi.
9. These Crimes Act sections state as follows:
 - a. section 190(e) states that "a person commits a summary offence if he or she... in any way obstructs, prevents, perverts or defeats, or attempts to obstruct, prevent, pervert or defeat, the course of justice"; and
 - b. sections 194(1)(j) and (k) state "a person commits a summary offence against this section if he or she... (j) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with such evidence; or (k) dismisses an employee because he has given evidence on behalf of a certain party to a judicial proceeding.
10. Please note that Ms Malimali's conduct in dismissing Mr Saumi has today been reported to the CID, and we have been advised that that investigation has been prioritised.
11. As you are aware, Ms. Malimali was appointed under section 5 of the Fiji Independent Commission Against Corruption Act 2007 ("the FICAC Act") by His Excellency the President on the recommendation of the Judicial Services Commission ("JSC"), following consultation by the JSC with the Attorney-General.
12. Section 112 of the Constitution of the Republic of Fiji 2013 ("the Constitution"), which refers to the removal of "judicial officers" for cause, and requires the appointment of a Tribunal, does not apply to the Commissioner of FICAC as she is not a "judicial officer". The term "judicial officer" is defined in s163(1) of the Constitution as follows:

“Judicial Officer” includes a Judge of the High Court (including the Chief Justice), a Justice of Appeal (including the President of the Court of Appeal), a Judge of the Supreme Court, Magistrate, Masters of the High Court, the Chief Registrar and other judicial officers appointed by the Judicial Services Commission.

13. Consequently, there is no explicit constitutional or statutory provision relating to the FICAC Commissioner’s removal or suspension. You may be aware that, generally, as is the case in New Zealand, the power to appoint includes the power to suspend or dismiss. In Fiji, this is contained in section 44 of the Interpretation Act 1967 (“the Interpretation Act”), which states:

Where by or under any written law, a power or duty is conferred or imposed upon any person or authority to make any appointment or to constitute or establish any board, commission, committee or similar body, then, unless a contrary intention appears, the person or authority having such power or duty shall also have the power to remove, suspend, dismiss or revoke the appointment, of, and to reappoint or reinstate, any person appointed in the exercise of the power or duty, or to revoke the appointment, constitution or establishment of, or dissolve, any board, commission, committee or similar body appointed, constituted or established, in exercise of such power or duty, and to reappoint, reconstitute or re-establish the same, provided that where the power or duty of such person or authority so to act is exercisable only upon the recommendation, or is subject to the approval or consent, of some other person or authority, then such powers shall, unless a contrary intention appears, be exercisable only upon such recommendation or subject to such approval or consent.

14. In the current circumstances, it is clear that Ms. Malimali’s continued occupation of the position of FICAC Commissioner, is allowing her to interfere with the Col’s work.
15. The CoI has already heard evidence from three FICAC officials, Mr. Saumi, the Manager Legal, Ms. Laite Bokini-Ratu, and, an Investigator, Mr. Alifereti Wakanivesi. We are intending to recall two of the FICAC witnesses, namely, Ms Bokini-Ratu and Mr Saumi. If Ms. Malimali is not suspended, the message to Ms. Bokini-Ratu is that if Ms Bokini-Ratu is helpful to the Col, she too could meet the same fate as Mr. Saumi. In addition, as Mr Saumi has now been terminated, he will not have access to crucial FICAC documents. This is likely to result in these FICAC witnesses not being forthcoming with relevant evidence, an outcome which will undermine the Col’s work.
16. The Commissioner, His Lordship Justice David Ashton-Lewis, has adjourned tomorrow’s session of the CoI hearing until the JSC has considered this request for Ms. Malimali to be suspended. It is untenable that the Col continue in circumstances whereby Col witnesses are being interfered with, because such conduct is undermining the work of the Col.

17. If the JSC was of a mind to suspend Ms. Malimali, then in accordance with section 44 of the Interpretation Act, the process of suspending Ms. Malimali would involve the JSC consulting the Attorney-General, and then recommending such suspension to the President. Furthermore, as there is no current Deputy Commissioner, someone will need to be appointed Acting Deputy Commissioner on an interim basis, until the CoI has completed its Report.
18. When the position of FICAC Commissioner was advertised last year, I noticed that a Ms Kolora Naliva applied for the position. I understand that she is qualified for the role, and therefore could be someone who would be able to hold the fort until the CoI's Report has been submitted. Other options include Ms Bokini-Ratu, the current Manager Legal at FICAC, or Mr George Langman, who was one of the first Deputy Commissioners of FICAC. Of course, it goes without saying that these are not matters for the CoI to decide, but for the JSC to decide. I have merely offered some options which you may like to consider.
19. Please note that, in the interests of transparency, this correspondence will be forwarded to His Excellency the President, and to the Honourable Prime Minister.
20. I would be more than happy to discuss any matters arising from this letter, or to provide any further explanations.
21. We look forward to your expeditious co-operation.

Sincerely



Janet Mason
Counsel Assisting

CONFIDENTIAL


24 January 2025


Mr Kuliniasi Saumi
Lot 69, Secala Road
Nasole
Nasinu

Dear Mr Saumi

SUMMARY DISMISSAL

1. I refer to my email of 23rd January 2025 in which I requested your response to a complaint made against you.
2. I have now considered your response which you sent by email to me. I do not accept your statement that the presence of the complainant (Mr. Nemani Tuifagalele) at the Commission "seemed" unlawful. Indeed, you have provided no basis for your belief as to why the complainant's presence was unlawful. I also disagree with you that it is a "usual practice" at the Commission to conduct "normal covert operation". It is apparent from your response that you recorded the conversation on your own volition without any prior approval. Such conduct on your part to record conversations of visitors to the Commission without their knowledge or consent is not only unlawful, but it also exposes the Commission to potential claim for compensation for breach of fundamental human rights. Such conduct poses a serious risk of bringing the Commission into disrepute and undermining the authority of the Commission.
3. Having considered the complaint and your response to the complaint, I find that you have acted in clear breach of the FICAC Code of Conduct on integrity, non-disclosure and confidentiality. Such behaviour on your part also amounts to gross misconduct under the CSO, General Instructions 8.7.2a and 8.7.3b.
4. I find that summary dismissal is warranted effective immediately. Therefore, in accordance with Paragraph 8.7.1 of the CSO, General Instructions, you are hereby summarily dismissed on the grounds of misconduct and your employment with FICAC is hereby terminated with immediate effect.
5. Any dues owed to you shall be paid subject to the mandatory FNPf and tax deduction.
6. All pending and outstanding work in your capacity as Manager Investigations, you are to make a detailed list and handover files to PSO Mr. Matanisiga before vacating FICAC office today.


Barbara Malimali (Ms)
Commissioner



cc: Finance Copy
Human Resources Copy

All correspondence must be addressed to the Commissioner and sent to the FICAC Headquarters

Website: www.ficac.org.fj

Email: info@ficac.org.fj



COMMISSION OF INQUIRY

In the Commission of Inquiry issued under the Commissions of Inquiry Act 1946 to enquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission against Corruption (FICAC)

30 January 2025

His Excellency Ratu Naiqama Tawakecolati Lalabalavu
 President of the Republic of Fiji
 State House
 P. O. Box 2513
 Government Buildings
Suva

Dear His Excellency Ratu Naiqama Lalabalavu,

1. You will recall that I had sent you a copy of a letter I had written to the Chair of the Judicial Services Commission (“the JSC”), dated 26 January 2025 (“the CoI Letter”). For ease of reference, a copy is enclosed. Enclosed please find the response of the JSC, dated 29 January 2025 (“the JSC Response”) to the CoI Letter.
2. I have drafted a further letter to the JSC outlining the concerns of the CoI in relation to the JSC’s view that they do not have the power to suspend the FICAC Commissioner. A copy is enclosed.
3. You will see that the view of the CoI is as follows:
 - a. under the Constitution, the FICAC Commissioner is not a “judicial officer”, as defined in s 163(1) of the Constitution;
 - b. unlike the provisions in s 112 of the Constitution, explicitly setting out the processes for suspension and removal of “judicial officers”, the Constitution is silent as to processes for the suspension and dismissal of the FICAC Commissioner;
 - c. the appointment of the FICAC Commissioner is not set out in the Constitution. Instead, it was set out in ordinary legislation, namely, s 5(1) of the Fiji Independent Commission Against Corruption Act 2007 (“the FICAC Act”);
 - d. the FICAC Act is silent as to the requisite processes needed to suspend or dismiss the FICAC Commissioner;
 - e. section 115(6) of the Constitution stipulates that FICAC, in the performance of its functions or the exercise of its authority and powers, shall be independent and shall not be subject to the direction or control of any person or authority, *except* by a court of law or “*as otherwise prescribed by written law*”;
 - f. section 44 of the Interpretation Act 1967 comes within the exception to the independence afforded to FICAC under s 115(6) of the Constitution, as it is a “written law”;
 - g. section 44 of the Interpretation Act provides that a statutory power to appoint someone includes an equivalent power to suspend or dismiss that appointee;

- h. therefore the JSC does have the power to, after consulting the Attorney-General, recommend to His Excellency that the FICAC Commissioner be suspended or dismissed;
 - i. it would be extraordinary indeed if a statutorily appointed office holder was not ever able to be suspended or dismissed, regardless of unprofessional or inappropriate behavior;
 - j. just because the Constitution provides detailed and explicit provisions at s 112, for the suspension and removal of “judicial officers”, it does not automatically follow that if the Constitution is silent as to suspension and removal powers in relation to the FICAC Commissioner, then there is no power to suspend or remove;
 - k. likewise, just because the FICAC Act is silent as to suspension and dismissal powers in relation to the FICAC Commissioner, then it does not automatically follow that there is no power to suspend or remove her; and
 - l. consequently, as set out above, s 44 of the Interpretation Act provides the JSC with the power to, after consultation with the Attorney-General, recommend the suspension or dismissal of the FICAC Commissioner to the President.
4. I consider it is of the utmost importance that this issue of whether there is a power to suspend, and/or, dismiss the FICAC Commissioner is resolved immediately, because one of the recommendations that could come out of the CoI’s Report is that the FICAC Commissioner be dismissed, or her appointment be voided.¹ His Excellency cannot have a situation whereby the recommendations of the CoI, which His Excellency may or may not wish to give effect to, are thwarted because of a view that there is no legal power to suspend, and/or, dismiss the FICAC Commissioner.
 5. As set out above, the appointment provisions for the FICAC Commissioner are not set out in the Constitution. They are instead set out in the FICAC Act, which, having the status of ordinary legislation, can be amended by a simple majority of MPs in Parliament.
 6. If the JSC maintains that the law is unclear, then a power to suspend or dismiss the FICAC Commissioner can simply be the subject of a legislative amendment.
 7. However, prior to getting to that stage, it would be helpful for His Excellency’s Office, the CoI, and the JSC to try to reach some agreed position on whether the FICAC Commissioner can be lawfully suspended, and/or, dismissed.
 8. It is therefore recommended that His Excellency approve the following actions:
 - a. I meet with the Attorney-General urgently, and that we jointly draft a legal opinion on the issue of whether the FICAC Commissioner can be lawfully suspended, and/or, dismissed (“the Joint Opinion”); and
 - b. the Joint Opinion be provided to the JSC and to His Excellency, prior to determining what the next steps should be.

¹ The CoI assures His Excellency that the CoI is open minded, and no decisions have been made about Ms. Malimali’s appointment because the evidence has not all been heard. Conclusions and recommendations will not be made by His Lordship until the Report is finalised.

9. I am available to meet and to brief you, should you require. Otherwise, I look forward to hearing from you.

Humbly and respectfully,

A handwritten signature in dark ink, appearing to be 'JM.' with a stylized flourish.

Janet Mason *LLM, LLB, BSocSci*
Counsel Assisting the Commissioner

Cc: Right Honourable Prime Minister, Major-General (Rtd) Sitiveni Rabuka.



COMMISSION OF INQUIRY

In the Commission of Inquiry issued under the Commissions of Inquiry Act 1946 to enquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission against Corruption (FICAC)

26 January, 2025

His Lordship Salesi Temo
Chief Justice
Government Buildings
SUVA

Dear Chief Justice,

1. You may recall that I wrote to you on 13 December 2024, requesting that Ms. Malimali be temporarily suspended while the Commission of Inquiry (“Col”) was undertaking its work, due to the risk that Ms. Malimali could interfere with witnesses employed by the Fiji Independent Commission Against Corruption (“FICAC”).
2. That request was not acceded to.
3. Regretfully, we have now been advised that on Friday 24 January 2025, Ms. Malimali summarily dismissed one of the key FICAC witnesses to the Col, the Manager of Investigations, Mr Kuliniasi Saumi. A copy of Ms Malimali’s dismissal letter is enclosed. Two weeks ago Mr. Saumi was on the witness stand for four days providing the Col with lengthy and detailed evidence, which was extremely helpful to our work.
4. You will recall that Ms. Malimali had been arrested by Mr. Saumi on 5 September 2024. The affidavit which Mr. Saumi provided the Col attached a transcript (“the Transcript”) of an audio recording (“the Recording”) which Mr. Saumi had taken during a meeting on 5 September 2024 (“the Arrest Meeting”), attended by the Chief Registrar, Mr. Bainivalu, Mr. Wylie Clark, Ms. Laurel Vuarasi, Mr. Amani Bale, and Mr. Nemani Tuifagalele, and at which those attendees had secured the release of Ms. Malimali from arrest.
5. Mr. Tuifagalele had learnt of the Recording when he saw the affidavit which Mr. Saumi had submitted to the Col. Upon learning of the Recording, Mr Tuifagalele complained to Ms. Malimali about Mr. Saumi recording the dialogue which occurred at the Arrest Meeting (“the Complaint”).

6. Mr Saumi has advised me that the Complaint was that Mr Tuifagalele had consented, neither to the Recording, nor to the provision of the Transcript to the CoI. Firstly, it is inappropriate of Ms Malimali to appoint herself the decision-maker of the Complaint when she obviously has an interest in Mr Saumi's dismissal. Secondly, as a key part of the Complaint was the provision of the Transcript to the CoI, Ms Malimali's dismissal of Mr Saumi amounts to an interference with a CoI witness.
7. The issue of the admissibility of the Transcript was considered early on in the CoI proceeding. His Lordship, relying upon the very wide powers of the CoI to admit evidence not normally admissible in a court of law under s 9(b) of the Commissions of Inquiry Act 1946, made a decision to admit it. Relevant case law was considered but found not to apply to the circumstances in which Mr. Saumi had made the Recording.
8. In relation to Mr. Saumi's dismissal, we refer Your Lordship to sections 190(e) and 194(1)(j) and (k) of the Crimes Act 2009, as offences which may have been committed by Ms. Malimali in her dismissal of Mr. Saumi.
9. These Crimes Act sections state as follows:
 - a. section 190(e) states that "a person commits a summary offence if he or she... in any way obstructs, prevents, perverts or defeats, or attempts to obstruct, prevent, pervert or defeat, the course of justice"; and
 - b. sections 194(1)(j) and (k) state "a person commits a summary offence against this section if he or she... (j) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with such evidence; or (k) dismisses an employee because he has given evidence on behalf of a certain party to a judicial proceeding.
10. Please note that Ms Malimali's conduct in dismissing Mr Saumi has today been reported to the CID, and we have been advised that that investigation has been prioritised.
11. As you are aware, Ms. Malimali was appointed under section 5 of the Fiji Independent Commission Against Corruption Act 2007 ("the FICAC Act") by His Excellency the President on the recommendation of the Judicial Services Commission ("JSC"), following consultation by the JSC with the Attorney-General.
12. Section 112 of the Constitution of the Republic of Fiji 2013 ("the Constitution"), which refers to the removal of "judicial officers" for cause, and requires the appointment of a Tribunal, does not apply to the Commissioner of FICAC as she is not a "judicial officer". The term "judicial officer" is defined in s163(1) of the Constitution as follows:

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13. Consequently, there is no explicit constitutional or statutory provision relating to the FICAC Commissioner’s removal or suspension. You may be aware that, generally, as is the case in New Zealand, the power to appoint includes the power to suspend or dismiss. In Fiji, this is contained in section 44 of the Interpretation Act 1967 (“the Interpretation Act”), which states:

Where by or under any written law, a power or duty is conferred or imposed upon any person or authority to make any appointment or to constitute or establish any board, commission, committee or similar body, then, unless a contrary intention appears, the person or authority having such power or duty shall also have the power to remove, suspend, dismiss or revoke the appointment, of, and to reappoint or reinstate, any person appointed in the exercise of the power or duty, or to revoke the appointment, constitution or establishment of, or dissolve, any board, commission, committee or similar body appointed, constituted or established, in exercise of such power or duty, and to reappoint, reconstitute or re-establish the same, provided that where the power or duty of such person or authority so to act is exercisable only upon the recommendation, or is subject to the approval or consent, of some other person or authority, then such powers shall, unless a contrary intention appears, be exercisable only upon such recommendation or subject to such approval or consent.

14. In the current circumstances, it is clear that Ms. Malimali’s continued occupation of the position of FICAC Commissioner, is allowing her to interfere with the Col’s work.
15. The CoI has already heard evidence from three FICAC officials, Mr. Saumi, the Manager Legal, Ms. Laite Bokini-Ratu, and, an Investigator, Mr. Alifereti Wakanivesi. We are intending to recall two of the FICAC witnesses, namely, Ms Bokini-Ratu and Mr Saumi. If Ms. Malimali is not suspended, the message to Ms. Bokini-Ratu is that if Ms Bokini-Ratu is helpful to the Col, she too could meet the same fate as Mr. Saumi. In addition, as Mr Saumi has now been terminated, he will not have access to crucial FICAC documents. This is likely to result in these FICAC witnesses not being forthcoming with relevant evidence, an outcome which will undermine the Col’s work.
16. The Commissioner, His Lordship Justice David Ashton-Lewis, has adjourned tomorrow’s session of the CoI hearing until the JSC has considered this request for Ms. Malimali to be suspended. It is untenable that the Col continue in circumstances whereby Col witnesses are being interfered with, because such conduct is undermining the work of the Col.

17. If the JSC was of a mind to suspend Ms. Malimali, then in accordance with section 44 of the Interpretation Act, the process of suspending Ms. Malimali would involve the JSC consulting the Attorney-General, and then recommending such suspension to the President. Furthermore, as there is no current Deputy Commissioner, someone will need to be appointed Acting Deputy Commissioner on an interim basis, until the CoI has completed its Report.
18. When the position of FICAC Commissioner was advertised last year, I noticed that a Ms Kolora Naliva applied for the position. I understand that she is qualified for the role, and therefore could be someone who would be able to hold the fort until the CoI's Report has been submitted. Other options include Ms Bokini-Ratu, the current Manager Legal at FICAC, or Mr George Langman, who was one of the first Deputy Commissioners of FICAC. Of course, it goes without saying that these are not matters for the CoI to decide, but for the JSC to decide. I have merely offered some options which you may like to consider.
19. Please note that, in the interests of transparency, this correspondence will be forwarded to His Excellency the President, and to the Honourable Prime Minister.
20. I would be more than happy to discuss any matters arising from this letter, or to provide any further explanations.
21. We look forward to your expeditious co-operation.

Sincerely



Janet Mason
Counsel Assisting

CONFIDENTIAL

24 January 2025

Mr Kuliniasi Saumi
Lot 69, Secala Road
Nasole
Nasinu

Dear Mr Saumi

SUMMARY DISMISSAL

1. I refer to my email of 23rd January 2025 in which I requested your response to a complaint made against you.
2. I have now considered your response which you sent by email to me. I do not accept your statement that the presence of the complainant (Mr. Nemani Tuifagalele) at the Commission "seemed" unlawful. Indeed, you have provided no basis for your belief as to why the complainant's presence was unlawful. I also disagree with you that it is a "usual practice" at the Commission to conduct "normal covert operation". It is apparent from your response that you recorded the conversation on your own volition without any prior approval. Such conduct on your part to record conversations of visitors to the Commission without their knowledge or consent is not only unlawful, but it also exposes the Commission to potential claim for compensation for breach of fundamental human rights. Such conduct poses a serious risk of bringing the Commission into disrepute and undermining the authority of the Commission.
3. Having considered the complaint and your response to the complaint, I find that you have acted in clear breach of the FICAC Code of Conduct on integrity, non-disclosure and confidentiality. Such behaviour on your part also amounts to gross misconduct under the CSO, General Instructions 8.7.2a and 8.7.3b.
4. I find that summary dismissal is warranted effective immediately. Therefore, in accordance with Paragraph 8.7.1 of the CSO, General Instructions, you are hereby summarily dismissed on the grounds of misconduct and your employment with FICAC is hereby terminated with immediate effect.
5. Any dues owed to you shall be paid subject to the mandatory FNPf and tax deduction.
6. All pending and outstanding work in your capacity as Manager Investigations, you are to make a detailed list and handover files to PSO Mr. Matanisiga before vacating FICAC office today.


Barbara Malimali (Ms)
Commissioner



cc: Finance Copy
Human Resources Copy

All correspondence must be addressed to the Commissioner and sent to the FICAC Headquarters



JUDICIAL SERVICES COMMISSION

Tel: (879) 3211698
Fax: (879) 3300674

P.O. Box 2215,
Government Buildings,
Suva,
Fiji Islands

29 January, 2025

Commission of Inquiry
Level 4, Bali Towers
Toorak Road
SUVA

Attention: Janet Mason, Counsel Assisting

Dear Ms. Mason,

Re: Ms. Malimali, Commissioner of FICAC

1. With reference to your 26 January 2025 letter regarding matters concerning the internal affairs of the Fiji Independent Commission Against Corruption (FICAC). The matters mentioned in your letter were noted.
2. Copies of your letter had been sent to the other four members of the Judicial Services Commission (JSC) for their information and comments.
3. The general view was that the Judicial Services Commission (JSC) does not have the power to suspend the Commissioner of the Fiji Independent Commission Against Corruption (FICAC).
4. While we understand the work of the Commission of Inquiry, we note that by virtue of section 115 (6) of the 2013 Constitution, the *"Commission*

All correspondence to the Secretary
Judicial Services Commission

(FICAC) shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law", in exercising its powers and in performing its function and duties.

5. We understand that your allegation of Ms. Malimali's alleged interference with a Commission of Inquiry witness, had been referred to the police. The JSC's general view was that the police are to be left to conduct their investigation independently, without the JSC unnecessarily complicating things by stepping in to exercise its purported powers of suspension.
6. The JSC's general view is to let the law take its normal course. We are watching what is happening at the Fiji Independent Commission Against Corruption (FICAC) closely, to ensure that things are done within the four corners of the law, and that it remains strong in the public interest.

Yours respectfully,



Salesi Temo

Chief Justice and Chairperson
of the Judicial Services Commission

- cc:**
1. Chief Registrar and Secretary of the Judicial Services Commission;
 2. Assistant Secretary of the Judicial Services Commission.



COMMISSION OF INQUIRY

In the Commission of Inquiry issued under the Commissions of Inquiry Act 1946 to enquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission against Corruption (FICAC)

30 January 2025

His Lordship Salesi Temo
Chief Justice
Government Buildings
SUVA

Dear Chief Justice,

1. Thank you for your letter dated 29 January 2025. A copy has been provided to His Lordship the Commissioner, and we have discussed its contents.
2. At the outset I wish to convey that we accept that any suspension of the FICAC Commissioner is solely a matter for the JSC, after consultation with the Attorney-General, to recommend such suspension to His Excellency the President. I have written to the JSC on behalf of the Commission of Inquiry (“CoI”), not to usurp the powers and functions of the JSC, but to request that the FICAC Commissioner be suspended because of the effect of her conduct on the work of the CoI.
3. We acknowledge the views of the JSC, as conveyed in your 29 Jan Letter. It appears that the view of the JSC is that, as powers for the suspension and removal of “judicial officers” are set out clearly and explicitly in s 112 of the Constitution, and there are no explicit provisions in the Constitution giving the JSC the power to suspend or dismiss the FICAC Commissioner, then the JSC has no power to do so. This is especially the case given the independence afforded to FICAC under s 115(b) of the Constitution.
4. If the view is taken that the lack of any explicit powers in the Constitution relating to the suspension, and/or, dismissal of the FICAC Commissioner, read together with the independence provided for under s 115(6) of the Constitution, prevents the JSC from suspending the FICAC Commissioner, then it follows that the JSC ***cannot ever suspend or dismiss*** the FICAC Commissioner, regardless of how unseemly, or unprofessional, her conduct may be.
5. With the greatest of respect, we do not accept such an interpretation of s 115(6) of the Constitution. For ease of reference, s 115 (6) states:

In the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law ***or as otherwise prescribed by written law*** [emphasis added].

6. The opinion of the CoI is that the words “or as otherwise prescribed by written law” allow the “written law” of s 44 of the Interpretation Act 1967, to come into play. As per

my letter to the JSC dated 26 January 2025, that section provides that a statutory power to appoint includes an equivalent power to suspend or dismiss the appointee.

7. To clarify, the position of the CoI is as follows:
 - a. under the Constitution, the FICAC Commissioner is not a “judicial officer”, as defined in s 163(1) of the Constitution;
 - b. unlike the provisions in s 112 of the Constitution, explicitly setting out the processes for suspension and removal of “judicial officers”, the Constitution is silent as to processes for the suspension and dismissal of the FICAC Commissioner;
 - c. the appointment of the FICAC Commissioner is not set out in the Constitution. Instead, it was set out in ordinary legislation, namely, s 5(1) of the Fiji Independent Commission Against Corruption Act 2007 (“the FICAC Act”);
 - d. the FICAC Act is silent as to the requisite processes needed to suspend or dismiss the FICAC Commissioner;
 - e. section 115(6) of the Constitution stipulates that FICAC, in the performance of its functions or the exercise of its authority and powers, shall be independent and shall not be subject to the direction or control of any person or authority, *except* by a court of law or “*as otherwise prescribed by written law*”;
 - f. section 44 of the Interpretation Act 1967 comes within the exception to the independence afforded to FICAC under s 115(6) of the Constitution, as it is a “written law”;
 - g. section 44 of the Interpretation Act provides that a statutory power to appoint someone includes an equivalent power to suspend or dismiss that appointee;
 - h. therefore the JSC does have the power to, after consulting the Attorney-General, recommend to His Excellency that the FICAC Commissioner be suspended or dismissed;
 - i. it would be extraordinary indeed if a statutorily appointed office holder was not ever able to be suspended or dismissed, regardless of unprofessional or inappropriate behavior;
 - j. just because the Constitution provides detailed and explicit provisions at s 112, for the suspension and removal of “judicial officers”, it does not automatically follow that if the Constitution is silent as to suspension and removal powers in relation to the FICAC Commissioner, then there is no power to suspend or remove; and
 - k. likewise, just because the FICAC Act is silent as to suspension and dismissal powers in relation to the FICAC Commissioner, then it does not automatically follow that there is no power to suspend or remove her.
8. The CoI is concerned to obtain a correct interpretation of the interface between s 115(6) of the Constitution, and the provisions in the Fiji Independent Commission Against Corruption Act 2007 (“the FICAC Act”), in the current circumstances, so that, together, the Office of His Excellency the President, the CoI, and the JSC are all undertaking our respective functions with an agreed interpretation of the relevant law.
9. To this end, we have written to His Excellency the President to ask that he request the Honourable Attorney-General to work jointly with me to produce a legal opinion as to

what the correct lawful process is, if any, to suspend, and/or, dismiss the FICAC Commissioner (“the Joint Opinion”).

10. As set out above, the appointment provisions for the FICAC Commissioner are not set out in the Constitution. They are instead set out in the FICAC Act, which, having the status of ordinary legislation, can be amended by a simple majority of MPs in Parliament.
11. If the outcome of the Joint Opinion is that there is no lawful way to suspend, and/or, dismiss the FICAC Commissioner, then it may well be that a recommendation is then made to government that the FICAC Act be amended to stipulate processes to suspend, and/or, dismiss the FICAC Commissioner.
12. We will provide the JSC with a copy of the Joint Opinion as soon as it has been finalised. In the interim, we remain happy to meet with you, should you consider that would assist.

Humbly and respectfully,



Janet Mason *LLM, LLB, BSocSci*
Counsel Assisting the Commissioner



4th September, 2024

Ref No: C1/A/33

Ms. Barbara Maimali
 c/- The Honourable Acting Chief Justice
 Supreme Court
 Government Buildings
Suva.

Re: **APPOINTMENT AS COMMISSIONER FIJI INDEPENDENT COMMISSION
 AGAINST CORRUPTION**

In exercise of powers granted to me by *Section 5 (1) and (3) of the Fiji Independent Commission Against Corruption Act 2007*, and *Chapter 5, Part B, Section 115 (12) of the Constitution*, and having received the recommendation of the Judicial Services Commission, after it had consulted the Attorney-General, I hereby appoint you as *Commissioner of the Fiji Independent Commission Against Corruption* for a term of 3 years with effect from 5 September 2024, on the terms and conditions attached to the letter.

I congratulate you on your appointment and wish you the strength and courage to perform your role effectively and with the utmost integrity.


 (Ratu) William Mavakali Katonivere
 CF, MSD
PRESIDENT OF THE REPUBLIC OF FIJI

- cc - *The Honourable Mr. Justice Salesi Temo, Acting Chief Justice and Chairperson of the Judicial Services Commission.*
- *The Honourable Mr. Graham Leung, Attorney-General,*

TERMS AND CONDITIONS OF THE COMMISSIONER FICAC

The following are the terms and conditions of Commissioner FICAC

1. Salary of \$224,000 per annum.
2. FNPF Contribution – rate prescribed by Fiji Law, payable by Employer;
3. Mobile phone [for personal and official use];
4. Official vehicle and driver for official and personal use;
5. Business Class Travel for international official travel;
6. 21 days annual leave per annum which must be compensated if not utilized; otherwise, other leave in accordance with the conditions of Judicial Officers;
7. Removal for Cause: Procedure for removal of Commissioner shall be same as what is prescribed for removal of Judges in Section 112 of the Constitution of the Republic of Fiji;
8. Conflict of Interest – During the term of employment, not to be engaged in any business or occupation part-time or otherwise, other than as a full-time employee of FICAC. Shall be responsible to ensure that none of her immediate family members are engaged in any activity, which would be in conflict with the responsibility or any of FICAC's policy;
9. Reporting, as per Section 115 (9) of the Constitution, by providing regular updates and advice to the Attorney-General and also pursuant to section 5 (3) of the Fiji Independent Commission Against Corruption Act 2007, shall provide regular updates, reports and advice to the Judicial Services Commission [JSC] on any matter relating to its functions and responsibilities, in consultation with the Attorney-General.



ANNEX F

Advice from Professor Joseph dated
14 February 2025

**Opinion prepared on instruction of
Commission of Inquiry into the appointment of the
Commissioner of the Fiji Independent Commission against Corruption**

Introduction

- 1 The Commission of Inquiry (Col) to inquire into matters relating to the appointment of the Commissioner of the Fiji Independent Commission against Corruption (FICAC) has instructed me to advise whether the Commissioner may be lawfully suspended from her duties pending the completion of the Col's inquiries.
- 2 The Col specifically seeks my opinion on the following issues:
 - (i) does the Judicial Services Commission (JSC), after consulting the Attorney-General, have the power under s 44 of the Interpretation Act 1967 to recommend to the President of Fiji, His Excellency Ratu Naiqama Tawakecolai Lalabalavu (HE), that the FICAC Commissioner be suspended for the duration of the Col?
 - (ii) does HE have the power under s 82 of the Constitution, acting on the advice of the Prime Minister, Rt Hon Major-General Sitiveni Rabuka (PM), to suspend the FICAC Commissioner on an interim basis, for the duration of the Col?
 - (iii) if HE is able to suspend the FICAC Commissioner on an interim basis acting under s 82 of the Constitution, is HE able to appoint some person as the Acting Deputy Commissioner in the interim without the recommendation of the JSC?
- 3 For purposes of organising my advice, I will call each of the above issues: Issue one, Issue two, and Issue three.

Executive summary

- 4 The JSC has the power under s 44 of the Interpretation Act 1967 to recommend that HE suspend the FICAC Commissioner from duties for the duration of the Col. The power vested in HE to appoint the Commissioner imports also the power to suspend the Commissioner. Section 44 provides that a power to appoint imports also a power to suspend or revoke.
- 5 The President, acting on the advice of the Prime Minister, has the power to suspend the FICAC Commissioner in exercise of "the executive authority of the State" (s 81(2) of the Constitution). The vesting of these powers in the President internalises the

appointing power formerly exercised under the royal prerogative. The power to appoint to office under s 81(2) imports also the power to suspend from office.

- 6 The analysis set out in [24]–[45] applies equally to the appointment of a Deputy Commissioner. The executive authority vested in the President under s 81(2) embraces the appointing power that was formerly exercised under the prerogative. The exercise of executive authority under s 81(2) is on the advice of the PM (s 82), not on the recommendation of the JSC.
- 7 The Col is a high-level body, established by HE on the advice of the PM. The Col should not be beholden to the JSC, a subordinate body under the Constitution, in order to discharge its inquiry functions in the public interest. As matter of constitutional propriety, the JSC should grant its recommendation under s 44 of the Interpretation Act 1967 to secure the suspension of the FICAC Commissioner. The Col must be free to perform its inquiry functions without hindrance or obstruction.

Issue one

- 8 This issue raises the question whether s 44 of the Interpretation Act 1967 provides the necessary authority for the JSC to recommend to HE the interim suspension of the FICAC Commissioner. I advise that s 44 provides the necessary authority.
- 9 The relevant part of s 44 reads:

44 Power to appoint to include power to suspend dismiss etc

Where by or under any written law, a power or duty is conferred or imposed on any person or authority to make any appointment ... then, unless a contrary intention appears, the person or authority having such power or duty shall also have the power to remove, suspend, dismiss or revoke the appointment, of, and to reappoint or reinstate, any person appointed in the exercise of the power or duty ... provided that where the power or duty of such person or authority so to act is exercisable on the recommendation, or is subject to the approval or consent, of some other person or authority, then such powers shall, unless a contrary intention appears, be exercisable only upon such recommendation or subject to such approval or consent.

- 10 Appointment of the FICAC Commissioner is made “under any written law” within the meaning of s 44. The appointment is not made under the Constitution but under the written law. Section 5(1) of the Fiji Independent Commission Against Corruption Act 2007 (FICACA) provides that the Commissioner shall be appointed by HE on the recommendation of the JSC, following that body’s consultation with the Attorney-General.

