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LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

GUATEMALA

Communicated by the Government of Guatemala

NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

DECREE No. 48-92

The Congress of the Republic of Guatemala,

WHEREAS:

The Political Constitution of the Republic of Guatemala guarantees the life, integrity and development of the human person, considers the health of the citizens to be a public asset, and declares action to combat drug addiction to be of social benefit;

The State of Guatemala has acceded to, signed and ratified several international treaties that commit it to combating drug trafficking and all activities relating to the production, manufacture, use, possession and marketing of or traffic in narcotic or psychotropic substances and drugs;

In recent years, our country has been the victim of widespread illicit drug-trafficking activities but to date does not possess appropriate legislation to deal generally and fundamentally with this problem, which is harming not only the population but also the very rule of law and the institutional fabric of the country;

THEREFORE:

In the exercise of the powers conferred upon it by article 171, paragraph (a), of the Political Constitution of the Republic of Guatemala,

HEREBY DECREES:

the following

LAW AGAINST DRUG-RELATED ACTIVITIES

ARTICLE 1. Public interest. In order to protect health, the adoption by the State of the necessary measures to prevent, control, investigate, avert and penalize all activities relating to the production, manufacture, use, possession and marketing of or trafficking in narcotic or psychotropic substances and other drugs or pharmaceuticals capable of causing alterations or changes in the central nervous system, whose use can produce physical or psychological dependence and which are included in the relevant international treaties and conventions ratified by Guatemala or in any other international legal instrument adopted in that respect, is declared to be in the public interest.

ARTICLE 2. Definitions. For the purposes of this Law, the following expressions shall have the meanings indicated:

(a) **Drugs:** Any pharmacological agent or substance which, when introduced into the body of a living person, changes its physiological functions and alters the state of consciousness.

Drugs shall also be regarded as the seeds, flowers, plants or parts thereof, and any other substance from which they may be extracted.

The provisions of this Law shall not apply to alcoholic beverages or tobacco;

(b) **Narcotic and psychotropic substances:** Any drug, whether natural or synthetic, which is regarded as such in international treaties or conventions whose observance is binding on the Republic of Guatemala, in the Public Health Code and in any other provisions issued for the purpose of specifying drugs whose use is prohibited hereunder;

(c) **Addiction:** Physical or psychological dependence, the former being understood to mean a person's compulsion to take drugs, whose withdrawal causes physical and/or bodily disorders, the latter an urge to use drugs on a regular and continuing basis in order to suppress a psychological affliction;

(d) **Illicit traffic:** Any act involving the production, manufacture, extraction, preparation, offering, distribution, storage, warehousing, transport, sale, supply, transit, possession, purchase or holding of any narcotic drug or psychotropic substance without lawful authorization;

(e) **Consumption:** Occasional, periodic, habitual or permanent use of a substance referred to in this Law;

(f) **International transit:** The import, export, supply or movement of narcotic drugs or psychotropic substances from one country to another, in whatsoever manner, by the perpetrator of the offence;

(g) **Precursors:** The raw material or any other unprocessed, semi-processed or processed substance used for the preparation of narcotic drugs or psychotropic substances;

(h) **Property:** Assets of any kind, whether material or immaterial, movable or immovable, tangible or intangible, and legal instruments or documents certifying ownership of or other rights with respect to such assets;

(i) **Instrumentalities and objects of the offence:** Instrumentalities are the tools used to commit offences under this Law; objects of the offence are the narcotic and psychotropic substances or drugs and precursors derived from offences under this Law;

(j) **Commission:** the National Commission on Drug Addiction and Trafficking.

ARTICLE 3. Lawful use. Authorization may be granted solely for the import, production, manufacture, extraction, possession and use of drugs, by lawfully entitled persons only, under their strict responsibility, in quantities strictly necessary, for purposes of medical treatment, toxicological and pharmacological analyses, scientific research and the production of medicines.

The sale of drugs at points of distribution to private individuals shall require a medical prescription.

ARTICLE 4. Authorization and control. Establishments lawfully engaged in the marketing, retailing, processing, manufacture, analysis, refining, transformation, extraction, dilution, packaging, preparation, production, import, export, supply or storage of solvents or substances that may be used as precursors in the processing of addictive narcotic drugs or psychotropic substances shall obtain authorization from the Ministry of Public Health and shall undergo any controls and inspections which that Ministry may carry out.

