

Translated from French

Act No. 2016-004 concerning measures to counter piracy and other unlawful acts, and the exercise of national police powers at sea

The following Act, having been debated and adopted by the National Assembly, is hereby promulgated by the President of the Republic:

Article 1: The present Act concerns measures to counter acts of maritime piracy and other unlawful acts against the safety of maritime navigation committed at sea, as defined in the United Nations Convention on the Law of the Sea concluded at Montego Bay on 10 December 1982, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 10 March 1988 and other international conventions ratified by Togo, as well as laws and regulations of the Togolese Republic.

Article 2: The present Act shall apply to:

- Togolese private vessels in all maritime areas, without prejudice to the powers conferred on States by international law;
- foreign vessels and vessels without a flag or nationality in the maritime areas under the sovereignty or jurisdiction of the Togolese Republic, and on the high seas in accordance with international law;
- vessels flying the flag of a State that has requested the intervention of Togo or accepted its request to intervene;
- vessels located in maritime areas under the sovereignty of a foreign State with the agreement of that State;
- vessels that remain at sea despite the withdrawal of their navigation permit by the national or international competent authority.

The provisions of the present Act shall not apply to:

- foreign warships;
- vessels belonging to a State or operated by a State when they are used as naval auxiliaries or for customs or police purposes.

Article 3: To ensure compliance with the provisions concerning measures to counter piracy and other unlawful acts committed at sea that are applicable by virtue of international law, and with the laws

and regulations of the Togolese Republic, commanders of Government vessels or aircraft responsible for maritime surveillance shall be authorized to conduct, or order the conducting of, inspection and coercion measures as provided for by the present Act.

Article 4: In order to fulfil that mission, the commanders of Togolese Government vessels and aircraft may perform the following actions:

- conduct an approach;
- conduct a visit/search.

An approach entails requesting the identity and nationality of a vessel by inviting it to show its flag and provide information thereon.

A visit entails sending a team to verify the vessel's flag, and in particular its certificate of registration, in the event of doubt as to the veracity of the responses provided during the approach. The commander of the Government vessel or aircraft may verify and inspect the ship's papers in order to ascertain that the vessel is not transporting prohibited goods or engaging in prohibited activities.

Article 5: In addition to judicial police officers and officials acting pursuant to the Code of Criminal Procedure, commanders, first officers and second officers of Government vessels and commanders of Government aircraft shall be authorized to establish, during the visit, the offences referred to in article 4, paragraph 3.

Offences are established by means of statements that are deemed authentic in the absence of evidence to the contrary. These statements are transmitted to the public prosecutor of the competent court of first instance.

The perpetrators of the offences established, and their accomplices, may be prosecuted and tried in the Togolese courts when they have been apprehended by the Togolese personnel referred to in the present article or handed over to them by the competent agencies of countries that have signed agreements with Togo in that regard.

Article 6: In the event of a refusal to identify the vessel to be inspected, or when admittance on board has been refused or has been found to be physically impossible, the commander of the Government vessel or aircraft may order that the vessel be diverted to a Togolese port, or the port of a foreign State subject to the latter's agreement.

The commander may also order that the vessel be diverted to an appropriate position or port in the following cases:

- in application of international law;
- by virtue of specific legislative or regulatory provisions;
- for the enforcement of a court decision;
- at the request of a competent administrative or judicial authority;
- at the request of a military authority for reasons of national security.

Article 7: While the vessel is in transit following the decision to order a diversion, the commander of the Government ship or aircraft may impose the necessary restrictions on the persons subject to inspection to ensure the preservation of the vessel and its cargo and the safety of the persons on board.

Article 8: The commander of the Government vessel or aircraft may exercise the right of hot pursuit of the foreign vessel as provided for under international law when there are reasons to believe that the said vessel has violated the laws and regulations in force.

Article 9: If the captain refuses to comply with the order issued in connection with the right of approach and the right of visit, or the diversion order, coercion measures, even extending to the use of force, may be undertaken.

Article 10: Coercion measures consist of:

- verbal warnings issued to the vessel to make it stop;
- warning shots ahead of the vessel's bow, comprising one shot ordering it to show its flag and three shots signalling it to stop;
- shots intended to immobilize the vessel. They are preceded by further verbal warnings, and fired in such a way as to minimize the risks of injury or loss of human life and other collateral damage;
- use of force with the aim of securing the captain's compliance; in some cases a team of Togolese security forces may even take control of the vessel.

Article 11: Except in self-defence, authorization to fire warning shots and shots aimed at immobilizing the vessel using military weapons must be obtained from the Chief of Staff of the Togolese Armed Forces.

Actions involving the use of force, or actions to restore public order at sea, come under the

responsibility of the maritime prefect.

Article 12: Refusal to comply with orders issued under article 4, paragraph 3, and articles 6 and 8 of the present Act shall be punishable by a fine of fifty million (50,000,000) to one billion (1,000,000,000) CFA francs, without prejudice to the criminal proceedings brought.

Article 13: The same penalties shall be applicable either to the owner of the vessel or the owner's representative in Togo, or to the operator of the vessel, when they are responsible for the refusal to comply with the orders referred to in article 9 of the present Act.

Article 14: Measures taken against foreign vessels pursuant to the present Act shall be notified to the flag State through the diplomatic channel.

Article 15: The present Act shall be executed as a State law.

Done at Lomé, 11 March 2016

President of the Republic

Signed

Faure Essozimna **Gnassingbe**

Prime Minister

Signed

Selom Komi **Klassou**

Certified copy

Secretary-General

Office of the President of the Republic

(Signed)

Daté Patrick **Tevi-Benissan**