- 11 Section 44 is a standard machinery provision found in most Interpretation Acts. In New Zealand, for example, the Legislation Act 2019 replicates s 44 in more compendious form:

45 Power to appoint persons to an office includes related powers

The power to appoint a person to an office includes the power to –

- (a) remove or suspend a person from the office:
- (b) reappoint or reinstate a person to the office:
- (c) appoint (temporarily or permanently, and for all or limited purposes) another person in place of a person who –

...

- (v) has been removed or suspended from the office.

- 12 There is no obstacle to s 44 applying in the present matter. HE appointed the FICAC Commissioner, so HE may suspend the Commissioner. The one qualification is that HE must act on the recommendation of the JSC, following consultation with the Attorney-General. Following any suspension, HE can also reinstate the Commissioner, providing the JSC so recommends following consultations with the Attorney-General.
- 13 Section 44 is straightforward and unambiguous. Its terms do not support the view of the JSC, that the JSC lacks power to make a recommendation to suspend the FICAC Commissioner. I refer to the letter of the JSC to Counsel Assisting the Col, Ms Janet Mason, dated 29 January 2025. The JSC stated in [3]: “The general view was that the Judicial Services Commission does not have the power to suspend the Commissioner of the Fiji Independent Commission Against Corruption.”
- 14 The JSC is correct on one point: it does not have the power to suspend the FICAC Commissioner. HE is invested with that power (the power to appoint includes the power to suspend). The JSC intended to say that it lacks the power to make the *necessary recommendation* to HE. HE can exercise the power under s 44 to suspend only upon the recommendation of the JSC.
- 15 The JSC cited in support s 115(6) of the Constitution. With respect, this provision does not assist. It reads:
- “(6) In the performance of its functions or the exercise of its authorities and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as prescribed by written law.”
- 16 This provision has no relevance to the present matter. It is an operational provision. Its purpose is to protect the operational independence of the FICAC against the untoward interference of persons in the discharge of its law enforcement functions.

The subsection speaks to “the performance of its functions or the exercise of its authorities and powers”.

- 17 No *functions* or *authorities* or *powers* of the FICAC are in issue. The interim suspension of the Commissioner would not disable the FICAC from continuing to discharge its functions and powers. Under the FICACA, the Commissioner includes the Deputy Commissioner (s 2). A Deputy Commissioner would automatically stand in the shoes of the Commissioner and expedite the work of the FICAC (see further s 115(5) of the Constitution). Presently, there is no Deputy Commissioner but I am instructed that persons are available to fill that office, either on the recommendation of the JSC or, failing that, under the appointing power secured by s 81(2) of the Constitution (see below [24]–[45]).
- 18 There is a further problem with the JSC’s explanation. Under s 115(6), the FICAC shall not be subject to direction and control, “except by a court of law *or as otherwise prescribed by written law*” (emphasis added). Section 44 of the Interpretation Act 1967 is “written law”. If suspension of the FICAC Commissioner (relying on that provision) would be an interference in the FICAC’s functioning, then it is authorised by “the written law” (s 44) within the meaning of s 115(5) of the Constitution.
- 19 For reasons best known to it, the JSC is reluctant to be implicated in this matter. In its letter to Counsel Assisting, dated 29 January 2025, the JSC expressed its “general view ... to let the law take its normal cause [sic]”. It observed that “the police are to be left to conduct their investigation independently, without the JSC unnecessarily complicating things by stepping in”.
- 20 I am not asked to pass judgement on the JSC. However, I am instructed that the continuing presence of the FICAC Commissioner at FICAC is hampering the Col’s inquiry functions mandated by its terms of reference. HE, on the advice of the PM, established the Col in the public interest to secure due process. The JSC is in dereliction of its duty by declining to assist the Col.
- 21 The terms of appointment of the FICAC Commissioner are not relevant to proceedings to suspend the Commissioner. The Commissioner’s terms of appointment provide that the holder of the office may be removed for cause, and adopt for that purpose the removal procedures for Judges under s 112 of the Constitution (letter of the President Ratu Williams Maivalili Latonivere to Ms Barbara Malimali, 4 September 2024, “Terms and Conditions of the Commissioner FICAC” attached). However, no removal process has been activated, or is proposed to be activated at this time. The Col seeks the interim suspension of the Commissioner pending the completion of its hearings and inquiry functions. The need to establish cause applies to removal proceedings, not proceedings to suspend the Commissioner.
- 22 Section 5(1) of the FICACA confers the power to appoint FICAC Commissioners, and this power can be exercised only on the recommendation of the JSC. Any exercise of

the (lesser) power to suspend under s 44 of the Interpretation likewise requires the recommendation of the JSC.

- 23 For completeness, I mention that the Col could not rely on s 112(4) of the Constitution to suspend the FICAC Commissioner. This provision authorises the suspension of Judges “or any other judicial officer appointed by the Judicial Services Commission”. The Commissioner is not “a judicial officer” within the meaning of s 112(4). The JSC appoints Judicial Officers (Constitution, s 163(1)), whereas HE appoints the FICAC Commissioner on the recommendation of the JSC (FICACA, s 5(1)).

Issue two

Context

- 24 My instructions seek my opinion on whether HE has the power under s 82 of the Constitution, acting on the advice of the PM, to suspend the FICAC Commissioner. I advise that s 81(2) is the crucial empowering provision; s 82 regulates the exercise of the powers so conferred.
- 25 I advise that s 81(2) furnishes the power to suspend the FICAC Commissioner on an interim basis. That provision also furnishes the power to reinstate the Commissioner, once the Col has completed its mandated task. Section 82 requires that those matters be achieved on the advice of the PM.
- 26 Sections 81(2) and 82 read:

81(2) The President is the Head of State, and the executive authority of the State is vested in the President.

82 In the exercise of his or her powers under executive authority, the President acts only on the advice of Cabinet or a Minister or some other body or authority prescribed by the Constitution for a particular purpose as the body or authority on whose advice the President acts in that case.

Executive authority of the State

- 27 Section 81(2) is the lynchpin of the executive branch of government. It vests the “executive authority of the State” in the President. The term “executive authority” is a compendious term that includes all of the established powers, prerogatives and authorities of executive government.
- 28 The term “executive authority” includes the power of appointment to executive or judicial office. The power of appointment is an ancient one secured historically under the royal prerogative. At common law (and by analogy to s 44 of the Interpretation Act 1967), this power imports also the incidental powers to revoke an appointment or to suspend it.

- 29 All of the Crown’s prerogatives travelled with the expansion of the empire in colonial times. English and colonial authorities affirmed that the royal prerogative was as bountiful and extensive in the colonies as in Great Britain (*Kielley v Carson* (1842) 4 Moo PC 63 at 85; *Solicitor-General v Corp of the City of Dunedin* (1875) 1 NZ Jur (NS) 1 at 14-15; *Maritime Bank of Canada v Receiver-General of New Brunswick* [1892] AC 437 (PC)).

Prerogative accommodated under executive authority of the State

- 30 In *Iloilo v Commander, Republic of Fiji Military Forces* Judicial Review NO:HBJ of 2005 at [33], the High Court of Fiji considered it “clear that before 1970 Her Majesty exercised her royal prerogatives as Queen of Great Britain and its colonies in respect of Fiji”. Following Fiji’s accession to independence in 1970, Her Majesty exercised the royal prerogative henceforth “as Queen of Fiji and not as Queen of Great Britain” (at [33]).
- 31 Under the 1990 Constitution, the Court observed (at 34)), Fiji was declared a Republic, with executive authority vesting in the President exercisable on the advice of the PM or Cabinet. That position was carried over under the 1997 Constitution, and thereto the current Constitution of 2013. The current Constitution re-enacts verbatim the 1997 provision vesting the executive authority of the State in the President (see s 81(2) reproduced above at [25]).
- 32 In *Qarase v Bainimarama* [2009] FJCA 9, [2009] 3 LRC 614, the Court of Appeal observed that this vesting of authority in the President subsumed the prerogative power, as a separate source of constitutional authority. “The right question is,” the Court observed (at [79]), “what is the scope of the [s 81(2)] power.” That power undoubtedly includes the prerogative to make appointments to executive and judicial office.
- 33 The appointing power is the first of 13 political prerogatives listed in the New Zealand text, *Joseph on Constitutional and Administrative Law* (5th ed, Thomson Reuters, Wellington, 2021) at 733–752. The appointing power is expansive and indispensable. It embraces the appointment of: the Prime Minister, Ministers comprising Cabinet, Judges, Kings Counsel, royal commissioners and commissions of inquiry, military officers, recipients of Royal Honours, diplomats and consular representatives, and national representatives accredited to international organisations.
- 34 In *Qarase v Bainimarama* [2009] FJCA 9, [2009] 3 LRC 614 at [127], the Court of Appeal affirmed that Fiji inherited the full suite of prerogative powers from its colonial beginnings. The Court drew a comparison with the list of prerogative powers in Australia, recorded in Quick and Carran *Annotated Constitution of the Australian Commonwealth* (1987) at 28–31.

Appointing power includes power to suspend

- 35 The appointing power subsumed under the executive authority of the State establishes incidental powers at common law and by analogy to s 44 of the Interpretation Act 1967. The power imports the incidental powers to suspend appointees to an office and to reinstate such persons to the office.
- 36 I advise that HE has the power under s 81(2) of the Constitution to suspend the FICAC Commissioner. Under s 82, that power must be exercised with the concurrence and advice of the PM. Similarly, HE, with the concurrence and advice of the PM, has the power to reinstate the FICAC Commissioner following any suspension HE might effect.
- 37 It would be a grave lacuna in Fiji's constitutional apparatus if the Constitution did not supply the power of suspension in circumstances such as the present. There is ample judicial authority that constitutions must be given a "generous interpretation", and applied expansively, avoiding what has been called "the austerity of tabulated legalism" (*Minister of Home Affairs v Fisher* [1980] AC 319 (PC) at 328). The Constitution mandated such an interpretation at s 3(1) which states:
- Any person interpreting or applying this Constitution must promote the spirit, purpose and objects of this Constitution as a whole, and the values that underlie a democratic society based on human dignity, equality and freedom.
- 38 The Col will be seriously compromised if is unable to secure the interim suspension of the FICAC Commissioner. I am instructed that her continuing presence is seriously hampering the Col's evidential and fact-finding functions.
- 39 My only caveat concerns s 5(1) of the FICACA. This provision stipulates that HE, acting on the recommendation of the JSC (in consultation with the Attorney-General), shall appoint the FICAC President. Does this requirement preclude the executive power of appointment under s 81(2) of the Constitution? Although the FICACA represents the written law, the Constitution is the supreme law that overrides and controls all law. I advise that s 5(1) of the FICACA does not pre-empt the appointing power (and thereto the suspending power) arising under s 81(2).

Judicial equivocation

- 40 The Courts have equivocated over the effect of s 82(1) and the vesting of executive power in the President. They have grappled with the question whether, and if so, to what extent, the prerogatives of the Crown have survived Fiji's transition to an independent Republic. That equivocation may be understandable, given the fraught context where these questions have arisen – principally in situations of national emergency following a coup d'état or military usurpation.

- 41 The equivocation is partly over the appropriate nomenclature. In *Qarase v Bainimarama* [2009] FJCA 9, [2009] 3 LRC 614 at [115], the Court of Appeal stated that the absence of any reference in the Constitution to prerogative is not a conclusive statement that prerogative powers do not exist. They do exist, in fact, but not as a separate source of law. The Constitution refers sub silentio to their subsumed existence as part of the executive authority of the State (s 81(2)).
- 42 Various decisions have either recognised or equivocated over the survival of the prerogative post-1990. In *State v Patel* 2002 FJCA 13, 2002 FLR 480 (Full Ct), the Court of Appeal held that the royal prerogative founded the common law principle that the State cannot be liable to pay costs in criminal proceedings. Similarly, in *Iloilo v Commander, Republic of Fiji Military Forces* Judicial Review NO:HBJ of 2005 at [27], counsel for the State conceded that prerogative powers continued to exist despite Fiji's independence as a Republic. The High Court held that the prerogative of the Commander-in-Chief had constitutionally survived intact and could only be ousted or restricted by "specific legislation".
- 43 In *Iloilo* the Court acknowledged the continuing operation of the prerogative of mercy (at [75]: see also *Qarase v Bainimarama* [2009] FJCA 9, [2009] 3 LRC 614 at [127]). This prerogative has constitutional standing under s 119 of the Constitution. This provision carries over the Commission on the Prerogative of Mercy (established under the State Services Decree 2009) and prescribes procedures for expediting petitions for mercy. Section 119 attests to the interrelationship of the Constitution and prerogative, which makes understandable the judicial equivocation.
- 44 The Constitution is the supreme law (s 2(1) of the Constitution). Pre-eminence must be given to it over all other sources of law. Any law that is inconsistent with the Constitution is invalid to the extent of the inconsistency (s 2(2) of the Constitution). The appropriate rationalisation of the prerogative today is through the lens of the Constitution. The former prerogatives of the Crown are now incidents of "the executive authority of the State" as that phrase is used in s 81(2).
- 45 There is little purpose, from a legal or constitutional perspective, referring to the former prerogatives of the Crown, except for informing the scope of "the executive authority of the State" (s 81(2)). In *Qarase v Bainimarama* [2009] FJCA 9, [2009] 3 LRC 614 at [79], the Court of Appeal affirmed that the content of executive authority under (what is now) s 81(2) "is informed by the common law", which includes the royal prerogative. In the same paragraph, the Court alluded to "common law prerogatives".

Issue three

- 46 In the event that the FICAC Commissioner is suspended, can HE appoint someone as Acting Deputy Commissioner in the interim, without obtaining the recommendation of the JSC?

- 47 Section 6 of FICACA provides the procedures for the appointment of the Deputy Commissioner. This section adopts the identical provisions set out in s 5(1) for the appointment of the FICAC Commissioner. HE appoints the Deputy Commissioner on the recommendation of the JSC, following consultation with the Attorney-General.
- 48 On the analysis set out in [24]–[45], I advise that HE, on the advice of the PM, can appoint an Acting Deputy Commissioner under the executive authority vested in the President under s 81(2) without obtaining the recommendation of the JSC.
- 49 In [39] above, I advise that the provisions of the FICACA do not restrict or limit the scope of executive authority vested in the President under s 81(2) (the supreme law). The exercise of executive authority under s 81(2) is on the advice of the PM, not on the recommendation of the JSC.

A handwritten signature in black ink, appearing to read 'Philip Joseph', with a stylized flourish at the end.

Philip A Joseph LLD, KC
Professor of Law
Barrister at Law
University of Canterbury

14 February 2025



ANNEX G

Request from Col to Professor Joseph for a
Second Opinion dated 24 February 2025

From: Nicholas Johnson

Sent: Monday, February 24, 2025 2:14 PM

To: Philip Joseph KC <philip.joseph@canterbury.ac.nz>

Cc: Janet Mason <mason@PHOENIXLAW.EXPERT>; Roger Macdonald <Macdonald@PHOENIXLAW.EXPERT>

Subject: Fiji Commission of Inquiry

Sent on behalf of Janet Mason

Tēnā koe Prof. Philip,

1. The Fiji Commission of Inquiry ("Col") has drafted the **attached** letter following on from the legal opinion the Col engaged you to write. Would you please review the letter and provide feedback.
2. If you have any questions, please do not hesitate to contact us.

Ngā mihi nui,

Nicholas Johnson, *LLB*

Legal Counsel

Phoenix Law Ltd

Constitutional and Public Law Specialists

PO Box 27400

200 Willis Street

Wellington

Phone: 043841355

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COMMISSION OF INQUIRY

In the Commission of Inquiry issued under the Commissions of Inquiry Act 1946 to enquire into certain matters pertaining to the appointment of the Commissioner of the Fiji Independent Commission against Corruption (FICAC)

24 February 2025

His Excellency Ratu Naiqama Tawakecolati Lalabalavu
President of the Republic of Fiji
State House
P. O. Box 2513
Government Buildings Suva
Fiji

Right Honourable Prime Minister Major General Sitiveni Rabuka
Prime Minister's Office
Parliament Buildings Suva
Fiji

Re: Powers to Appoint, Suspend, and Dismiss FICAC Commissioner

Dear His Excellency and Honourable Prime Minister,

1. I write to you on behalf of the Commission of Inquiry ("CoI") in relation to the advice dated 17 February 2025 from the Prime Minister ("PM") to the President that the Commissioner of the Fiji Independent Commission Against Corruption ("FICAC") be suspended.
2. As you will recall the CoI first requested the Judicial Services Commission ("JSC"), in person, in early December 2024, and then subsequently in writing three times, to recommend to the President that the FICAC Commissioner be suspended because of the high likelihood of witness interference if she continued in her position.
3. The JSC wrote back to the CoI on two occasions advising that it did not have the power to recommend to the President that the FICAC Commissioner be suspended.
4. On Friday 14 February 2025, the CoI received a legal opinion from Professor Philip Joseph KC ("the KC Opinion") that confirmed the views of the CoI, namely, that the JSC did have the power to recommend the suspension of the FICAC Commissioner. In addition, the KC Opinion also agreed that the PM could, under s 82 of the Constitution of the Republic of Fiji 2013 ("the Constitution"), advise the President to suspend the FICAC Commissioner.
5. Subsequently, on Monday 17 February 2025, the PM wrote to the President advising him to suspend the FICAC Commissioner and appoint someone else as interim Acting Deputy Commissioner.

6. Section 82 of the Constitution states:

In the exercise of his or her powers and executive authority, the President acts only on the advice of Cabinet or a Minister or of some other body or authority prescribed by this Constitution for a particular purpose as the body or authority on whose advice the President acts in that case.

7. The President's Official Secretary, Ms. Vuki Qionibaravi was summoned to appear before the CoI on Wednesday 19 February 2025, during which there was some discussion about s 82 of the Constitution. Ms. Qionibaravi had highlighted the second part of s 82 of the Constitution which refers to the President acting on the advice of "some other body or authority prescribed by this Constitution for a particular purpose as the body or authority on whose advice the President acts in that case ("the Second Part"), submitting that the JSC could advise the President on matters related to the FICAC Commissioner's suspension.
8. The CoI's view, which was communicated to Ms. Qionibaravi at that time, was that the Second Part of s 82 was not relevant to the matters before us. The position of the CoI was that the President had to act upon the advice of the PM. He did not have a discretion to decline to act. The CoI is concerned that this point may not have been understood by Ms. Qionibaravi, and/or, may not have been adequately communicated to the President.
9. The CoI was, and is, of the view that the Second Part of s 82 was not relevant for two reasons.
10. Firstly, in being the body which appointed the FICAC Commissioner, the JSC is one of the subjects of the CoI's enquiry. Although it was thought at the time that the JSC would have had the power to recommend the suspension of Ms. Malimali, it had not done so despite multiple requests. It had therefore become clear to the CoI that the JSC was conflicted, as it appeared not to want to take any action to support the integrity of the CoI.
11. Secondly, the JSC function in relation to the suspension of the FICAC Commissioner is not sourced in the Constitution. It is instead set out in s 5 of the FICAC Act 2007. Consequently, the JSC is not ***prescribed by the Constitution for a particular purpose as the body or authority on whose advice the President acts in that case***. The JSC's powers of appointment, suspension, and/or, dismissal of the FICAC Commissioner ***are not*** prescribed by the Constitution. They are sourced in s 5 of the FICAC Act.
12. Consequently, the President cannot act on any recommendation from the JSC in relation to FICAC appointments, suspensions, or dismissals. It therefore means that s 5(1) along with ss 5(3), 6(1), 6(2), 7(1) and 7(2) of the FICAC Act are all ultra vires the Constitution, because the President, under s 82, can only act on the advice of the Cabinet or a Minister, or of a body prescribed under the Constitution for a particular purpose as the body on whose advice the President acts in that case.

13. Where does this leave us? The CoI discovered on Thursday 20 February that the FICAC Commissioner had voluntarily taken leave for three weeks. Voluntarily taking leave is not the same as being suspended. It is clearly inadequate, as her powers as Commissioner are still intact, and she can still make decisions adverse to the FICAC witnesses who will be giving evidence before the CoI, if she wanted to. The FICAC Commissioner currently still has oversight over all FICAC operations.
14. The JSC also recommended to the President that Mr. Fotofili be appointed as interim Acting Deputy Commissioner of FICAC while the FICAC Commissioner is on leave. Mr. Fotofili has now been appointed to this position.
15. Given the analysis above, that the JSC has no powers to make any suspension, dismissal, or appointment recommendations to the President in relation to FICAC Commissioners or Deputy Commissioners, it is the CoI's view that the appointment of Mr. Fotofili ought to be revoked, and the advice of the PM to the President to suspend the FICAC Commissioner, and appoint Ms. Laite Bokini-Ratu as interim acting Deputy Commissioner be given effect.
16. It is also now a matter of urgency that the FICAC Act be amended.
17. We have had some initial discussions about the inappropriateness of the JSC being involved in the appointment of the FICAC Commissioner and Deputy Commissioner. The CoI is not aware of any country in the western world in which the head of a law enforcement agency is appointed by a body led by the head of the Judiciary. In furtherance of the doctrine of the separation of powers, it is important that the functions of the Judiciary are confined to the operations of the Judiciary, and their appointment powers are only for "Judicial Officers," namely, Magistrates and Judges.
18. The CoI considers that the appointment of the Commissioner and Deputy Commissioner of FICAC should more appropriately sit with the Constitutional Offices Commission ("the COC"). The COC is a bipartisan entity having the following members:
 - (a) the Prime Minister, who shall be the chairperson;
 - (b) the Leader of the Opposition;
 - (c) the Attorney-General;
 - (d) 2 persons appointed by the President on the advice of the Prime Minister; and
 - (e) 1 person appointed by the President on the advice of the Leader of the Opposition.¹
19. Given the problems identified above with ss 5, 6 and 7 of the FICAC Act being ultra vires the Constitution, the CoI recommends that the FICAC Commissioner and Deputy

¹ See section 132 of the Constitution.

Commissioner be appointed by the President on the advice of the Prime Minister, upon obtaining the concurrence of the COC.

20. In the interests of completeness, we advise that the CoI's view in relation to the President's role in the receipt of the CoI's Report remains one of receiving the Report, and acting upon it, where necessary, only upon the advice of the Prime Minister.

Next Steps

21. The CoI therefore requests that consideration be given to:
- a. the President revoking the appointment of Mr. Fotofili;
 - b. the President suspending Ms. Malimali, on the basis of the advice of the PM;
 - c. the President appointing Ms. Bokini-Ratu, on the basis of the advice of the PM;
 - d. the PM taking immediate steps to amend the FICAC Act, in the manner set out in **Annex A**.

Yours respectfully,



Janet Mason
Counsel Assisting the Commissioner

ANNEX A: Amendments Proposed For Fiji Independent Commission Against Corruption Act 2007

- 1.** Amend ss 5(1), 5(2), 5(3), 6(1), 6(2), 7(1), and 7(2) of the Act by:
 - a.** repealing the words “Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General”; and
 - b.** substituting the words “Prime Minister, upon obtaining the concurrence of the Constitutional Offices Commission”.





ANNEX H

Advice from Professor Joseph
dated 25 February 2025

**Review and Feedback on Letter of Counsel Assisting
the Commission of Inquiry into the Appointment of the Commissioner
of the Fiji Independent Commission against Corruption, dated 24 February 2025**

Introduction

- 1 I have been asked to review and comment on the Letter of Ms Janet Mason, Counsel Assisting the Commission of Inquiry (Col) into the Appointment of the Commissioner of the Fiji Independent Commission Against Corruption (FICAC)), addressed to His Excellency the President of Fiji (HE) and the Prime Minister (PM), dated 24 February 2025. The letter addresses the powers to appoint, suspend, and dismiss the Commissioner of the FIAC.

Executive Summary

- 2 I endorse the analysis, findings and recommendations set out in the Letter of 24 February 2025 (the Letter).
- 3 I advise that the view expressed to the Col on 19 February 2025 by the President's Official Secretary, Ms Vuki Qionibaravi, was insupportable at law. Ms Qionibaravi opined that s 82 of the Constitution authorised the Judicial Services Commission (JSC) to advise HE on matters relating to the FICAC Commissioner's suspension.
- 4 I endorse the view set out in the Letter that HE cannot act on any recommendation of the JSC in relation to FICAC appointments, suspension, or dismissals.
- 5 I endorse the advice that parts of ss 5(1)(3), 6(1)(2), and 7(1)(2) of the Fiji Independent Commission Against Corruption Act 2007 (FICACA) were enacted in contravention of the Constitution and are constitutionally invalid.
- 6 I advise that the offending parts of ss 5(1)(2), 6(1)(2), and 7(1)(2) may be validly severed without altering or upsetting the pith and substance of those sections. I support the recommendation in the Letter that the PM take immediate steps to amend the FICACA so as to remove the constitutionally invalid portions of the above sections.
- 7 I endorse the steps recommended in the Letter to remedy the current impasse. These steps are to have the PM advise HE to: suspend the FICAC Commissioner forthwith, revoke the interim appointment of Mr Fotofili as Acting Deputy Commissioner, and appoint Ms Laite Bokini-Ratu as interim Acting Deputy Commissioner. It is also recommended that the PM take immediate steps to amend the FICACA, in the manner specified.

Insupportable advice

- 8 The Letter sets out why the advice of the President's Official Secretary to the Col on 19 February 2025 is wrong in law. The Official Secretary relied on the latter part of s 82 of the Constitution, which provides that HE may act on the advice of Cabinet or a Minister "or some other body or authority ***prescribed by this Constitution*** for a particular purpose as the body or authority on whose advice the President acts in that case" (emphasis added).
- 9 The italicised words in s 82 (above) explain why the advice of the Official Secretary is wrong in law. The Constitution does not prescribe the JSC as the body that will advise HE in making appointments, suspensions, etc to the FICAC. Rather, "the written law" (namely, s 5(1) of the FICACA) prescribes the JSC as being that body. This explains why the provisions of the FICACA listed above are constitutionally invalid: they contravene the terms of s 82 of the Constitution.

In contravention of the Constitution

- 10 In my advice to the Col of 14 February 2025, my instructions did not require me to report on the constitutional validity of any relevant provisions of the written law. However, I confirm the advice in the Letter that ss 5(1)(3), 6(1)(2), and 7(1)(2) are in contravention of the Constitution and invalid to the extent of the inconsistency.
- 11 Section 82 of the Constitution secures the democratic ideal. HE exercises the executive authority of the State primarily on the advice of Cabinet or a Minister, including the PM. The Parliament of Fiji is elected "by secret ballot in fair and free elections administered by the Electoral Commission" (s 52 of the Constitution), and the member so elected who commands the confidence of that body has the mandate to be appointed Prime Minister and head of the political executive. That person, in turn, has the mandate to advise HE in discharging executive power.
- 12 Section 82 is *exhaustive* of the persons or bodies who/that may advise HE in the exercise of the President's executive authority. Section 82 reads (emphasis added):

"In the exercise of his or her powers and executive authority, the President acts ***only*** on the advice of Cabinet or a Minister or some other body or authority prescribed by this Constitution for a particular purpose as the body or authority on whose advice the President acts in that case."
- 13 The provisions of ss 5(1)(3), 6(1)(2), and 7(1)(2) of FICACA each contravene s 82. These provisions provide that HE shall make appointments to FICAC on the recommendation of *the JSC* (appointments also including suspensions and removals from office). The purported authority prescribed by ss 5-7 of FICACAS is not "prescribed by this Constitution". On the contrary, it is authority prescribed by the written law in contravention of s 82 and the Constitution.

- 14 The Constitution is “the supreme law of the State” (s 2(1) of the Constitution) and “any law inconsistent with this Constitution is invalid to the extent of the inconsistency” (s 2(2)). Sections 5(1)(3), 6(1)(2), and 7(1)(2) are inconsistent with the Constitution (s 82) and are invalid *pro tanto* (to the extent of the inconsistency).

Severance

- 15 Constitutionally invalid laws are no different from delegated legislation that is vitiated on grounds of vices. Regulations or bylaws that are ultra vires may be upheld and enforced if the offending part is *severable*. Severance is possible where the invalid part is not inextricably interconnected with the valid part, and where to excise the invalid part does not alter the essential character or substance of the remaining (valid) part.
- 16 I advise that the invalid parts of ss 5–7 of the FICACA may be clinically severed, without altering the character or substance of the remaining part. Sometimes, invalid legislation that is not textually severable may still be upheld if the offending part is substantively severable through emendation (amending the instrument so as to remove or correct the invalid part). However, that recourse would not be required with the FICACA.
- 17 Sections 5–7 lend themselves to the blue pencil test (clinically severing the invalid part). Simply excise in those provisions the words, “on the recommendation of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General”.
- 18 That recourse would leave the power to appoint the Commissioner/Deputy Commissioner to FICAC in the hands of HE, acting on the advice of the PM. This recourse would comply with s 82 of the Constitution. However, there would be no objection to amending ss 5–7 of the FICACA so as to require the PM to obtain the concurrence of the Constitutional Offices Commission, before tending advice to HE. This is the preferred outcome recommended in the Letter of Counsel Assisting, Ms Janet Mason.

Next steps

- 19 I endorse the advice given in [21] of the Letter, outlining “next steps.”



Philip A Joseph LLD, KC
Professor of Law
Barrister at Law
University of Canterbury


25 February 2015



ANNEX I

Saumi Transcript

14

This is the Annexure <u>K/S</u> referred to in	
the Affidavit of <u>Kuldeep Singh</u>	
which before me on the <u>5th</u> of <u>June</u>	
 Commissioner for Oaths	

TEVITA CABEMAIWAI
 Barrister & Solicitor
 Commissioner for Oaths

TRANSCRIPT OF MEETING DISCUSSION HELD AT FICAC HQ (LEVEL 4 CONFERENCE ROOM) ON 05 SEPTEMBER 2024 RELATING TO THE NEGOTIATION FOR RELEASE OF MS. BARBARA MALIMALI AFTER HER ARREST


Vei talanoa ga me savasava, na ka e yaco na rumu qo me tiko ga eke, kena tacavu ituba that's why you give reason, understanding at the end of the day that we see that we all, all on the same page. I believe.

That's just basically I'm putting that on the nussnell, even just to be to tell you the fact you know the Police won't join, no no why why the Police? This is an independent body and we not here to be seen as interference of your own investigation, my concern as the Secretary, why? .. she has all the power right now, signed by the President, I do not know what power you have to arrest your own Commissioner.


We have received a letter from Chief Justice your courtesy letter saying your charging interesting it's made today. That day she supposed to sit in give some direction, she said that still navigate there is still some investigation, never been charged it's still an allegation.

Why so fast over - night that's my question? Is it birth from bitterness is it birth from who because you already told us, the Deputy Commissioner gave us the direction to make an arrest. I don't have any issue with that. I have no issue with that I'm not here to interfere with your work.

I'm not an Investigator I'm here as a Secretary for JSC, what is the right and the best way because you just told me yesterday I saw the message around it was unhealthy she said I'm going to resign today, she was upfront.



Mr. Tomasi Bainivalu
Chief Registrar

	<p>She told Ms. Malimali on the face I can't work with you, that's why I raised that issue. How long have you been here? You were here during Aslam's time. What were you doing, why now? Why Ms. Barbara Malimali?</p> <p>You can never get around that. I'm just saying I'm right whatever I'm saying but I'm just putting that across. So they can open this discussion and of course we have lawyers there to say that is the JSC's concern and JSC has said to share these messages as well.</p> <p>He's waiting for the result from here so that so they can go on with whatever they have to do. So that's basically that, don't take me wrong. I'm not here to stop the investigation, I'm not here to tell you what you do best, you all you at your own field of work and you know that and I know that.</p> <p>I cannot interfering either and I said what I said, the Police wanted to come I said no why? You don't have to. This is the independence of FICAC. That is basically that Ms. ... I leave that with you.</p>
 <p>Mrs. Francis Puleiwai Acting Deputy Commissioner FICAC</p>	<p>Thank you Sir, thank you Colleagues, the thing was yes we did have a meeting yesterday with CR into the details of the meeting yesterday we were also informed that Ms. Malimali was coming on board.</p> <p>The investigation for Ms. Malimali was on going since April and the Team .. was also informed. The we had informed because our direct reporting line was the President; and to the JSC as well as the Acting Deputy Commissioner.</p> <p>So I have informed the President including the Prime Minister and even the AG that there was an ongoing investigation and for Ms. Malimali in, we were not notified of the appointment until as off yesterday but respective if what I was hearing I needed a confirmation and I wrote the letter, informing the my reporting line that there is an ongoing investigation against Ms. Malimali and her coming in to the post or they e they have to hold on to the post until the investigation is completed what will happen to the case?</p> <p>Will come into question as to if she is holding that post as Commissioner, who will be giving the yes and no for her own investigation that's ongoing. So, I have written the</p>

letter and I had notified the respective chairman of command and thereafter when the appointment came in yesterday.

When the appointment still happens, the investigation were on the verge of completion so yesterday yes I had given the directive to the Investigation Team for the Team to complete the investigation and interview Ms. Malimali today.



So under the Constitution the Commissioner and the Deputy Commissioner we both have the same powers. I'm exercising my right, my powers under the Constitution to for the Team to carry out their due diligent and the investigation to be completed against Ms. Malimali.




So it's unfortunate that the circumstances had to be done this way we were, that's why we wanted to see if there is a case against her if there was no case it would have been closed. We would have ended this matter. Ms. Malimali would have come on Board as the Commissioner, there is no bitterness, there's no animosity, we are doing our duty to the public and to our best of our ability as well and under the rule of law.

We are not doing this out of bitterness, this is simply we have the evidence and been in my role as the Deputy Commissioner. This is what I'm doing, I take note of what the Chief Registrar said to me this morning and what was informed by the Chairperson... Chief Justice the Honourable Chief Justice Mr. Temu.

How we going the answer the public if there is a case against her that is the question. Any these officers unfortunately not all HOD's are scaled here. So yesterday and we don't have anything personal against Ms. Malimali. What we heard she's a lovely person but it's the Commission we trying to protect the integrity of the institution.

So the questions that came to mind when all these officers were scaled here, what will happen to the case that we are currently investigating. These officers have sweat yes they were working under the previous, under the previous Government and they were suffering with the previous Government so of them at the end of the day they because these were part of the job they were doing but with the with the Commissioner coming on Board, that's the question that we have to ask ourselves eh and that is the power that I have exercise and the, the Team are ready to proceed with it.