ARTICLE 5. Social reintegration and rehabilitation. It shall be the duty of the State to provide the necessary economic resources for rehabilitation treatment of addicts and to promote their social reintegration.

ARTICLE 6. National cooperation. Collective legal entities of a social, informational, cultural, recreational, sporting, religious or any other nature shall cooperate in drug abuse control programmes. All persons shall cooperate in preventing offences under this Law and illicit drug use.

ARTICLE 7. International cooperation. It shall be the duty of the State, through its competent organs, to promote international, technical and economic cooperation with a view to strengthening and coordinating strategies between States and research, prevention, punitive and rehabilitation programmes regarding narcotic and psychotropic substances and drugs, and to conclude treaties, conventions and agreements with a view to improving the effectiveness of such cooperation and coordination.

ARTICLE 8. Tax exemption. In order to improve air and sea monitoring and increase the capacity to control the international traffic in illicit drugs, the State of Guatemala shall grant full tax exemption on the import of radar equipment and any other instruments used to control drug-related activities.

CHAPTER II

PARTICIPATION IN OFFENCES

ARTICLE 9. Individual offenders. Any persons who take part in the commission of an offence, provide assistance or help, beforehand or subsequently by any act without which the offence could not have been committed, make promises prior to its perpetration or aid or abet its commission or completion shall be deemed to be perpetrators of offences under this Law.

Anyone who uses his position of seniority to induce a subordinate by means of general orders whose scope is prohibited by this Law shall also be deemed to be a perpetrator.

ARTICLE 10. Corporate offenders. Corporate entities shall, regardless of the criminal liability of their representatives, be held responsible for offences under this Law where involving acts carried out by their regular agents, provided that such acts come within the normal or apparent course or object of their business.

ARTICLE 11. Complicity. Any persons who in any way, voluntarily assist the commission of an offence or who provide help subsequent to an offence by virtue of promises made before it was perpetrated shall, if the assistance does not amount to perpetration, be deemed to be accomplices.

CHAPTER III

PENALTIES

ARTICLE 12. Penalties. The main penalties applicable to individuals for offences under this Law shall be:

- (a) Death;
- (b) Imprisonment;
- (c) Fine;
- (d) General or specific disqualification;

(e) Confiscation, forfeiture or destruction of objects of the offence and of instrumentalities used for its commission, unless they belong to a third party who is not responsible for the offence or who acted in good faith;

(f) Expulsion of aliens from the national territory;

(g) Payment of expenses and costs of the proceedings;

(h) Publication of the conviction.

ARTICLE 13. Penalties. The penalties provided for under this Law for corporate entities shall be:

(a) Fine;

(b) Cancellation of corporate status;

(c) Total or partial suspension of activities;

(d) Confiscation, forfeiture or destruction of objects of the offence and of instrumentalities used for its commission;

(e) Payment of expenses and costs of the proceedings;

(f) Publication of the verdict.

ARTICLE 14. Conversion of fines. Any persons on whom a fine is imposed who fail to pay it within the statutory period or who fail to make the repayments due in settlement thereof shall serve a custodial sentence, whose term shall be calculated on the basis of between Q 5.00 and Q 100.00 per day, according to the nature of the offence and the quantity of the drug seized. If a sentence of imprisonment was also imposed, the conversion shall begin once that sentence has been completed, but no person shall serve a prison sentence of more than 30 years.

The convicted offender may at any time, pay the fine less the portion corresponding to the time spent in prison. If, upon completion of the prison sentence, the offender's conduct has been satisfactory, the competent judge may order the conditional suspension of the fine. Any application to that effect shall be dealt with as an interlocutory plea.

ARTICLE 15. Commutation of custodial penalties. The penalties set out in articles 36, 39, 43, 44, 49, 50 and 51 of this Law may be commuted if the term of imprisonment does not exceed five years. The commutation shall be calculated on the basis of a minimum of Q 5.00 per day to a maximum of Q 100.00 per day, having regard to the circumstances of the offence, the offender's economic situation and the amount of the seized objects of the offence.

ARTICLE 16. Conditional suspension of sentence. If a person is sentenced to a term of imprisonment not exceeding three years, the penalties imposed may be conditionally suspended, without prejudice to compliance with any disciplinary measures or order to pay compensation. The benefit of this clause shall be granted if the enforcement of the penalty is inappropriate or unnecessary by reason of the particular features of the case or the legal capacity of the offender. This provision shall not apply if the sentence has already been reduced in accordance with article 22 of this Law.

