

SEYCHELLES INTELLIGENCE SERVICE ACT, 2018

(Act 2 of 2019)

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SCHEDULES

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 14th December, 2018.



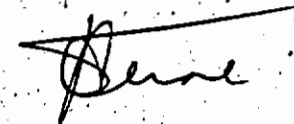
Mrs. Tania Isaac
Deputy Clerk to the National Assembly



SEYCHELLES INTELLIGENCE SERVICE ACT, 2018

(Act 2 of 2019)

I assent



Danny Faure
President

21st February, 2019



AN ACT to provide for the establishment of the Seychelles Intelligence Service in order to coordinate and regulate intelligence and preserve the security of Seychelles; to define its powers, duties and functions; to regulate the administration and control of the Service and for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Seychelles Intelligence Service Act, 2018 and shall come into operation on such date as the President may, by notice published in the *Gazette*, appoint.

Short title and commencement

Interpretation

2. In this Act, unless the context otherwise requires —

“classified information” means information of such a sensitive nature and value that the unauthorised publication or disclosure thereof would lead to a security risk being posed to the State;

“Council” means the National Security Council established under section 3 of the Act;

“departmental intelligence” means the information which relates to any power, duty or function concerning the security of Seychelles which by or under any written law has been entrusted to any ministry, department, agency or public body, and which information may be required by that ministry, department, agency or public body in the performance of any such power, duty or function;

“Director-General” means the Director-General appointed under section 6(1) of the Act;

“Director” means the Director appointed under section 6(2) of the Act;

“evaluate” means the process of determining and assessing whether the information is possibly correct, probably correct or factually correct;

“intelligence” means information which has been collated, evaluated, and analysed and which is relevant to a government decision-making formulation or implementation of policy in relation to any internal or external threat or potential threat to the security of Seychelles as well as opportunities relevant to the protection and promotion of the security of Seychelles;

SCHEDULE II

[Section 7(4)(b)]

**OATH OR SOLEMN AFFIRMATION OF
SECURITY OF DIRECTOR-GENERAL, DIRECTOR
AND STAFF MEMBERS**

I,, do hereby swear/solemnly affirm that I will not without being duly authorised disclose to any person any information which I have obtained or to which I had access by virtue of the duties and functions performed by me on behalf of or under the direction of the Seychelles Intelligence Service or by virtue of any office or employment held by me under the Seychelles Intelligence Service Act, 2018.

(In the case of an oath: So help me God.)

SCHEDULE III

(Section 23(1))

**OATH OR SOLEMN AFFIRMATION OF SECURITY
OF MEMBERS OF COMMITTEE OF NATIONAL
ASSEMBLY**

I,, a member of the Committee of the National Assembly, do hereby swear/solemnly affirm that I will not communicate or divulge directly or indirectly any matter which are brought before the said Committee and which are entrusted to me under secrecy under the Seychelles Intelligence Service Act, 2018.

(In the case of an oath: So help me God)

Code of
Conduct and
Ethics

32.(1) The Director-General shall issue and maintain a code of conduct, ethics, leadership and integrity for the members of the Service which shall provide, amongst other things, for—

- (a) professional conduct;
- (b) political neutrality;
- (c) conflict of interest; and
- (d) conduct of private affairs.

(2) For the purpose of clarity, members of the Service are bound by the Public Officers Ethics Act or any other written law regulating matters of ethics and integrity issues for public officers.

Information
to members
of the
Service

33. The Director-General shall ensure that the disciplinary code and the code of conduct and ethics are made available to members of the Service.

SCHEDULE I

(Section 7(4)(a))

**OATH OR SOLEMN AFFIRMATION OF
ALLEGIANCE OF DIRECTOR-GENERAL,
DIRECTOR AND STAFF MEMBERS**

I,, do hereby swear/solemnly affirm that I will faithfully and impartially to the best of my abilities perform the duties and functions required of me as Director-General/Director/staff member of the Seychelles Intelligence Service.

(In the case of an oath: So help me God.)