	<p>We are ready to answer to the JSC, to the President as well because this is, the this is nothing .. against the law. This is our interpretation of the law and this is what going to begin and our interest .. as well</p> <p>The interview was supposed to commence this morning and thereafter the Team are ready to charge her as well. So there is two option available it's either she can be interviewed or we can have her produce in Court and answer to the charges against her and the .. after this meeting we will proceed with, yeah, with the</p>
 <p>Mr. Nemani Tullagalele Senior Lawyer</p>	<p>You sticking by your .. to ah ..</p>
 <p>Mrs. Francis Pulluwa Acting Deputy Commissioner FICAC</p>	<p>Yes</p>

 <p>Mr. Nemani Tuifagalele Senior Lawyer</p>	<p>That you will charge her ...?</p>
 <p>Mrs. Francis Puleiwai Acting Deputy Commissioner FICAC</p>	<p>Yes</p>
 <p>Mr. Wylie Clark Senior Lawyer President - Fiji Law Society</p>	<p>.. what had happened today alright now just just hold on to some considering, you did your job, you convey your concern to President, you convey your concern to the JSC, you convey your concern to the Attorney General</p> <p>It's fair to assume that there was concern that was considered but the appointment went ahead, once the appointment went ahead, I don't think the President not anybody else the President .. they assume he too considered the points you guys have raised and yet he made the appointment ..</p> <p>I think we all have to think very very carefully the work that you doing, you going against the wishes of the President through due diligent that was the lawful process the perception she asked perception</p>

The perception of what's going on right now .. okay let's go on from here and you talking about the integrity of FICAC and holding the integrity of FICAC.

I have to say ... this time from outside watching what's going on, what's happening right now is .. the perception of the integrity of FICAC

You have to be very careful in what you doing she has already said .. in Court so I think procedurally and legally this case is going no-where, I'm not saying that correct I'm not saying that wrong but that's what been made very clear right .. and with all due respect to all of you .. to do your job but you have to be very careful about the legality of what you doing

She's been Barbara has appointed by ... there is a big question mark .. about mid-night last night as Acting Deputy Commissioner, my view would be legally that that Acting appointment lapse, okay at midnight last night so there's a big question about your authority.


.. we also have to think very carefully now about the fact that having detained her this morning .. she is now .. she is now the substantive Commissioner and all the powers of FICAC under the Constitution and under your own law define her.



Now I don't disagree it's a bad look, okay may not look cozy from the outside I get it but the law is the law. We all have to uphold whether we like it or not, noly crap!


I've fallen .. you know you see .. maybe we disagree on many things but we all share and respect for the law. Unfortunately I heard what you saying but outside the .. I just don't think the Opposition that you just have .. answered supporting the majority this is how, it does not sound and you continuing down this path is going to end up in the stand - off between this organization and the Court.



Now as the leader of the private bar we don't want to see that happened because that undermine confidence from all system of Justice.



So I ask you to be very very careful of what you doing because I don't think it's that simple as you guys said .. and with all respect it's not anyone of us around this table .. what the President has decided and the JSC not for us.




	<p>We all our place in the system an you verbally agree with it or not, it's either here or there it's done the appointment is done and you all have to respect it.</p> <p>Okay there is really nothing after that so the only reason I come here and we all here because we are so concern about what this done it under mind the confidence in our whole system .. okay and I hoping we can contain it stop it if we can get through this and we have to be very very careful with what happens next so I ask you to consider that very very carefully.</p>
 <p>Mrs. Laurel Vaurasi Senior Lawyer</p>	<p>Yes we were speaking about .. there is no issues .. in our line ah I think that was the reason we are here. I understand the concerns of FICAC with respect of her, Barbara coming in as Commissioner complaint in the system, what you do, what you do with that complaint.</p> <p>It seems to be the latest concern for them but also I also hear the integrity issue been raised and if we are concern about the integrity then you have to be concern about, why did that or we didn't do anything about it all this times and the way forward here, what's the way forward?</p> <p>Because it will definitely, I mean I'm just thankful to the media is not here but like I said I hear you public perception and if you produce her in Court and the Court refuse and then so for us our part is just you know member of the .. you know one of the ordinary members and it is our greatest concern that the rules of laws is adhere and no one is trying to interfere and that is importantly clear, no one here is wanting to interfere with the work.</p> <p>Our great concern about is the rule of law and how do we ensure that the rule of law is upheld and also to hear what you saying about integrity. And so I hoping that we can finish this with a proper solution to this.</p>




 <p data-bbox="531 1473 595 1668">Mr. Amani Bale Senior Lawyer</p>	<p data-bbox="212 228 308 1288">I ask that you release her and she's be released immediately and let the JSC go and convince and the JSC see fits to go to the President to revoke your appointment .. that's so late because at the end of the day you all come under the AG.</p> <p data-bbox="339 228 467 1288">We are all, you heard very clearly that Court would not accept it so this is an exercise to fulfill yes at the end of the day we are all answerable to the top .. so everybody comes under the AG so I ask. I say this with all honesty I have 35 years - experience what you have done now this will spoil your careers but that's your choice</p> <p data-bbox="499 228 659 1288">So, I also ask that; common sense prevail you release her, let her go, let the JSC through the Secretary go and so that the tension is a and then like you like him you await what the AG's said because to if you keep her here this impasse won't go away because you want to understand what he said if you go to Court if won't accept your charges so what you gonna do come and keep her here</p> <p data-bbox="691 228 818 1288">So better we bring this attention up and like Mr. Clark had said your concern have been noted. You have reported to your inos of communication and they have decided taking that into consideration in their own deliberate way own because they aware of other things they have decided to appoint her yes</p>
	<p data-bbox="1145 228 1241 1288">Sir, with all due respect I just want to raise my views eh, as the Manager Investigation I have been given the responsibility to conduct the investigation. This investigation Sir, has been directed prior to the appointment of, of the current Commissioner.</p> <p data-bbox="1273 228 1337 1288">Ah we the Investigators have been directed and we have started our investigation from the time we were given the instruction. Conducting an investigation as such is</p>




<p>Mr. Kulintasi Saumi Manager Investigation FICAC</p>	<p>not easy it takes time. An ah cases of corruption is not easy we need to do our investigation properly, you might ask why today?</p> <p>We have been doing this investigation over time and I just want to share an experience over the last few days, even the recent days that we have. When we want to access records ah we were facing problems, even though we have, we already have the copies but we were after the originals that was .. to us but what I'm saying Sir here ah we have conducted investigation, we have presented our findings ah after consultation with the Legal.</p> <p>Ah we were in the position to conduct the caution interview to get the formal responses from Madam Commissioner on the allegation that has been put across.</p> <p>Okay, since she has been appointed I knew that she is the Commissioner, I am, I'm aware of that but there is an active investigation that was directed prior to her appointment. This is my view I stand to be corrected ah so I was, I'm liable to answer to the type of investigation I have conducted if questions might come.</p> <p>I have stood up in Court to give evidence on what I did in a case a USP matter but Bainimarama was charged. I don't want that to happen again that my role be questioned. So Sir with due respect I just want to share if the matter of public interest ah I don't to be questioned that I did not perform my role, that is the only thing I want to say I have no personal grudge against her, yesterday when we meet explained everything.</p> <p>I don't want to be questioned some other times after like I have already encountered when I gave evidence in the Bainimarama case I don't that to happen again. So that reminds me that I need to be stand my grounds to do my work Sir. Eh so this morning after consultation I expect that there will be confrontation that's why I sought the legal advice on.</p>
	<p>So, you, saying this is a confrontation?</p>


<p>Mr. Tomasi Bainivalu Chief Registrar</p>	
 <p>Mr. Wylie Clark Senior Lawyer President – Fiji Law Society</p>	<p>This is not ...</p>
	<p>No no what I'm saying, the confrontation is with our Commissioner, you know I was anticipating when we approach her there will be some confrontation eh so we have the tools in investigation when we encounter such ah circumstances eh so the tools that we used is the powers that we have under Section 10 because of her arrest</p>




<p>Mr. Kuliniasi Saumi Manager Investigation FICAC</p>	<p>That is why I have effect arrest on her this morning. To control the situation and we proceed with the caution interview as per the advice of our colleague Mr. Bale ah if you want us this is my view Sir en. If you want us to ah</p>
 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>So you saying this is a confrontation</p>
 <p>Mr. Wylie Clark Senior Lawyer President - Fiji Law Society</p>	<p>This is not .</p>
	<p>No no what I'm saying the confrontation is with our Commissioner you know with with our Commissioner. I was anticipating when we approach her there will be some confrontation oh so we have the tools in investigation when we encounter such ah circumstances oh so the tool that we used is the powers that we have under Section 17 because of her arrest.</p>




 <p>Mr. Kuliniyasi Saumi Manager Investigation FICAC</p>	<p>That is why have in fact arrest her this morning to control the situation and we proceed with the caution interview as per the advice of our colleague Mr. Bale eh if you want us, this is my view Sir eh. If you want us to ah</p>
 <p>Mr. Amani Bale Senior Lawyer</p>	<p>For her to go?</p>
 <p>Mr. Kuliniyasi Saumi Manager Investigation FICAC</p>	<p>No if you want us to stop this process we would appreciate a formal, a formal correspondence from your end</p>


 <p>Mr. Amani Bale Senior Lawyer</p>	<p>No I think you madam, learn release her , you guys go to the .. and have a chat.</p>
 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>See this is ..</p>
 <p>Mr. Amani Bale Senior Lawyer</p>	<p>That's why I said to have the chat</p>




 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>so far, that will be what two ladies I know ...</p>
 <p>Mr. Anani Bolo Senior Lawyer</p>	<p>You have a chair</p>
 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>... is there and I'll ask Mr. Tuifagalele and I just received a call they having an urgent meeting with the JC sitting in today at 3pm the concern what we have raised on what I know you know my position.</p> <p>I must apology too when I started I always started a tone is a bit but my staffs understand that as well but I know I'm not angry at anybody at the end of the day we all go clean and see that this does not evolve or erupt in such a way because small thing today and Media makes a big thing out of it</p> <p>The issue about my concern is that, the President of our beloved land .. because the of the process of the interview has taken it's course, short listed has been taken, interview eh and all and your new Commissioner is the highest out of all that has been interviewed unfortunately now I'm repeating myself.</p>



	<p>I don't know they were not, but they have their own reasons .. don't take me wrong I understood you said this yesterday, said it again today it's not out of animosity I'm just doing my job</p> <p>The question been raised by the President just ask ourselves how do we go about it: are we going to continue? But what will be the perception of the people out there, why do FICAC pull out?</p> <p>It's the way I see it, sorry to say this, this is kind of childish it's stays here just in this room we can, I hope you don't mind, you give us your views, I want to hear the two ladies as well and also Mr. Tuifagalele and also Ratu .. as position but she will go back ah we don't want to even as I speak we all make mistakes, we all sort calls of our work, professionals when you send the letter direct to the President from you, why didn't you go through JSC?</p> <p>Why does it just go direct to the President, see that type of questions .. I'm just saying this as a Secretary because it all come through my desk.</p> <p>I don't know what would be the agenda of the meeting this afternoon, I hope you will .. all we are not here to threatened anybody we know you all have a lot of work but .. but what Mr. Bale had mentioned even I was, I was kind when I came they were standing there that's why they only think, I I they took on Board they are only here them as Senior Counsels of the land that we can discuss something positive ..</p>
 <p>Mr. Amant Bale Senior Lawyer</p>	<p>Maybe .. you suspend the interview and at 2 o'clock when they meet, Madam can go and talk to</p>



 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>Yeah maybe</p>
 <p>Mr. Amari Balo Senior Lawyer</p>	<p>JSC and sort this out internally so Madam because remember at the end of the day Madam too reports to JSC through the President so once that line that directive is given today then she can decide whether she accepts it or not because at the moment it's it's no used you continuing your thing, CR has already said that your charges will not be accepted so better we go down this path. Madam at 2 o'clock goes and talks to the JSC.</p>
 <p>Mr. Wylie Clark Senior Lawyer President – Fiji Law Society</p>	<p>Can I also make a point, make a point she is now the substantive Commissioner under the law Ms. Malimali now under the law... she has been properly... you have to follow her direction right or wrong, you have to follow her direction so let me ask you a question 'if she directs you to stop this right now to set her free, what would you guys do?' You have to be very very careful about this</p>



 <p>Mr. Amani Bale Senior Lawyer</p>	<p>... you suspend let her go while Madam goes and have that conversation at that level</p>
 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>Avoid all of that .</p>
 <p>Mr. Amani Bale Senior Lawyer</p>	<p>Avoid all of that and then and then whatever is the outcome this afternoon from the JSC one or one then Madam can take her, can take her queue from there</p>




 <p data-bbox="438 1433 518 1691">Mrs. Laurel Vaurasi Senior Lawyer</p>	<p>I think the other thing that needs to be raised too is the concern that if you continue to keep her as you say following your system and your processes then there is also the rights ... not to actually to file application on the Court, the Court will listen to that but not listen to it so can you image the rule of law all the problems that will come out of that.</p> <p>And you might say look according to me I'm standing by my conviction but alternately you you standing by your conviction has to be conviction based on law and if you look at what's happening evolving now this small thing right now, you know it it seems like a tense but it can't be resolved.</p> <p>When it became the moment, the moment it can't become resolve, you got the Media in, you got the ... you got all those applications in the Court will entertain then the integrity that you are so concerned about will be the very integrity that will be pulled down.</p> <p>That's the reason we here not because you know the title it's because the rule of law is a great concern because this country we have so many rule of laws bash so many times, you people didn't hear all the allegation against you people that you always listening to the former Attorney General we, we want this a land that actually prevail and we respect the rule of law.</p> <p>That means whatever the appointment by the President then it's something that you can bring it internally, figure out. Madam, you are now the Commissioner but you have a problem here how do we resolve this?</p> <p>But personally as I see it your conviction are good I think that people should work with conviction but within the rule of law and the boundaries of it otherwise it's no longer the rule of law. It is now outside and you are now operating outside the law and that's a great concern for all of us.</p>
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 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>... just when she left just for your information Mr ... the Chair called again to CJ he said CR I don't know maybe you know the process that you do for LPU as a Prosecutor are the options, sit and try to re-do it</p> <p>That's the way best way forward ... panel ... and I remember he did said that on the phone. Now that's an opportunity hope I'll share that, that now I'm sharing, what do you think?</p>
 <p>Mrs. Francis Puleiwai Acting Deputy Commissioner FICAC</p>	<p>And we get that</p>
 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>that the Prosecutor leaving the Prosecution, Prosecuting lawyers where when we receive complaints for the case, we assess them ... and ... and we can move mitigation and we discussing at the moment eh there are so many problems ... it's in the ... he ... he reminded me of that I was not really have that ...</p> <p>The conclusion is we need to have some wisdom you know understanding, unity together to see that it doesn't split out here, and I'll continue to say I'm not here to as the Secretary for JSC I'm just here with that ... nothing personal, nothing to say that what you doing is wrong.</p> <p>But we are just here to see that if we can, what is the best way forward? It's just ... you know it's a big transition and we just enjoying even though we still ... there's two stage of our development</p>




	<p>This new administration but we have been there along and for 16 years we work with the past administration and now working with the current administration we have not .. as far as I am concerned, we are judicial .. so how you going to continue to make .. look the people from the outside yes it's secure we have so much confidence in FICAC.</p> <p>We have so much confidence even you have to take that to the Chief Justice .. advice .. don't accept any charge ... this is the beginning of that this dialogue eh there's a need to if Ms. Pulewai wants to come over I will ask her .. daru vei talarua.</p>
 <p>Mr. Kuliniasi Saumi Manager Investigation FICAC</p>	<p>Ah</p>
 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>But that's the matter I want to raise.</p>




 <p>Mr. Kuliniase Saumii Manager Investigation FICAC</p>	<p>I just want</p>
<p>Ms. Laite Bokini Ratu Manager Legal</p>	<p>Sir, if I may, if I may</p>
 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>Yes</p>
<p>Mrs. Laite Bokini Ratu Manager Legal</p>	<p>My apology My name is Laite Bokini, I'm the Manager Legal currently. I think that was our main dilemma because the investigation had been ongoing and it's a serious allegation and we had determine that there are charges, our dilemma was who do we take this to? Because this we understand she is our Commissioner and it's nothing personal against Ms. Malimali if this complaint was not with us, if this investigation was not ongoing it's won't be happening. We would be here supporting her brilliantly we also understand that the rule of law needs to be followed needs to be done we respect that but our dilemma Sir was how do we and how, how do we ensure that the Commissioner's office stays independent and by if this comes to charging the Commissioner must sanction so how do I as Manager Legal who recommends the</p>




	<p>charges bring this to her and say this is your charge oh this charge is against you, now, how do I do that?</p> <p>That is my dilemma and that is something that I had raised with the ADC with the MI and that was something that we were trying to figure out so I hear your, I hear your suggestion for mediation I think that is a good suggestion. I think Mr. Bale, that ADC go to the JC is a good suggestion</p> <p>It's that the mediation it's under the Legal Practitioners Act it's not under the FICAC Act like how lawfully how do we do this? That's, that's my problem.</p>
 <p>Mr. Amani Bale Senior Lawyer</p>	<p>No really what he was ... to that this morning ... had asked her, had asked her "to say you think you should not come back here then you would have raised this with him but you have gone the extreme steps you have arrested her.</p> <p>The mediation we talking about was before all this because you knew everything, you know she was appointed yesterday so that's why we trying to contain this by saying you suspend your thing ... the JSC Counsels they go and sort it out because at the end of the day when Acting CJ and the AG what they decide she will also be answerable to it so all of us. So better we do it that way so we, we contain the situation.</p>
 <p>Mr. Kulindasi Sammi Manager Investigation FICAC</p>	<p>Okay</p>




 <p>Mr. Amani Bale Senior Lawyer</p>	<p>What do you think?</p>
 <p>Mr. Kuliniasi Saumi Manager Investigation FICAC</p>	<p>to Sir, I, I</p>
 <p>Mr. Wylie Clark Senior Lawyer President – Fiji Law Society</p>	<p>Sir, can I add, just ... I'm really happy everyone stopped in with their concern. I really happy to because the obvious solution to your dilemma, dilemma and there was a ... right. It's because when this appointment was pending, I kept ... of all the capacity to be independent, about this, the only was then to be given to an independent process, you know what that was?</p> <p>You hand it this file to the Police you take it away from FICAC that was the solution. That was the answer to your dilemma not this is, not this. I'm relay glad you raised it ... really ... so that's</p>




 Mr. Kulniasi Saumi Manager Investigation FICAC	<p>Sir, we understand that we, we, I suggested in that eh</p>
Ms. Lalle Bokini Ratu Manager Legal	<p>That was our suggestion</p>
 Mr. Kulniasi Saumi Manager Investigation FICAC	<p>But we</p>
 Mr. Amani Bale Senior Lawyer	<p>But the problem your charges won't be accepted you have to go that way</p>




 <p>Mr. Kuliniasi Saumi Manager Investigation FICAC</p>	<p>I just want to explain eh we suggested that</p>
<p>Ms. Laile Bokini Ratu Manager Legal</p>	<p>Even with the Police it will be accepted</p>
 <p>Mr. Amani Bale Senior Lawyer</p>	<p>Accepted yeah</p>
 <p>Mr. Tomas Bainivalu</p>	<p>That's your people ..</p>




Chief Registrar	
 <p>Mr. Kulniasa Saumi Manager Investigation FICAC</p>	<p>It's an Election related matters and we have the Law Enforcement agency that deal with the</p>
 <p>Mr. Amani Bale Senior Lawyer</p>	<p>But remember you, you, you need the Court to accept it, if they say no then you ..</p>
 <p>Mr. Kulniasa Saumi Manager Investigation FICAC</p>	<p>No. I'm just saying in relation to that solution eh to hand over to the Police, we were of the view of that but the other issue is that the Law says that only FICAC is to deal with Election matters so we cannot leave it.</p>




 Mr. Tomasi Bainivalu Chief Registrar	Dou lai vei talanoa kamudou
 Mr. Wylie Clark Senior Lawyer President – Fiji Law Society	I mean all of Fiji .. we should be
 Mr. Amant Bale Senior Lawyer	.. me raiou lai vei talanoa na gauna sa tau mai na lewa, lewa from the CJ and AG then everybody has to and if she doesn't like it so be it, we all come under some sort of umbrella ..




 <p>Mr. Kulniasi Saumi Manager Investigation FICAC</p>	<p>Okay Sir I just explain the process of release now. I have arrested, I have instructed arrested ah we have powers to release eh we can do that now but ah I have taken the instruction from our as per the e-mail instruction I receive this morning before I did this arrest; eh, our intent was just to conduct caution interview get her response through the allegation that has been put across eh but since this has come from your end</p>
 <p>Mr. Tomasi Bainivatu Chief Registrar</p>	<p>Have you started interview?</p>
 <p>Mr. Kulniasi Saumi Manager Investigation FICAC</p>	<p>We haven't started because I</p>



 <p>Mr. Amani Bale Senior Lawyer</p>	<p>Say, say, let them...this scenario hypothetically</p>
 <p>Mr. Kulniasi Saumi Manager Investigation FICAC</p>	<p>Okay</p>
 <p>Mr. Amani Bale Senior Lawyer</p>	<p>Since she goes to the meeting today she gets her letter to go or alternatively they appoint somebody else to be the Commissioner who's not, then what happens to you? Who will you listen to? Think about it you have to think of the scenario, think about that scenario</p>



 <p>Mr. Kuliniasi Sauni Manager Investigation FICAC</p>	<p>Yes yeah</p>
 <p>Mr. Amani Bale Senior Lawyer</p>	<p>Because at the end of the day we all answerable.</p>
 <p>Mr. Wyke Clark Senior Lawyer President – Fiji Law Society</p>	<p>Yeah</p>




 Mr. Amani Balo Senior Lawyer	<p>Say say they decide if she doesn't bunch they say to her, Madam this is your letter, you came in this way, you going th's way now will appoint somebody, we have taken your concern, will appoint somebody who is not bound under Section 105 to come and sit here</p>
 Mr. Kulimasi Saumi Manager Investigation FICAC	<p>Right yes</p>
 Mr. Amani Balo Senior Lawyer	<p>And then ne comes here and he says, brother come this is my Directive to you lawful Directive then what you going to do so</p>




 <p>Mr. Kulniasi Sami Manager Investigation FICAC</p>	<p>Yeah</p>
 <p>Mr. Amani Bale Senior Lawyer</p>	<p>Those are the scenarios those the extreme sides better in my view in my 35 years of experience she goes down .. she has raised her concerns, two concerns but remember at the end of the day we all come under that Directive, HE and the JSC</p>
 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>At the beginning of our discussion today we heard the message of our friend .. sitting in this room are bunch of foolish people, so we all foolish we all doing these things and sometimes .. you just said you just receive the direction today this morning from the Deputy Commissioner knowing very well that you have a Commissioner .. yesterday she had .. out the Manager Legal.</p> <p>We could have sit and decide are we doing the right thing so shall we move it to the Police or we just call JSC because now we wanted to charge, you really want to charge this because I'm the Investigator I aggregate every elements .. I'm in a dilemma you sort the direction knowing very well the Commissioner is already there that's wisdom. That's why I prayed this morning 'father we are fools, we needs your wisdom now more than ever .. are you with me.</p>



 <p>Mr. Kulniasi Saumi Manager Investigation FICAC</p>	<p>Yeah</p>
 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>I know, I'm not judging you ...</p>
	<p>No, we not questioning your integrity, we not questioning any of your integrity</p>




<p>Mr. Wylie Clark Senior Lawyer President – Fiji Law Society</p>	
 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>You know what you doing. me dou dabe ga dou vei talanoa, qo sa vesu tu</p>
 <p>Mr. Amanti Bale Senior Lawyer</p>	<p>Madam could have told her I ask you to don't, do not come back here on I'll be qo sa vesu lu. karakera vei kemudou me release mai dou mai vei talanoa</p>



 Mr. Kulniasi Saumi Manager Investigation FICAC	Sa donu.
Anonymous:	.. Oh we go together .. I want her to be grateful
 Mr. Kulniasi Saumi Manager Investigation FICAC	Pardon Sir




 <p>Mr. Amari Bale Senior Lawyer</p>	<p>Sa vei talanoa saraga ko ratou iako yani vei kemuni tau mai na lewa mai na JSC, na lewa ni JSC e va uci keda kece. Ke na tukuna na JSC dou charge taki koya se ko ya se the JSC could say Ms. Mallimali were are relieving you now we are appointing somebody else who's not picked or otherwise the extreme person Ms. Pulewai here is your letter go home They can do that too.</p>
 <p>Mr. Kulniasl Saumi Manager Investigation FICAC</p>	<p>But</p>
 <p>Mr. Amari Bale Senior Lawyer</p>	<p>But you know the consequences like a domino that means she will go home, you will go home, she will go home. We not, we be frank with you, yes yes</p>




 <p>Mr. Wylie Clark Senior Lawyer President - Fijian Law Society</p>	<p>Just try to find</p>
 <p>Mr. Amzani Bale Senior Lawyer</p>	<p>Yes just try to find one solution, don't you think madam, dau lai vel talanoa</p>
	<p>Dau lai vel talanoa ga qo</p>




<p>Mrs. Laurel Vaurasi Senior Lawyer</p>	 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>Qc na talanoa vakavuvale qo, Manager Legal eh</p>
	 <p>Mr. Amani Bale Senior Lawyer</p>	<p>Dau lai ve talanoa</p>
		<p>This is a Family Court because once, you have to protect the integrity of FICAC as well you better tell them already, ga qo ve talanoa ga, va ya bau kacivi yau mai meu lako mai, what's your view as the Secretary of JSC, baleta it's obvious been appointed so na ka au rogoca tiko vei na JSC au share vei kemuni ena message, you know it's</p>



Mr. Tomasi Bainivalu Chief Registrar	
 Mr. Amani Bale Senior Lawyer	Go there and lay your cards on the table and let them decide.
 Mr. Tomasi Bainivalu Chief Registrar	<p>Because you said already some of the things we had discuss they need my brief report this afternoon the JSC and I'm going to share that to them, the direction was this morning knowing very well, they have the Commissioner there appointed signed by the President of Fiji</p> <p>You can run your line of defense and say I'm doing my work, why the period the timing, those are the questions that will come. Good to know that we are discussing these things with you and Manager Legal could see the dilemma.</p>
	Yeah dju sa vei talanoa saraga ka kemudou, be direct and



<p>Mr. Amani Bale Senior Lawyer</p>	
 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>We need probably Ms. Puleiwa for you if the JSC needs your presence this afternoon, I'll let you know.</p>
 <p>Mr. Amani Bale Senior Lawyer</p>	<p>I think CR, Honourable CR, she should to be there.</p>



 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>Yes she should be there, I will ask, I will ask ..</p>
 <p>Mr. Amami Bale Senior Lawyer</p>	<p>She should be there</p>
 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>Yeah she should make up her mind already when she comes</p>



 <p>Mr. Wylie Clark Senior Lawyer President – Fiji Law Society</p>	<p>I think to just to .. the situation you need to release Mrs. Malimali now before this thing gets worst okay you can arrest her later .. there is a possible you can do it later she got this situation cannot be considered ..</p>
 <p>Mr. Amani Bale Senior Lawyer</p>	<p>While we sit here</p>
	<p>While we sit here</p>



<p>Mr. Wynne Clark Senior Lawyer President – Fiji Law Society</p>	
 <p>Mr. Amami Bale Senior Lawyer</p>	<p>Eh Ms. Pulewai don't be scared kerekere, dau qai lai vei talanoa saraga, baleta you can go to and dono it with the CJ ni sa mai</p>
 <p>Mr. Kuliniasi Saumi Manager Investigation FIGAC</p>	<p>Io sa donu</p>
	<p>Tou vei wusaki</p>




<p>Mrs. Francis Pulewai Acting Deputy Commissioner FICAC</p>	
 <p>Mr. Kuliniasi Sammi Manager Investigation FICAC</p>	<p>Io</p>
 <p>Mrs. Francis Pulewai Acting Deputy Commissioner FICAC</p>	<p>So keitou sa vei vosaki na CR and then will come back here</p>



 <p>Mr. Amami Bale Senior Lawyer</p>	<p>Donu, lo orau lai, keilou sa dape liko ga eke</p>
 <p>Mrs. Francis Pulelwal Acting Deputy Commissioner FICAC</p>	<p>lo</p>



 <p>Mr. Kulmasi Saumi Manager Investigation FICAC</p>	<p>Io sa donu</p>
 <p>Mr. Amant Bale Senior Lawyer</p>	<p>Oua tale na wai e tu</p>
<p>Mrs. Lalte Bolini Ratu, Manager Legal – FICAC</p>	<p>Tea, coffee</p>



 <p>Mr. Amani Bale Senior Lawyer</p>	<p>ic kerekere</p>
 <p>Mr. Kulniasi Saumi Manager Investigation FICAC</p>	<p>..io</p>



 <p>Mrs. Francis Pulewai Acting Deputy Commissioner FICAC</p>	<p>It's all taken care of.</p>
 <p>Mr. Wylke Clark Senior Lawyer President – Fiji Law Society</p>	<p>Okay I'll just go and check now</p>



 <p>Mr. Tomasi Bainivalu Chief Registrar</p>	<p>Iko tiko ira</p>
 <p>Mr. Kulinlas Saumi Manager Investigation FICAC</p>	<p>Io</p>
	<p>Vinaka. Io vakacava tiko?</p>




	<p>Mr. Tomasi Bainivalu Chief Registrar</p>
<p>Sel sel tiko</p>	 <p>Mr. Kuliniasi Saumi Manager Investigation FICAC</p>
<p>Va kaukauwa tiko</p>	 <p>Mr. Tomasi Bainivalu Chief Registrar</p>



 <p>Mrs. Laurel Vaurasi Senior Lawyer</p>	<p>How long will come back here ...</p>
	<p><i>Discussion and movements - 43:38 - 45:30</i></p>
	<p>MANAGEMENT DISCUSSION</p>
 <p>Mrs. Francis Pulewai Acting Deputy Commissioner FICAC</p>	<p>Ivei ko AMI, coming down?</p>



 Mr. Kulnias Saumi Manager Investigation FICAC	<p>Mal tou vei lalanoa mada, sega ni dua</p>
<p>Mrs. Kolora Naliva, Manager Corruption Prevention - FICAC</p>	<p>Opposition tale ga sa press conference qo na tini kadua, ko lnia Seruratu</p>
 Mr. Kulnias Saumi Manager Investigation FICAC	<p>Tou vosola liko dua na ka dredre tou so lava</p>



 <p>Mrs. Francis Pukeiurai Acting Deputy Commissioner FICAC</p>	<p>to</p>
 <p>Mr. Kunnasi Saumi Manager Investigation - FICAC</p>	<p>I know it's madam</p>


 <p>Mrs. Francis Pulewai Acting Deputy Commissioner FICAC</p>	<p>Sir, the ah proposal</p>
 <p>Mr. Kuluasi Saumi Manager Investigation FICAC</p>	<p>Yes</p>


 <p>Mrs. Francis Puleiwai Acting Deputy Commissioner FICAC</p>	<p>The proposal to release her and the discussion</p>
 <p>Mr. Kudinas/ Saumb Manager Investigation - FICAC</p>	<p>The discussion</p>
	<p>The discussion with JSC</p>



<p>Mrs. Francis Pulewai Acting Deputy Commissioner FICAC</p>	
<p> Mr. Kuliniasi Saumi Manager Investigation - FICAC</p>	<p>Yeah</p>
<p> Mrs. Francis Pulewai Acting Deputy Commissioner FICAC</p>	<p>In terms of the way forward</p>



 <p>Mr. Kulunasi Saumi Manager Investigation - FICAC</p>	<p>Okay</p>
<p>Mrs. Laite Bokuni Ratu – Manager Legal - FICAC</p>	<p>Ma'am, I am sorry because I just missed it but what is the what basis did CR and CJ give for not accepting charges? Just their discretion.</p>
 <p>Mrs. Francis Puleiwai Acting Deputy Commissioner FICAC</p>	<p>Just their discretion. So ahm this first of all in my view that interference right</p>
	<p>And interfere out right</p>



Mrs. Laite Bokini Ratu – Manager Legal - FICAC	
 <p>Mrs. Francis Puleiwai Acting Deputy Commissioner FICAC</p>	Exactly
Mrs. Laite Bokini Ratu – Manager Legal - FICAC	No matter how many times they saying they not interfering
	Yes for me that's cut right interference in my view eh, secondly they don't have, the law is the law to accept the charges once it's filed so when it's not we just have to file the charges in Court. The ahm I'm not worried about my job

<p>Mrs. Francis Pudeiwan Acting Deputy Commissioner FICAC</p>	
<p>Mr. Umar Dean – Manager Finance FICAC</p>	<p>Madam it's not only you</p>
<p>Mrs. Kolera Naliva – Manager Corruption Prevention – FICAC</p>	<p>me right now</p>
<p>Mr. Umar Dean – Manager Finance – FICAC</p>	<p>I'm telling you now, it's only the frontliners only</p>
	<p>I'm not really worried about my job if they want to give me my letter so so I'm gonna stand my ground and because you've seen the charges eh and</p>


Mrs. Francis Puleiwai Acting Deputy Commissioner FICAC	
Mrs. Latte Bokini Ratu - Manager Legal - FICAC	Yes that's something they didn't tell us even I said it CR's face changed
 Mrs. Francis Puleiwai Acting Deputy Commissioner FICAC	Yes
Mrs. Latte Bokini Ratu - Manager Legal - FICAC	And I said there is a charge and it's serious

 <p>Mrs. Francis Puloiwai Acting Deputy Commissioner FICAC</p>	<p>It's a very serious offence and I don't it to go to the Police because that shows that we are not transparent enough</p>
<p>Mr. Umar Dean – Manager Finance – FICAC</p>	<p>Yeah</p>
 <p>Mrs. Francis Puloiwai Acting Deputy Commissioner FICAC</p>	<p>To take someone to Court eh</p>

 <p>Mr. Kuliniasi Saumi Manager Investigation- FICAC</p>	Can we refer it to the Police
 <p>Mrs. Francis Puleiwai Acting Deputy Commissioner FICAC</p>	We can't, it's Electoral

 <p>Mr. Kulniasa Saumi Manager Investigation - FICAC</p>	<p>We can't .. it's an Electoral</p>
<p>Mrs. Kolora Naliva – Manager Corruption Prevention – FICAC</p>	<p>It's an Electoral matter</p>
 <p>Mr. Kulniasa Saumi Manager Investigation- FICAC</p>	<p>So</p>

Mrs. Laite Bokini Ratu – Manager Legal – FICAC.	See we actually can, we actually can the reason why I wanted us to hold on it is they are saying it doesn't look good on our maye, no it's looks good on our image
Mrs. Kolora Naliva – Manager Corruption Prevention – FICAC	It looks good on our maye
Mrs. Laite Bokini Ratu – Manager Legal – FICAC.	In fact that we are cleaning up from
Mr. Umar Dean – Manager Finance – FICAC	Madam ADC
Mrs. Laite Bokini Ratu – Manager Legal – FICAC.	... but the basis of it's an Electoral complaint eh

 <p>Mr. Kuliniasi Sauni Manager Investigation FICAC</p>	Yeah
Mrs. Laite Bokini Ratu – Manager Legal – FICAC	But the actual charge itself is under the Crimes Act the Police can .. the Police can investigate
Mr. Umar Dean – Manager Finance – FICAC	Madam ADC, whatever transpired in the meeting you put it in writing copy to the President .. and the AG
	[Duration: 48:37]





ANNEX J

Witness Summaries

WITNESS SUMMARIES

Evidence Summary of Prime Minister and Chairperson of the Constitutional Offices Commission, Hon. Sitiveni Ligamamada Rabuka

1. Hon. Rabuka filed a sworn affidavit dated 26 November 2024 and was the first witness to give oral evidence at the CoI hearing on 6 January 2025.
2. Hon. Rabuka is the Prime Minister of Fiji and serves as the Chairperson of the COC.
3. The evidence of Hon. Rabuka broadly addresses the following topics:
 - a. appointment and resignation of Ms. Barbara Malimali;
 - b. tensions between the Electoral Commission and the SoE;
 - c. the ECF Letters and concerns around consultation;
 - d. knowledge of FICAC complaints and investigations;
 - e. role of the CoC in oversight and appointments;
 - f. handling of resignation and institutional handover; and
 - g. ministerial views on propriety, timing, and accountability in public office.