In granting this benefit, the judge may impose one or more of the following rules of conduct on the offender:

- (a) To reside or not to reside at a specific place and to undergo the supervision of the court;
- (b) To be barred from frequenting certain places or associating with certain persons;
- (c) To refrain from the use of narcotic drugs and from the abuse of alcoholic beverages;
- (d) To begin and complete primary education, if applicable, to learn a trade or occupation, or to attend training courses at the location or institution fixed by the court;
- (e) To undergo medical or psychological treatment, if necessary.

In pronouncing sentence, the judge shall fix the specific terms of enforcement and duration of the application of the rules of conduct imposed, which may not exceed five years. The probationary period relating to conditional suspension may not be less than two years or more than four years.

ARTICLE 17. Revocation. If the offender unjustifiably departs from the rules of conduct imposed or commits a deliberate crime during the probationary period, the suspension shall be revoked and he shall serve the rest of the sentence.

ARTICLE 18. Confiscation. Weapons, objects, money, vehicles, buildings or assets used in the commission of offences under this Law or derived therefrom or acquired by means of assets obtained from the commission of such offences, shall be confiscated.

If objects or vehicles used to commit offences under this Law are not owned by the persons involved, they shall be returned to their lawful owner if he is held to be free from responsibility. Confiscation shall be ordered, in cases of conviction or acquittal, if the use of the objects in question is prohibited or if they may not be lawfully traded.

Confiscated objects which may be lawfully traded shall be sold and the proceeds of the sale shall be paid into the Judiciary's own funds, but shall be allocated specifically for use in the control and prevention of offences under this Law.

ARTICLE 19. Judicial destruction of drugs. When seized drugs or substances are no longer required for the purposes of the proceedings, the examining magistrate shall order their destruction.

For the purposes of the destruction, the magistrate shall personally attend the act of destruction and recheck the circumstances of the confiscation and the appropriate method of destruction. The act may be attended by the parties but shall necessarily be attended by a representative of the Department of Public Prosecution and a person delegated by the Commission, who shall both be duly summoned to attend and in whose presence the destruction shall take place at the place, date and time previously stated.

The examining magistrate shall retain a sample of the destroyed drug as procedural evidence of the existence of the offence, preserving it in safekeeping under his responsibility and in conditions of maximum security, and shall hand it over to the sentencing court, which shall order the destruction of the drug, when the final verdict becomes enforceable, with full responsibility.

CHAPTER IV

SPECIAL CIRCUMSTANCES RELATING TO THE APPLICATION OF PENALTIES

ARTICLE 20. Accomplices. Accomplices shall be liable to the penalty laid down for perpetrators, possibly reduced by one third at the discretion of the judge. This provision shall also apply to the perpetrator of an attempted offence.

ARTICLE 21. Special aggravating circumstances. The following shall be considered to be special aggravating circumstances in connection with offences under this Law:

- (a) If the offence affects or may affect minors, pregnant women, or persons suffering from mental illness or physical disabilities;
- (b) If the perpetrator has encouraged the use or consumption of drugs at educational establishments, centres for the protection and recreation of children, military units, or detention centres or penal institutions, or if the perpetrator is the owner or manager of facilities used for social, cultural, recreational, sporting or any other purposes;
- (c) If the perpetrator is responsible for the prevention or prosecution of offences under this Law;
- (d) If the perpetrator is a public official or employee, uses arms or carries on an occupation directly connected with public health.

In the aforementioned cases, the punishment may be increased up to twice the maximum punishment indicated for the offence committed.

ARTICLE 22. Special extenuating circumstances. The punishment may be reduced to one quarter of the minimum indicated in this Law in the following cases:

- (a) If the perpetrator of offences under this Law or their accomplices or accessories voluntarily provide the competent judge in addition to information regarding their own participation, with information that may assist in the establishment of offences under this Law or in the arrest of their perpetrators, or if the perpetrator informs the authorities of facts known to him regarding plans to commit such offences, in time to prevent them from being committed;
- (b) If, during the proceedings or the trial, and prior to the verdict, the accused provides important information that makes it possible to seize or confiscate drugs or proceeds of crimes connected with offences under this Law.

The application of the benefit provided for in this article may not exceed one quarter of the minimum penalty for the sentence imposed.

CHAPTER V

REMEDIAL MEASURES

ARTICLE 23. Prerequisites. Remedial and corrective measures shall be applied:

(a) If circumstances render it impossible to impose a punishment owing to the absence of criminal responsibility;

(b) If a repetition of offences under this Law gives reason to presume a continuation of criminal practices or the pursuit of criminal activities endangering society or property legally protected by this Law.