“Judge” means a Judge of the Supreme Court of Seychelles;

“misconduct” means —

- (a) the commission of any offence; or
- (b) a contravention of, or failure to comply with, any provision of this Act which does not constitute an offence;

“monitor” includes the recording of conversation by means of a monitoring service;

“monitoring device” means any instrument, device or equipment which is used or can be used, whether by itself or in combination with any other instrument, device or equipment, to listen to or record any image or conversation;

“postal article” means any letter, post card, letter card, newspaper, book, packet, pattern or sample packet or any parcel or other article in transit by post, and includes a telegram when conveyed by post;

“security intelligence” means information which relates to, or may be relevant to, any internal or external threat to the security of Seychelles in any field;

“security vetting investigation” means any systematic procedure used to examine and appraise a person to determine the person’s security competence, including the continued monitoring thereof;

“sensitive information” includes any information —

- (a) which is likely to disclose the identification of, or provide details of, the source of the information or assistance or operational method available to the Service;
- (b) which relates to particular operations which have been, are being or are proposed to be undertaken by the Service in pursuance of any of its functions; or
- (c) which has been provided by an agency of a foreign government where that agency or government does not consent to the disclosure of the information;

“Service” means the Seychelles Intelligence Service established under section 4 of this Act;

“telecommunication system” includes any apparatus, instrument, pole, mast, wire, pipe, pneumatic or other tube, thing or means which is or may be used or in connection with the sending, conveying, transmitting or receiving of signs, signals, sounds, communications or other information; and

“threat to the security of Seychelles” means —

- (a) any activity relating to espionage, sabotage, terrorism or subversion or intention of any such activity directed against, or detrimental to the interests of, Seychelles, and includes any other activity performed in conjunction with any activity relating to espionage, sabotage, terrorism or subversion, but does not include any lawful advocacy, protest or dissent not performed in conjunction with any such activity;

service for the purpose of sections 91 to 96 of the Penal Code.

30. A suit or other legal proceedings shall not lie against any member of the Council, and the Director-General or Director or any staff member of the Service for anything done or omitted to be done in good faith in the performance of his or her functions under this Act.

31. (1) The Council shall issue and maintain a disciplinary code for the Service which, among other things, shall —

- (a) prescribe disciplinary offences;
- (b) provide for the investigation, hearing and determination of disciplinary cases and the hearing of any appeals therefrom; and
- (c) provide for the delegation by the Director-General to the Director or a member of the Service of such disciplinary powers as he or she may consider necessary.

(2) The disciplinary code shall, in addition to any other penalties provided for under this Act or any written law, provide for the following disciplinary penalties —

- (a) dismissal from the Service;
- (b) retirement in the public interest;
- (c) reduction in rank or grade, as the case may be;
- (d) reprimand;
- (e) admonition;
- (f) forfeiture of salary or increments; and
- (g) fines.

Protection of
action taken
in good faith

Disciplinary
Code

PART VIII - REGULATIONS, RULES, OFFICE MEMORANDA

Regulations

24. The President may make Regulations for the purpose of carrying out the provisions of this Act.

Rules

25. The Chief Justice may, after consultation with the Director-General, make Rules as to the manner and procedure of applications under sections 17(1) and (4) and 19 (1) and (4) are regulated.

Office memoranda or circulars

26. The Director-General may, in order to achieve the objects of this Act, and subject to the provisions of this Act, issue office memoranda or circulars in relation to all matters in respect of which the Director-General considers it necessary or issue directives where it is necessary and expedient to do so.

PART IX - MISCELLANEOUS

Functions of ministries, departments, agencies and public bodies relating to security intelligence

27. It shall be the duty of every ministry, department, agency or public body that comes into possession of intelligence concerning a threat to the security of Seychelles or other intelligence related information which may be of value to the Service for the purposes of effectively performing its functions, to transmit such intelligence and information without delay to the Service with an indication of the reliability of the source of such intelligence or information.

Application of the Act

28(1). Any act, omission or other conduct constituting an offence under this Act, shall constitute an offence even if the act, omission or conduct takes place wholly or partially outside Seychelles.

(2) Unless the context otherwise indicates, the provisions of this Act shall apply in respect of the Director-General, the Director and all staff members, irrespective of whether they work in or outside Seychelles.

Application of the provisions of the Penal code

29. The Director and other staff members of the Service or any other person acting under the direction of the Director-General shall be deemed to be employed in the public

- (b) any activity directed at undermining, or directed at or intended to bring about the destruction or overthrow of, the constitutionally established system of government;
- (c) any act or threat of violence or unlawful harm that is directed at or intended to achieve, bring about or promote any constitutional, political, industrial, environmental, social or economic objective and includes any conspiracy, incitement or attempt to commit any such act or threat;
- (d) any foreign influenced activity with or related to Seychelles that —
 - (i) is detrimental to the interest of Seychelles; and
 - (ii) is clandestine or deceptive or involve any threat whatever to the State or its citizens or any other person lawfully resident in Seychelles; and
- (e) any organised crime.