Appointment and Resignation of Ms. Barbara Malimali

4. Hon. Rabuka stated that he was aware of Ms. Malimali's appointment by the President on 4 September 2024 as Commissioner of FICAC, with the appointment taking effect from 12 am on 5 September 2024.¹
5. He confirmed that Ms. Malimali had submitted her resignation as Chairperson of the ECF by letter to the Secretary of the CoC on 3 September 2024, a day prior to her appointment taking effect.²
6. He acknowledged, however, that there was no formal communication from Ms. Malimali directly to the CoC or to him as Chairperson regarding her resignation. He stated that he learned of her resignation only after being approached by the press while in Lautoka and subsequently confirmed the matter with the CoC Secretariat.³
7. Hon. Rabuka gave evidence that Ms. Malimali left the ECF without a handover report or formal meeting with the appointing authority, and without returning

¹ Affidavit of Hon. Sitiveni Ligamamada Rabuka, dated 26 November 2024 at [14].

² Ibid., [25].

³ Transcript, Day 1, Session 1 – PM. Rabuka at 29.

all government assets in her possession, specifically a laptop and a mobile phone.⁴ These issues were raised with him by the SoE approximately two weeks after the resignation.⁵

8. He agreed that, as a matter of courtesy and procedural propriety, a resigning Chairperson of a constitutional body should notify the appointing authority and participate in handover arrangements.⁶ He also stated that although not formally set out, there should have been standard operating procedures to that effect.⁷

Relationship Between the Electoral Commission and the SoE

9. Hon. Rabuka confirmed that the CoC was aware of longstanding tensions between Ms. Malimali and Ms. Ana Mataciwa, the SoE.⁸
10. He described receiving or being privy to several communications and protestations from Ms. Malimali in her capacity as Chairperson of the ECF, particularly regarding the process followed in appointing the SoE.⁹
11. He specifically referred to a letter dated 2 April 2024 from Ms. Malimali to the CoC Secretary, urging that the recruitment process be restarted to include meaningful consultation with the ECF, citing the SoE's statutory role as Secretary to the ECF.¹⁰
12. A subsequent letter dated 15 April 2024 from Ms. Malimali raised concerns about leaked confidential materials and again sought consultation with the Prime Minister and COC.
13. Hon. Rabuka interpreted these letters as reflecting a concern on Ms. Malimali's part about a lack of proper engagement in the SoE appointment, though he deferred to the legal advice of the Secretariat as to whether the COC had discharged its consultation obligations.¹¹

The ECF Letters and Consultation Concerns

14. Hon. Rabuka gave detailed evidence about a lengthy letter from the ECF, signed by Ms. Malimali, which objected to the appointment of Ms. Mataciwa as SoE.¹²
15. There was also the April 2 Malimali Letter included criticism of the COC Selection Panel's process, and proposed alternative appointment models, including a rotation between Ms. Mataciwa, Ms. Ana Senimoli, and Mr.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid., 30.

⁷ Ibid., 31.

⁸ Affidavit of Hon. Sitiveni Ligamamada Rabuka, dated 26 November 2024 at [8].

⁹ Transcript, Day 1, Session 1 – PM. Rabuka at 10.

¹⁰ Affidavit of Hon. Sitiveni Ligamamada Rabuka, dated 26 November 2024 at [11].

¹¹ Transcript, Day 1, Session 1 – PM. Rabuka at 8.

¹² Ibid., 8.

Sanjeshwar Ram, or the appointment of Mr. Graham Leung as SoE with Ms. Mataiciwa as Deputy.¹³

16. Hon. Rabuka acknowledged that the letter was discussed at length within the COC but confirmed that no formal response was issued.¹⁴
17. He noted that the letter was later leaked to the media and attracted commentary suggesting that Ms. Malimali had attempted to interfere with the appointment process.¹⁵ While he found such media commentary disappointing, he indicated that he deferred to the legal position provided by the Secretariat.¹⁶
18. He stated that he was unsure whether the letter had been written on behalf of all of the ECF Commissioners or just by Ms. Malimali personally, despite its use of plural pronouns and the Chairperson's signature. He acknowledged disappointment upon learning that the other ECF Commissioners had not endorsed the proposals contained in the letter.¹⁷

Knowledge of FICAC Investigations and Complaints

19. Hon. Rabuka confirmed that he became aware of a pending FICAC investigation into Ms. Malimali around the time of her appointment but had no prior knowledge that she would be arrested on the day she assumed office, namely, 5 September 2024.¹⁸
20. He testified that the arrest was related to a complaint dated 8 April 2024 lodged by Ms. Alexandra Forwood and that he subsequently learned of a second complaint made by Ms. Mataiciwa on 9 September 2024.¹⁹
21. When shown a letter from Ms. Forwood dated 30 August 2024, alleging serious misconduct and also referring to FICAC complaints against other senior government officials, including the CR, Mr. Green, and Mr. Turaga, Hon. Rabuka stated he had no prior knowledge of the document or its contents.²⁰
22. He further denied being aware of a directive from Ms. Malimali to the SoE demanding that complaints be sent to her and not referred to FICAC, or the dispute that this created.²¹

¹³ Ibid., 10.

¹⁴ Ibid., 12.

¹⁵ Ibid., 11.

¹⁶ Ibid.

¹⁷ Ibid., 12.

¹⁸ Ibid., 15.

¹⁹ Ibid., 13.

²⁰ Ibid., 22.

²¹ Ibid.

23. He stated that, although he suspected dysfunction between the ECF Commissioners and the SoE, he was not aware of the full extent of the breakdown in relations.²²

Role of the CoC and Ministerial Responsibility

24. As Chair of the COC, Hon. Rabuka stated that he relied heavily on the advice of the Secretariat, particularly in legal and procedural matters, including the legality of consultation processes.²³
25. He gave evidence that when concerns were raised about the timing of the FICAC Malimali Investigation, he advised Deputy Commissioner Frances Puleiwai to write an out-brief report and confirmed that he had no legal authority to intervene in the President's appointment process.²⁴
26. He recalled attempting to raise the issue with the President on 4 September 2024 but was informed that the appointment had already been signed and could not be undone.²⁵ He accepted that, in hindsight, the appointment should have been deferred until the investigation was resolved.²⁶

Resignation, Handover, and Organisational Impact

27. Hon. Rabuka gave evidence that Ms. Malimali left the ECF without providing notice, a handover plan, or transition arrangements.²⁷
28. He testified that while she had informally suggested replacements in her resignation letter, such conduct was inappropriate given that appointments were a public process overseen by the COC.²⁸
29. He was not contacted by the JSC regarding Ms. Malimali's performance prior to her appointment as FICAC Commissioner, and accepted that no formal reference-checking was undertaken.²⁹

Views on Public Office and Stepping Aside

30. Hon. Rabuka confirmed his view that individuals in high office should voluntarily step aside if subject to criminal investigation, to preserve public confidence and the integrity of their position.³⁰

²² Ibid., 23.

²³ Ibid., 8 and 23.

²⁴ Ibid., 16.

²⁵ Ibid., 17.

²⁶ Ibid., 18.

²⁷ Ibid., 30.

²⁸ Ibid., 31.

²⁹ Ibid., 40.

³⁰ Ibid., 27.

31. He referenced the example of Hon. Pio Tikoduadua, who had voluntarily stood down during a prior investigation, and agreed that this reflected the appropriate standard.³¹
32. He accepted that many senior officials may not have known about the investigation into Ms. Malimali, but maintained that had he known, he would have advised deferral of her appointment.³²

Evidence Summary of Former President of the Republic of Fiji, His Excellency Ratu Wiliame Maivalili Katonivere

33. His Excellency Ratu Wiliame Maivalili Katonivere served as the President of the Republic of Fiji from 12 November 2021 until 12 November 2024.
34. He filed a sworn affidavit on 13 December 2024 and gave oral evidence on 10 January 2025, which was Hearing Day 5.
35. His Excellency's evidence primarily relates to:
 - a. the appointment process of Ms. Malimali as Commissioner of FICAC;
 - b. his understanding of legal and constitutional duties during the appointment;
 - c. whether he was aware of the FICAC Malimali Investigation; and
 - d. his views on propriety, institutional advice, and regret regarding the appointment.

The Appointment of Ms. Malimali as FICAC Commissioner

36. His Excellency stated that the appointment process for Ms. Malimali commenced with a recommendation and legal advice from the A-G.³³ He confirmed that he acted in accordance with s 5 of the FICAC Act, which requires the President to act on the recommendation of the JSC, following consultation by the JSC with the A-G.³⁴
37. He asserted that he received the necessary legal documentation, including a recommendation from the JSC, confirmation of consultation with the A-G, and Ms. Malimali's curriculum vitae.³⁵ These documents formed the basis of his decision to proceed with the appointment.³⁶

³¹ Ibid.

³² Ibid., 27.

³³ Transcript, Day 5, Session 1 – Ratu Wiliame Katonivere at 13.

³⁴ Ibid.

³⁵ Ibid., 10.

³⁶ Ibid.

38. He identified the A-G, the JSC Selection Panel, and himself as the key actors in the Appointment Process. He emphasized that his role was not discretionary and that he relied entirely on the advice provided to him.³⁷
39. The draft appointment letter was prepared by the CR and presented to His Excellency for signature. He confirmed that this was standard practice and that he did not personally draft or amend the documents.³⁸

Knowledge of FICAC Investigation and Complaint

40. His Excellency stated he was unaware of any FICAC investigation into Ms. Malimali until he received a letter from Ms. Frances Puleiwai on 30 August 2024, five days before the appointment took effect.³⁹
41. He confirmed that upon receiving this letter, he referred it to the S-G's office for legal advice through his secretary, Ms. Temo. He received no response.⁴⁰
42. He was reassured by the CR, Mr. Tomasi Bainivalu, that the JSC was aware of the allegations, had conducted due diligence, and that both the JSC and A-G were satisfied with the recommendation.⁴¹
43. His Excellency affirmed that this assurance, alongside the legal documentation, informed his understanding that the Appointment Process had been properly followed.⁴²

Process and Timing of Appointment

44. His Excellency confirmed that the process of appointment was rapid. He reviewed the documents presented to him and signed the appointment without delay.⁴³ He was not given multiple days to reflect or request independent verification.⁴⁴
45. He acknowledged that this standard process left little room for him to interrogate the basis of the recommendation or initiate inquiries beyond the materials presented.⁴⁵

³⁷ Ibid., 13.

³⁸ Ibid., 11.

³⁹ Ibid., 9.

⁴⁰ Ibid.

⁴¹ Ibid., 13.

⁴² Ibid.

⁴³ Ibid., 10.

⁴⁴ Ibid.

⁴⁵ Ibid.

46. He did not seek the presence or advice of the S-G during his meeting with the CR regarding the draft appointment documents.⁴⁶ In hindsight, he agreed that such advice would have been helpful.⁴⁷

Allegation of Improper Motive

47. His Excellency rejected any suggestion that his decision to appoint Ms. Malimali was influenced by a personal interest in avoiding scrutiny from FICAC, including any existing complaints against him.⁴⁸
48. He stated unequivocally that he was unaware of any FICAC complaint against him at the time of the appointment.⁴⁹ He denied adjusting his conduct to protect himself or secure a second presidential term, stating that he had no intention of continuing in office beyond the three-year term.⁵⁰

View on Appointments Under Investigation

49. When asked for his personal view on whether it was appropriate for a person under investigation to accept a senior appointment, His Excellency responded that, personally, he would not have applied for such a role if he were the subject of an ongoing complaint. He emphasized that leaders should enter office “clean,” without unresolved allegations that could cast doubt on their integrity.⁵¹
50. He reiterated that his role as President was to act on official advice, not to inject personal opinion or judgment into the process.⁵²

Assessment of Ms. Malimali’s Suitability

51. His Excellency stated that based on the documents presented to him, particularly Ms. Malimali’s curriculum vitae, he was satisfied that she was a “fit and proper person” for the role of FICAC Commissioner.⁵³
52. He noted her extensive legal experience as the basis for his confidence in her ability to perform the duties of the office effectively.⁵⁴

Reaction to Ms. Malimali’s Arrest

53. His Excellency stated that he first learned of Ms. Malimali’s arrest on 5 September 2024, the day her appointment took effect, through a media report.⁵⁵

⁴⁶ Ibid., 35.

⁴⁷ Ibid., 11.

⁴⁸ Ibid., 14.

⁴⁹ Ibid.

⁵⁰ Ibid., 15.

⁵¹ Ibid., 16.

⁵² Ibid.

⁵³ Ibid., 23.

⁵⁴ Ibid.

⁵⁵ Ibid., 26.

54. He described feeling “bad” upon hearing the news, noting that the situation was personally and institutionally distressing.⁵⁶ He empathized with Ms. Malimali and reiterated that if he had been in her position, he would not have applied for the role.⁵⁷

Regret and Reflections

55. Despite the events that followed, His Excellency stated that he did not regret signing the appointment of Ms. Malimali, as he acted in good faith and in accordance with his constitutional obligations.⁵⁸
56. He confirmed that although he had seen media reports in May 2024 suggesting that he was among those referred to FICAC, he had not received any official communication or confirmation from his office.⁵⁹
57. In hindsight, he agreed that it would have been prudent to seek independent confirmation from the COC about Ms. Malimali’s resignation and to inquire further into the status of the complaint raised by Ms. Puleiwai.⁶⁰ He did not do so, relying instead on the assurances of Mr. Bainivalu, whom he trusted as Secretary to the JSC.⁶¹
58. He confirmed that he did not consider rescinding Ms. Malimali’s appointment, nor sought legal advice on whether this was an option, explaining that his practice was to follow the advice of the appointing institutions.⁶²

Evidence Summary of Hon. Siromi Turaga, Minister for Justice

59. Hon. Siromi Turaga is Fiji’s Minister for Justice and formerly served as A-G. He filed a sworn affidavit on 2 January 2025, and he provided oral evidence on Day 4 of the hearing.
60. The evidence of Hon. Siromi Turaga broadly covers the following:
- a. his constitutional role and oversight of FICAC;
 - b. the lawful process for appointing the FICAC Commissioner;
 - c. the leaking of FICAC investigation letters;
 - d. the legal authority of Acting Deputy Commissioner Ms Puleiwai; and
 - e. his knowledge of investigations into Hon. Prasad and Ms. Malimali.

⁵⁶ Ibid.

⁵⁷ Ibid., 27.

⁵⁸ Ibid., 29.

⁵⁹ Ibid.

⁶⁰ Ibid., 41.

⁶¹ Ibid.

⁶² Ibid., 36.

Constitutional Role and Receipt of FICAC Updates

61. As Minister for Justice, Mr. Turaga routinely receives updates on FICAC's work, as authorised under the 2013 Constitution, which empowers FICAC to advise the A-G.⁶³
62. He confirmed that FICAC's statutory offices of Commissioner and Deputy Commissioner, are established by law, and that FICAC reports to his Ministry via formal channels.⁶⁴

Authority and Independence in Commissioner Appointments

63. Under the FICAC Act, the Commissioner is appointed by the President on the recommendation of the JSC, following consultation with the A-G.⁶⁵
64. Hon. Turaga stated he is not a member of the JSC, to preserve its constitutional independence, and had no involvement or insight into Ms. Malimali's appointment process.⁶⁶
65. He affirmed that, to his knowledge, the appointment adhered to constitutional and statutory requirements.⁶⁷

Leaking of Investigation Letters

66. Hon. Turaga placed fault on FICAC for leaking the letter detailing investigations into both Hon. Biman Prasad and Ms. Malimali.⁶⁸
67. He found it highly improper that FICAC advised his office of those investigations, and impending charges, on the same day Ms. Malimali was formally appointed Commissioner.⁶⁹

Legal Authority of Acting Deputy Commissioner

68. In his view, Ms. Puleiwai, the then ADC, lacked any legal authority to issue letters announcing investigations or charges.⁷⁰
69. He stressed that such advisories should have come through formal FICAC channels or direct ministry correspondence, not unilateral action.⁷¹

⁶³ Transcript, Day 4, Session 1 – Hon. Turaga at 8.

⁶⁴ Ibid., 12.

⁶⁵ Ibid., 13.

⁶⁶ Ibid., 28.

⁶⁷ Ibid., 41.

⁶⁸ Ibid., 13.

⁶⁹ Ibid., 38.

⁷⁰ Ibid., 15.

⁷¹ Ibid., 38.

Knowledge and Communication of Investigations

70. Hon. Turaga stated he was never formally briefed by FICAC on the substance of investigations into Hon. Prasad or Ms. Malimali.⁷²
71. His only awareness came indirectly via emails and social media posts, notably by Ms. Forwood, which he found an unsatisfactory and unprofessional means of communication.⁷³
72. He expressed concern about FICAC's failure to disclose investigation details through official ministry channels, hampering his capacity to oversee and ensure due process.⁷⁴
73. Mr. Turaga's evidence underscores the constitutional demarcation between government oversight and FICAC's operational independence, and his objection to informal leaks and unauthorised communications about sensitive investigations.⁷⁵

Evidence Summary of A-G, Mr. Graham Leung

74. Mr. Graham Leung is the current A-G of Fiji. He provided a sworn affidavit dated 11 December 2024, which was taken as read. He gave oral evidence before the CoI on Day 10 of the Hearings.
75. Mr. Leung's evidence primarily addresses:
 - a. the consultation process with the JSC concerning the appointment of Ms. Malimali as FICAC Commissioner;
 - b. his knowledge of the complaint against Ms. Malimali;
 - c. his advice to the Chief Justice and subsequent reconsideration;
 - d. the influence of correspondence from the Electoral Commission;
 - e. reflections on FICAC's independence and the role of the Acting Deputy Commissioner, Ms. Puleiwai; and
 - f. admissions regarding hindsight and procedural caution.

Consultation Process on the Appointment of the FICAC Commissioner

76. Mr. Leung confirmed that the consultation process relating to the appointment of Ms. Malimali was carried out in accordance with statutory requirements under section 5 of the FICAC Act. The consultation involved CJ Temo, S-G Ropate Green, and the CR.⁷⁶

⁷² Ibid., 39.

⁷³ Ibid., 39.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Transcript, Day 10, Session 1 – A-G Leung at 8.

77. He received a document titled “Consultation and Briefing” on 2 September 2024, which outlined the names of the JSC Selection Panel and the Panel’s recommendation to appoint Ms. Malimali. Mr. Leung stated that this satisfied the formal requirement for consultation.⁷⁷

Initial Concerns About a Complaint Against Ms. Malimali

78. On 3 September 2024, Mr. Leung contacted the Acting Deputy Commissioner of FICAC, Ms. Frances Puleiwai, to inquire about any complaints or investigations concerning Ms. Malimali.⁷⁸ Ms. Puleiwai confirmed that there was a complaint, but Mr. Leung could not recall whether she stated there was an active investigation or the nature of the complaint.⁷⁹
79. As a result of this conversation, Mr. Leung advised Chief Justice Temo to pause the appointment of Ms. Malimali as a precautionary measure until further clarification could be obtained.⁸⁰ He noted that his advice was driven by prudence and a desire to avoid proceeding with the appointment while an unresolved complaint existed.⁸¹

Correspondence and Influence of the Electoral Commission

80. Later that same day on 3 September 2024, Mr. Leung received an email from Dr. Emberson-Bain that included a letter from the ECF Commissioners. The letter criticized FICAC’s actions, specifically the execution of a search warrant, which they called a raid, and described FICAC as “disgraceful.”⁸²
81. Mr. Leung stated that he did not express a view on the tone of the letter at the time but acknowledged in his testimony that he personally would have used more temperate language.⁸³
82. The ECF Commissioners letter, in Mr. Leung’s view, suggested that the complaint against Ms. Malimali was vexatious. Balancing that representation against the earlier information received from Ms. Puleiwai, and the fact that the complaint was from blogger Alexandra Forwood, Mr. Leung revised his position.⁸⁴
83. He called the CJ and rescinded his earlier advice to the CJ to pause the appointment, indicating that the letter from the ECF Commissioners influenced his shift in stance.⁸⁵

⁷⁷ Ibid., 10.

⁷⁸ Ibid., 12.

⁷⁹ Ibid., 13.

⁸⁰ Ibid., 15.

⁸¹ Ibid., 17.

⁸² Ibid., 21.

⁸³ Ibid., 22.

⁸⁴ Ibid., 22.

⁸⁵ Ibid., 23.

Reflections on FICAC's Role and the Position of Ms. Puleiwai

84. Mr. Leung emphasized that he did not seek to interfere with FICAC's independence or investigative processes and accepted that FICAC must assess and respond to complaints in its own capacity.⁸⁶
85. He acknowledged the complexity of Ms. Puleiwai's role, particularly given that she was herself an applicant for the position of FICAC Commissioner. While he did not suggest any malicious motive on her part, he recognized the potential for a perceived conflict of interest.⁸⁷

Hindsight and Acknowledgment of Error

86. Mr. Leung candidly admitted that, in hindsight, he should have maintained his initial advice to the CJ, namely, to delay the appointment until the FICAC Malimali Investigation was concluded.⁸⁸
87. He acknowledged that the situation required greater caution and that deferring the appointment would have allowed FICAC to independently and conclusively deal with the matter without creating a cloud over the appointee's legitimacy.⁸⁹

Role of the JSC and Final Reflections

88. Mr. Leung confirmed that the JSC is an independent constitutional body and not subject to the direction or control of any person or authority, including himself.
89. He accepted that while the CJ was entitled to take his advice into account, he retained the ultimate discretion to accept or reject it.⁹⁰
90. Mr. Leung stated that he had no personal or political interest in the appointment of Ms. Malimali to the FICAC role and that his involvement was solely in his professional capacity as A-G.

Evidence Summary of Commissioner of FICAC, Ms. Barbara Malimali

91. Ms. Malimali was the newly appointed Commissioner of FICAC, her appointment taking effect on 5 September 2024. She was the former Chairperson of the ECF.

⁸⁶ Ibid., 27.

⁸⁷ Ibid., 28.

⁸⁸ Ibid., 29.

⁸⁹ Ibid., 28.

⁹⁰ Ibid., generally at 32-46.

92. Ms. Malimali provided a sworn affidavit dated 27 November 2024 and gave extensive oral evidence over nine separate Hearing Days, 19, 21, 23, 24, 30, 32, 33, 34, and 36.
93. Her evidence focused on:
- a. the integrity of her appointment process;
 - b. knowledge and handling of the FICAC complaint against her;
 - c. the ECF letter of 2 April 2024 and the subsequent search warrant;
 - d. her professional conduct and political relationships;
 - e. issues of conflict of interest and engagement of legal representation;
 - f. the stop departure order placed on Ms. Puleiwai; and
 - g. her arrest and the legality of the process.

Appointment as FICAC Commissioner

94. Ms. Malimali stated that although her formal letter of appointment was issued on 4 September 2024, she had been informally notified of her successful application around 22-23 August 2024.⁹¹
95. She was surprised to be shortlisted for an interview given what she described as a “not-so-warm” professional relationship with CJ Temo. She joked that defence lawyers used to relax when she appeared before him, expecting she would be “attacked.”⁹²
96. Despite her doubts, she applied for the role following encouragement from friends, including Ms. Tanya Waqanika, who argued she had long-standing experience in criminal law and should put her name forward.⁹³

The April 2 Malimali Letter and Its Consequences

97. As Chair of the ECF, Ms. Malimali authored a letter to the COC dated 2 April 2024, objecting to the process for appointing the SoE. The letter proposed three alternative options: re-advertising the position, rotating it among three internal applicants, or appointing Mr. Graham Leung as SoE and Ms. Mataiciwa as Deputy.
98. This letter was subsequently leaked to the public and posted on social media by Ms. Forwood. Ms. Malimali denied leaking it and said she did not know how Ms. Forwood obtained it. She believes the leak prompted Ms. Forwood’s complaint against her for abuse of office.

⁹¹ Transcript, Day 23, Session 2 – Ms. Malimali at 3.

⁹² Ibid., 4.

⁹³ Ibid., 5.

Awareness of FICAC Complaint and Investigation

99. Ms. Malimali confirmed that she was aware, via Facebook, that Ms. Forwood had lodged a complaint against her with FICAC in April 2024.⁹⁴ However, she was not officially notified of any investigation and was unaware of any formal process being initiated until a search warrant was executed on 3 September 2024.⁹⁵
100. She acknowledged she did not disclose the complaint to the JSC during her interview, stating that she did not consider it material because there was no formal notification or investigation underway.⁹⁶

Execution of ECF Search Warrant

101. On 3 September 2024, Ms. Malimali was informed by Commissioner Dr. Atubain that FICAC officers were conducting a raid at the ECF office.⁹⁷ The warrant was served on the ECF Executive Secretary, Mr. Tudonu.⁹⁸
102. The officers were reportedly searching for the April 2 Malimali Letter, related meeting minutes, and a directive allegedly instructing the SoE to consult the ECF before referring complaints to FICAC.⁹⁹
103. Ms. Malimali described the timing of the raid, two days before her appointment took effect, as suspect and perceived it as a targeted attempt to discredit her.¹⁰⁰

Handling of Complaints and Investigations

104. Ms. Malimali denied any attempt to suppress complaints filed with FICAC, including those made by Ms. Forwood.¹⁰¹ She emphasized that investigations continued independently, and she did not interfere with operational matters.¹⁰²
105. She claimed that the complaint and raid were deliberately timed to damage her credibility, describing the events as “poorly timed” and “undermining.”¹⁰³

⁹⁴ Ibid., 10.

⁹⁵ Ibid., 11.

⁹⁶ Ibid., 9.

⁹⁷ Ibid., 72.

⁹⁸ Ibid., 73.

⁹⁹ Ibid.

¹⁰⁰ Ibid., 81.

¹⁰¹ Transcript, Day 32, Session 2 – Ms. Malimali at 15.

¹⁰² Ibid., 16.

¹⁰³ Transcript, Day 23, Session 2 – Ms. Malimali at 81.

Integrity, Political Relationships, and Conflicts of Interest

106. Ms. Malimali acknowledged that she had engaged Ms. Tanya Waqanika as her legal representative but denied any improper process, asserting that proper procurement procedures were followed.¹⁰⁴
107. She denied that her political relationships with individuals such as Hon. Tabuya, Hon. Kamikamica, and Hon. Vosarogo had any influence on her work as FICAC Commissioner. She stressed her commitment to maintaining impartiality.¹⁰⁵
108. She emphasized that her conduct as FICAC Commissioner was governed by internal controls and standard procedures, and that she upheld principles of fairness and independence.¹⁰⁶

Stop Departure Order Against Deputy Commissioner

109. Ms. Malimali confirmed that she lodged a complaint against Ms. Puleiwai and issued an SDO to prevent her from leaving the country.¹⁰⁷
110. She explained that while no formal investigation had commenced, she was concerned that Ms. Puleiwai might not return to co-operate with FICAC proceedings, justifying the issuance of the SDO as a precautionary measure.¹⁰⁸

Arrest of Ms. Malimali and Legal Dispute

111. Ms. Malimali was arrested by her own Manager Investigations, Mr. Saumi, on-site at FICAC. She described the arrest as “shocking,” “traumatic,” and “humiliating,” and expressed personal outrage that her subordinate had taken such action.¹⁰⁹
112. She contended that as FICAC Commissioner, she was immune from such action and that Mr. Saumi had “no right to touch her.”¹¹⁰
113. Justice Ashton-Lewis dismissed this argument as “errant nonsense,” clarifying that s 10 of the FICAC Act grants the Deputy Commissioner full arrest powers. Ms. Mason reinforced this interpretation and stated that Ms. Malimali she had been lawfully arrested.¹¹¹

¹⁰⁴ Transcript, Day 32, Session 2 – Ms. Malimali at 1-2 and 6-7 and 10-11.

¹⁰⁵ Transcript, Day 23, Session 2 – Ms. Malimali at 7.

¹⁰⁶ Transcript, Day 32, Session 2 – Ms. Malimali at 1-2 and 6-7 and 10-11.

¹⁰⁷ Transcript, Day 24, Session 2 – Ms. Malimali see generally pages 7 – 13.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid., 15.

¹¹⁰ Ibid., 17.

¹¹¹ Ibid.

114. Despite the explanation, Ms. Malimali maintained that the arrest was unlawful and amounted to an ambush.¹¹² She described the event as a deeply distressing public humiliation, stating that the media coverage made her feel “publicly crucified.”¹¹³

Evidence Summary of Electoral Commissioner Mr. Reginald Manor Kant Jorkhan

115. Mr. Reginald Manor Kant Jorkhan was appointed as a Commissioner of the ECF by His Excellency the President on 11 July 2023.
116. He provided a sworn affidavit dated 3 January 2025 and provided further oral testimony on Day 14 of the Hearing.
117. Mr. Jorkhan’s evidence focused on:
- a. the authority of the ECF under the Constitution and the legality of directives issued to the SoE;
 - b. his involvement in and knowledge of the April 2 Malimali Letter sent by Ms. Malimali to the COC;
 - c. his communications with fellow ECF Commissioners and with Ms. Forwood;
 - d. his assessment of Ms. Mataiciwa’s performance as SoE;
 - e. the abuse of office allegation against Ms. Malimali and whether he was aware of being implicated; and
 - f. his awareness of Ms. Malimali’s political affiliations and friendships.

The Authority of the Electoral Commission and Binding Directives

118. Mr. Jorkhan affirmed that, during 2024, the ECF issued multiple directives to the SoE pursuant to ss 75 and 76 of the Constitution.¹¹⁴
119. He maintained that such directives were binding unless and until declared unlawful by a court. He acknowledged that while the SoE could apply to court for clarification, there was no indication that any such application had been made.¹¹⁵
120. On this basis, he stated:

As I see it, the directives remain legally valid and binding on the Supervisor of Elections... Non-compliance is misbehaviour under the Constitution.¹¹⁶

¹¹² Ibid., 27.

¹¹³ Ibid., 14.

¹¹⁴ Affidavit of Reginald Manor Kant Jorkhan, sworn 3 January 2025 at [4]-[5].

¹¹⁵ Ibid., [6].

¹¹⁶ Ibid., [7].

121. He further averred that unless invalidated by court order, the directives were shielded by s 3(3) of the Electoral Act.¹¹⁷

Participation in the Meeting Preceding the April 2 Malimali Letter

122. Mr. Jorkhan stated he participated in the 2 April ECF meeting via Zoom from New Zealand. Although he was scheduled to attend a function, he joined the meeting for a limited time before losing reception.¹¹⁸
123. He confirmed that his Zoom connection was poor, causing disruptions. He left the call about 45 minutes before the end of the meeting and could not confirm whether he heard all matters being discussed.¹¹⁹
124. He denied knowledge of the final contents of the April 2 Malimali Letter or the alternative appointment options for the SoE proposed by Ms. Malimali until the letter was circulated to the ECF Commissioners on 9 April.¹²⁰

Delay in Circulation of the Letter and Internal Frustration

125. Mr. Jorkhan stated that requests were made for the letter's circulation beginning on Friday, 5 April 2024, but it was not released until Tuesday, 9 April.¹²¹
126. He testified that Ms. Malimali explained her delay by saying she was engaged in an appeal. While he expressed empathy for the demands on legal professionals, he admitted being frustrated that a simple confirmation text could have allowed the letter to be circulated earlier.¹²²
127. He stated that no explanation was offered for the lack of communication over the weekend, and conceded that the delay contributed to internal tension.¹²³

Text Messages with Ms. Forwood and View on Resignation

128. Mr. Jorkhan confirmed he exchanged messages with Ms. Forwood, expressing dissatisfaction with Ms. Malimali's handling of the situation.¹²⁴
129. He acknowledged the authenticity of messages in which he said, "Barbara is not responding to our emails, Viber messages, or phone calls," and indicated personal belief at the time that she should resign.¹²⁵

¹¹⁷ Ibid., [8]-[10].

¹¹⁸ Transcript, Day 14, Session 1 – Mr. Jorkhan at 11.

¹¹⁹ Ibid., 12.

¹²⁰ Ibid., 16-17.

¹²¹ Ibid., 14.

¹²² Ibid., 15.

¹²³ Ibid.

¹²⁴ Ibid., 16-17.

¹²⁵ Ibid.

130. He clarified that this was his personal view, not one discussed or agreed upon by the other ECF Commissioners. His frustration stemmed from being bombarded with media questions following the letter's leak.¹²⁶

Relationship with Acting SoE Ms. Mataiciwa

131. Mr. Jorkhan testified that, in his view, Ms. Mataiciwa was performing "okay" in her capacity as Acting SoE. She regularly attended meetings, provided updates, and took minutes.¹²⁷
132. He stated there was no personal breakdown in his relationship with her but noted that tensions may have existed between Ms. Mataiciwa and the ECF Commissioners more broadly following her permanent appointment.¹²⁸
133. He affirmed that the ECF Commissioners had welcomed her appointment and had intended to work collaboratively.¹²⁹
134. In messages with Ms. Forwood, Mr. Jorkhan confirmed agreeing with the statement that "Ms. Mataiciwa is guided by the law" and "was just doing her job."¹³⁰

Knowledge of the Abuse of Office Allegation

135. Mr. Jorkhan stated he was unaware that he, along with other ECF Commissioners, were potentially under investigation for abuse of office related to the directives issued to the SoE.¹³¹
136. He confirmed that he had been contacted for an interview at 9 pm. but did not attend. He claimed he received no documents or formal notice of being under investigation.¹³²
137. When asked whether he knew the matter had been referred to the ODPP and remained live, he stated that he did not know.¹³³

Knowledge of Ms. Malimali's Political Associations

138. Mr. Jorkhan was asked about his awareness of Ms. Malimali's friendships with political figures, including:

- a. Hon. Tabuya;
- b. Hon. Turaga; and

¹²⁶ Ibid., 22-23.

¹²⁷ Ibid., 23.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid., 32.

¹³² Ibid., 33.

¹³³ Ibid.

c. Hon. Kamikamica.¹³⁴

139. He recalled casual conversations about her friendship with Hon. Tabuya but did not clearly recall discussions about the others. He emphasized that none of these relationships stood out as unusual or significant at the time.¹³⁵

Evidence Summary of Electoral Commissioner Dr. Atu Emberson-Bain

140. Dr. Atu Emberson-Bain was appointed as a member of the ECF by the President on 16 August 2023.
141. She provided a sworn affidavit dated 22 January 2025, and further provided oral evidence on Day 15 of the hearings.
142. Dr. Emberson-Bain's evidence focused on:
- a. the consultation rights of the ECF regarding the appointment of the SoE;
 - b. the April 2 Malimali Letter and the events surrounding its creation and aftermath;
 - c. the alleged lack of response from the COC to repeated letters from the ECF;
 - d. her understanding of internal ECF dynamics, including participation by other ECF Commissioners and the conduct of Ms. Mataiciwa; and
 - e. her views on the legality of the ECF directives and the failure to be notified of complaints against the ECF.

Consultation Rights and COC Communications

143. Dr. Emberson-Bain emphasized the ECF's view that the Constitution, particularly s 76(4) required meaningful consultation with the ECF throughout the recruitment process for the SoE.¹³⁶
144. Between August 2023 and April 2024, while Ms. Mataiciwa was Acting SoE and the COC was considering her for the substantive role, the ECF discussed this issue frequently. At least six formal letters were sent to the COC asserting the ECF's right to be consulted.¹³⁷

¹³⁴ Ibid., 34-35.

¹³⁵ Ibid.

¹³⁶ Transcript, Day 15, Session 2 – Dr. Emberson Bain at 5.

¹³⁷ Ibid., 6.

- 145.** No response was received to these letters until 4 January 2025, when the ECF was provided with the COC Selection Panel Report, along with a seven-day deadline for feedback.¹³⁸
- 146.** In response, on 11 January 2025, the ECF sent a further letter describing the recruitment process as “seriously flawed and lacking credibility,” and recommended that the process be restarted. No reply was received to this correspondence either.¹³⁹
- 147.** Dr. Emberson-Bain believes that another follow-up letter was sent in January, in addition to the later April 2025 letter, which subsequently became the subject of public controversy and allegations of abuse of office.¹⁴⁰

The April 2 Malimali Letter and Surrounding Events

- 148.** Dr. Emberson-Bain stated that she attended the 2 April 2024 meeting at the FEO offices. Present were Ms. Malimali, herself, and Commissioner Dokonivalu. Commissioner Jokhan and Commissioner Singh attended the meeting via Zoom.¹⁴¹
- 149.** She described the working environment as informal due to short staffing. It was not unusual for ECF Commissioners, including Ms. Malimali, to perform administrative tasks normally handled by staff. On that day, she and Ms. Malimali were seated at opposite ends of the conference table, both drafting documents.¹⁴²
- 150.** She did not hear or discuss the specific content of the letter that Ms. Malimali authored during the meeting and claims no recollection of the proposals it included.¹⁴³
- 151.** She first became aware of what she called a “mysterious letter” authored by Ms. Malimali on 5 April 2024. The ECF Commissioners met to discuss it on Monday, 15 April.¹⁴⁴
- 152.** At that meeting, Ms. Malimali explained that she had read the draft letter aloud at the earlier meeting, apologized for any oversight, and acknowledged that she had not responded promptly to the ECF Commissioners once the letter became public and attracted media attention.¹⁴⁵

¹³⁸ Ibid., 5.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid., 6.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

153. Despite her own lack of involvement, Dr. Emberson-Bain testified that she was later informed that Commissioners Dokonivalu and Mati were aware of the April 2 Malimali Letter and had approved its content at the time.¹⁴⁶
154. In her view, the April 2 Malimali Letter was consistent with earlier ECF communications to the COC and simply reflected the Chairperson's right to make procedural suggestions. She stated that Ms. Malimali's proposals were within her mandate as Chair and aligned with the ECF's constitutional obligation to be consulted.¹⁴⁷

Ms. Mataciwa's Conduct and EC Meeting Attendance

155. Dr. Emberson-Bain testified that Ms. Mataciwa missed more ECF meetings than she attended during her tenure as Acting SoE.¹⁴⁸
156. She accused Ms. Mataciwa of non-compliance with ECF directives and cited, in particular, a unilateral relocation of the ECF's offices by the SoE that allegedly caused operational disruption and raised confidentiality and security concerns.¹⁴⁹
157. Dr. Emberson-Bain referenced Ms. Mataciwa's affidavit, which alleged that certain ECF directives were unlawful. She testified that this belief was never formally communicated to the ECF.¹⁵⁰
158. She also stated that the ECF was never notified that a complaint had been made to the PM against the ECF Commissioners, despite such complaints later being referenced in other materials.¹⁵¹

Evidence Summary of Hon. Inia Seruiratu, Leader of the Opposition and Member of the Constitutional Offices Commission

159. Hon. Inia Seruiratu is the current LoOp in Fiji and a member of the COC.
160. He provided a sworn affidavit dated 16 December 2024, and further provided oral evidence at the Hearing on 7 and 8 January 2025.
161. His evidence covered the following topics:
- a. the process and circumstances surrounding the appointment of Ms. Malimali as Commissioner of FICAC;
 - b. unlawful influences and political motivations behind her appointment;

¹⁴⁶ Ibid., 7.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid., 8.

- c. transparency, resignation processes, and procedural failures within the COC;
- d. the appointment and performance of Ms. Mataciwa as SoE;
- e. suspension practices and leadership integrity during ongoing investigations; and
- f. good governance standards and the role of the CoI.

Knowledge of Appointment and Alleged Political Influence

- 162.** Hon. Seruiratu stated he had no knowledge of the appointment process leading to Ms. Malimali becoming FICAC Commissioner. He only became aware of her appointment through media coverage in early September 2024.¹⁵²
- 163.** He raised concerns about the perception of political interference, citing public knowledge that Ms. Mataciwa had submitted a list of high-profile politicians to FICAC for investigation.¹⁵³
- 164.** The timing of events, including the surfacing of the FICAC letter to the Minister for Justice, and Ms. Malimali's appointment, led him to suspect political motives, including a desire to obstruct ongoing investigations.¹⁵⁴

Concerns with Transparency, Resignation, and CoC Procedures

- 165.** Hon. Seruiratu first learned of Ms. Malimali's resignation from the ECF through a newspaper article dated 17 September 2024, not through COC communication.¹⁵⁵
- 166.** He stated that no resignation letter was shared with him at the time. He only saw it later as part of the PM's Affidavit for the CoI.¹⁵⁶
- 167.** He described the communication failures within the CoC Secretariat, highlighting that correspondence was inconsistently directed either to the Secretariat, or directly to the PM as Chair, leading to systemic gaps in information sharing.¹⁵⁷
- 168.** He expressed that both the appointment to FICAC and the resignation from the ECF were rushed, and that this contributed to widespread suspicion of political manoeuvring.¹⁵⁸

¹⁵² Affidavit of Hon. Inia Seruiratu dated 16 December 2024 at [4].

¹⁵³ Ibid., [10].

¹⁵⁴ Transcript, Day 2, Session 3 – Hon. Seruiratu at 163-164.

¹⁵⁵ Ibid., 160-161.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid., 162.

¹⁵⁸ Ibid.

Discord Between Ms. Malimali and Ms. Mataiciwa

169. Hon. Seruiratu testified that tensions between the ECF Chair and the Acting SoE were known and appeared to stem from procedural disagreements, notably over reporting lines and how matters should be routed to the ECF.¹⁵⁹
170. He acknowledged that he later came to learn that the root of the problem may have been linked to Ms. Mataiciwa referring complaints against Ministers, including Hon. Prasad and Hon. Tabuya to FICAC.¹⁶⁰
171. He agreed that the COC should have been better informed about the nature and seriousness of these issues, including the FICAC investigations.¹⁶¹

Appointment of Ms. Mataiciwa as SoE

172. Hon. Seruiratu explained that the COC appointed Ms. Mataiciwa as SoE following a split recommendation from the COC Selection Panel, with two members, Naqiolevu and Solanki, supporting her and one, Maopa, supporting Mr. Graham Leung.¹⁶²
173. Although Mr. Leung later withdrew his application, by way of letter dated 7 April 2024, the COC considered whether to re-advertise or proceed with Ms. Mataiciwa's appointment. The matter was finalized at the COC meeting of 2 May 2024, with the PM deciding in Ms. Mataiciwa's favour.¹⁶³

Ms. Malimali's Leadership and Suitability for Public Office

174. Hon. Seruiratu stated that while Ms. Malimali was professionally qualified, he harboured concerns about her leadership style and decision-making. He would not have supported her appointment had he been on the JSC.¹⁶⁴
175. He believed the appointment should have been paused pending the outcome of the investigation and expressed that it sent the wrong message to the public and investors.¹⁶⁵
176. He emphasized that while her talent was not in doubt, her suitability for leadership roles, especially amid controversy, was questionable.¹⁶⁶

¹⁵⁹ Ibid., 168-169.

¹⁶⁰ Ibid., 167.

¹⁶¹ Ibid.

¹⁶² Ibid., 168-169.

¹⁶³ Ibid.

¹⁶⁴ Ibid., 177-178.

¹⁶⁵ Ibid., 178-179.

¹⁶⁶ Ibid.

Suspension During Investigation and Convention of Practice

177. Hon. Seruiratu affirmed that individuals under investigation, particularly for roles as sensitive as that of FICAC Commissioner, should be suspended during inquiries.¹⁶⁷
178. He supported this as a convention of public office and governance, noting precedents such as the DPP Mr. Pryde’s suspension, and Hon. Tikoduadua stepping aside.¹⁶⁸
179. He agreed with Ms. Mason that this is a recognized norm in jurisdictions like New Zealand and Australia, even if not strictly codified in law.¹⁶⁹

Concerns About FICAC Investigation and JSC’s Lack of Consultation

180. Hon. Seruiratu confirmed that he was not informed about the FICAC search warrant on the ECF or the complaint lodged about it by the current ECF Commissioners.¹⁷⁰
181. He stated that COC members typically only received such correspondence at formal meetings and that the COC was working on developing standard operating procedures to address such communication failures.¹⁷¹
182. He noted that the JSC had not consulted the COC or sought references regarding Ms. Malimali’s performance before her appointment as FICAC Commissioner, despite her previous role as ECF Chair being relevant.¹⁷²

Practice of Handovers and Institutional Protocol

183. Hon. Seruiratu described the lack of a formal handover by Ms. Malimali as unprofessional. He acknowledged that while there may be no legal requirement, such practices are standard in public service and critical to organizational continuity.¹⁷³
184. He said that handovers are generally outlined in Public Service Commission Regulations and form part of sound administrative practice.¹⁷⁴
185. He ultimately described Ms. Malimali’s departure as “messy,” due to the lack of notice, insufficient communication, and abrupt transition.¹⁷⁵

¹⁶⁷ Transcript, Day 3, Session 1 – Hon. Seruiratu at 7.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Transcript, Day 2, Session 3 – Hon. Seruiratu at 165.

¹⁷¹ Ibid., 168-169.

¹⁷² Ibid.

¹⁷³ Transcript, Day 3, Session 2 – Hon. Seruiratu at 23.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

Evidence Summary of Mr. Ropate Green, S-G and Secretary of the Constitutional Offices Commission

- 186.** Mr. Ropate Green is the current S-G of Fiji and serves as Secretary of the COC. He provided a sworn affidavit dated 23 December 2024, along with several Reply Affidavits on 23 January 2025, in response to Ms. Mataiciwa, Mr. Saumi, Ms. Puleiwai, Ms. Forwood, and His Excellency President Katonivere. He provided further oral evidence across Days 28, 29, 30, and 31 of the hearing.
- 187.** Mr Green’s evidence broadly addresses:
- a. the appointment of Ms. Malimali as Commissioner of FICAC;
 - b. the SoE recruitment process and correspondence with the COC;
 - c. allegations of non-disclosure regarding investigations;
 - d. the execution of a search warrant at the ECF; and
 - e. reflections on governance, complaint-handling within FICAC, and the appointment authority for the FICAC Commissioner.

Correspondence Between the ECF and COC

- 188.** Mr. Green’s office received multiple letters from Ms. Malimali as Chair of the ECF objecting to the SoE recruitment process and the lack of consultation, as follows:
- a. 11 January 2024: Letter raising formal objections on behalf of the ECF about non-consultation in the SoE appointment;¹⁷⁶
 - b. 2 February 2024: Follow-up letter requesting the status of the SoE recruitment;¹⁷⁷
 - c. 2 April 2024: Letter recommending re-advertisement and full ECF involvement in accordance with legal obligations;¹⁷⁸ and
 - d. 15 April 2024: Letter raising the issue of leaked confidential correspondence and reiterating the call for consultation.¹⁷⁹
- 189.** These letters were discussed in COC meetings but no responses were sent, a fact acknowledged by Mr. Green.¹⁸⁰

Objections from Ms. Forwood and Appointment of Ms. Malimali

- 190.** On 30 August 2024, the COC Secretariat and the CR received an email from Ms. Forwood objecting to the rumoured appointment of Ms. Malimali as FICAC Commissioner.¹⁸¹

¹⁷⁶ Transcript, Day 28, Session 1 – S-G Green at 21-22.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid., 32-34.

- 191.** On 3 September 2024, Ms. Malimali resigned as Chair of the ECF.¹⁸²
- 192.** On 4 September 2024, His Excellency the President appointed her as FICAC Commissioner, with effect from 12 am on 5 September 2024.¹⁸³
- 193.** On 5 September, Mr. Green learned of Ms. Malimali's arrest by FICAC officers on allegations of abuse of office and interference in the affairs of the FEO.¹⁸⁴

Appointment Process of the FICAC Commissioner

- 194.** The role of FICAC Commissioner was first advertised on 15 June 2024, attracting 15 applicants.¹⁸⁵
- 195.** On 10 July 2024, the JSC decided to re-advertise the position to attract more qualified applicants, ultimately receiving 23 applications.¹⁸⁶
- 196.** A Selection Panel comprising Mr. Green, CJ Temo, and Mr. Waqaivolavola shortlisted and interviewed four candidates, after two withdrew. The JSC Selection Panel unanimously recommended Ms. Malimali as the most meritorious candidate.¹⁸⁷
- 197.** Mr. Green confirmed that at no point during the process was the JSC or the JSC Selection Panel made aware of an ongoing FICAC investigation into Ms. Malimali.¹⁸⁸
- 198.** A formal minute was circulated to the JSC members asking that they endorse the recommendation.¹⁸⁹
- 199.** The A-G was consulted on 2 September 2024 and, per the FICAC Act, was treated as a consultee, not an advisor.¹⁹⁰
- 200.** Mr. Green asserted there was no political pressure or external influence in the process and emphasized the appointment was made in accordance with s 5 of the FICAC Act.¹⁹¹

¹⁸² Affidavit of Ropate Green Lomavatu dated 23 December 2024 at [15].

¹⁸³ Ibid., [16].

¹⁸⁴ Ibid., [17].

¹⁸⁵ Transcript, Day 29, Session 2 – S-G Green see generally 35-37.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Transcript, Day 28, Session 2 – S-G Green at 14-16.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid., 27-28.

¹⁹¹ Ibid.

Awareness of FICAC Investigation

- 201. Mr. Green became aware of the FICAC investigation into Ms. Malimali only on 5 September 2024, the day of her arrest.¹⁹²
- 202. He stated that FICAC did not formally notify the COC or his office about the investigation.¹⁹³
- 203. He received a text message indicating Ms. Malimali was under investigation. Mr. Green emphasized the need for formal written notice, not casual communication, before acting.¹⁹⁴
- 204. He did not reach out to FICAC proactively to verify the claims before the appointment was made.¹⁹⁵

Execution of the Search Warrant

- 205. Mr. Green received a search warrant via email on 2 September 2024, relating to the COC documents.¹⁹⁶
- 206. He stated that the search warrant appeared overly broad and stated that he requested FICAC investigators to return the following day to identify and clarify the documents sought.¹⁹⁷
- 207. He denied any attempt to obstruct the execution of the search warrant, emphasizing that his office was attempting to facilitate compliance in a more structured manner.¹⁹⁸
- 208. He confirmed a text message exchange with Mr. Saumi, where it was stated that the FICAC Malimali Investigation was about allegations of abuse of office against Ms. Malimali.¹⁹⁹
- 209. Mr. Green reiterated that text messages were insufficient and that proper written correspondence on FICAC letterhead was required for official action.²⁰⁰

¹⁹² Transcript, Day 28, Session 1 – S-G Green at 32-34.

¹⁹³ Ibid.

¹⁹⁴ Transcript, Day 29, Session 1 – S-G Green at 21-22.

¹⁹⁵ Transcript, Day 28, Session 1 – S-G Green at 37-39.

¹⁹⁶ Ibid., 8-11 and 15-16.

¹⁹⁷ Ibid., 10-11 and 15-16.

¹⁹⁸ Ibid., 10-11 and 15-16.

¹⁹⁹ Ibid., 19-20.

²⁰⁰ Ibid., 21.

Handling of Complaints and Investigative Integrity

210. Mr. Green expressed scepticism toward complaints from Ms. Forwood, describing her as a serial complainant whose allegations were often vexatious.²⁰¹
211. He recommended that FICAC establish a filtering mechanism to assess complaints based on merit before initiating full investigations, to avoid reputational damage and unnecessary stigma.²⁰²

Institutional Reflections and Recommendations

212. Mr. Green reflected on the balance needed in FICAC leadership, suggesting:
- a. the Commissioner should have legal qualifications;
 - b. the Deputy Commissioner could focus on investigations; and
 - c. greater emphasis on public education and awareness is needed to uphold institutional integrity.²⁰³
213. He questioned whether the JSC is the most appropriate body to appoint the FICAC Commissioner, suggesting that the COC may offer a more balanced and representative structure.²⁰⁴

Evidence Summary of Hon. Manoa Kamikamica, Deputy Prime Minister

214. Hon. Kamikamica, provided a sworn affidavit to the CoI on 31 December 2024 and provided further oral evidence on Day 31 of the Hearing, 18 February 2025.
215. Hon. Kamikamica's evidence broadly addressed:
- a. awareness of any complaint(s) made against him;
 - b. details of a meeting with former Acting FICAC Commissioner, Ms. Puleiwai;
 - c. response to allegations made by other MPs;
 - d. the role of the JSC in addressing issues in the SoI; and
 - e. broader reflections on institutional integrity and FICAC's priorities.

²⁰¹ Ibid., 51.

²⁰² Ibid., 53.

²⁰³ Ibid., 55.

²⁰⁴ Ibid., 59.

4.10.1 Awareness of Complaint(s) Against Him

- 216.** In his affidavit, Hon. Kamikamica denied any official knowledge of complaints lodged against him with FICAC. He stated he had not been contacted or informed by any FICAC official, including Ms. Puleiwai or Ms. Malimali.²⁰⁵
- 217.** His only awareness of potential allegations came via social media rumours and later through the affidavit of Ms. Forwood.²⁰⁶

Meeting with Ms. Puleiwai on 25 April 2024

- 218.** Hon. Kamikamica confirmed that he met Ms. Puleiwai on 25 April 2024 in the Ministry Board Room at Civic Tower, Suva. During this meeting, he flagged three proposed complaints involving alleged misconduct in public entities:

- a.** the Walesi Investigations;
- b.** Capital Gains Tax Waivers; and
- c.** Film Rebate Irregularities.²⁰⁷

- 219.** These were prospective issues, not formal complaints at the time. He offered to respond to any inquiries about allegations against him, but Ms. Puleiwai did not take up the offer.²⁰⁸

Denial of Interference and Social Ties with Ms. Malimali

- 220.** Hon. Kamikamica acknowledged a friendship with Ms. Malimali through his wife, but denied any influence over her appointment as FICAC Commissioner.²⁰⁹
- 221.** He rejected any suggestion that he was aware of her application or tried to influence the JSC in her favour.

Response to Allegations by Other Members of Parliament

- 222.** Hon. Kamikamica denied claims made in the affidavits of Hon. Ravu, Hon. Koroilavesau, and Hon. Ravunawa, who alleged that he:
- a.** knew of Ms. Malimali's appointment before she had even been informed, and told them she was going to be the next FICAC Commissioner; and
 - b.** offered to help "resolve" Hon. Ravu's FICAC matters.²¹⁰

²⁰⁵ Affidavit of Hon. Manoa Kamikamica, dated 31 December 2024 at [5]-[6].

²⁰⁶ Ibid., [4].

²⁰⁷ Ibid., [7]-[8].

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid. [9].

223. He insisted that any conversations were personal in nature and supportive, not suggestive of inside knowledge or influence, and attributed the allegations to political motivations from individuals aligned with the opposition.

Handling of FICAC Allegations Against Him

224. Hon. Kamikamica became aware of specific allegations against him only after reading Ms. Forwood's affidavit, including:

- a. alleged misuse of funds during a Nadi fundraising event, and
- b. alleged interference in the Lyndhurst contract, his former employer.

225. He denied both allegations, explaining that:

- a. fundraising finances were handled by Party officials; and
- b. the Lyndhurst contract was managed independently by FNPF with proper governance protocols.

226. He expressed concern about FICAC's lack of communication with elected officials, and called for procedural fairness, stressing that suspects should be notified early and given the opportunity to consult Counsel and prepare a response.

Views on FICAC Independence and Conflicts of Interest

227. Hon. Kamikamica did not perceive a conflict of interest when he submitted documents related to the Walesi case to FICAC after Ms. Malimali's appointment, as the matter was of national interest, not personal gain.

228. However, he agreed that from a governance perspective, it may have been prudent for Ms. Malimali to formally declare a potential conflict.

Institutional Reflections and Reform Suggestions

229. He was critical of how complaints against MPs were handled under Ms. Puleiwai's tenure at FICAC, noting poor communication and lack of transparency.

230. He supported reforms to FICAC's internal complaint-handling processes, including:

- a. clear protocols for communication with those under investigation;
- b. stronger procedural safeguards; and
- c. filtering mechanisms to eliminate unmeritorious complaints.

FICAC Prioritisation and National Governance

231. Hon. Kamikamica stated that FICAC should focus on systemic corruption, especially in light of allegations involving the previous administration.

232. He further stated that while he could not influence operational decisions, he considered the prioritisation of the Walesi investigation justified due to its public profile and scope.
233. He expressed support for a separate CoI into the former government, suggesting it would better ensure public accountability and institutional reform than case-by-case probes by FICAC.

Position on JSC and Statement of Issues

234. Hon. Kamikamica affirmed that the JSC was the appropriate constitutional body to address matters raised in the SoI, particularly regarding appointments.

Evidence Summary of Chief Justice Salesi Temo, Chair of the Judicial Services Commission

235. Chief Justice Salesi Temo, as Chair of the JSC, provided oral evidence on Day 15 of the hearing and was recalled on Day 36. He did not file a sworn affidavit.
236. CJ Temo's evidence broadly covered:
- a. his awareness of allegations against Ms. Malimali and other officials;
 - b. the internal sequence and decision-making on recommending Ms. Malimali's appointment;
 - c. the JSC's authority to investigate complaints;
 - d. his reliance on institutional processes and chain of command;
 - e. reference checks and qualifications for Ms. Malimali;
 - f. allegations against Acting Commissioner Frances Puleiwai; and
 - g. protocols for handling complainant identities.

Awareness of FICAC Investigations and Allegations

237. CJ Temo acknowledged hearing rumours that a person was under FICAC investigation but stated he received no formal notification and chose not to pursue unverified allegations, insisting he did not wish "to be a party to rumours" and left resolution to FICAC.²¹¹
238. He affirmed it would have been inappropriate for the JSC to approach FICAC directly for case details, as that risked improper interference with FICAC's independent investigations.²¹²

²¹¹ Transcript Day 15, Session 1 – CJ Temo at 10-15.

²¹² Ibid.

Sequence of Recommendation for Ms. Malimali's Appointment

239. CJ Temo recounted that the A-G first advised pausing the recommendation upon learning of the FICAC Malimali Investigation.²¹³
240. A subsequent call from the A-G gave the “all-clear,” after which CJ Temo proceeded to endorse the JSC Selection Panel’s recommendation and had it submitted to the President for appointment.

Jurisdiction and Authority of the JSC

241. Under s 104(2) of the Constitution, the JSC has the authority to investigate complaints about judicial officers. CJ Temo agreed that the JSC could handle allegations against its members, not solely via the President.
242. He described the Malimali arrest as a “coup d’état”, as a breach of protocol by ADC Ms. Puleiwai, who should have followed the chain of command through the CR and JSC rather than acting unilaterally.

Reference Checks and Assessment of Ms. Malimali

243. CJ Temo confirmed he did not obtain formal references for Ms. Malimali. Instead, he relied on observing her 15 years of performance in the criminal courts in Fiji, concluding she was “an appropriate person” for the FICAC role.
244. He stated he was unaware of Ms. Malimali’s unsuccessful 2018 magistrate application and had no personal knowledge of any investigations into himself or Mr. Green, dismissing a claim by a Mr. Sovea Tabua that he had a past conviction.

Allegations Against ADC Puleiwai

245. CJ Temo acknowledged he was aware of three formal allegations against Ms. Puleiwai:
- a. unlawfully assuming the Commissioner’s powers;
 - b. authorising the arrest of Ms. Malimali without a warrant; and
 - c. insubordination.
246. He confirmed the JSC had both the power and responsibility to investigate these allegations internally.

Protocols on Disclosing Complainant Identity

247. When the JSC asked her, Ms. Puleiwai refused to name the complainant in the Malimali case. CJ Temo characterised that refusal as non-cooperation,

²¹³ Ibid.

emphasising that knowing the complainant's identity is a basic step in any proper inquiry.²¹⁴

Evidence Summary of Mr. Josaia Waqaivolavola – Chief Magistrate

248. Mr. Josaia Waqaivolavola is the Chief Magistrate of Fiji. He provided a sworn affidavit to the CoI on 7 January 2025, which was taken as read. He also gave oral evidence on Day 24 of the Hearing. His evidence broadly addressed the following:

- a.** composition and function of the interview panel;
- b.** candidate withdrawals and shortlisting;
- c.** interview methodology and evaluation criteria;
- d.** conflict of interest and procedural oversight; and
- e.** knowledge of prior complaints or disciplinary history.

Role in Selection Process

249. Mr. Waqaivolavola confirmed his name and role in the JSC Selection Panel for the FICAC Commissioner Appointment Process. The Panel included himself, CJ Temo, and the S-G.²¹⁵

250. He confirmed that the JSC Selection Panel was responsible for conducting interviews and recommending a candidate based on merit.²¹⁶ He clarified that he did not retain documents related to the appointment and believed administrative responsibilities lay with the CR as the Secretary of the JSC.

Candidate Withdrawals

251. He explained that two candidates, Mr. Rabuku and Ms. Joytika Jathan, had withdrawn from the process.²¹⁷ Mr. Rabuku withdrew following a Supreme Court ruling concerning his eligibility for public office, which was believed to affect his eligibility for the FICAC Commissioner role.²¹⁸

Interview Criteria and Assessment

252. The JSC Selection Panel prepared interview questions to test leadership, problem-solving skills, and knowledge of corruption law. Ms. Malimali demonstrated familiarity with anti-corruption principles and proposed improvements for FICAC.²¹⁹

²¹⁴ Ibid., 15.

²¹⁵ Transcript, Day 24, Session 1 – Mr. Waqaivolavola at page 10.

²¹⁶ Transcript, Day 24, Session 1 – Mr. Waqaivolavola at page 11.

²¹⁷ Transcript, Day 24, Session 1 – Mr. Waqaivolavola at page 8.

²¹⁸ Transcript, Day 24, Session 1 – Mr. Waqaivolavola at page 9.

²¹⁹ Transcript, Day 24, Session 1 – Mr. Waqaivolavola at 13.

253. Counsel Assisting questioned the JSC Selection Panel's focus on general criminal law, rather than FICAC's statutory functions, including education and prevention.²²⁰ Mr. Waqaivolavola stated that Ms. Malimali addressed those functions in her answers.²²¹
254. He stated that the JSC Selection Panel did not view Ms. Malimali's background as a defence lawyer as a disqualifying factor. He considered defence experience to be an asset, not a bias.²²²
255. Counsel Assisting challenged the brevity of interviews, but Mr. Waqaivolavola clarified that interviews spanned several hours per candidate, not the 30 minutes initially assumed.²²³

Procedural Gaps and Oversight

256. The JSC Selection Panel did not conduct reference checks or personality assessments. Mr. Waqaivolavola believed such checks were the responsibility of the CR.²²⁴
257. He acknowledged that he knew some applicants personally but did not see this as a conflict due to the distant nature of those relationships.²²⁵ However, he agreed a formal process for declaring conflicts should be established.²²⁶
258. The JSC Selection Panel accepted Ms. Malimali's claim that no complaints were pending against her with FICAC without any verification. Counsel Assisting identified this as a significant procedural lapse.²²⁷
259. Mr. Waqaivolavola said the panel was unaware of any disciplinary issues involving Ms. Malimali in Tuvalu, where she was previously refused the right to practise law due to failing the "fit and proper person" standard.²²⁸

Interview Conditions and Fairness

260. Mr. Waqaivolavola was asked about whether the Appointment Process was rushed and he said it did not feel rushed, but noted that the practice was to conclude such matters within a week.²²⁹

²²⁰ Ibid., 12.

²²¹ Ibid., 13.

²²² Ibid., 14.

²²³ Ibid., 15.

²²⁴ Ibid., 16.

²²⁵ Ibid., 18.

²²⁶ Ibid., 19.

²²⁷ Ibid., 17.

²²⁸ Ibid., 23.

²²⁹ Ibid., 22.

- 261.** In cross-examination by Ms. Waqanika, he denied encouraging Ms. Malimali to apply and stated that the recommendation was made purely on merit following the interviews.²³⁰
- 262.** Concerns raised by Ms. Forwood and Ms. Puleiwai included the absence of reference checks and a certificate of good standing. Mr. Waqaivolavola reiterated his assumption that these checks fell under the CR's remit.²³¹
- 263.** Ms. Puleiwai also highlighted omissions in Ms. Malimali's CV. Mr. Waqaivolavola confirmed these were not raised or discussed during the interview process.²³²

Evidence Summary of CR Bainivalu, Secretary of the Judicial Services Commission, and Head of the Legal Practitioners Unit

- 264.** Mr. Bainivalu is the CR, with 30 years of experience, and has held this role for over 20 months.
- 265.** He has served as Secretary to the JSC since March 2023, providing administrative and procedural support.
- 266.** He also heads the LPU, responsible for regulatory oversight of the legal profession.
- 267.** He provided an affidavit dated 31 December 2024, and provided further oral evidence on 24 and 28 January 2025.
- 268.** Mr Bainivalu's evidence broadly covered:
- a.** involvement in the appointment of the Commissioner of FICAC;
 - b.** knowledge of the FICAC Malimali Investigation;
 - c.** events following the arrest of Ms. Malimali;
 - d.** presence at FICAC and allegations of interference;
 - e.** disclosure obligations and the role of the JSC;
 - f.** interaction with the President and Appointment Procedure;
 - g.** awareness within the JSC; and
 - h.** Professional Standards and LPU.

Involvement in Appointment of Commissioner FICAC

- 269.** Mr. Bainivalu confirmed that six candidates were shortlisted for the Commissioner of FICAC role, with two later withdrawing.²³³

²³⁰ Ibid., 27.

²³¹ Ibid., generally pages 31-40.

²³² Ibid., 35.

²³³ Affidavit of Tomasi Bainivalu, dated 31 December 2024, at [7]-[10].

270. He was not a member of the JSC Selection Panel, which consisted of Acting Chief Justice Temo, S-G Ropate Green, and Acting Chief Magistrate Josaia Waqaivolavola.²³⁴
271. He stated that Ms. Malimali was recommended as the “most meritorious candidate” and that her appointment was lawful under s 5 of the FICAC Act.²³⁵
272. The President acted on the JSC’s advice in making the formal appointment.²³⁶

Knowledge of the FICAC Investigation

273. Mr. Bainivalu stated that he was unaware of the FICAC investigation into Ms. Malimali at the time of her appointment.²³⁷
274. However, he later acknowledged receiving a 3 September 2024 email addressed to the CR’s office confirming the existence of the FICAC Malimali Investigation.²³⁸
275. Upon reflection, he agreed that Ms. Malimali should have disclosed the FICAC investigation to the JSC during her interview.²³⁹
276. He also acknowledged that, in hindsight, he should have advised the CJ to put the appointment on hold.²⁴⁰

Events Following the Arrest of Ms. Malimali

277. Mr. Bainivalu confirmed he was instructed by the CJ to ensure the President’s appointment letter was complied with after Ms. Malimali’s arrest.²⁴¹
278. He interpreted this as requiring her reinstatement and that this may have implicitly involved securing her release.²⁴²
279. He ultimately agreed that FICAC officers were carrying out their duties lawfully.²⁴³

²³⁴ Ibid.

²³⁵ Ibid., [9].

²³⁶ Ibid., [7]-[8] and [11]-[12].

²³⁷ Ibid., [14]-[17].

²³⁸ Transcript, Day 31, Session 1 – CR Bainivalu at 10.

²³⁹ Ibid., 6-7.

²⁴⁰ Ibid., 21.

²⁴¹ Ibid., 45.

²⁴² Ibid., 46.

²⁴³ Ibid., 57-58.

Presence at FICAC and Allegations of Interference

280. Justice Ashton-Lewis questioned the appropriateness of five senior legal professionals, including Mr. Bainivalu, attending FICAC on 5 September.²⁴⁴
281. Mr. Bainivalu denied instructing others to attend but accepted they may have felt pressured to do so.²⁴⁵
282. He admitted assuming that all four lawyers present were acting for Ms. Malimali, but later learned this was incorrect.²⁴⁶
283. He disagreed with suggestions that his raised voice constituted unprofessional behaviour, though later conceded it may have appeared so.²⁴⁷
284. He ultimately accepted that the demands made by senior lawyers for Ms. Malimali's release were unconstitutional and unprofessional.²⁴⁸

Disclosure Obligations and the Role of the JSC

285. Mr. Bainivalu confirmed there were no discussions within the JSC about Ms. Malimali's obligation to disclose the investigation prior to her appointment.²⁴⁹
286. He initially resisted the idea that he should disclose the FICAC complaint against himself, but changed position after an explanation from Justice Ashton-Lewis.²⁵⁰
287. He agreed that disclosure protects decision-makers and enhances transparency, even if the subject believes the complaint is baseless.²⁵¹

Interaction with the President and Appointment Procedure

288. Mr. Bainivalu was tasked with delivering the JSC recommendation to the President on 4 September 2024.²⁵²
289. The President queried the appointment in light of a letter from the ADC Ms. Puleiwai.²⁵³

²⁴⁴ Ibid., 17.

²⁴⁵ Ibid.

²⁴⁶ Transcript, Day 32, Session 1 – CR Bainivalu at 8.

²⁴⁷ Ibid., 8.

²⁴⁸ Ibid., 27.

²⁴⁹ Ibid., 15-16.

²⁵⁰ Transcript, Day 18, Session 2 – CR Bainivalu at page 7-9.

²⁵¹ Ibid.

²⁵² Transcript, Day 18, Session 2 – CR Bainivalu at page 12-13.

²⁵³ Ibid.

290. Mr. Bainivalu disagreed with the President's recollection that he downplayed the concerns, but confirmed that he said due diligence had been followed.²⁵⁴
291. He could not recall seeing the letter during the meeting but acknowledged it may have been referenced verbally.²⁵⁵
292. He affirmed that he was directed by the CJ to deliver the appointment documentation to the President.²⁵⁶

Awareness within the JSC

293. Mr. Bainivalu stated that he could not confirm when individual JSC members became aware of the investigation into Ms. Malimali.²⁵⁷
294. He believed knowledge of the matter spread only after her arrest on 5 September.²⁵⁸
295. He acknowledged that there were later discussions in the JSC about whether Ms. Malimali should be suspended, but the Chair advised that the JSC had no power to do so.²⁵⁹

Professional Standards and LPU

296. As Head of the LPU, Mr. Bainivalu confirmed that dishonesty in Statutory Declarations and non-disclosure of material facts are serious matters going to the integrity of legal practitioners.²⁶⁰
297. He agreed that the LPU would investigate the Tuvalu Issue and Ms. Malimali's failure to disclose it during her PC applications.²⁶¹
298. He emphasised that integrity and full disclosure are fundamental expectations for senior legal officeholders.²⁶²

Evidence summary of former FICAC Investigations Manager, Mr. Kuliniasi Saumi

299. Mr. Kuliniasi Saumi filed a sworn affidavit on 3 January 2025 and further provided oral testimony over five Hearing Days, 5, 6, 7, 8, and 9 February 2025. He also submitted a supplementary affidavit.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ Ibid., 11.

²⁵⁷ Transcript, Day 32, Session 1 – CR Bainivalu at 15-16.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ Transcript, Day 16, Session 2 – CR Bainivalu at 57-58.

²⁶¹ Ibid.

²⁶² Ibid.

- 300.** Mr. Saumi was employed by FICAC for approximately 15 years and held the position of Manager Investigations from September 2021 until his departure in late 2024. Prior to that he worked for the Fiji Police Force for 10 years.
- 301.** His evidence broadly addresses the following:
- a.** complaints against Ms. Malimali;
 - b.** execution of search warrants;
 - c.** institutional obstruction and pressure;
 - d.** integrity and internal procedure of FICAC investigations;
 - e.** legal and procedural clarifications; and
 - f.** extraordinary circumstances of the investigation.

Complaints against Ms. Barbara Malimali

- 302.** Mr. Saumi identified three allegations lodged against Ms. Malimali in 2024.
- a.** Ms. Malimali had abused her authority as Chair of the ECF by directing a different process of handling any election related complaints contrary to the process set out in s 18 of the Electoral Act;
 - b.** Ms. Malimali, whilst opposing the appointment of Ms. Mataiciwa to the position of SoE wrote a falsified letter to the Secretary of the COC Mr. Ropate Green setting out three options, all of which went against the COC Selection Panel's choice of Ms. Mataiciwa for SoE; and
 - c.** Ms. Malimali had illegally directed the obtaining of the Voter Information of Ms. Forwood, from the National Register which somehow was disclosed to Hon. Tabuya.²⁶³

- 303.** A legal opinion provided on 30 August 2024 recommended an urgent preliminary inquiry into all three complaints and concluded that a prima facie case existed.²⁶⁴

Execution of search warrants

- 304.** Two search warrants were obtained on 2 September 2024 as part of the investigation, one for documents at the ECF, and one for documents at the S-G's Office.²⁶⁵
- 305.** Although the warrant was lawfully issued by a Magistrate, FICAC investigators faced significant delays in accessing the materials. Numerous excuses were advanced, the last one being the apparent need for clearance from the PM before releasing documents.

²⁶³ Affidavit of Kulianisi Saumi, dated 3 January 2025 at [15].

²⁶⁴ Ibid., 20-21.

²⁶⁵ Ibid., 30-31.

Investigation procedures and pressures

306. Mr. Saumi explained that all investigations followed the FICAC Act and the FICAC Commissioner's Standing Orders.²⁶⁶
307. He emphasised that while there was a sense of urgency from the ADC, he did not feel personally pressured to reach any particular conclusion.²⁶⁷
308. He confirmed the investigation into Ms. Malimali proceeded on evidentiary grounds and was not driven by political motivation or external influence.²⁶⁸

Cooperation with the FEO

309. Mr. Saumi stated that FICAC enjoyed constructive cooperation from the FEO and the SoE, Ms. Mataiciwa.²⁶⁹
310. He confirmed that a statement was taken from Ms. Mataiciwa at the Grand Pacific Hotel and clarified that while joint interviews are not standard practice, they do sometimes occur for logistical reasons.²⁷⁰

Handling of complaints from Ms. Alexandra Forwood

311. Mr. Saumi acknowledged that Ms. Forwood had submitted numerous complaints, some against high-profile figures.²⁷¹
312. He was opposed to the directive issued by Ms. Malimali to halt investigations into Ms. Forwood's complaints or allocate fewer resources to them.²⁷²
313. He insisted all complaints should be assessed on merit, irrespective of the complainant's identity.²⁷³

Integrity and impartiality in investigations

314. Mr. Saumi affirmed that complaints involving senior public officials and MPs were being investigated without interference or bias.²⁷⁴
315. He criticized efforts to categorise complainants or to deprioritise certain files and maintained that FICAC had a duty to investigate all matters impartially.²⁷⁵

²⁶⁶ Transcript, Day 7, Session 1 – Kulianisi Saumi at 1-3.

²⁶⁷ Ibid., 2.

²⁶⁸ Ibid., 3.

²⁶⁹ Ibid., 6.

²⁷⁰ Ibid., 7.

²⁷¹ Ibid., 10-12; Session 2, See also Transcript, Day 7, Session 2 – Kulianisi Saumi at 1-2.

²⁷² Transcript, Day 7, Session 2 – Kulianisi Saumi at 1-2.

²⁷³ Transcript, Day 7, Session 1 – Kulianisi Saumi at 10-12; See also Transcript, Day 7, Session 2 – Kulianisi Saumi at 1-2.

²⁷⁴ Transcript, Day 7, Session 2 – Kulianisi Saumi at 6.

²⁷⁵ Ibid., 7.

Specific incidents and outside influence

- 316.** Mr. Saumi recounted the events of 5 September 2024, when senior legal figures, including the CR and four lawyers, appeared at FICAC after Ms. Malimali's arrest.²⁷⁶
- 317.** He described the encounter as highly pressurised and intimidating. Although FICAC initially intended to proceed with charges, the team ultimately agreed to release Ms. Malimali due to escalating pressure, intimidation, bullying, and perceived legal risks.²⁷⁷
- 318.** He identified statements made by senior lawyers, such as warnings that FICAC's actions could end officials' careers, as inappropriate and contributing to the reversal of the arrest decision.²⁷⁸

Legal opinions and continuation of investigation

- 319.** Mr. Saumi explained that while a legal opinion had been received justifying the investigation, a final written opinion was not provided until the 5th of September, which was Ms. Malimali's first day at work.²⁷⁹
- 320.** He reiterated that FICAC's charging decisions occurred only after a full investigation, including a caution interview.²⁸⁰

Witness evidence and corroboration

- 321.** In the case of the voter registration complaint, FICAC accepted the email complaint from Ms. Forwood, but did not record a formal statement from her.²⁸¹
- 322.** The investigation proceeded based on corroboration from other sources.²⁸²

Electoral Commission and SOE appointment

- 323.** Mr. Saumi confirmed that the ECF had not passed any resolutions to remove Ms. Mataciwa.²⁸³
- 324.** He noted that while letters from the ECF Commissioners did not recommend her continuation, they also did not explicitly call for her removal.²⁸⁴

²⁷⁶ Transcript, Day 7, Session 4 – Kuliniasi Saumi at 1-4; See also Transcript, Day 8, Session 1 – Kuliniasi Saumi at 1-3.

²⁷⁷ Transcript, Day 8, Session 1 – Kuliniasi Saumi at 1-3.

²⁷⁸ Transcript, Day 7, Session 4 – Kuliniasi Saumi at 4-10.

²⁷⁹ Transcript, Day 8, Session 1 – Kuliniasi Saumi see generally at 10-16.

²⁸⁰ Ibid.

²⁸¹ Transcript, Day 8, Session 1 – Kuliniasi Saumi at 20-25.

²⁸² Transcript, Day 8, Session 2 – Kuliniasi Saumi at 5-10.

²⁸³ Ibid., see generally 10-15.

²⁸⁴ Ibid.

Extraordinary circumstances and legal context

325. Mr. Saumi described the events surrounding the investigation into a sitting Commissioner of FICAC as unprecedented in his 15-year career.²⁸⁵
326. He noted that the presence of senior legal officials and judicial figures blurred the lines between independent oversight and undue influence.²⁸⁶
327. Mr. Saumi concluded by affirming the integrity of FICAC's investigative procedures, and the importance of insulating its officers from external influence.²⁸⁷
328. He cautioned against interventions that may compromise the rule of law and the independence of anti-corruption investigations.²⁸⁸

**Evidence summary of Adi Laite Naroi Baleisuva Bokini-Ratu,
Manager Legal Division, FICAC**

329. Adi Laite Bokini-Ratu is the Manager of the Legal Division at FICAC.
330. Adi Bokini-Ratu filed a sworn affidavit on 3 January 2025, and a further two supplementary affidavits, one on 24 February 2025, and another on 25 February 2025. She provided oral evidence on Hearing Days 11, 12 and 34.
331. The evidence of Ms. Bokini-Ratu broadly covers the following topics:
- a. introduction of Ms. Malimali as Commissioner;
 - b. legal advice and prima facie case assessment;
 - c. arrest and subsequent release of Ms. Malimali;
 - d. external interference and alleged intimidation during the 5 September meeting;
 - e. post-arrest instructions from Ms. Malimali;
 - f. Viber messages indicating political interference; and
 - g. reflections on the integrity of process and independence of FICAC.

Introduction of Ms. Malimali as Commissioner

332. On 4 September 2024, Ms. Bokini-Ratu attended a meeting in the Commissioner's Boardroom at FICAC, convened by Ms. Lorraine Fesaitu.²⁸⁹

²⁸⁵ Transcript, Day 7, Session 4 – Kuliniyasi Saumi at 1-4; See also Transcript, Day 8, Session 1 – Kuliniyasi Saumi at 1-3.

²⁸⁶ Transcript Day 8, Session 1 – Kuliniyasi Saumi at 1-3.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

²⁸⁹ Affidavit of Adi Laite Bokini-Ratu dated 12 December 2024 at [37].

- 333.** CR Bainivalu introduced Ms. Barbara Malimali as the newly appointed FICAC Commissioner, stating her appointment had been made by the President on the recommendation of the JSC following consultation with the A-G.²⁹⁰
- 334.** Present at the meeting were senior FICAC officers including Mr. Kuliniasi Saumi, Mr. Aifereti Wakanivesi, Ms. Frances Puleiwai, and others.²⁹¹ Mr. Wakanivesi expressed distrust in Ms. Malimali and stated he could not serve under her leadership.²⁹²
- 335.** Ms. Malimali responded by disclosing past associations with Hon. Tabuya and Hon. Kamikamica, noting a falling out with the former in 2019.²⁹³

Legal Opinion and Prima Facie Case

- 336.** Ms. Bokini-Ratu confirmed she had been instructed to draft a legal opinion on complaints against Ms. Malimali, including an allegation of abuse of office for seeking the removal of the Acting SoE.²⁹⁴
- 337.** She confirmed in oral testimony that she waited until all relevant statements were received before concluding there was a prima facie case.²⁹⁵
- 338.** She further testified that she and Mr. Saumi agreed that the evidentiary threshold for charges had been met on 4 September 2024.²⁹⁶
- 339.** On instructions from ADC Ms. Puleiwai, she began drafting a charge under s 139 of the Crimes Act pending the caution interview with Ms. Malimali.²⁹⁷

Arrest and Subsequent Release of Ms. Malimali

- 340.** On 5 September 2024, Ms. Malimali was arrested and escorted for a caution interview.²⁹⁸
- 341.** Ms. Bokini-Ratu participated in a follow-up meeting in the FICAC Boardroom that afternoon involving the CR, senior lawyers including Mr. Wylie Clarke, Mr. Bale, Mr. Tuifagalele, Ms. Vaurasi, and for FICAC, Ms. Puleiwai and Mr. Saumi.²⁹⁹

²⁹⁰ Ibid., [40].

²⁹¹ Ibid., [37].

²⁹² Ibid., [41].

²⁹³ Ibid., [43].

²⁹⁴ Ibid., [49].

²⁹⁵ Transcript, Day 11, session 2 – Adi Laite Bokini-Ratu at 6.

²⁹⁶ Ibid., 13.

²⁹⁷ Affidavit of Adi Laite Bokini-Ratu dated 12 December 2024 at [48].

²⁹⁸ Transcript, Day 11, Session 2 – Adi Laite Bokini-Ratu at 18.

²⁹⁹ Affidavit of Adi Laite Bokini-Ratu dated 12 December 2024 at [54].

342. Tensions escalated at the meeting, with Mr. Bainivalu yelling at Ms. Puleiwai and Mr. Bale commenting that the actions of the FICAC Officials amounted to “career suicide.”³⁰⁰
343. Following this confrontation, the decision was made to release Ms. Malimali from custody and not lay charges at that point.³⁰¹

External Pressure and Intimidation

344. In her oral evidence, Ms. Bokini-Ratu confirmed she felt intimidated and threatened by the presence and conduct of the senior external figures at the 5 September meeting.³⁰²
345. She stated she had never before experienced such conduct from legal professionals or judges and described the tone as highly inappropriate and unprofessional.³⁰³

Post-Arrest Instructions from Ms. Malimali

346. After her release, Ms. Malimali called Ms. Bokini-Ratu to express disappointment and issued a directive that no charges be laid without her express approval.³⁰⁴
347. She further stated that she would return to the office on 6 September to take control and, if necessary, would do so accompanied by Police.³⁰⁵
348. Despite the Malimali file containing legal opinions and a drafted charge sheet being submitted to her office, no charges have since been laid.³⁰⁶

Political Influence and Viber Communications

349. In oral evidence, Ms. Bokini-Ratu confirmed she had seen Viber exchanges between Ms. Malimali and Mr. Saumi, in which Ms. Malimali stated she needed a “big one charged to shut the critics up.”³⁰⁷
350. She interpreted subsequent messages as an instruction to deprioritize or cease investigations into MPs, particularly election-related complaints.³⁰⁸

³⁰⁰ Ibid.

³⁰¹ Ibid., [57].

³⁰² Transcript, Day 11, Session 2 – Adi Laite Bokini-Ratu at 33.

³⁰³ Ibid.

³⁰⁴ Affidavit of Adi Laite Bokini-Ratu dated 12 December 2024 at [60].

³⁰⁵ Ibid.

³⁰⁶ Affidavit of Adi Laite Bokini-Ratu dated 12 December 2024 at [33].

³⁰⁷ Transcript, Day 11, Session 2 – Adi Laite Bokini-Ratu at 39-40.

³⁰⁸ Ibid.

- 351.** Ms. Bokini-Ratu agreed with Mr. Saumi that the Commissioner's messages constituted a directive to stop pursuing such matters.³⁰⁹

Independence and Integrity of Process

- 352.** When asked what should have occurred given the ongoing FICAC Malimali Investigation at the time of Ms. Malimali's appointment, Ms. Bokini-Ratu stated that the JSC should have held off on the appointment pending the outcome of the Investigation.³¹⁰
- 353.** She opined that if no charges were laid following completion of the Investigation, the appointment could proceed. However, if charges were warranted, the JSC should have selected the next preferred candidate.³¹¹
- 354.** She also confirmed that she believed Ms. Malimali should have stood aside upon arrest in order to preserve the integrity of FICAC and its processes.³¹²
- 355.** She reiterated that her legal advice and all actions undertaken by her Division in relation to Ms. Malimali were based on an objective and fair analysis of the evidence.³¹³

Evidence summary of Assistant Investigator Mr. Alifereti Wakanivesi

- 356.** Mr. Alifereti Wakanivesi is an Investigator at FICAC and the Chief Investigator of FICAC's Economic Crimes Unit. He previously worked as an auditor at the Fiji Development Bank before joining FICAC, where he has served for over 15 years.
- 357.** Mr. Wakanivesi provided a sworn affidavit on 12 December 2024, and a supplementary affidavit on 27 February 2025. He further provided oral evidence on days 9, 10, 11, 34, and 35 of the hearing.
- 358.** His evidence broadly covers the following topics:
- a.** concerns about Ms. Malimali's appointment;
 - b.** integrity of the FICAC investigation process;
 - c.** interference, obstruction, and external pressure;
 - d.** legal opinion and evidentiary thresholds;
 - e.** political interference and Viber messages; and
 - f.** Economic Crimes Unit and operational challenges.

³⁰⁹ Ibid.

³¹⁰ Ibid., 37.

³¹¹ Ibid.

³¹² Ibid., 38.

³¹³ Ibid.

Concerns About the Appointment of Ms. Malimali

- 359.** Mr. Wakanivesi attended a meeting on 4 September 2024 where Ms. Malimali was introduced by the CR as the new Commissioner of FICAC.³¹⁴
- 360.** He expressed immediate concern, stating he could not serve under someone who was the subject of an active investigation. He told the meeting he would resign if the appointment was not handled properly.³¹⁵
- 361.** He believed that allowing Ms. Malimali to assume the Commissioner role without the investigation being resolved would compromise FICAC's integrity and undermine public confidence.³¹⁶

Involvement in the Investigation Process

- 362.** Mr. Wakanivesi became involved in the FICAC Malimali Investigation on 4 September 2024 and was responsible for taking witness statements.³¹⁷ He was not involved in executing search warrants.³¹⁸
- 363.** He confirmed that FICAC had collected various documents, including appointment letters, internal directives, meeting minutes, and witness statements.³¹⁹ Charges against other ECF Commissioners had been referred to the ODPP.³²⁰
- 364.** He testified that he had no personal bias or vendetta against Ms. Malimali, and that the Investigation progressed rapidly due to the clarity of evidence, which was comparable to previous fast-moving cases.³²¹

Interference and Obstruction

- 365.** Mr. Wakanivesi testified that the conduct of CR Bainivalu and the four senior lawyers present during Ms. Malimali's arrest amounted to obstruction.³²²
- 366.** He emphasized that none of the external parties present were Ms. Malimali's Legal Counsel, and that their presence was inappropriate and intimidating.³²³

³¹⁴ Transcript, Day 9, Session 1 – Alifereti Wakanivesi at 24.

³¹⁵ Ibid., 25.

³¹⁶ Ibid., 31.

³¹⁷ Ibid., 22.

³¹⁸ Ibid.

³¹⁹ Ibid., 6.

³²⁰ Ibid., 7.

³²¹ Ibid., 1.

³²² Ibid., 13.

³²³ Ibid., 14.

- 367.** He confirmed that the actions at the 5 September 2024 meeting ultimately led to the decision not to charge Ms. Malimali at that time, despite the legal team's view that a case had been established.³²⁴

Legal Opinions and Evidentiary Threshold

- 368.** Mr. Wakanivesi referred to the initial legal advice received from Ms. Mausio indicating that further investigation was warranted.³²⁵ He agreed with the conclusion that the evidentiary threshold had been met as of 4 September.
- 369.** He acknowledged there was no direct evidence linking Ms. Malimali to the alleged leak of voter data to Hon. Tabuya but emphasized that further witness statements had not been obtained.³²⁶
- 370.** He discussed the April 2 Malimali Letter from the ECF and confirmed that the ECF's subsequent directives lacked a lawful basis and were not supported by any legal opinion.³²⁷

Political Influence and Viber Messages

- 371.** Mr. Wakanivesi confirmed seeing a Viber exchange between Ms. Malimali and Mr. Saumi dated 24 December 2024 in which Ms. Malimali instructed that election-related cases, particularly against MPs, not be pursued.³²⁸
- 372.** He interpreted the exchange, like others, as a directive to deprioritize politically sensitive cases. He also referenced that Mr. Saumi discussed the exchange with Ms. Bokini-Ratu, who drew similar conclusions.³²⁹
- 373.** He expressed the belief that Ms. Malimali's appointment was made to shield certain senior government officials, including two Deputy Prime Ministers, and the CR from prosecution.³³⁰

Stop Departure Order and Related Investigations

- 374.** Mr. Wakanivesi described the issuance of an SDO against ADC Ms. Puleiwai as an abuse of office.³³¹ He noted that Ms. Puleiwai was not under investigation and that the SDO shocked him.³³²

³²⁴ Ibid.

³²⁵ Ibid., 2.

³²⁶ Ibid., 5.

³²⁷ Ibid., 9, 18.

³²⁸ Ibid., 14.

³²⁹ Ibid., 15.

³³⁰ Ibid., 7.

³³¹ Ibid., 33.

³³² Ibid.

375. He confirmed the existence of complaints lodged by Ms. Forwood against the S-G, Mr. Green, the Minister for Justice, Hon. Turaga, and the CR. He said these were under review and required proper verification of documents.³³³

Appointment of Mr. Matanisiga and Internal FICAC Management

376. Mr. Wakanivesi discussed the appointment of Mr. Mosese Matanisiga, a former Police Officer, as Acting Manager Investigations. The position had not been advertised and the appointment was made directly by Ms. Malimali.³³⁴
377. He described staff hesitancy following Ms. Malimali's directive to cease allocating resources to cases involving Ms. Forwood, stating that no counter-directive was issued to continue those investigations.³³⁵
378. He expressed frustration with Ms. Malimali's leadership style and noted that her internal communications were not motivating. He said morale had been negatively affected.³³⁶

Economic Crimes Unit and Task Force Operations

379. Mr. Wakanivesi leads FICAC's Economic Crime Unit, which investigates white-collar crimes, proceeds of crime, money laundering, and cybercrime.³³⁷
380. He discussed notable cases handled by the unit, including the Feroz Jan case and the Lautoka swimming pool investigation.³³⁸
381. He also led the task force established by Ms. Malimali to investigate the Walesi case. He noted the task force model was a new approach within FICAC, requiring the reassignment of investigation team members.³³⁹

Institutional Integrity

382. Mr. Wakanivesi emphasized that FICAC's credibility was under threat due to politicization and interference.³⁴⁰
383. He reiterated that a filtering mechanism should be introduced to manage frivolous complaints while ensuring genuine allegations were investigated thoroughly and without fear or favour.³⁴¹

³³³ Transcript, Day 34, Session 3 – Alifereti Wakanivesi at 4-6.

³³⁴ Ibid., 4.

³³⁵ Transcript, Day 35, Session 1 – Alifereti Wakanivesi at 33.

³³⁶ Ibid., 34.

³³⁷ Transcript, Day 34, Session 3 – Alifereti Wakanivesi at 15.

³³⁸ Ibid., 16.

³³⁹ Transcript, Day 35, Session 1 – Alifereti Wakanivesi at 6-7.

³⁴⁰ Transcript, Day 10, Session 1 – Alifereti Wakanivesi at 31.

³⁴¹ Transcript, Day 11, Session 1 – Alifereti Wakanivesi at 5.

- 384.** In his final remarks, he advised Ms. Malimali not to resign prematurely but to await the outcome of the CoI because he felt sorry for her. He said she had told him she felt she was being used as a scapegoat by the JSC.³⁴²

Evidence summary of Supervisor of Elections, Ms. Ana Salaivalu Mataiciwa

- 385.** Ms. Ana Salaivalu Mataiciwa is the SoE, Registrar of Political Parties, and Registrar of Voters. She has been with the FEO since its establishment in 2014.³⁴³ She initially served as Compliance Coordinator, then Manager Legal, and was appointed Acting Supervisor of Elections on 27 January 2023.³⁴⁴
- 386.** Ms. Mataiciwa filed a sworn affidavit dated 29 November 2024, and provided further oral evidence to the CoI on Day 1 of the hearings.
- 387.** Her evidence broadly addresses the following topics:
- a.** political interference and institutional intimidation;
 - b.** conflicts of interest and concerns regarding Ms. Malimali;
 - c.** legal interpretation of reporting obligations under the Electoral Act;
 - d.** breakdown in relations with the ECF;
 - e.** delays in investigations and search warrant execution; and
 - f.** integrity and independence in electoral oversight.

Political Interference

- 388.** Ms. Mataiciwa described a culture of fear and intimidation embedded within the FEO under the previous regime. She testified to having received instructions from higher authorities in relation to electoral processes and complaint referrals, including cases being diverted to the Fiji Police Force or FICAC based on political influence.³⁴⁵
- 389.** Upon her appointment as Acting SoE, she undertook a review of administrative and electoral processes.³⁴⁶ Feedback from internal and external stakeholders indicated the FEO was perceived as politically compromised and lacking independence.³⁴⁷

Conflicts of Interest and Concerns Regarding Ms. Malimali

- 390.** Ms. Mataiciwa raised serious concerns about a conflict of interest involving Ms. Malimali, then Chair of the ECF and later FICAC Commissioner. She stated

³⁴² Transcript, Day 35, Session 1 – Alifereti Wakanivesi at 3-4.

³⁴³ Transcript, Day 1, Session 2 – Ms. Mataiciwa at 7.

³⁴⁴ Ibid., 8.

³⁴⁵ Ibid.

³⁴⁶ Ibid., 9.

³⁴⁷ Ibid.

that Ms. Malimali had previously discussed her personal and professional relationships with government ministers, most notably Hon. Tabuya.³⁴⁸

- 391.** She noted that Ms. Malimali had spoken of receiving gifts from Ministers, which Ms. Mataiciwa found troubling given her position as an independent constitutional officeholder.³⁴⁹

Directive from the Electoral Commission

- 392.** On 13 June 2024, Ms. Mataiciwa received a directive from the ECF instructing her to:

- a.** inform individuals of complaints made against them; and
- b.** table all complaints with the ECF before taking further action, including referring matters to FICAC.³⁵⁰

- 393.** Ms. Mataiciwa believed the directive was unlawful and conflicted with her mandatory duty under s 18 of the Electoral Act, which obliges the SoE to immediately refer probable breaches of election-related offences to FICAC immediately.³⁵¹

Legal Opinions and Interpretation of Section 18

- 394.** Faced with the directive, Ms. Mataiciwa sought internal and external legal advice.³⁵² The verbal advice confirmed her understanding that the directive from the ECF was inconsistent with the Electoral Act and should not be followed.³⁵³
- 395.** Based on this legal guidance, Ms. Mataiciwa did not comply with the Commission's instruction and continued to refer complaints directly to FICAC as required under law.³⁵⁴

Handling of Complaints

- 396.** Ms. Mataiciwa submitted a detailed table of complaints to the ECF, noting that some were delayed for months, and in a few cases, up to a year, due to the confusion and institutional pressure surrounding the directive.³⁵⁵
- 397.** She emphasized that despite the delays, her office attempted to ensure that complaints were eventually referred for investigation, including those involving high-profile individuals.³⁵⁶

³⁴⁸ Ibid., 11.

³⁴⁹ Ibid., 10.

³⁵⁰ Ibid., 15.

³⁵¹ Ibid.

³⁵² Ibid., 18.

³⁵³ Ibid.

³⁵⁴ Ibid., 19.

³⁵⁵ Ibid., 25-28.

³⁵⁶ Ibid., 28.

Search Warrants and Investigations

- 398.** Ms. Mataiciwa provided evidence on the execution of search warrants at the FEO and the S-G's Office as part of the broader FICAC investigation into Ms. Malimali.³⁵⁷
- 399.** She described delays and obstacles, particularly from the S-G's Office, including references to the need for the PM's approval before documents could be released.³⁵⁸

Relationship with the Electoral Commission

- 400.** Ms. Mataiciwa described a breakdown in the relationship between her office and the ECF. Tensions escalated after she reported complaints against senior figures, including those perceived to be close to members of the ECF.³⁵⁹
- 401.** She described the ECF's behaviour as increasingly obstructive and politicized, particularly after she refused to comply with their 13 June Directive and continued her statutory duties independently.³⁶⁰

Integrity and Influence in Investigations

- 402.** Ms. Mataiciwa affirmed her commitment to impartiality in handling complaints and investigations. She testified that despite external attempts to influence the process, including from Ms. Malimali, her office remained focused on its constitutional duties.³⁶¹
- 403.** She also described incidents of intimidation and pressure faced by her and other FEO officers during the investigation into Ms. Malimali and related matters.³⁶²
- 404.** Ms. Mataiciwa's evidence reiterated that she had always acted within the law and relied on sound legal advice. She stated that her actions were motivated by a duty to uphold public trust in electoral integrity and democratic accountability.³⁶³
- 405.** She expressed concern that institutional independence was at risk and emphasized the need for clear legal boundaries to ensure that constitutional officers could perform their roles without undue interference.³⁶⁴

³⁵⁷ Ibid., 24.

³⁵⁸ Ibid., 26.

³⁵⁹ Ibid., 21.

³⁶⁰ Ibid., 26.

³⁶¹ Ibid., 53.

³⁶² Ibid., 54.

³⁶³ Ibid., 100.

³⁶⁴ Ibid.

Evidence Summary of Former Executive Secretary of the Electoral Commission of Fiji, Mr. Sefanaia Tudonu

- 406.** Mr. Sefanaia Tudonu was the Executive Secretary to the ECF, a role he held from 13 March 2024 until his resignation in late 2024. He resigned due to the internal conflicts between the ECF and the SoE, Ms. Mataiciwa.
- 407.** Mr. Tudonu has over 20 years of experience in public service. He filed an affidavit dated 20 December 2024, and further provided oral testimony on 7 January 2025 of the hearing.
- 408.** His evidence broadly addresses the following topics:
- a. governance and conduct within the ECF;
 - b. political interference and conflicts of interest;
 - c. leaking of correspondence and handling of complaints;
 - d. execution of search warrants and cooperation with investigators;
 - e. working under conflicting authority and internal tension;
 - f. statements regarding Ms. Malimali's possible charging; and
 - g. resignation and professional consequences.

Governance and Conduct within the Electoral Commission

- 409.** Mr. Tudonu stated that during the 2 April 2024 ECF meeting, concerns were raised about the Acting SoE referring complaints to FICAC without consulting the ECF.³⁶⁵
- 410.** He stated that Ms. Malimali unilaterally amended a letter recommending Mr. Graham Leung for the position of SoE, without input from the other ECF Commissioners. These changes included alternative recommendations not discussed or approved in prior ECF meetings.³⁶⁶
- 411.** He confirmed that the audio recording of that meeting was paused at Ms. Malimali's request when discussion turned to complaints involving Hon. Prasad and Hon. Tabuya.³⁶⁷ The recording was not resumed, and the rest of the meeting was not documented.³⁶⁸
- 412.** Mr. Tudonu delivered the signed and amended letter to the COC Secretariat, which is the S-G's office, on 3 April 2024. Within an hour, he was informed by Ms. Forwood that the contents had been leaked on SM.³⁶⁹

³⁶⁵ Affidavit of Sefanaia Tudonu, dated 13 March 2024 at [2.2]-[2.4].

³⁶⁶ Ibid., [4.1]-[4.3].

³⁶⁷ Ibid., [3.1].

³⁶⁸ Ibid., [3.2].

³⁶⁹ Ibid., [4.3].

