I assent.

(L.S.) AGATHA BARBARA
President

21st March, 1986

ACT No. VIII of 1986

AN ACT further to amend the Dangerous Drugs Ordinance, Cap. 161.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:–

Short title.

1. This Act may be cited as the Dangerous Drugs (Amendment) Act, 1986, and shall be read and construed as one with the Dangerous Drugs Ordinance, hereinafter referred to as "the principal law".

Amendment of section 22 of the principal law.

2. Section 22 of the principal law shall be amended as follows:

(a) in subsection (1) thereof —

(i) for the words "against this Ordinance," in paragraph (d) thereof there shall be substituted the words "against this Ordinance; or"; and

(ii) for the words "shall be guilty of an offence against this Ordinance." there shall be substituted the following:

"(e) being a citizen of Malta or a permanent resident in Malta, who in any place outside these Islands does any act which if committed in these Islands would constitute an offence of selling or dealing in a drug against this Ordinance or an offence under paragraph (f) of this subsection; or

(f) who with another one or more persons in these Islands or outside these Islands conspires for the purposes of selling or dealing in a drug in these Islands against the provisions of this Ordinance or who promotes, constitutes, organises or finances the conspiracy,

shall be guilty of an offence against this Ordinance.

For the purposes of paragraph (e) of this subsection the expression "permanent resident" means a person in favour of whom a permit of residence has been issued in accordance with the provisions contained in section 7 of the Immigration Act, 1970.

(1A) The conspiracy referred to in paragraph (f) of the preceding sub-section shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between such persons.

(1B) For the purposes of this Ordinance the word "dealing" includes importation, manufacture, exportation and distribution.";

(b) in subsection (2) thereof —

(i) for paragraph (a) thereof there shall be substituted the following:

"(a) on conviction by the Criminal Court —

(i) where the offence consists in selling or dealing in a drug contrary to the provisions of this Ordinance, or in promoting, constituting, organising or financing a conspiracy under paragraph (f) of subsection (1) of this section, to imprisonment for a term of not less than four years but not exceeding twenty years and to a fine (*multa*) of not less than one thousand Maltese liri but not exceeding fifty thousand Maltese liri; and

(ii) for any other offence to imprisonment for a term of not less than twelve months but not exceeding ten years and to a fine (*multa*) of not less than two hundred Maltese liri, but not exceeding ten thousand Maltse liri; or";

(ii) for sub-paragraphs (i) and (ii) of paragraph (b) thereof there shall be substituted the following:

"(b) on conviction by the Court of Magistrates —

(i) in the case of a conviction for an offence under paragraph (b), (c) or (e) of section 8, or a conviction for an offence consisting in selling or dealing in any other drug contrary to the provisions of this Ordinance, or a conviction for an offence of promoting, constituting, organising or financing of a conspiracy under paragraph (f) of subsection (1) of this section, to imprisonment for a term of not less than six months but not exceeding five years and to a fine (*multa*) of not less than two hundred Maltese liri but not exceeding two thousand Maltese liri; and

(ii) for any other offence, in the case of a conviction, to a fine (*multa*) of not less than two hundred Maltese liri but not exceeding one thousand Maltese liri or to imprisonment for a term of not less than three months but not exceeding twelve months, or to both such fine and imprisonment.";

(c) immediately after subsection (3) thereof there shall be added the following new subsection:

"(3A) Where an offence against this Ordinance in respect of which a person has been found guilty consists in or refers to the selling or dealing in a drug, or consists in the promotion, constitution, organisation or financing of a conspiracy under paragraph (f) of subsection (1) of this section, the Court shall, at the request of the prosecution, in addition to any other punishment —

(a) where any immovable property has been used for the keeping or storing, or for the selling or dealing in such drug, as described in the bill of indictment or in the charge, order the forfeiture in favour of the Government of any real title which the offender holds on such immovable property;

(b) where the offender is not the absolute owner but holds any other real title on the immovable property, or has a title, other than a real title, in virtue of which he has the control of or a right of access to such property, the Court shall order the offender to pay a fine (*multa*) of not less than five thousand Maltese liri but not exceeding thirty thousand Maltese liri as the Court shall determine after taking into account the value of the immovable property and the value of the real title thereon, if any, forfeited as aforesaid;

(c) saving the provisions of the Criminal Code and of the Customs Ordinance, make an order whereby the provisions of paragraphs (a) and (b) of this subsection shall be applied *mutatis mutandis* to or in respect of any vessel or vehicle used for the keeping or storing, or for the selling or dealing in such drug; and

(d) order the forfeiture in favour of the Government of all moneys or other movable property, and of the entire immovable property of the person so found guilty even if the immovable property has since the offender was charged passed into the hands of third parties."; and

(d) in subsection (7) thereof for the words "mentioned in subsection (3)" there shall be substituted the words "mentioned in subsections (3) and (3A)".