ARTICLE 24. Duration. The remedial and corrective measures shall be discontinued when the circumstances that gave rise to their imposition cease to be present. However, they shall be reviewed each year.

ARTICLE 25. Categories. The competent courts, when trying offences under this Law, may impose the following remedial measures:

(a) **Special internment.** This shall involve the internment of persons not criminally responsible for their actions at an appropriate place for them to receive care and therapy. The judge may, if he deems it advisable, impose an obligation to undergo out-patient treatment, setting the requirements to be fulfilled by the person undergoing such treatment, under the supervision of the court;

(b) **Labour.** Re-offenders, habitual offenders and dangerous persons may be sentenced to a special labour regime at one of the country's prison farms;

(c) **Special prohibitions.** A ban on residing in a specific place or frequenting specific places may be imposed.

CHAPTER VI

DAMAGES

ARTICLE 26. Compensation. The commission of any of the offences under this Law shall give rise to an obligation to provide compensation for any serious material and moral harm caused to society. The obligation shall be jointly and severally incumbent on all parties responsible for the offence, be they individuals or corporate entities, and shall take the form of monetary compensation, to be fixed by the judge when pronouncing the verdict, and shall be enforced by order of the sentencing court of first or sole instance. If the offence was committed by a corporate entity, the individuals who served as its decision-making organs shall, with the exception of those free from guilt, be jointly and severally liable. Similarly, a corporate entity shall be jointly and severally liable for offences committed by its representatives in all cases where it directly or indirectly derived any benefit therefrom.

ARTICLE 27. Liable third parties. Anyone who has derived economic benefit from the proceeds of an offence, even if he was not involved in its commission, shall be liable to pay compensation up to the amount of his gain. Cases of manifest good faith in regard to all participants in the offences shall be excepted.

ARTICLE 28. Precedence. The provision of compensation for harm caused to society by reason of the offence shall take precedence over any other debt, the enforcement of penalties and the payment of fines.

ARTICLE 29. Calculation. In calculating the material and moral harm caused to the public, account shall be taken of:

- (a) The value of the drugs seized;
- (b) The value of property connected with the offence and of objects or instrumentalities used in the unlawful act;
- (c) The scale of the national or international association to which the offender belongs;
- (e) The capacity to produce, manufacture, cultivate or traffic in drugs;
- (f) The seriousness of the offence committed;
- (g) The financial harm suffered by society as a consequence of the investment in resources to control drug-trafficking activities.

ARTICLE 30. Transfer of indebtedness. Liability to pay compensation by reason of offences under this Law shall pass to all the heirs of the person responsible, up to the amount of the inheritance received.

ARTICLE 31. Timing. The Department of Public Prosecution, representing society, shall bring a civil action jointly with the penal action and both shall be instituted in accordance with the rules of criminal procedure.

ARTICLE 32. Subsidiarity. The civil action shall be subsidiary to the penal action and the judge shall rule on them in the same verdict immediately after deciding the penal matter. If the penal action is terminated or discontinued, by reason of death or absence of criminal responsibility, before the final pronouncement of the verdict, the Department of Public Prosecution shall pursue or continue such action before the competent courts.

ARTICLE 33. Allocation. The damages fixed by the judge in favour of the State shall be paid into the Judiciary's own funds for specific allocation to the investigation of offences under this Law, and to prosecution, punishment and social reintegration of persons committing such offences.

If, when the case is to be ruled on, the amount of the damages has not been established, fully or in part, such damages shall be determined by the competent court, in its sentence, on the basis of the factors specified in this chapter for calculation thereof.

ARTICLE 34. Injured third parties. Any third parties injured by reason of any of the offences under this Law may claim damages from the accused, and such damages shall be converted into pecuniary compensation for personal material or moral harm and total or partial repair or restitution of the objects or instrumentalities of the offence, subject to proof of ownership thereof and provided that they may be lawfully traded.

CHAPTER VII

OFFENCES AND RELATED PENALTIES

ARTICLE 35. International transit. Anyone who without authorization participates in any manner in the international transit of narcotic or psychotropic substances or drugs, or precursors or essential substances intended for the manufacture or dilution of such drugs, shall be punished by a term of imprisonment of between 12 and 20 years and a fine of between 50,000 quetzals and 1,000,000 quetzals.

ARTICLE 36. Sowing and cultivation. Anyone who without lawful authorization sows, cultivates or harvests seeds, flowers, plants or parts thereof from which it is possible, naturally or by any means, to obtain drugs that produce physical or psychological dependence, shall be punished by a term of imprisonment of between five and 20 years and a fine of between Q 10,000.00 and Q 100,000.00.

ARTICLE 37. Manufacture or processing. Anyone who without lawful authorization produces, manufactures, processes, extracts or obtains drugs shall be punished by a term of imprisonment of between eight and 20 years and a fine of between Q 50,000.00 and Q 1,000,000.00.

ARTICLE 38. Illicit marketing, trafficking and storage. Anyone who without lawful authorization acquires, disposes of in whatsoever manner, imports, exports, stores, transports, distributes, supplies, sells, retails or carries on any other activity connected with the trafficking in seeds, leaves, plants, flowers or substances or products classified as narcotic or psychotropic substances or drugs or precursors shall be punished by a term of imprisonment of between 12 and 20 years and a fine of between Q 50,000.00 and Q 1,000,000.00. Anyone who provides the means, or who facilitates or permits the landing of aircraft used for illicit trafficking, shall be liable to the same punishment.

ARTICLE 39. Possession for the purpose of use. Anyone who for his own use acquires or possesses any of the drugs referred to in this Law shall be punished by a term of imprisonment of between four months and two years, and a fine of between Q 200.00 and Q 10,000.00. The drug seized shall be deemed to be for his own use if it does not exceed a reasonable quantity for immediate consumption, provided that the other circumstances of the case give grounds for the belief that the drug is for personal use.

ARTICLE 40. Aiding or abetting and incitement. Anyone who in any way aids or abets the illicit cultivation of or trafficking in seeds, leaves, flowers, plants or drugs, or the manufacture, extraction, processing or production thereof, or incites others to their illicit use, shall be punished by a term of imprisonment of between six and ten years and a fine of between Q 10,000.00 and Q 100,000.00.

ARTICLE 41. Furnishing of means. Anyone who possesses, manufactures, transports or distributes equipment, materials or substances in the knowledge that they will be used in any of the activities referred to in the preceding articles shall be punished by a term of imprisonment of between five and ten years and a fine of between Q 10,000.00 and Q 100,000.00.

The same punishment shall be imposed on anyone who, in whatsoever manner, furnishes, provides, uses or assigns any building, premises or establishment for the manufacture, production, extraction, storage, cultivation, sale, supply or consumption of drugs. If the establishment is a commercial one, it shall be closed.

ARTICLE 42. Alteration. Anyone who alters or falsifies medical prescriptions, wholly or in part, and thereby obtains, for himself or for another person, drugs or medicines that contain drugs shall be punished by a term of imprisonment of between four months and two years and a fine of between Q 200.00 and Q 10,000.00. The same punishment shall be applied to anyone who, for non-therapeutic purposes or without a medical prescription, administers any type of drugs to another person with the consent of that person. If the person does not give his consent or is aged under 18 years, the punishment shall be a term of imprisonment of between three and six years and a fine of between Q 5,000.00 and Q 100,000.00.

ARTICLE 43. Illicit retailing. Anyone authorized to retail medicinal substances that contain drugs who retails them in a form, quality or quantity different from that specified on the medical prescription, or without a medical prescription, shall be punished by a term of imprisonment of between three and five years and a fine of between Q 2,000.00 and Q 10,000.00.

ARTICLE 44. Prescription or supply. Any physician who, in breach of the relevant laws or regulations, prescribes or supplies drugs that require a prescription when they are not indicated for treatment purposes shall be punished by a term of imprisonment of between three and five years, a fine of between Q 200.00 and Q 10,000.00 and disqualification from carrying on his profession, which additional punishment may not exceed the duration of the custodial punishment.

ARTICLE 45. Illicit investments and transactions. Anyone who, personally or through an intermediary, whether an individual or a corporate entity, carries out business transactions with other persons or commercial, banking, financial or any other establishments, using money or proceeds derived from illicit activities under this Law, regardless of the place on national or foreign territory where the offence was committed or where such financial resources were generated, shall be punished by a term of imprisonment of between six and 20 years and a fine of between Q 50,000.00 and Q 5,000,000.00. The same punishment shall be applied to:

(a) The intermediary, owner, legal representative or administrator, or manager of the establishment who authorized, permitted or carried out such transactions knowing the illicit source of the money or proceeds;

(b) Anyone who participates in acts or contracts, whether real or simulated, relating to the purchase, possession, transfer or administration of property or assets with the aim of concealing, disguising, simulating or diluting the financial resources obtained as a result of the illicit activities referred to in this Law;

(c) Anyone, other than the persons mentioned in the preceding subparagraph, who, knowing the illicit origin of the money or proceeds, authorizes, permits or carries out the transactions referred to in this article by taking advantage of his office, position or post shall be punished by a term of imprisonment of between five and ten years and a fine of between Q 10,000.00 and Q 1,000,000.00. Corporate entities or individuals who report to the Department of Public Prosecution transactions conducted by them in excess of 50,000 quetzals shall be deemed not to have committed this offence. Such reports may be used only for the purposes of this Law.

ARTICLE 46. Presumption. For the purposes of this Law, the monies or proceeds shall be presumed to have been derived from transactions connected with offences under this Law if they have been acquired or negotiated within a period of three years preceding the related prosecution. Since the law may not be applied retroactively, such period shall be computed from the time when this Law comes into force.

ARTICLE 47. Criminal associations. Any individuals who belong to groups or associations formed of two or more people for the purpose of sowing, cultivating, producing, refining, marketing, selling, transporting, holding, distributing, storing, importing, exporting, receiving, supplying or trafficking in narcotic or psychotropic substances or drugs, or products derived from them or intended for their preparation, as well as any other illicit activity relating thereto, shall be punished, through this fact alone, by a term of imprisonment of between six and ten years and a fine of between Q 1,500.00 and Q 3,000.00. Anyone who promotes, directs, finances or in any manner performs any act without which neither the organization nor the activities of such groups or associations could be undertaken shall be punished by a term of imprisonment of between 10 and 20 years and a fine of between Q 3,000.00 and Q 6,000.00. The foregoing shall be without prejudice to any other offences which such persons may have committed.

ARTICLE 48. Assisting the avoidance of punishment or escape. Any public employee or official responsible for the investigation, trial or custody of persons connected with offences established under this Law who in any way assists such persons in avoiding punishment or in escaping, conceals, alters, removes or causes the disappearance of evidence, traces or instrumentalities of the offence, or who safeguards the

benefits or proceeds therefrom, shall be punished by a term of imprisonment of between six and 15 years and permanent disqualification from holding public office, as well as a fine of between Q 50,000.00 and Q 1,000,000.00. If the aforementioned acts were committed by the public employee or official through negligence, the punishment shall be a term of imprisonment of between two and six years and permanent disqualification from public office.

ARTICLE 49. Aiding and abetting or encouragement of drug addiction. Anyone who encourages, aids and abets or incites by whatsoever means the unauthorized use of narcotic or psychotropic substances or drugs or inhalants shall be punished by a term of imprisonment of between two and five years and a fine of between Q 5,000.00 and Q 100,000.00.

ARTICLE 50. Receiving stolen property. Anyone who, for the purpose of obtaining any advantage, either for himself or for a third party, following the commission of any offence under this Law, and without prior agreement, conceals, acquires or receives money, assets or property in the knowledge that they are the proceeds of that offence, or were used to commit it, shall be punished by a term of imprisonment of between three and five years and a fine of between Q 1,000.00 and Q 100,000.00.

ARTICLE 51. Shielding of criminals. Anyone who, being aware of the commission of any offence under this Law and without prior agreement, assists the perpetrator or accomplice in evading the authority's investigations or in escaping the action of the authority, shall be punished by a term of imprisonment of between two and five years and a fine of between Q 1,000.00 and Q 100,000.00. For the purposes of the application of this article and the preceding article, it shall be immaterial whether the criminal act was committed on national territory or abroad.

ARTICLE 52. Offences aggravated by result. Should one or more persons die, as a consequence of offences established under this Law, the punishment imposed shall be the death penalty or imprisonment for a term of 30 years, depending on the circumstances of the case. Should the consequence be serious or very serious injuries or the loss or impairment of mental faculties, the punishment shall be imprisonment for a term of between 12 and 20 years.

ARTICLE 53. Concurrence of offences. If, as a consequence of offences under this Law, other criminal acts are perpetrated, the rules relating to the concurrence of offences shall apply.

CHAPTER VIII

PROCEDURE

ARTICLE 54. Applicable procedure. For the prosecution of offences under this Law, the procedure set out in the Code of Criminal Procedure shall be applied.

ARTICLE 55. Confidentiality of the investigation. