

EMBARGOED UNTIL DELIVERY 3PM 5/09/24

Press Statement

5 September, 2024

**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.

As I understand it, the Acting Deputy Commissioner of FICAC, Ms Francis Pulewai, 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 Pulewai must respect that appointment.

This matter is particularly sensitive since Ms Pulewai was herself an applicant for the position of Commissioner. She was unsuccessful.

As Acting Deputy Commissioner, Ms Pulewai has no role in the appointment of the Commissioner. If Ms Pulewai 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 Pulewai, 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 Pulewai, 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 Pulewai 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 Pulewai - 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.