Addition of new sections to the principal law.

3. Immediately after section 22 of the principal law there shall be added the following new sections:

"Freezing of property of person accused.

22A. (1) Where a person is charged under section 22 of this Ordinance, with selling or dealing in a drug, or with promoting, constituting, organising or financing a conspirancy under paragraph (f) of subsection (1) of that section, the Court shall at the request of the prosecution make an order —

(a) attaching in the hands of third parties in general all moneys and other movable property due or pertaining or belonging to the accused, and

(b) prohibiting the accused from transferring or otherwise disposing of any movable or immovable property:

Provided that the Court shall in such an order determine what moneys may be paid to or received by the accused during the subsistence of such order, specifying the sources, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the accused, to allow him and his family a decent living in the amount, where the means permit, of six thousand Maltese liri every year:

Provided further that the Court may also—

(a) authorise the payment of debts which are due by the accused to *bona fide* creditors and which were contracted before such order was made, and

(b) on good ground authorise the accused to transfer movable or immovable property.

(2) Such order shall—

(a) become operative and binding on all third parties immediately it is made, and the Registrar of the Court shall cause a notice thereof to be published without delay in the Gazette, and shall also cause a copy thereof to be registered in the Public Registry in respect of immovable property, and

(b) remain in force until the final determination of the proceedings, and in the case of a conviction until the sentence has been executed.

(3) The Court may for particular circumstances vary such order, and the provisions of the foregoing subsections shall apply to such order as so varied.

(4) Every such order shall contain the name and surname of the accused, his profession, trade or other status, father's name, mother's name and maiden surname, place of birth and place of residence and his Identity Card number.

(5) Where any money is or becomes due to the accused from any person while such order is in force such money shall, unless otherwise directed in that order, be deposited in a bank to the credit of the accused.

(6) When such order ceases to be in force as provided in paragraph (b) of subsection (2) of this section the Registrar of the Court shall cause a notice to that effect to be published in the Gazette, and shall enter in the Public Registry a note of cancellation of the registration of that order.

Penalty for contravening Court order.

22B. Any person who acts in contravention of a court order mentioned in section 22A of this Ordinance shall be guilty of an offence and shall on conviction be liable to a fine (*ammenda*) not exceeding five hundred Maltese liri, and the Court may order the person so found guilty to deposit in a bank to the credit of the accused the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.

Special Court proceedings.

22C. (1) Where an order of forfeiture is made under paragraph (d) of subsection (3A) of section 22 of this Ordinance, the person found guilty, or the third party therein mentioned, may bring an action for a declaration that any or all of the movable or immovable property so forfeited is not profits or proceeds from the commission of the offence nor property acquired or obtained, directly or indirectly, by or through any such profits or proceeds.

(2) Such action shall be brought not later than three months from the date on which the sentence ordering the forfeiture shall have become definite, by an application in the Civil Court, First Hall.

(3) The applicant shall attach to the application all such documents in support of his claim as it may be in his power to produce and shall indicate in his application the names of all the witnesses he intends to produce, stating in respect of each the proof which he intends to make.

(4) The Court shall, without delay, set down the application for hearing at an early date, which date shall in no case be later than thirty days from the date of the filing of the application.

(5) The application and the notice of the date fixed for hearing shall be served on the Commissioner of Police without delay, and the said Commissioner shall file his reply thereto within fifteen days after the date of the service of the application.

(6) The Court shall hear the application to a conclusion within twenty working days from the date fixed for the original hearing of the application, and no adjournment shall be granted except either with the consent of both parties or for an exceptional reason to be recorded by the Court, and such adjourned date shall not be later than that justified by any such reason.

(7) Saving the preceding provisions of this section, the provisions of the Code of Organization and Civil Procedure relating to proceedings before the Civil Court, First Hall, shall apply in relation to any such application.

(8) Any judgement revoking the forfeiture of immovable property shall be deemed to transfer the title of such property back from the Government to the party in favour of whom it is given, and such party may obtain the registration of such transfer in the Public Registry.

Reversion of property ceasing to be forfeited.

22D. When the Court allows the demand for a declaration as provided in subsection (1) of section 22C in respect of any property forfeited, such property shall cease to be forfeited and shall revert to the applicant in virtue of the judgment upon its becoming definite, and the applicant shall thereupon be entitled to the recovery of the income received by the Government from such property during the period of its forfeiture.".

Addition of new section to the principal law.

4. Immediately after section 22D of the principal law there shall be added the following new section:

"Destruction of drugs after drawing up a *procès-verbal.*

22E. (1) At the commencement of proceedings under section 22 of this Ordinance, the drug in respect of which a person is charged shall be exhibited materially in Court, as far as possible, and the following procedure shall be followed.

(2) The Court shall appoint a photographic expert to take pictures, as shall be indicated by the Court, of the drug in its containers, wrappings, packages or receptacles, and shall also appoint an expert to analyse and establish the exact quantity, kind and form and give the most accurate description of the drug, and to take samples thereof for preservation as evidence.

(3) The experts shall, as early as possible, file in Court and confirm on oath a written report of their findings, together with the photographs and samples aforementioned.

(4) The Court, upon being satisfied with such report or reports shall proceed to have the drug, other than the samples, destroyed under its supervision and draw up a *procès-verbal.*

(5) The *procès-verbal* shall be deemed to have been regularly drawn up if it contains a short description of the drug, the experts' report or reports are attached thereto and it is signed by the Court.

(6) The *procès-verbal* drawn up as aforesaid shall be evidence of its contents in any criminal proceedings.".

Addition of new sections to the principal law.

5. Immediately after section 26 of the principal law there shall be added the following new sections:

"Detention during inquiry.

27. Notwithstanding the provisions of the Criminal Code, and saving the extensions by the President of the term of the inquiry as provided in subsection (1) of section 413 of that Code, where the Attorney General has directed that a person charged with selling or dealing in a drug against this Ordinance or charged with promoting, constituting, organising or financing a conspiracy under paragraph (f) of subsection (1) of section 22 is to be tried in the Criminal Court, such person shall be arraigned under arrest and the Court of Judicial Police as a Court of Criminal Inquiry shall conclude the

inquiry within the term of twenty days from the arraignment, and until the expiration of that term or, if the inquiry is concluded at an earlier date, until such day, the person accused shall not be granted temporary release from custody, but at the end of those twenty days or such earlier date as aforesaid, the Court may grant temporary release from custody in accordance with the provisions of that Code.

Pecuniary penalty recoverable as a civil debt.

28. (1) On a conviction for an offence against this Ordinance, the pecuniary penalty shall, at the request of the prosecution, be deemed to be a civil debt and shall be declared by the competent Court in passing judgment as being so owed and payable to Government and shall be executable in the same court pronouncing judgment in the same manner as if it had been given in a civil action duly instituted between the Government and the person convicted.

(2) Where however the prosecution informs the competent Court that the pecuniary penalty has not been recovered by the Government as provided for in the preceding subsection, such penalty or any part thereof not recovered, shall be treated as a fine (*multa* or *ammenda*) as inflicted by the Court and shall be converted into imprisonment, without the benefit of time for payment, in accordance with the provisions of the Criminal Code.

Diminution of punishment.

29. Where in respect of a person found guilty of an offence against this Ordinance, the prosecution declares in the records of the proceedings that such person has helped the Police to apprehend the person or persons who supplied him with the drug, or the person found guilty as aforesaid proves to the satisfaction of the Court that he has so helped the Police, the punishment shall be diminished, as regards imprisonment by one or two degrees, and as regards any pecuniary penalty by one-third or one-half.

Evidence by accomplice.

30. Notwithstanding the provisions of subsection (3) of section 635 of the Criminal Code where a person has purchased or otherwise obtained or acquired a drug contrary to the provisions of this Ordinance, the evidence of such person in proceedings against the person from whom he shall have purchased, obtained or acquired the drug, shall not require to be corraborated by other circumstances.

Direction for trial by the Court of Judicial Police as a Court of Criminal Judicature.

31.Notwithstanding that the Attorney General has directed in accordance with the provisions of subsection (2) of section 22 of this Ordinance, that a person be tried in the Criminal Court, he may, at any time before the filing of the bill of indictment, direct that that person be tried before the Court of Magistrates of Judicial Police, and upon such direction the Court of Magistrates of Judicial Police as a Court of Criminal Judicature shall become competent to try that person as if no previous direction had been given.

Offences cognizable by the Court of Judicial Police as a Court of Criminal Judicature.

32. Nothwithstanding the provisions of section 382 of the Criminal Code and without prejudice to the provisions of section 31 of this Ordinance, the Court of Magistrates of Judicial Police shall be competent to try all offences against this Ordinance as directed by the Attorney General in accordance with the provisions of subsection (2) of section 22 of this Ordinance.".

Addition of new section 33 to the principal law.

6. Immediately after section 32 of the principal law there shall be added the following new section:

"Right of appeal.

33. Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgement given by the Court of Magistrates of Judicial Police in respect of criminal proceedings arising out of the provisions of this Ordinance.".

Savings.

7. (1) The provisions of section 30 of the principal law shall apply to any proceedings which on the day of the coming into force of this Act are pending before any Court.

(2) The provisions of section 31 of the principal law shall apply to any pending proceedings in respect of which a bill of indictment has not yet been filed by the Attorney General on the day of the coming into force of this Act.

Passed by the House of Representatives at Sitting No. 331 of the 17th March, 1986.

DANIEL MICALLEF
Speaker

C. MIFSUD
Clerk to the House of Representatives

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