- 413.** After the leak, the ECF Commissioners requested to see the letter, but Ms. Malimali did not to provide it.³⁷⁰ The ECF Commissioners instead pressured Mr. Tudonu, who stated he could not release it without the Chairperson's approval.³⁷¹
- 414.** Eventually, under pressure, the April 2 Malimali Letter was released approximately a week later, after Ms. Malimali provided belated approval. By then, the ECF Commissioners had created a separate Viber group excluding both the SoE and Mr. Tudonu.³⁷²

Political Interference and Conflicts of Interest

- 415.** Mr. Tudonu testified that the discussion about complaints at the 2 April meeting was heavily focused on individual MPs rather than broader policy issues. He found this focus inappropriate for a policy body such as the ECF.³⁷³
- 416.** He also recalled informal comments from Ms. Malimali about her personal relationship with Hon. Tabuya and social interactions with Hon. Vosarogo, raising his concern about potential political influence.³⁷⁴
- 417.** He believed external influences might have shaped the April 2 Malimali Letter recommending Mr. Leung's appointment, due to the unexplained amendments introduced after the initial draft.³⁷⁵

Execution of Search Warrants and Cooperation with FICAC

- 418.** Mr. Tudonu cooperated fully with FICAC when they executed a search warrant on 3 September 2024. He had been informed the previous day by the SoE that the search would occur.³⁷⁶
- 419.** During the execution of the search warrant, ECF Commissioner Jokhan visited the office, objected to the warrant, and was advised to speak with the FICAC investigators directly. The search proceeded without incident, and Mr. Tudonu handed over the required documents.³⁷⁷
- 420.** He disputed characterizations of the search as a "raid," describing it instead as a standard legal procedure.³⁷⁸

³⁷⁰ Ibid., [5.3].

³⁷¹ Ibid., [5.4].

³⁷² Ibid., [6.3].

³⁷³ Transcript, Day 2, Session 1 – Mr. Tudonu at 10-11.

³⁷⁴ Ibid., 12-13.

³⁷⁵ Ibid., 24-25.

³⁷⁶ Ibid., 39-40.

³⁷⁷ Ibid.

³⁷⁸ Ibid.

Internal Tension and Professional Strain

421. Mr. Tudonu described his role as caught between two authorities, the ECF and the SoE, both of whom held conflicting positions. This placed him in an invidious position, creating professional and personal stress.
422. He described feeling used by both parties and stated that efforts to encourage them to work collaboratively were unsuccessful.
423. Following the leak of the letter and the Viber fallout, he was accused of insubordination by the ECF Commissioners. He was excluded from a special meeting and removed from the official Viber group, signalling a complete breakdown in trust.

Allegations Regarding Charging of Ms. Malimali

424. During witness interviews at the FICAC office on the evening of 4 September 2024, Mr. Tudonu was seated in the same room as the SoE and her team. He testified that while in the same room, he overheard Ms. Mataciwa speaking to FICAC investigators, saying in iTaukei that Ms. Malimali should be charged the next morning.³⁷⁹
425. He emphasized that it was not a directive, but rather a comment overheard in the course of discussions with investigators.³⁸⁰
426. He further testified that this statement, combined with his earlier instructions from the SoE about the impending search warrant, made him feel as if the sequence of events was pre-planned and targeted at Ms. Malimali.³⁸¹

Resignation and Professional Consequences

427. Mr. Tudonu stated that he felt pressure from both the SoE and the ECF Commissioners during his time in the role. He testified that he gave his FICAC witness statement under pressure and confusion but confirmed its contents as truthful.³⁸²
428. He ultimately resigned due to the ongoing internal conflict, lack of support from either side, and its toll on his health and family.³⁸³
429. He testified that the ECF Commissioners held him accountable for administrative matters over which he had little discretion and used him as an intermediary without genuine regard for his role.³⁸⁴

³⁷⁹ Ibid., 54-56.

³⁸⁰ Ibid., 49-52.

³⁸¹ Ibid., 57-58.

³⁸² Ibid., 58.

³⁸³ Ibid., 57-58.

³⁸⁴ Ibid.

430. He confirmed that directives issued by the ECF, including those instructing the SoE to consult them before referring complaints, were never published as required by law. No explanation was given by the Chairperson or other ECF Commissioners as to why.³⁸⁵

Legal Interpretation and Institutional Independence

431. During cross-examination, Mr. Tudonu agreed that the SoE does not have the power to direct FICAC to charge individuals and that FICAC is an independent constitutional body responsible for deciding on charges based on their investigations.³⁸⁶
432. He reiterated that he believed he was being used in a conflict between two senior officials, and his resignation was due to the unhealthy working environment that emerged as a result.³⁸⁷

Evidence summary of Deputy Prime Minister and Minister of Finance, Hon. Biman Prasad.

433. Hon. Prasad filed a sworn affidavit on 3 December 2024, and provided oral testimony on 11 February 2025 which was Hearing Day 26.
434. Hon. Prasad is the Deputy Prime Minister and Minister of Finance.
435. The evidence of Hon. Prasad broadly covers the following:
- a. FICAC investigation into Hon. Prasad's assets and liabilities declaration;
 - b. knowledge of Ms Malimali's appointment;
 - c. interference and politicisation of FICAC;
 - d. procedural unfairness;
 - e. alleged political involvement; and
 - f. alleged political conspiracy.

FICAC Investigation

436. Hon. Prasad only became aware on 18 March 2024 via a *Fiji Sun* newspaper article that FICAC was investigating a complaint against him. The complaint had originally been filed at the FEO office. The SoE, Ms. Mataiciwa had then referred the complaint to FICAC. Following this, Hon. Prasad instructed his lawyer, Mr. Nagin of Sherani & Co, to seek clarification from Ms. Mataiciwa

³⁸⁵ Ibid., 75-76.

³⁸⁶ Ibid., 144-145.

³⁸⁷ Ibid., 57-58.

regarding the complaint. She responded, asserting her legal authority and duty to act on the complaint.³⁸⁸

437. Mr. Richard Naidu of Munro Leys was later instructed. Mr Nagin, wrote to Ms. Mataciwa on 8 April 2024, requesting a written explanation based on constitutional grounds. No response was received.³⁸⁹
438. In August 2024, FICAC sought to question Hon. Prasad regarding alleged breaches of the PP Act. Hon. Prasad was interviewed on 12 and 22 August, and exercised his right to silence, with Mr. Naidu representing him. On 24 August, Mr. Naidu responded to FICAC in writing, endorsing a legal opinion from Martin Daubney KC, but received no reply.³⁹⁰
439. On 5 September, while attending his official duties, Hon. Prasad became aware through social media that FICAC had written to the Minister of Justice, Siromi Turaga, stating that Hon. Prasad would be charged that day. He expressed concern over why such a letter, unnecessary under the law, had been issued and leaked so quickly. In light of this and his schedule, Prasad instructed Mr. Naidu to write again to FICAC requesting a more reasonable approach. The letter was acknowledged by Ms. Malimali. Hon. Prasad confirmed that he had no further information about developments after that date.³⁹¹
440. In respect of the SoI Hon. Prasad states that he has no direct knowledge of any of the matters set out at Issues 3 (a) to (d) or (f). In relation to Issue 1(e), Hon. Prasad believed that Ms. Mataciwa did not follow due process in referring the allegations against him to FICAC under s18 of the Electoral Act.³⁹²
441. In respect of Issue 2 outlined in the SoI, Hon. Prasad advised that he was not at any time involved in the Appointment Process of Ms. Malimali, nor did he attempt to improperly influence the selection and appointment of Ms. Malimali at any time.³⁹³
442. On the evening of 4 September, Mr. Saumi, the Manager of Investigations tried to arrange for Hon. Prasad to attend a caution interview the next day to be formally charged.
443. Mr. Naidu, conveyed to Mr. Saumi that it would be inconvenient and embarrassing to meet on the 5th September 2025, especially since the World Bank President was visiting and there was a Parliamentary sitting on 5 September.

³⁸⁸ Affidavit of Biman Chand Prasad dated 3 December 2024 at [7].

³⁸⁹ Ibid., [11].

³⁹⁰ Ibid., [12]-[15].

³⁹¹ Ibid., [20]-[22].

³⁹² Ibid., [24].

³⁹³ Ibid., [25].

444. Hon. Prasad confirmed in his evidence that he was engaged in high-level diplomatic and parliamentary duties on that day, including being the final speaker in Parliament, and reiterated the significance of the World Bank President's first visit to Fiji.

Knowledge of Ms Malimali's Appointment

445. Hon. Prasad denied any knowledge of Ms Malimali's appointment process, acknowledging that he knew about her appointment from reading social media.
446. He stated that Cabinet typically does not discuss independent appointments, including those by the JSC or the COC.
447. He did not recall any Cabinet discussion around Ms. Malimali's appointment.

Interference and Politicisation of FICAC

448. Hon. Prasad was of the view that FICAC had been "weaponised" in the past to target political opponents and that installing a sympathetic Commissioner could be a strategy to stop politically sensitive investigations from continuing. He acknowledged being a target of the previous government, having had multiple FICAC interviews during COVID, possibly due to him being a political opponent.

Procedural Unfairness

449. Hon. Prasad described what he saw as procedural unfairness on the part of the SoE, Ms Mataciwa, citing how his voluntary income declaration error was used against him publicly without any formal communication to him first.
450. Hon. Prasad compared such conduct as worse than his prior experience under the former SoE, who had allowed him to correct similar errors.

Alleged Political involvement

451. Ms. Puleiwai had suggested that Hon. Prasad may have contacted Ms. Malimali on 5 September to halt the charges. Hon. Prasad denied this outright, labelling it "nonsense" and "lies", and stated that he had never spoken to Ms. Malimali, except once during a budget submission.
452. Hon. Prasad also rejected the claim made by Ms. Forwood that he attended a JSC meeting on 9 September, saying he had no involvement and wasn't even aware of who sat on the JSC beyond CJ Temo.

Alleged Political Conspiracy

453. Hon. Prasad claimed there was an orchestrated campaign involving:
- a. Ms. Mataiciwa;
 - b. FICAC officials;
 - c. individuals like Ms. Forwood, Mr. Victor Lal, Mr. Rajendra Chaudhry, and Mr. Mahendra Chaudhry; and
 - d. elements of the former Fiji First Party.
454. Hon. Prasad stated that his income declaration was leaked within 48 hours of it being submitted, which was then circulated rapidly on social media and in the press, causing reputational damage.
455. Hon. Prasad emphasized that there are strict rules governing access to such declarations, and the leak was a breach of protocol and confidentiality.

Evidence Summary of Hon. Lynda Tabuya

456. Hon. Tabuya filed a sworn affidavit dated 16 December 2024 and provided oral testimony on Day 14 of the Hearing.
457. Her evidence focused primarily on the following:
- a. awareness of FICAC complaints against her since the 2022 Elections;
 - b. past personal relationship with Ms. Malimali;
 - c. denial of any role or discussions relating to the appointment of Ms. Malimali; and
 - d. denial of any misconduct in relation to the complaints made by Ms. Forwood.

Awareness of FICAC Complaints

458. Hon. Tabuya confirmed that since the 2022 General Elections, she has become aware, through the media, of complaints made against her to FICAC.
459. She stated that she has never been formally informed by FICAC or the FEO of any such complaints.
460. Hon. Tabuya reiterated in both her affidavit and oral evidence that she has had no interaction with FICAC since 2022 regarding any complaints.

Relationship with Ms. Malimali

- 461.** Hon. Tabuya acknowledged that she and Ms. Malimali were friends between 2009 and 2019. She explained that the friendship ended due to personal differences but confirmed that they remained civil in professional settings.
- 462.** Hon. Tabuya stated that she had not had any discussions with Ms. Malimali regarding the latter's appointment as FICAC Commissioner.

Allegations Regarding Accessing Voter Information

- 463.** During cross-examination, Counsel Assisting questioned Hon. Tabuya about a complaint made by Ms. Forwood regarding the alleged unlawful access to her voter registration details.
- 464.** Hon. Tabuya denied having accessed Ms. Forwood's voter information or having posted such information on Facebook.
- 465.** When asked whether she had received this information from Ms. Malimali, Hon. Tabuya denied that any such disclosure occurred.

Denial of Involvement in Appointment Process or Interference

- 466.** Hon. Tabuya was asked whether she was involved in any conversations about Ms. Malimali's appointment or whether she had participated in efforts to halt investigations into MPs.
- 467.** Hon. Tabuya categorically denied any involvement in the Appointment Process or in any attempts to "shut down" FICAC investigations relating to MPs.
- 468.** She reiterated that she has had no contact or discussions with Ms. Malimali concerning the selection or Appointment Process to FICAC.

Gifting Incident and Clarification

- 469.** In response to questions about paragraph 10 of her affidavit, Hon. Tabuya confirmed that she had gifted sunglasses to a mutual friend, who subsequently gave them to Ms. Malimali.
- 470.** She stated that this action was not intended as a gift to Ms. Malimali directly and that it occurred prior to the current controversies.
- 471.** Hon. Tabuya rebutted allegations made by Ms. Forwood relating to her involvement in the unlawful dissemination of voter information.
- 472.** She also denied any role in discussions concerning Ms. Malimali's appointment, any attempts to influence the appointment outcome, or any intention to interfere with FICAC's operations.

473. She concluded her evidence by reaffirming that since the 2022 Elections, she has had no formal interactions with FICAC and no involvement in issues relating to the appointment or conduct of Ms. Malimali.

Evidence Summary of Opposition MP, Hon. Semi Koroilavesau

474. Hon. Koroilavesau is currently an Opposition MP for the Group of 16. He filed a sworn affidavit dated 16 December 2024 and provided oral testimony on Day 14 of the Hearing.
475. His evidence focused on two issues:
- a. political interference, particularly surrounding the appointment of Ms. Malimali; and
 - b. a conversation with Hon. Penioni Ravunawa concerning ministerial complaints and the role of the FICAC Commissioner.

Political Interference in Appointment of FICAC Commissioner

476. Hon. Koroilavesau stated in his affidavit and oral evidence that the appointment of Ms. Malimali was the subject of active concern and discussion among Opposition MPs. He characterised the appointment as part of a broader pattern of politically motivated judicial and legal sector appointments.
477. He asserted that the appointment undermined the transparency and accountability expected of independent institutions such as FICAC. He noted that the issue had been repeatedly raised in Parliament by Opposition MPs as a matter of national concern.
478. Hon. Koroilavesau described Ms. Malimali's appointment as highly irregular, especially given that prior FICAC Commissioners had typically been appointed on an acting basis for extended periods, presumably to assess their performance.
479. He viewed the decision to appoint Ms. Malimali to a substantive, permanent position, despite knowledge of an ongoing investigation, as damaging to public trust in legal oversight bodies.

Conversation with Hon. Penioni Ravunawa

480. Hon. Koroilavesau described a conversation in early December 2024 during a parliamentary sitting week, held in the Opposition Chambers.
481. According to his evidence, Hon. Penioni Ravunawa relayed that he had spoken with the suspended Minister of Fisheries, Hon. Ravu, who expressed strong views about the CoI process.
482. Hon. Ravu allegedly told Hon. Ravunawa that the establishment of the CoI would "bring out the whole truth." He reportedly added that he had been assured

by several Ministers that the appointment of Ms. Malimali as FICAC Commissioner would ensure that complaints against them would be “squashed.”

- 483.** The Ministers reportedly referred to were Hon. Prasad, Hon. Turaga, and Hon. Kamikamica.
- 484.** According to the hearsay relayed to him, Hon. Ravu was frustrated that he was now before the courts while other Ministers under investigation had not been charged. Hon. Koroilavesau recalled that Hon. Ravu believed it was Hon. Kamikamica who either told him directly or was overheard expressing such assurances.

Concerns Over Systemic Influence

- 485.** In his oral evidence, Hon. Koroilavesau expanded on his concerns regarding the politicisation of appointments, particularly in institutions meant to function independently from the Executive.
- 486.** He cited widespread bipartisan concern over legal appointments and suggested that there was a perception that certain legal officials, such as the CR, were receiving favourable treatment despite ongoing allegations.
- 487.** He also recalled hearing conversations that suggested a desire to appoint someone to FICAC who would “play the game” by delaying or dismissing investigations against sitting Ministers.
- 488.** While he had no direct knowledge of any attempt to remove ADC Ms. Puleiwai, he observed that the atmosphere and direction at FICAC shifted notably following the appointment of Ms. Malimali.
- 489.** Hon. Koroilavesau maintained that Ms. Malimali’s appointment was politically motivated and served to shield certain members of the government from investigation or prosecution.
- 490.** He expressed concern that the integrity of key institutions was being compromised and called for greater transparency in judicial and constitutional appointments to restore public confidence.

Evidence Summary of Hon. Kalaveti Vodo Ravu

- 491.** Hon. Kalaveti Vodo Ravu is a sitting MP and the former Minister for Fisheries. He was sworn into Cabinet on 24 December 2022 but currently serves as a backbencher following FICAC charges that were pending before the court, but have now been dismissed.
- 492.** Hon. Ravu filed an affidavit sworn on 13 December 2024, and provided oral testimony on Day 25 of the Hearing.

Parliamentary Conversations Regarding His FICAC Case

- 493.** Hon. Ravu maintained contemporaneous diary records and referred to them during his preparation for the CoI hearing. He described a series of interactions with senior members of government regarding the FICAC case against him.
- 494.** On 8 July 2024, at the parliamentary complex, Hon. Kamikamica enquired about the status of Hon. Ravu’s case. Hon. Ravu replied that it was still before the court.
- 495.** On the same day, while in the bathroom, Hon. Prasad also casually asked about his case, to which Hon. Ravu gave the same response.
- 496.** A further conversation occurred on 5 August 2024 during a parliamentary morning break. Hon. Kamikamica again asked about the case. Hon. Ravu replied that he had retained new legal counsel, who was managing the matter.
- 497.** According to Hon. Ravu, Hon. Kamikamica then told him that Ms. Barbara Malimali would soon be appointed as the new FICAC Commissioner.
- 498.** In his oral evidence, Hon. Ravu confirmed that Hon. Kamikamica explicitly linked Ms. Malimali’s prospective appointment to potential action on Hon. Ravu’s case:

Ms. Mason: And did he say that she would, once she was appointed, she would try to close your case?

Mr. Ravu: That’s what he told me. If Barbara Malimali is appointed Commissioner, he will talk to Barbara regarding to my case.³⁹⁴

Ministerial Inquiries and Attempts to Intervene

- 499.** Hon. Ravu stated that after the CoI hearing and a subsequent caucus meeting on 25 November 2024, the PM asked about the status of his case. Hon. Ravu told him that the matter was due for hearing in February 2025.
- 500.** Hon. Ravu also informed the PM that his counsel had written to FICAC stating that the charge should not have been laid. The PM reportedly replied that he looked forward to the matter being finalised.
- 501.** Following the PM’s departure, Hon. Kamikamica again approached Hon. Ravu, asking for a copy of the letter sent by his legal counsel so that he could “follow it up” with Ms. Malimali.

³⁹⁴ Transcript, Day 25, Session 2 – Hon. Ravu at 11-12.

502. Hon. Ravu informed his counsel of the request. She refused to provide the letter, stating that she was handling the matter and would await a response from FICAC.

Correspondence with FICAC and Case Handling

503. Hon. Ravu annexed to his affidavit the following documents:
- a. a letter sent by his legal counsel to FICAC on 23 August 2024, stating that he should not have been charged;
 - b. FICAC's response, dated 27 August 2024; and
 - c. a follow-up email and reattachment of the original letter addressed to Ms. Malimali.
504. As of the date of his affidavit, no further response had been received from FICAC. Hon. Ravu stated that Ms. Malimali had advised she was awaiting legal analysis.

Additional Political Interactions and Context

505. Hon. Ravu recounted an interaction with MP Vosarogo, who offered to assist with his case if Hon. Ravu would provide his disclosures.
506. Hon. Ravu concluded by stating that his trial as scheduled to commence on 2 February 2025.
507. Hon. Ravu consistently suggested that his FICAC charge had become the subject of informal political discussion at senior levels.
508. He alleged that Hon. Kamikamica made multiple offers to intervene on his behalf, because of the appointment of a friend, Ms. Malimali.

Evidence Summary of Hon. Penioni Ravunawa

509. Hon. Ravunawa is a former Cabinet Minister and Fiji First MP of Parliament. He did not file a sworn affidavit but provided oral testimony before the CoI on Day 25 of the hearing.

Confirmation of Evidence Provided by Hon. Semi Koroilavesau

510. Hon. Ravunawa's oral evidence was primarily directed toward corroborating the affidavit evidence of Hon. Koroilavesau, which detailed conversations between Hon. Ravunawa and Hon. Ravu regarding the appointment of Ms. Malimali as FICAC Commissioner.
511. Hon. Ravunawa confirmed that the contents of Hon. Koroilavesau's affidavit, including the context and content of the conversation regarding the alleged political motivations behind Ms. Malimali's appointment, were accurate:

Ms. Mason: So, then this that you've read here, in the affidavit of Mr. Koroilavesau, you confirm that that's correct?

Mr. Ravunawa: That's correct, Madam.³⁹⁵

Recounting of the Discussion Regarding FICAC and Hon. Kalaveti Ravu

512. Hon. Ravunawa confirmed that the conversation occurred between 2–6 December 2024 in the Opposition Chambers, where he relayed to Hon. Koroilavesau what Hon. Ravu had told him.

513. Hon. Ravu had reportedly stated that he was pleased with the establishment of the CoI and had been assured by government ministers that Ms. Malimali's appointment would ensure that complaints against Hon. Prasad, Hon. Turaga, and Hon. Kamikamica would be "squashed."

514. Hon. Ravunawa confirmed that the Ministers involved were named in that conversation and that Hon. Ravu felt unfairly treated as he alone faced court proceedings.

Comments Regarding Hon. Kamikamica's Role

515. Hon. Ravunawa confirmed that Hon. Kamikamica was present during his conversation with Hon. Ravu and that he had heard Hon. Kamikamica support the appointment of Ms. Malimali to FICAC.

Mr. Ravunawa: And it was Honourable Kamikamica that did mention it's good that Barbara Malimali be appointed so that she can assist.³⁹⁶

516. When asked to elaborate on the meaning of "assist," Hon. Ravunawa stated that he understood the comment to mean that Ms. Malimali's appointment would help "squash the case" against Hon. Ravu.

Perception of a Coordinated Political Strategy

517. Hon. Ravunawa confirmed under questioning that he **believed the Ministers orchestrated** Ms. Malimali's appointment to protect themselves from FICAC prosecution.

Justice Ashton-Lewis: ...So, did you pick up that there was some arrangement, get Malimali in and these cases will disappear?

Mr. Ravunawa: I would say yes, Your Honour.³⁹⁷

³⁹⁵ Transcript, Day 25, Session 2 – Mr. Ravunawa at 7.

³⁹⁶ Ibid., 5.

³⁹⁷ Ibid., 7.

- 518.** Hon. Ravunawa’s oral evidence significantly corroborated allegations of political interference raised by Hon. Koroilavesau.
- 519.** His testimony directly implicated Hon. Kamikamica as advocating for the appointment of Ms. Malimali in a manner that would benefit government ministers under investigation.
- 520.** Hon. Ravunawa’s interpretation of the conversations supports the inference that there was an orchestrated effort to shield ministers from legal accountability by manipulating senior appointments within FICAC.

Evidence Summary of Acting Director of Public Prosecutions, Ms. Nancy Tikoisuva

- 521.** Ms. Tikoisuva is the Acting DPP. She provided written evidence via a letter dated 20 December 2024 in response to a request from the CoI dated 28 November 2024. She further provided oral evidence during the hearings.

Role and Limitations of the ODPP

- 522.** Ms. Tikoisuva stated that the ODPP was not involved in the events relevant to the SoI. As such, the ODPP was unable to affirm the content in affidavit form.
- 523.** She explained that the ODPP is not an investigative body, and that the responsibility for evidence gathering lies with law enforcement agencies such as the Fiji Police Force or, in some matters, FICAC.
- 524.** Despite this limitation, the ODPP responded to the CoI’s request for file information by attaching:
- a.** an email thread concerning the relevant matter;
 - b.** a Case Management System Report detailing registration and file movement;
 - c.** front pages of the investigation file; and
 - d.** the ODPP’s referral letter to the Director of CID.
- 525.** The ODPP noted that it has the constitutional authority under s 117(8) of the Constitution to institute, take over, discontinue, or intervene in criminal proceedings, except for matters already initiated by FICAC.
- 526.** In support of that limitation, s 55 of the Criminal Procedure Act 2009 was cited as a key provision outlining the respective powers and boundaries between ODPP and FICAC.
- 527.** Ms. Tikoisuva clarified that there is currently no Memorandum of Understanding between the ODPP and FICAC, and this is the first case requiring co-ordination between them.

File Status, Budget and Organisational Context

- 528.** Ms. Tikoisuva confirmed that the matter involving Ms. Malimali is still under investigation and has not resulted in any charges being instituted in court. As such, the ODPP has had no prosecutorial involvement.
- 529.** The ODPP attempted to locate budgetary records from 2007 to 2012, but due to staff turnover, financial records are only available from 2012 onward. Budget documents from 2009 to 2024 were included in the submission.
- 530.** Despite being the largest prosecutorial body in Fiji with 51 prosecutors, Ms. Tikoisuva noted that the ODPP's budget is significantly smaller than FICAC's, and ODPP prosecutors are paid less.

Relationship Between ODPP, FICAC, and Police

- 531.** In her oral evidence, Ms. Tikoisuva reiterated that the ODPP is not an investigative authority. Any information requiring investigation would be handed to the Police, including material relevant to this case.
- 532.** When asked whether the ODPP should have taken a more proactive role, Ms. Tikoisuva reaffirmed that their role begins only after investigations conclude and files are referred for legal advice.

Appointment of Ms. Malimali While Under Investigation

- 533.** Ms. Tikoisuva was questioned about the appropriateness of Ms. Malimali accepting the role of FICAC Commissioner while under investigation.
- 534.** She stated that blame could lie with multiple parties:
- a.** the JSC for failing to perform due diligence;
 - b.** Ms. Malimali, for not disclosing the pending investigation; and
 - c.** the institution for not intervening once the appointment was made.
- 535.** Ms. Tikoisuva disagreed with the proposition that Ms. Malimali should not have accepted the position, stating that once appointed, institutional actors should evaluate whether to proceed or pause. She added that the ODPP could not control what JSC or the appointee chose to do.

Handling of Conflicts of Interest

- 536.** Ms. Tikoisuva acknowledged that both she and Mr. Rabuku were friends of Ms. Malimali, but asserted that the ODPP has strict internal conflict-of-interest protocols.
- 537.** Files involving conflicts are redirected to other senior prosecutors. The ODPP maintains a practice whereby any legal opinion must begin with a declaration of conflict, including relationships with relevant parties.

538. In this matter, Ms. Tikoisuva confirmed that the ODPP referred the file to Police and any further review would be handled by assistant DPPs with no personal or professional association with Ms. Malimali.
539. She also referenced other instances where ODPP Officers and Police Officers had been investigated, and the relevant files were appropriately redirected to avoid internal bias.
540. In Ms. Tikoisuva's view, the appropriate step, referring the matter to the Police, had already been taken. She confirmed that no further ODPP involvement would occur unless a prosecutorial brief was formally requested.

Evidence Summary of Acting Director of Public Prosecutions, Mr. John Rabuku

541. Mr. Rabuku is the Acting DPP. He provided a sworn affidavit dated 23 December 2024, and provided further oral evidence on Day 31 of the hearing.

Mr Rabuku's evidence broadly covered:

- a. dual role of former Acting DPP and FICAC Commissioner;
 - b. handling of the Malimali complaint file;
 - c. lack of Memorandum of Understanding between FICAC and ODPP;
 - d. conflict of interest concerns;
 - e. role of Police vs. ODPP in investigations and charging decisions;
 - f. importance of formal complainant statements; and
 - g. application for FICAC Commissioner role and past disciplinary history.
542. Mr. Rabuku was appointed Acting DPP in October 2023, following the death of his predecessor, Ratu David Toganivalu.
543. During Mr. Toganivalu's tenure, he simultaneously held the roles of Acting DPP and Acting FICAC Commissioner, resulting in the unusual transfer of FICAC investigative files to the ODPP.
544. Mr. Rabuku stated that there was no Memorandum of Understanding governing such transfers, and this arrangement was unprecedented in his professional experience.

Handling of the Malimali File

545. Mr. Rabuku received the Malimali investigation file directly from a FICAC officer, who informed him that Ms. Malimali herself had directed its delivery.

546. Upon reviewing the file, Mr. Rabuku found it incomplete, noting the absence of a caution interview, or any decision to charge. It consisted primarily of witness statements.
547. Due to the incomplete nature of the file, he promptly referred it to the Fiji Police Force for proper investigation and further action. He emphasized that the Police—not the ODPP, are constitutionally mandated to investigate and decide whether to lay charges.
548. He explained that the ODPP’s role in such situations is advisory only, and that the final decision regarding charges rests with the Police.

Conflict of Interest

549. Mr. Rabuku openly acknowledged that he was personally acquainted with both Ms. Malimali and Ms. Tikoisuva, and conceded that this could be seen as a conflict of interest.
550. He accepted that he should have declared this conflict upon receiving the Malimali file, but explained that his involvement was minimal, as he had quickly redirected the file to Police.

On Investigative Standards and Procedures

551. Mr. Rabuku emphasized the importance of obtaining a formal written statement from the complainant, in this case Ms. Forwood, which serves as both a procedural safeguard and a legal commitment by the complainant.
552. He noted that such statements are standard practice in ODPP operations, especially in sensitive matters involving high-ranking individuals such as the FICAC Commissioner.
553. Mr. Rabuku stated that returning incomplete files leads to unnecessary delays and inefficiencies, and that the need for thorough, complete investigations was critical to avoiding back-and-forth dynamics between agencies.

The Role of Police vs. ODPP

554. In addressing questions around responsibility for charging decisions, Mr. Rabuku reiterated that the Police have the legal authority to determine whether or not to interview suspects or lay charges.
555. He explained that the DPP may advise but cannot compel the Police to act. Any requests made to Police by the ODPP are made respectfully and without obligation.
556. He clarified that while the ODPP handles serious indictable matters, the Police manage summary prosecutions in the Magistrates’ Courts.

Application for FICAC Commissioner Position

- 557.** Mr. Rabuku confirmed that he had applied to be FICAC Commissioner, but during the interview process, the panel raised concerns about a prior disciplinary ruling.
- 558.** This ruling related to his failure to respond to a notice from the LPU, which resulted in a fine and temporary suspension of his legal licence.
- 559.** Mr. Rabuku argued that this matter was irrelevant to the FICAC appointment, but the panel ultimately declined to proceed with his candidacy due to perceived reputational risk.

Evidence Summary of Speaker of Parliament, Justice Filimoni Jitoko

- 560.** Justice Filimoni Jitoko is the current Speaker of Parliament, and being the former President of the Court of Appeal he was a JSC member. He provided a sworn affidavit dated 8 January 2025, which was taken as read, and gave oral evidence on day 11 of the CoI hearings.

Justice Jitoko's evidence broadly covered:

- a.** the appointment of Ms. Malimali and the significance of pending complaints;
- b.** role of the JSC in the Appointment Process;
- c.** importance of FICAC's independence;
- d.** role of the A-G and the CR;
- e.** proposal for formal filtering processes and conflict of interest declarations; and
- f.** protection against vexatious complaints

Awareness of Complaint and the Appointment Process

- 561.** Justice Jitoko confirmed that had he known there was a complaint against Ms. Malimali at the time of her appointment, he would have withheld his consent until the matter was clarified. He stressed the importance of upholding FICAC's independence and ensuring external parties do not interfere with ongoing investigations.

JSC Meeting on 5 September 2024

- 562.** Justice Jitoko gave evidence in relation to the JSC meeting held on 5 September 2024. He confirmed that the A-G requested the Appointment Process be paused due to a complaint against Ms. Malimali. However, he said the details of the complaint were not properly disclosed to JSC members at the time.
- 563.** It was later revealed that FICAC intended to charge Ms. Malimali with three serious offences, each carrying a potential maximum sentence of ten years.

Justice Jitoko expressed disappointment that he was not informed of these allegations before the appointment decision was made. He indicated that a proper filtering mechanism should be introduced to assess and screen complaints before formal lodging with FICAC.

Independence of FICAC and Judicial Oversight

- 564.** Justice Jitoko reiterated that FICAC must remain independent and any disputes or challenges to its processes should be addressed through the courts. He agreed that full disclosure of the complaint to the JSC would likely have led to the appointment being deferred.

Role of the A-G and Consultation Duties

- 565.** He provided evidence relating to the A-G's consultation process with FICAC and stressed that while it is appropriate for the A-G to seek clarification in appointment matters, it must not infringe on FICAC's autonomy.

Managing Conflicts of Interest within the JSC

- 566.** Justice Jitoko suggested the need for a formal process within the JSC to declare and manage conflicts of interest. He also proposed a government-funded filtering system to independently assess the seriousness and credibility of complaints before they proceed.

Conduct of the CR During Arrest

- 567.** He expressed concern that the CR may have acted inappropriately by pressuring FICAC to release Ms. Malimali. He said the CR's role should have been limited to determining the reason for the arrest and ensuring due process, not intervening in the matter substantively.

Treatment of Ms. Puleiwai and Conduct Expectations

- 568.** Justice Jitoko acknowledged that Ms. Puleiwai was likely distressed by the situation and should have been advised to seek legal counsel. He commented on the CR's conduct during this period, noting the need for clarity around roles and responsibilities.

Addressing Vexatious Complaints

- 569.** He addressed the issue of vexatious complaints and stressed that a judicial process should exist to declare individuals vexatious litigants before they are barred from initiating further proceedings. He shared his experience dealing with such cases in the Fijian judicial system.

Confidentiality and Investigative Integrity

- 570.** Justice Jitoko emphasised the need for a filtering framework to prevent FICAC from being overwhelmed with complaints based on malice or resentment. He noted that without adequate checks, reputational harm could result from unfounded accusations. He also underlined the importance of confidentiality in FICAC investigations to protect the integrity of the process and those under scrutiny.

Disclosure Obligations of Appointees and JSC Decision-Making

- 571.** During discussion on transparency and disclosure, Justice Jitoko agreed that the JSC would have taken a different position had it known the full extent of the investigation into Ms. Malimali. He reiterated that individuals being considered for high office must be proactive in disclosing any ongoing investigations.
- 572.** Justice Jitoko concluded by reaffirming his stance that FICAC's independence must be safeguarded and that robust procedures must be implemented to ensure that all appointments are based on full, accurate, and timely information.

Evidence Summary of Former Deputy Commissioner of FICAC, Francis Leba Puleiwai

- 573.** Ms. Puleiwai is the former ADC of FICAC. She filed a sworn affidavit on 10 December 2024 and further provided oral testimony on day 32 of the hearing.

Ms. Puleiwai's evidence broadly covered:

- a.** lack of transparency and procedural impropriety in the appointment of Ms. Malimali;
- b.** existence of an active FICAC complaint and investigation into Ms. Malimali;
- c.** perceived interference by the CR, A-G, and senior legal persons;
- d.** breakdown in judicial and institutional protocols;
- e.** internal resistance at FICAC and threats from JSC members;
- f.** allegations of politically motivated appointments; and
- g.** procedural and ethical concerns surrounding her departure.

Lack of Transparency and Fairness in the Appointment Process

- 574.** Ms. Puleiwai applied for the position of FICAC Commissioner after it was first advertised on 17 June 2024. She received only an acknowledgment of her application, with no subsequent updates. When the position was re-advertised on 15 July 2024, she received no clarity on whether she needed to reapply. She submitted a second application but was later informed her application was unsuccessful via an email from Deputy Registrar Zarina Bi, a person she notes is not the JSC's official secretary.

575. She questioned whether the position had been pre-determined and raised concerns that new qualification requirements, namely, 15 years post-admission legal experience were not legally required. She emphasized that proper transparency would have necessitated a JSC Report outlining the selection process.
576. The appointment process involved the JSC members, Justices Temo and Jitoko, Mr. Green, Mr. Bainivalu, Ms. Catanasiga and Ms. Devan. The JSC failed to confirm whether any investigations were underway against Ms. Malimali. Despite being contacted by the A-G on 2 September 2024, and informing him that an investigation into an abuse of office allegation was active, the appointment went ahead two days later. Ms. Puleiwai maintained that the JSC never reached out to FICAC for verification.

Active Complaint and Investigation Against Ms. Malimali

577. Ms. Puleiwai confirmed that FICAC received complaints against Ms. Malimali in April or May 2024 from the SoE and Ms. Forwood. These complaints related to an alleged abuse of office during Ms. Malimali's tenure at the ECF and were under active investigation when the Appointment Process commenced. She described FICAC's structured case review process and emphasized the priority such complaints are given, especially under section 18 of the Electoral Act.

Inappropriate Influence and Political Pressure

578. Ms. Puleiwai recounted delays caused by the S-G in processing FICAC's requests for co-operation regarding politically sensitive cases. She noted that by 28 August 2024, she was informally told that Cabinet had confirmed Ms. Malimali's appointment. Between 30 August and 1 September, she made urgent appeals to the President and PM asking for the appointment to be paused. These were acknowledged, but not acted upon.
579. She detailed a timeline of her office's efforts to advance the investigation against Ms. Malimali, culminating in a search warrant executed on 3 September. By 5 September, she had directed that Ms. Malimali be interviewed under caution and, if uncooperative, arrested and charged.

Arrest of Ms. Malimali and Institutional Resistance

580. On 5 September 2024, FICAC officers arrested Ms. Malimali, who called Mr. Clarke, and asked that he call the CR and "everybody". A group including the CR, Mr. Bale, Mr. Clarke, Mr. Tuifagalele and Ms. Vaurasi, convened at FICAC to question the arrest and applied pressure to secure Ms. Malimali's release. Ms. Puleiwai resisted, citing legal process with support from her internal team, until she was told that the CJ had ordered all court registries not to accept any FICAC charges signed by her.

- 581.** Due to the threats of termination and mounting institutional pressure, Ms. Puleiwai agreed to release Ms. Malimali. At 2:20 pm that day, Ms. Malimali issued a directive that no charges could be laid without her approval and informed staff she would be assuming office the next day.

Resignation and JSC Ultimatum

- 582.** Ms. Puleiwai texted the CR stating she could not work under Ms. Malimali. She informed staff of her decision and met with the JSC later that afternoon. At the meeting, she was given two options: (1) face charges of insubordination and usurping powers, or (2) resign with a one-month payout. She refused a financial negotiation and chose to resign. She left for Australia on 7 September 2024 for personal safety, citing political interference in ongoing investigations as the motive behind Ms. Malimali's appointment.

Criteria and Legal Background for Appointment

- 583.** Ms. Puleiwai agreed that the FICAC Act and the Constitution do not require the Commissioner to be a lawyer. She supported the idea that candidates from policing or auditing backgrounds could be equally appropriate.

Insubordination Allegations

- 584.** When questioned about insubordination for not writing to the JSC directly, Ms. Puleiwai disagreed, stating her communication to the President and PM was proper and informed by the JSC's lack of action. She expressed disappointment at the CR's conduct, including avoiding her and bypassing her authority when facilitating Ms. Malimali's entry into FICAC.

Reaction to Appointment and Investigation Timeline

- 585.** Ms. Puleiwai denied that she revived a dormant complaint against Ms. Malimali out of resentment. She explained the timing of her decisions and emphasized that a legal opinion had been sought and endorsed before she was formally informed of her own unsuccessful application.

Disappointment with Appointment Decision

- 586.** Ms. Puleiwai clarified that she was not "unhappy" about not being selected but disappointed that the appointment went ahead despite a pending investigation. She criticized the JSC and CR for failing to consult FICAC to confirm whether any issues existed. She stated the least the JSC could have done was make inquiries before finalizing the appointment.

Evidence Summary of Mr. Wylie Clarke, President of the Fiji Law Society

587. Mr. Clarke is the President of the FLS. He provided a sworn affidavit dated 16 December 2024 and provided oral evidence on Day 12 of the Hearing.

Mr. Clarke's evidence broadly covered:

- a. clarification of professional relationship with Ms. Malimali;
- b. lack of involvement in her appointment;
- c. concerns about FICAC's impartiality and internal conflict;
- d. role in advocating for Ms. Malimali's release post-appointment; and
- e. reflections on rule of law and due process.

Clarification of Relationship with Ms. Malimali

588. Mr. Clarke began by clarifying that, contrary to an earlier letter, he had never acted as legal counsel for Ms. Malimali. He stated that all facts contained in his affidavit were either from personal knowledge or based on information made available to him.

589. Mr. Clarke affirmed that he had no role or knowledge in the process of Ms. Malimali's appointment as FICAC Commissioner. He first learned of her appointment through media in early September 2024, and confirmed that neither he nor the FLS were consulted by the JSC regarding the appointment.

No Knowledge of Bias or Investigations

590. Mr. Clarke stated that he had no knowledge of any unlawful influence, bias, or active investigations being pursued by the SoE, Ms. Mataiciwa, against MPs or public servants, apart from what he had read in media reports, which he did not fully trust.

Contact with Ms. Malimali on 5 September 2024

591. On 5 September 2024, Mr. Clarke contacted Ms. Malimali to congratulate her after learning she had taken office. He was concerned by concurrent media reports that she had been arrested by her own staff on the same day. He felt that this development, combined with internal FICAC conflicts and Ms. Puleiwai's previous candidacy, could erode public confidence in the justice system.

Response to Arrest and Efforts to Secure Ms. Malimali's Release

592. Ms. Malimali stated that given that Mr. Clarke's phone number was the last one on her call log, Ms. Malimali phoned Mr. Clarke to inform him of her arrest and request his assistance. Mr. Clarke then contacted the A-G and the CR, and they arranged to meet at the FICAC office. Mr. Clarke also called former FLS President, Ms. Vaurasi to accompany him.

FICAC Meeting and Negotiations

- 593.** At FICAC, Mr. Clarke met with the CR, Ms. Vaurasi, Mr. Bale, Mr. Tuifagalele, and FICAC officials, including Ms. Puleiwai. Mr. Clarke raised legal and procedural concerns regarding the arrest. He proposed that the caution interview be suspended and the matter referred to the Police. He also suggested that Ms. Malimali be released pending further deliberation, including an emergency JSC meeting.
- 594.** Following internal discussions among FICAC personnel, the Legal Manager and Manager Investigations advised Ms. Puleiwai to release Ms. Malimali. Ms. Puleiwai consented, and Ms. Malimali was released from custody. Mr. Clarke later learned that the matter had been referred to the ODPP for further investigation.
- 595.** Mr Clarke was later driven back to his office with Mr. Bale, Mr. Tuifagalele, and Ms. Malimali.

Rule of Law Implications

- 596.** When questioned by Counsel Assisting, Mr. Clarke emphasised that the arrest of a newly appointed Commissioner by her own staff had strong rule of law implications. He acknowledged that while no individual is immune from arrest in a democracy, the internal conflict within FICAC and the perception of institutional breakdown were deeply troubling. Mr. Clarke remarked that the optics of the situation suggested FICAC was “tearing itself apart,” which undermined public trust in the system.

Electoral Offence and Institutional Confusion

- 597.** Mr. Clarke recalled a moment during the FICAC meeting when Ms. Bokini-Ratu acknowledged that the matter might involve an electoral offence, marking a turning point in his perception of the case. He described the FICAC team as generally confused but was relieved to see that at least some members understood the gravity of the legal implications. He emphasized that this was a developing and concerning situation, one that highlighted a lack of cohesion and protocol within the agency.

Evidence Summary of Ms. Laurel Vaurasi, Senior Member, Fiji Law Society

- 598.** Ms. Vaurasi is the Principal of Shekinah Law and a lifetime member of the FLS. She provided a sworn affidavit dated 10 December 2024 and gave oral testimony on Day 13 of the Hearing.

Topics covered in Ms. Vaurasi's evidence:

- a. knowledge of and response to Ms. Malimali's arrest;
- b. role as a representative of the FLS during the FICAC incident;
- c. concerns regarding institutional independence and public confidence;
- d. perceptions of rule of law and process; and
- e. views on the appropriateness of Ms. Malimali's appointment.

Professional Background and Role in the Law Society

- 599.** Ms. Vaurasi affirmed that she is a legal practitioner in Fiji and a principal of her own law firm. She acknowledged her role as a senior member and lifetime member of the FLS.

No Knowledge of Appointment Process

- 600.** She clarified that she had no knowledge of Ms. Malimali's application for the position of FICAC Commissioner and had no involvement in the Appointment Process. She confirmed that she did not know who applied, what criteria were used, or how the JSC conducted its consultations.

Knowledge of Complaint Against Ms. Malimali

- 601.** Ms. Vaurasi stated she had no knowledge of the complaint against Ms. Malimali beyond what she read in media reports. She similarly affirmed that she had no information regarding the processes undertaken by FICAC before 5 September 2024, nor how any such processes might have influenced the appointment.

Involvement on 5 September 2024

- 602.** On 5 September 2024, Mr. Clarke contacted Ms. Vaurasi and requested that she accompany him to the FICAC Suva Office on behalf of the FLS. They were advised that Ms. Malimali had been arrested despite just assuming the role of Commissioner. She believed that this raised a serious issue regarding the rule of law and warranted the presence of the FLS there.

Observations Upon Arrival at FICAC

- 603.** Upon arriving at FICAC, Ms. Vaurasi observed that Ms. Malimali already had defence counsel present. She noted that the meeting that followed involved the CR, herself, Mr. Clarke, ADC Ms. Puleiwai, and FICAC officials. The purpose of the gathering was to discuss the lawfulness of the arrest and whether the proper institutional processes had been followed.

Authority to Arrest

- 604.** During the meeting, there was debate about whether the ADC Ms. Puleiwai, had the authority to arrest the Commissioner. Ms. Vaurasi expressed concern

about whether such power extended to junior staff arresting the head of their own institution. She acknowledged her uncertainty about FICAC's internal arrest protocols and whether blanket arrest warrants permitted this kind of action without oversight.

Legal Basis and Justification

- 605.** When questioned during her oral testimony, Ms. Vaurasi stated she was not aware that FICAC investigators could arrest without specific authorisation for each instance. She acknowledged that she had made the decision to involve herself based on principle and institutional concern, not based on a legal opinion, and that the FLS's intention was to de-escalate the situation and protect public confidence.

Presence of Legal Counsel for Ms. Malimali

- 606.** Ms. Vaurasi stated that she formed the view that Mr. Bale and Mr. Tuifagalele were acting for Ms. Malimali as her defence counsel during the FICAC incident.

Duty to Disclose Investigation

- 607.** When asked whether Ms. Malimali should have disclosed her active investigation to the JSC, Ms. Vaurasi answered affirmatively, stating, "that's a given."

View on Whether Ms. Malimali Should Have Stood Down

- 608.** Ms. Vaurasi agreed that it would have been appropriate for Ms. Malimali to offer to stand down while the investigation was ongoing. She acknowledged that if she were in the same position, she would have stood down.

Cross-Examination by Mr. Chaudhry

- 609.** During questioning by Mr. Chaudhry, Ms. Vaurasi was asked whether her intervention might have been inappropriate given FICAC's independence and the fact that Ms. Malimali had legal avenues available to her. Her full answer was not captured in the record provided, but the implication was that she maintained the intervention was justified in the interest of safeguarding institutional integrity and public trust.

Evidence Summary of Mr. Amani Bale – Senior Legal Practitioner

- 610.** Mr. Bale is a senior legal practitioner with over 30 years of experience and is currently a tax partner at Lal Patel Bale Lawyers. He provided an affidavit dated 10 December 2024, and provided testimony on Day 13 of the Hearing.

Mr. Bale's evidence broadly covered:

- a. involvement in the events of 5 September 2024 surrounding the arrest of Ms. Malimali;
- b. concerns regarding process, legal authority, and institutional independence;
- c. discussions with FICAC, the CR, and legal peers about resolution;
- d. reflections on Ms. Puleiwai's motivations and procedural fairness; and
- e. commentary on arrest powers, immunity, and conflict of interest

611. Mr. Bale was appearing before Justice Sharma on 5 September 2024 when he was contacted by the CR, who informed him of unconfirmed reports that the newly appointed FICAC Commissioner, Ms. Barbara Malimali, had been arrested. After confirming the news, the CR invited Mr. Bale to accompany him to the FICAC office. Mr. Bale agreed and also invited Mr. Tuifagalele to join, as both had previous dealings with Ms. Malimali.

Boardroom Meeting and Participants

612. At FICAC, they were escorted to a boardroom by Mr. Saumi. Present were Mr. Saumi, Ms. Ratu-Bokini, and Ms. Puleiwai. The CR identified himself as the Secretary of the JSC and stated the goal was to have Ms. Malimali released so she could begin her role. He expressed shock at the arrest, especially since there had been no objections during her introductory visit the previous day.

Position of Ms. Puleiwai

613. Ms. Puleiwai confirmed she had ordered the arrest of Ms. Malimali and that FICAC was ready to charge and produce her in court that day. Mr. Clarke asked for Ms. Malimali to be present in the meeting, but this request was denied. Mr. Bale described Ms. Puleiwai as mostly quiet during the meeting, focused on her phone. Most of the discussion was handled by Mr. Saumi and Ms. Bokini-Ratu.

Dispute over Legal Authority

614. Ms. Puleiwai asserted that her powers as ADC extended beyond the date of Ms. Malimali's appointment and included the authority to arrest her. She informed those present that she had written to both the Minister for Justice and the President that morning to advise them of the investigation into Ms. Malimali.

Conflicts and Jurisdictional Issues

615. Ms. Bokini-Ratu raised the issue of the FICAC officials main dilemma in that who do the FICAC officials take this matter to. Mr. Clarke stated that to remain independent FICAC should hand the file to Police and that that is the answer to the dilemma. Mr. Saumi disagreed, stating it was an Electoral Act matter within FICAC's jurisdiction.

Oral Evidence – Role in the Meeting

- 616.** In oral evidence, Mr. Bale stated that he and Mr. Tuifagalele were acting as Ms. Malimali’s lawyers during the meeting. He clarified that Mr. Clarke and Ms. Vaurasi, who were also present, were not representing her in a legal capacity but were there on behalf of the FLS to address concerns of public confidence and the rule of law.

Commentary on Arrest and Immunity

- 617.** Mr. Bale acknowledged that while the FICAC Commissioner is not immune from arrest or charges, he viewed the timing and manner of the arrest as problematic. He described it as "career suicide" for the junior officers involved, given the power dynamics of arresting their superior. He stated that arresting the newly appointed Commissioner without clear guidance or oversight posed serious risks to institutional stability.

JSC Involvement

- 618.** Mr. Bale stated that he encouraged Ms. Puleiwai to take her concerns to the JSC. He felt she had legitimate grievances about the selection process and was not given a proper opportunity to raise them. He believed the JSC was the appropriate forum for such concerns and encouraged a mediated resolution rather than confrontation.
- 619.** In response to questioning by Ms. Mason, Mr. Bale confirmed that no one, including the FICAC Commissioner, is immune from criminal charges. His objections were not to the principle of accountability but to the process and circumstances surrounding the arrest, which he felt undermined due process and stability.

Evidence Summary of Mr. Nemani Tuifagalele

- 620.** Mr. Tuifagalele did not provide a sworn affidavit to the CoI. His evidence is drawn solely from his viva voce testimony delivered on Day 13 of the Hearing.

Mr. Tuifagalele’s evidence broadly covered:

- a.** role in the events of 5 September 2024 during the arrest of Ms. Malimali;
 - b.** the intent and purpose behind attending the FICAC meeting;
 - c.** use of legal and ethical persuasion to seek a resolution;
 - d.** clarification of the “trump card” terminology; and
 - e.** his approach to resolving high-pressure legal confrontations.
- 621.** Mr. Tuifagalele confirmed that he attended the FICAC office on 5 September 2024 with Mr. Bale, at the invitation of the CR. He was present during the

confrontation involving FICAC’s ADC Ms. Puleiwai and senior lawyers regarding the arrest of Ms. Malimali, who had only recently taken office as the FICAC Commissioner.

Objective of the Visit and Use of the Term “Trump Card”

- 622.** Mr. Tuifagalele explained his mindset and intention upon arriving at FICAC. He stated his role was not merely to secure Ms. Malimali’s release, but rather to seek a resolution to the impasse and encourage reconsideration of the actions being taken:

Mr Tuifagalele: We will negotiate and place our trump cards on the table. Because that's what I came there for. I was not focused on anything else. I was thinking of Ms. Malimali. This is wrong. And maybe you should reconsider. So my word for that day was reconsider your position. Reconsider your position.³⁹⁸

- 623.** He clarified that while the goal was not explicitly to demand release, the meeting’s purpose was to find a workable solution that did not compromise institutional legitimacy.

Understanding of the Resolution Process

- 624.** When asked by Justice Ashton-Lewis whether the group’s intent was to demand Ms. Malimali’s release, Mr. Tuifagalele confirmed that it was about resolution, not dictating outcomes.
- 625.** He reiterated that the group believed the matter could be resolved through discussion and dialogue, even if it ultimately meant living with whatever decision was made.

Explanation of the “Trump Card” in Context

- 626.** When questioned by Counsel Assisting about whether the “trump card” referred to the CR’s advice that no charges would be accepted for filing, as directed by the Acting CJ, Mr. Tuifagalele declined to link his language to any such directive.
- 627.** Mr. Tuifagalele’s testimony indicated a strong belief that the arrest of a newly appointed Commissioner by her subordinates was procedurally and ethically fraught. His role, as he saw it, was to help de-escalate the situation.

Evidence Summary of Ms. Alexandra Forwood

- 628.** Ms. Forwood is a self-employed political commentator based in Campbelltown, New South Wales, Australia. She has actively followed and commented on

³⁹⁸ Transcript, Day 13, Session 3 – Mr. Tuifagalele at 55.

Fijian politics since 2018. She filed a sworn affidavit dated 4 December 2024, and provided oral testimony across four Hearing Days, 25, 26, 27, and 36.

Ms. Forwood's evidence broadly covered:

- a. integrity and transparency of the appointment process for Ms. Malimali;
- b. allegations of abuse of office and political influence;
- c. her formal complaints and interactions with oversight institutions;
- d. alleged inappropriate or unlawful conduct by political and legal figures; and
- e. concerns about the handling of her complaints and investigations.

Appointment Process Integrity

- 629.** Ms. Forwood testified that on 3 April 2024, she received an image of a letter signed by Ms. Malimali that demanded the removal of the Acting SoE, Ms. Ana Mataiciwa, and her replacement with Mr. Graham Leung. She engaged with former PM Mr. Mahendra Chaudhry to express concerns over what she perceived to be a veiled attempt at Ms. Mataiciwa's removal.
- 630.** She questioned the legality of Ms. Malimali's actions and her authority to demand changes in electoral office leadership. Ms. Forwood viewed the appointment of Ms. Malimali as lacking transparency and fairness.
- 631.** She named several individuals involved in or aware of the Appointment Process, Mr. Reginald Jokhan, Mr. Mahendra Chaudhry, and Hon. Kamikamica, and questioned their conduct. She was informed by a serving Minister that the appointment had been discussed in Cabinet, which she regarded as irregular, given the process should be conducted by the JSC in consultation with the A-G.
- 632.** Ms. Forwood also actively voiced her concerns via SM, including objections to the appointments of Mr. John Rabuku, and Mr. Filimoni Vosarogo. She later lodged a formal complaint against Mr. Rabuku for allegedly operating a private law firm while serving as Acting DPP.

Investigation and Appropriateness

- 633.** On 8 April 2024, Ms. Forwood lodged a complaint at FICAC against Ms. Malimali for alleged abuse of office. The complaint was widely publicised. She stated that her evidence demonstrated improper political interference and misconduct.
- 634.** She alleged that Ms. Malimali was instructed by Hon. Kamikamica to delay the Fiji First appeal proceedings, raising questions about impartiality. Ms. Forwood also endorsed the legal propriety of the steps taken by Ms. Mataiciwa in referring matters to FICAC, maintaining that her communications with Ms. Mataiciwa and Ms. Puleiwai were strictly official.

- 635.** Ms. Forwood further argued that it was unlawful for Ms. Malimali to be appointed FICAC Commissioner while under active investigation. She described the appointment as influenced by individuals with vested political interests and saw this as a significant breach of governance principles.
- 636.** Her primary motivation, she claimed, was to ensure transparency and accountability in Fiji's public institutions. She also confirmed that she lodged a complaint with the LPU about Ms. Malimali's alleged professional misconduct in Tuvalu, but received no reply.

Inappropriate or Unlawful Influences

- 637.** Ms. Forwood alleged inappropriate political involvement in the Appointment Process by key individuals, including Hon. Kamikamica and Mr. Graham Leung. She stated that Mr. Richard Naidu also had a FICAC complaint pending and implied he was involved in shielding Hon. Prasad from legal scrutiny by supporting the appointment of Ms. Malimali.
- 638.** During cross-examination, Ms. Forwood acknowledged that some of her allegations, particularly those regarding Mr. Naidu, were based on rumours rather than verified facts.
- 639.** She presented her broader concerns about improper use of public office to influence appointments. According to Ms. Forwood, ongoing FICAC investigations, particularly those referred by Ms. Mataciwa into sitting ministers and other officials, played a significant role in the selection of Ms. Malimali. She argued that those under investigation had an interest in controlling the outcome of those cases.
- 640.** Ms. Forwood confirmed that she had lodged complaints across multiple administrations, asserting her commitment to non-partisan accountability. She reiterated concerns about how her complaints were handled and expressed doubts about whether political interference had compromised the integrity of the process.
- 641.** Ms. Forwood's evidence placed her at the centre of multiple complaints lodged with FICAC and other bodies against senior legal and political figures. Her testimony provided a narrative of systemic interference, politicisation of oversight bodies, and a lack of transparency in Ms. Malimali's appointment.
- 642.** She maintained that her actions stemmed from concern for institutional independence and public trust in the justice system. While parts of her testimony involved hearsay, Ms. Forwood's evidence contributed to raising key questions regarding governance standards and accountability in Fiji.

Evidence Summary of Mr. George Langman

- 643.** Mr. George Langman served as the first permanent Deputy Commissioner of FICAC from its inception in March 2007 until his retirement in March 2019. He provided oral evidence on day 26 of the hearing.

Topics covered in Mr. Langman's evidence:

- a. structure and operational model of FICAC;
- b. comparison with the Hong Kong Independent Commission Against Corruption model;
- c. role of legal and operational backgrounds in leadership;
- d. political interference and the need for independence; and
- e. legislative reform and future direction of FICAC.

Structure and Operation of FICAC

- 644.** Mr. Langman explained that FICAC was originally modelled on the Hong Kong Independent Commission Against Corruption, incorporating investigative and preventative functions. However, unlike Hong Kong, Fiji's FICAC also includes its own prosecutorial arm.
- 645.** The rationale for this in-house prosecutorial body was to streamline processes and avoid overburdening the ODPP.
- 646.** He highlighted a key structural difference, while Hong Kong's Independent Commission Against Corruption leaders are usually lawyers, Fiji's legal framework does not require the Commissioner or Deputy Commissioner to have a legal background. Mr. Langman emphasized the need for operational leadership in Fiji's context, individuals with experience in finance, logistics, and administrative systems.

Experiences in Office and Operational Challenges

- 647.** Mr. Langman described a successful covert operation during his tenure that targeted the former CEO of Airports Fiji Limited and a Chinese businessman in a suspected bribery case. The operation was intended to gather discreet evidence relating to airport development projects.
- 648.** However, the operation triggered friction with former A-G Aiyaz Sayed-Khaiyum, who allegedly misunderstood its covert nature and objected to the lack of formal communication. This led to significant tension and was one of the contributing factors to Mr. Langman's resignation.

Political Influence and Institutional Integrity

- 649.** Mr. Langman stated that throughout his time at FICAC, he was never instructed to stop or initiate investigations based on political considerations. He said that

political interference did not influence the operations under his watch, but he acknowledged institutional tensions, particularly with the former A-G.

- 650.** He proposed that FICAC’s independence could be bolstered by appointing a Commissioner and Deputy Commissioner with complementary but different professional skillsets, for example, one with legal experience and the other with operational or investigatory expertise. This, he believed, would create a balance and reduce the risk of political interference.

Legislative Reform and Recommendations

- 651.** Mr. Langman advocated for legislative amendments to better define the powers and duties of the Commissioner and Deputy Commissioner to avoid jurisdictional conflict. He noted that a clearer legal framework would also help shield FICAC from external influence.
- 652.** He further suggested increasing the role of the Office of the President in the appointment process to ensure greater accountability and institutional support for FICAC leadership.
- 653.** Mr. Langman expressed concern about the current state of FICAC, stating that the institution had lost much of its credibility and independence following the change in leadership from former Commissioner Aslam onwards.
- 654.** He described FICAC as being “weaponised” in recent years and said it had been manipulated to serve political ends, undermining its integrity.

Evidence Summary of Mr. Juki Fong Chew

- 655.** Mr. Juki Fong Chew is the former Acting Commissioner of Police in Fiji. He provided a sworn affidavit in response to a request from the CoI dated 28 November 2024. Mr. Chew did not give oral evidence.

Topics covered in Mr. Chew’s evidence:

- a.** Police referral and handling of the FICAC investigation into Ms. Malimali;
- b.** complaint by Ms. Malimali against Ms. Puleiwai;
- c.** the Police force’s fraud investigation capability and coordination with FICAC; and
- d.** legislative limitations on the Police assuming FICAC’s mandate.

Referral of FICAC File Regarding Ms. Malimali

- 656.** Mr. Chew confirmed that on 23 September 2024, the Director of the CID, Senior Superintendent Loraini Seru, received a letter from Deputy DPP Mr. Rabuku.

- 657.** The letter, dated 20 September 2024, referred to FICAC File 133/24 concerning an investigation into Ms. Malimali, and requested CID to review and determine whether Police should assume control and complete the investigation.
- 658.** Mr. Chew stated that the file was under review by CID investigators in Suva. At the time of the affidavit, the Police had not reached a conclusion about the merits of the allegations against Ms. Malimali.

Complaint by Ms. Malimali Against Ms. Puleiwai

- 659.** Mr. Chew confirmed that Ms. Malimali had lodged a formal complaint on 11 September 2024, alleging that ADC Ms. Puleiwai unlawfully ordered her arrest and detention on 5 September 2024.
- 660.** A further letter from Ms. Malimali, dated 25 September 2024, provided additional details. Both communications were received and are being investigated by the CID.
- 661.** Mr. Chew reiterated that, as with the other matter, Police had not yet determined whether the complaint against Ms. Puleiwai had merit.

Capability of Police in Investigating Corruption and Fraud

- 662.** Mr. Chew outlined that the CID in Suva houses a dedicated Major Fraud Unit, formally established in 2002, which continues to investigate complex corruption and fraud cases, including those involving government entities.
- 663.** The creation of FICAC did not reduce the volume or scope of fraud complaints received by Police.
- 664.** The Police maintain a working referral process with FICAC, whereby cases involving misuse of public funds or falling within FICAC's mandate are referred appropriately.

Police Processes: Warrants, Travel Restrictions, and Watch Lists

- 665.** Mr. Chew described procedural safeguards relating to Police search and seizure, which are executed under warrants obtained pursuant to s 98 of the Criminal Procedure Act 2009.
- 666.** Travel restrictions, including placement on the Border Watch List, are implemented based on case specifics, nature of the crime, strength of evidence, and risk of flight, and must be supported by affidavits filed in court.

Police Powers and the FICAC Legislative Framework

- 667.** Mr. Chew concluded that the Police are well-equipped to perform statutory functions related to fraud and corruption investigation.

- 668.** However, he emphasized that while Police could practically assume some of FICAC's functions, they could not legally do so under the current constitutional and statutory framework, namely s 115 of the Constitution and the FICAC Act, which vests those powers solely in FICAC.

Evidence Summary of Mr. John Apted

- 669.** Mr. John Apted is a member of the COC. He provided a sworn affidavit to the CoI dated 13 December 2024. He was not required to give oral evidence. His affidavit broadly addressed the following:
- a.** correspondence from Ms. Malimali;
 - b.** vacancy and advertisement of the SoE position;
 - c.** consultation with the ECF;
 - d.** letters from Ms. Malimali; and
 - e.** complaint against Ms. Mataiciwa.
- 670.** Mr. Apted stated that his personal records of COC matters were incomplete, as he typically left meeting documents with the Secretariat after meetings.
- 671.** The first correspondence he recalled from Ms. Malimali in her role as ECF Chair was dated 21 December 2023, following up on an earlier letter dated 25 August 2023.
- 672.** This 21 December 2023 letter was discussed at a COC meeting held on 29 December 2023.
- 673.** At that time, the SoE position was vacant. The position had been advertised, and the COC had received a Report from a Selection Panel tasked with shortlisting and assessing applicants.
- 674.** The COC agreed to consult the ECF by sending it the COC Selection Panel Report and considering any feedback before recommending a candidate for appointment to the President.
- 675.** On 2 May, Mr. Apted received four letters from Ms. Malimali addressed to the S-G, as Secretary of the COC and the PM as Chair of the COC. These letters were tabled and discussed at a subsequent COC meeting.
- 676.** The meeting deliberated whether to appoint Ms. Mataiciwa, who had been recommended, or to follow Ms. Malimali's suggestion to re-advertise the role. The majority ultimately voted to appoint Ms. Mataiciwa.
- 677.** On 4 October 2024, the ECF sent a letter to the PM advising him that Ms. Malimali had lodged a complaint against Ms. Mataiciwa with the LPU. The COC referred the allegations to Ms. Mataiciwa for a response before any further action.

Evidence Summary of Hon. Ifereimi Vasu

- 678.** Hon. Ifereimi Vasu is an MP and Cabinet Minister. He provided a sworn affidavit dated 10 December 2024. He was not required to give oral evidence.
- 679.** Hon. Vasu's affidavit primarily addressed his awareness of a FICAC complaint allegedly lodged against him.
- 680.** He stated that he became aware of a potential complaint on 24 May 2024, after reading an article published by FBC News.
- 681.** Hon. Vasu affirmed that he had no prior knowledge of the complaint and was unaware whether it had been lodged with the FEO. No one had contacted him about the matter.

Evidence Summary of Ms. Cemo Bolabola

- 682.** Ms. Bolabola is retired and volunteers in the NGO sector. She was nominated by the PM as an independent member of the COC. She provided a sworn affidavit dated 20 December 2024. She was not required to provide oral evidence.
- 683.** Ms Bolabola's affidavit broadly covered:
 - a.** response to the Commission's letter;
 - b.** awareness of letters from Ms. Malimali; and
 - c.** sources of information regarding the appointment.
- 684.** Ms. Bolabola stated that she had no objection to the factual accuracy of paragraphs 1 and 2 of the CoI's letter dated 3 December 2024.
- 685.** She denied the contents of paragraph 3 of that letter and said she was unaware of any letter from Ms. Malimali that recommended Ms. Mataiciwa for the SoE post. The only letter she was aware of discussed the need to consult the ECF.
- 686.** In response to paragraph 5 of the letter, she stated she did not possess knowledge of section 8 of the CoI Act or the specific investigatory process of the CoI.
- 687.** Regarding the SoI attached to the letter, Ms. Bolabola stated that her only source of information about the appointment of Ms. Malimali as FICAC Commissioner was through local media reporting.

Evidence Summary of Ms. Kiti Temo

- 688.** Ms. Kiti Temo is the former Official Secretary to the President. She provided a sworn affidavit on 23 December 2024. She did not provide oral evidence. Her evidence broadly covered:
- a.** delivery of appointment documents;
 - b.** President’s queries regarding the appointment;
 - c.** role of the President’s Office in the process; and
 - d.** awareness of ongoing investigation into Ms. Malimali.
- 689.** On 4 September 2024, Ms. Temo received a call from the CR requesting to deliver the appointment letter for Ms. Malimali to the President. She received the letter and informed the CR that the President had questions to ask.
- 690.** The President questioned the CR about:
- a.** the veracity of the allegations against Ms. Malimali.;
 - b.** whether the JSC had considered the letter received from the ADC of FICAC; and
 - c.** whether that letter had been referred to the S-G for legal advice.
- 691.** The CR replied that the allegations were known and not serious enough to prevent the appointment. He affirmed that the JSC had consulted the A-G, who supported the appointment.
- 692.** Ms. Temo clarified that the President’s Office is not involved in the conduct of interviews or candidate assessments. It acts only to formally sign off on appointments recommended by the JSC and A-G.
- 693.** She stated that she became aware of the investigation into Ms. Malimali after receiving letters from Ms. Puleiwai on 30 August and 5 September 2024.
- 694.** In closing, Ms. Temo stressed that the Office of the President is apolitical and has never attempted to influence constitutional appointments. Its role is limited to acting upon formal advice.



Commission of Inquiry into the
Appointment of the Commissioner of the Fiji
Independent Commission Against Corruption



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REPORT

1 MAY 2025