PART II - NATIONAL SECURITY COUNCIL

3.(1) There is hereby established a National Security Council.

Establishment of National Security Council

(2) The Council shall comprise —

- (a) the President of the Republic;
- (b) the Attorney General;
- (c) the Commissioner of Police; and

(d) the Chief of the Defence Force.

(3) The Council may from time to time invite such persons as the Council thinks fit to sit on the Council.

(4) The President and, in the President's absence, the Vice-President shall preside over the meetings of the Council.

(5) The Council shall be the principal advisor to the President and the Government on matters relating to intelligence and security of Seychelles.

(6) Subject to the provisions of this Act, the Council shall be the body to which the Service reports.

(7) The Council shall regulate its own proceedings.

PART III - SEYCHELLES INTELLIGENCE SERVICE

4.(1) There is hereby established the Seychelles Intelligence Service for the purpose of this Act.

(2) The Service shall consist of a Director-General, a Director and such other staff members appointed in accordance with the provisions of this Act.

(3) The Council shall, subject to the provisions of the Constitution and other written laws of Seychelles and of this Act, do and cause to be done all things which in its opinion are necessary for the efficient superintendence and control, and actions by and functioning of the Service.

(4) Save as provided in subsection (3), the Service shall not be subject to the direction or control of any person or authority with regard to its functions under this Act.

5.(1) The powers, duties and functions of the Service are, subject to the provisions of subsection (2), to —

Establishment
of Seychelles
Intelligence
Service

Powers,
duties and
functions of
the Service

(2) If the Council is reasonably of the opinion that it is not in the national interest that the information sought, as contemplated in subsection (1), be disclosed by the Director-General to the Committee at a specific time, the Council may determine that such information should not be disclosed, in which event such information —

(a) shall not be disclosed within a period of six months from the date on which the Council has determined that it should not be disclosed;

(b) shall, after the expiry of the period of six months referred to in paragraph (a), but subject to the provisions of subsection (3), be disclosed to, either —

(i) the full Committee; or

(ii) only the Chairperson and one other member of the Committee, which other member shall be a representative of the main political party represented in the National Assembly other than the one from which the Chairperson originates,

as the Council may determine;

(c) shall, after the expiry of a period of one year from the date referred to in paragraph (a), but subject to the provisions of subsection (3), be disclosed to the full Committee, if such information has not previously been so disclosed.

(3) In the application of subsection (2)(b) and (c), the Director-General shall not disclose the information sought, unless each member of the Committee to whom such information is to be disclosed has made and subscribed to an oath or solemn affirmation of secrecy as specified in subsection (1).

Prohibition of disclosure of identity

22. Any person who has at his or her disposal information which he or she has obtained or to which he or she had access by virtue of —

- (a) the performance of his or her duties and functions under this Act; or
- (b) his or her position as a person who holds or has held any office or employment under this Act,

and from which the identity of any person —

- (i) who is or was a confidential source of information or assistance to the Service; or
- (ii) who is or was a staff member engaged in covert or operational activities of the Service,

can be inferred, and who discloses such information to any person other than a person to whom he or she is authorised to disclose it or to whom it may lawfully be disclosed, commits an offence and shall be liable on conviction to a fine not exceeding SCR 500,000 or to imprisonment for a period not exceeding ten years or to both such fine and imprisonment.

Disclosure of information

23.(1) If the Director-General is requested by the Defence and Security Committee of the National Assembly to disclose any information to the Committee, he or she shall, subject to the provisions of subsection (2), disclose the information sought:

Provided that if the information sought is sensitive or classified information, each member of the Committee shall, prior to such disclosure is being made, subscribe to an oath or solemn affirmation of secrecy before the Speaker or Deputy Speaker in the form specified under Schedule III.

- (a) investigate, gather, evaluate, correlate, analyse, process, supply or store information, whether inside or outside Seychelles, for the purposes of —
 - (i) detecting and identifying any threat or potential threat to the security of Seychelles;
 - (ii) advising the Council of any threat or potential threat to the security of Seychelles;
 - (iii) assisting law enforcement agencies and any other authority by gathering intelligence to be used in the detection and prevention of such serious offences as may be determined by the Director-General; and
 - (iv) taking steps to protect the security interests of Seychelles;
- (b) gather departmental intelligence from or at the request of any interested ministry, department, agency or public body and without delay evaluate and transmit as appropriate to that ministry, department, agency or public body such intelligence and any other intelligence at the disposal of the Service which constitutes departmental intelligence;
- (c) regulate, in co-operation with any ministry, department, agency or public body entrusted with any aspect of the maintenance of the security of Seychelles, the flow of security intelligence and the co-ordination between the Service and that of any other ministry, department, agency or public body of functions relating to such intelligence;

- (d) make recommendations to the Council in connection with—
- (i) policies concerning security intelligence;
 - (ii) security intelligence priorities; and
 - (iii) security measures in ministries, departments, agencies or public bodies.

(2) The provisions of subsection (1) shall not be construed as—

- (a) depriving or derogating from any power, duty or function conferred upon or entrusted to any person or authority other than the Service by or under any other written law;
- (b) limiting the continuation, establishment or functions of an intelligence capability connected to any ministry, office, or agency in respect of any function relating to departmental intelligence; and
- (c) depriving or derogating from any duty or function of a body or committee constituted by the President.

Appointment
of Director-
General and
Director

6.(1) Subject to subsection (2), the President shall appoint, on the recommendation of the Council and in consultation with the Defence and Security Committee of the National Assembly, a suitable person as the Director-General of the Service on such terms and conditions as the Council may determine.

(2) The Director-General shall be a citizen of Seychelles.

(3) The Council shall, in consultation with the Director-General, appoint a citizen of Seychelles of integrity,

- (b) the rendering of any service or services to a person, body or organisation, or class or classes of persons, bodies or organisations, mentioned in the direction,

by a staff member or any other person who executes that direction or assists with the execution of that direction, the person, body or organisation concerned shall as soon as possible comply with the terms of that direction.

PART VII - CONFIDENTIALITY

21.(1) Any person, or any employee of a person, body or organisation, referred to in section 20(4) shall not disclose any information which he or she obtained —

Secrecy

- (a) in the performance of any function under this Act; or
- (b) in the course of his or her employment and which is connected with the performance of any function under this Act, whether that person or employee is involved in the performance of such function or not, except—
 - (i) to any person who of necessity requires it for the performance of his or her functions under this Act;
 - (ii) if he or she is a person who of necessity supplies it in the performance of his or her functions under this Act; or
 - (ii) such information which is required under any written law or as evidence in any court of law.

(2) Any person who contravenes a provision of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding SCR 250,000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

person, body or organisation to which the application applies and without hearing such person, body or organisation.

(6) If, upon an application made by the Director-General before the expiry of the period or extended period for which a direction has been issued, the Judge who issued the direction or a Judge acting in his or her stead is satisfied that the grounds on which the direction was issued, have ceased to exist, the Judge shall cancel the direction.

Execution
of direction

20.(1) If a direction has been issued under section 19(1), any staff member or other person authorised by the Director-General, may execute that direction or assist with the execution thereof.

(2) The Director-General may authorise such number of staff members to assist with the execution of a direction as he or she may deem necessary.

(3) Any staff member or other person who executes a direction, or assists with the execution thereof, for the purposes of this Act, may at any time enter upon any premises in order to install, maintain or remove a monitoring device, or to intercept or take into possession a postal article, or to intercept any communication, or to install, maintain or remove a device by means of which any communication can be intercepted, or to search the premises with the purpose of gathering information concerning a threat or potential threat to the security of Seychelles, or to examine, copy, photograph or transcribe any record, document or other material on the premises or remove such record, document or other material from the premises, for as long as is reasonably necessary, for the purposes of examining, copying, photographing or transcribing it.

(4) If a direction contemplated in subsection (1) or a copy thereof is handed over to the person, body or organisation responsible for—

- (a) any activity or activities mentioned in the direction; or

good service record and experience in administration, as Director of the Service, on such terms and conditions as the Council may determine.

7.(1) The Council shall appoint other members of the Service in consultation with the Director-General on such terms and conditions as the President may determine.

Members of
the Service

(2) The members appointed under subsection (1) may include—

- (a) any person in the service of the Defence Forces of Seychelles;
- (b) any person in the service of the Police Force of Seychelles;
- (c) any person in the service of the Government ministry, department or body concerned with broadcasting and telecommunication;
- (d) any person in the service of the government ministry, department or body concerned with border control; and
- (e) any public officer.

(3) No person shall be appointed as Director or other member of the Service before—

- (a) information with respect to that person is gathered in the manner determined by the Director-General, in a security vetting investigation by the Service; and
- (b) the Director-General makes recommendations to the Council, after evaluating the collected information that such person may be appointed to the Service without the possibility that such person might be a security risk or that he or she

might act in a way prejudicial to the security interests of the State.

(4) The Director-General, the Director and every member of the Service shall, before commencing his or her duties under this Act make and subscribe to—

(a) an oath or solemn affirmation of allegiance; and

(b) an oath or solemn affirmation of secrecy, in the form specified under Schedules 1 and II respectively, before—

(i) in the case of the Director-General, the President; and

(ii) in the case of the Director and of other members of the Service, the Director-General.

(5) Any document in the prescribed form purporting to have been signed by the Director-General and certifying that a person has been appointed as a Director or member of the Service, shall be *prima facie* proof that the person has been so appointed.

8. The Director-General may, with the approval of the Council, appoint other administrative staff of the Service as required for the purpose of the Act.

9. The Director-General may, subject to the provisions of this Act, obtain the service of any person, body or organisation for the performance of a particular service or for any particular period.

10. The President may during a state of emergency declared under the Constitution, employ the Service or any

Appointment of other administrative staff

Acquiring of service for particular task

Employment of Service in times of emergency

section 5 of this Act or any other written law would not be obtained;

(c) the type of postal article or communication proposed to be intercepted, the type of information, records, documents or other material proposed to be obtained or removed and the powers proposed to be exercised for that purpose;

(d) the identity of the person, body or organisation, if known, whose communication is proposed to be intercepted or which is in possession of the information proposed to be obtained;

(e) the person, body or organisation, or class or classes of persons, bodies or organisations, to which the direction is proposed to be applied; and

(f) the place where the direction is proposed to be executed, if a general description of that place can be given.

(3) A direction issued under subsection (1) shall be issued for a period not exceeding three months at a time, and the period for which it has been issued shall be specified in that direction.

(4) The Judge who issued a direction or a Judge acting in his or her stead may, upon a written application made by the Director-General before the expiry of the period or extended period for which the direction has been issued, extend that period for a further period not exceeding three months at a time if the judge is satisfied that the extension is necessary for the reasons mentioned in subsection (1)(b).

(5) An application referred to in subsection (1)(a) or (4) shall be heard and a direction issued without any notice to the

(b) if the Judge is satisfied, on the grounds mentioned in subsection (2), that —

- (i) the gathering of information concerning a threat or potential threat to the security of Seychelles is necessary to enable the Service to properly investigate such threat or potential threat or to effectively perform its functions under section 5 of this Act or any other written law; and
- (ii) such threat or potential threat cannot be properly investigated or such functions cannot be effectively performed in any other manner.

(2) An application referred to in subsection (1)(a) shall be accompanied by a supporting affidavit stating —

- (a) the facts relied onto justify on reasonable grounds the necessity for the issue of a direction so as to enable the Service to investigate a threat or potential threat to the security of Seychelles or to effectively perform its functions under section 5 of this Act or any other written law;
- (b) that other investigative procedures have been tried and have failed, or why it appears that they are unlikely to succeed, or that the urgency of the matter is such that it would be impractical to carry out an investigation using only other investigative procedures or that without a direction it is likely that information of importance with respect to a threat or potential threat to the security of Seychelles or the performance of the functions entrusted to the Service under

part thereof to counter any such emergency or to assist in the defence of Seychelles, and may place the Service or any part thereof, while so employed, under the orders and directions of such person as the President may for that purpose appoint.

PART IV - POWERS, DUTIES AND FUNCTIONS OF DIRECTOR-GENERAL AND DIRECTOR

11.(1) The Director-General shall —

- (a) report to the Council on threats and potential threats to the security of Seychelles;
- (b) in consultation with the Council ensure that a good relationship is established and maintained between the Service and every ministry, department, agency or public body or any other institution approved by the President;
- (c) take all reasonable steps to ensure that the actions of the Service are limited to what is necessary for the proper performance of its functions under this Act or any other written law and that no information is gathered by the Service except in so far as may be necessary for the proper performance of its functions under this Act or any other written law;
- (d) ensure that the Service is not in the performance of its functions influenced by considerations not relevant to such functions and that no act is performed that could give rise to any reasonable suspicion that the Service is concerned in furthering, protecting or undermining the interests of any particular section of the population or any political party or organisation in Seychelles; and

Powers,
duties and
functions of
the Director-
General

