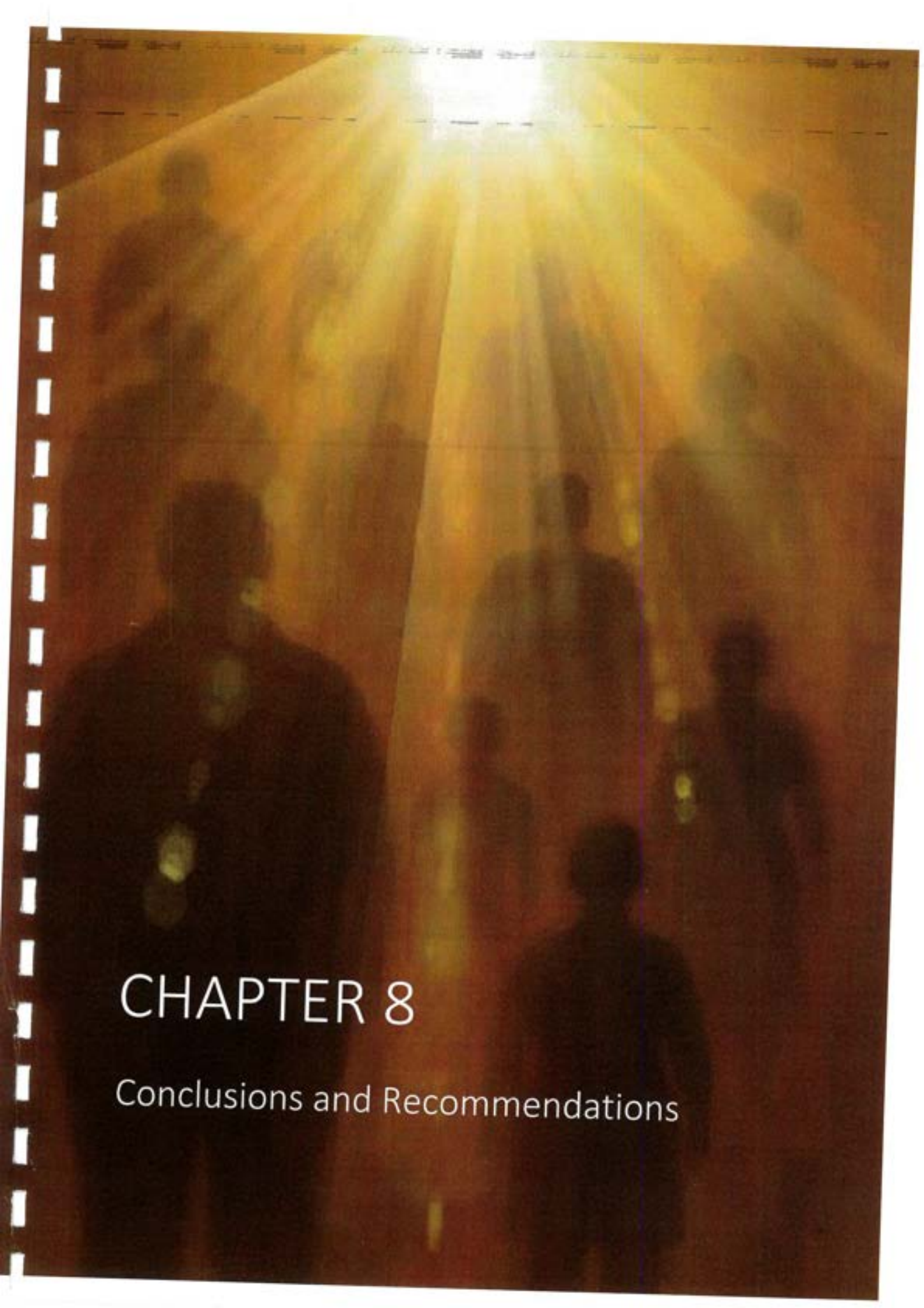


CHAPTER 8

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 indicatable 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;

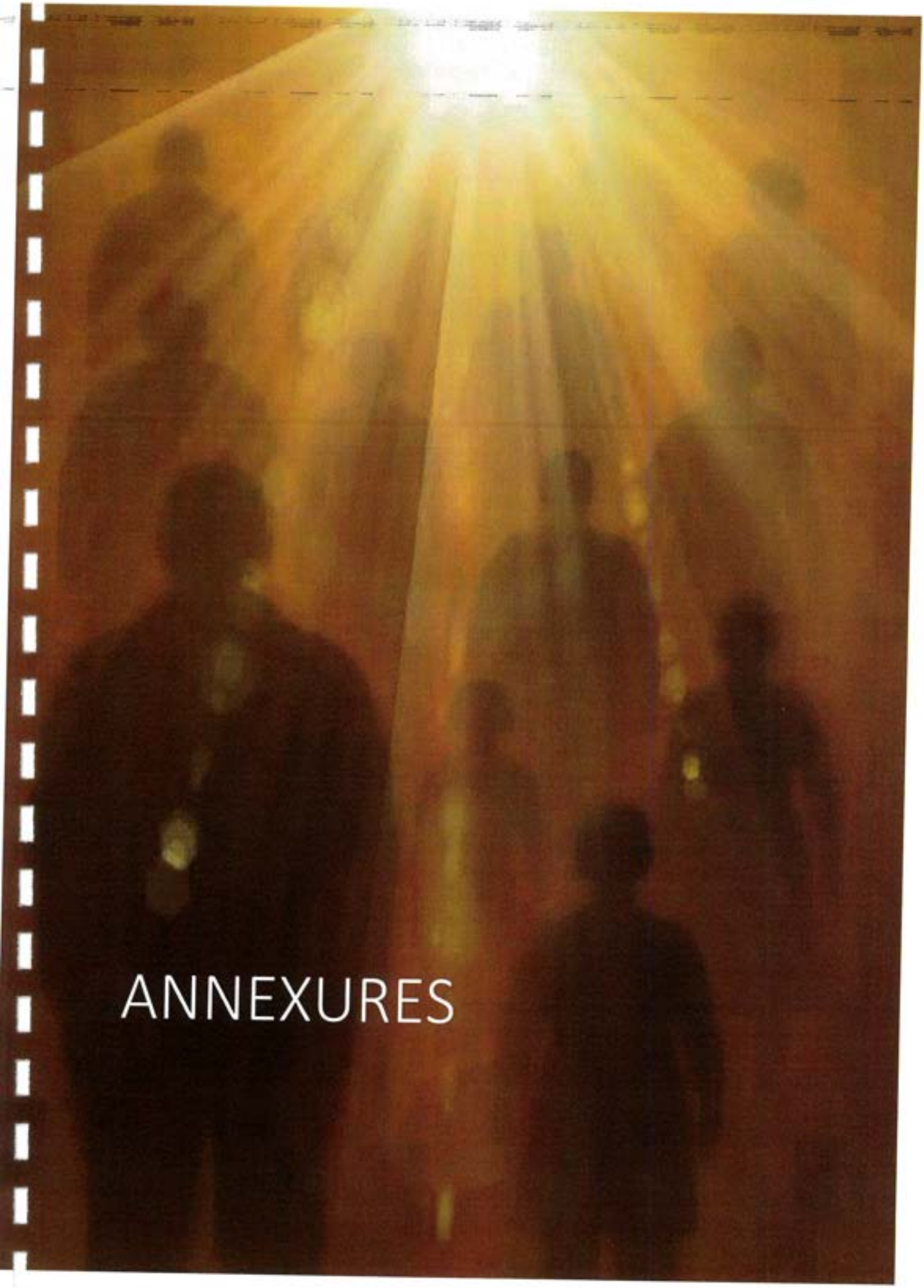
m. that the handling of Ms. Malimali's file by the ODPP and the Police is reviewed by independent senior Counsel;

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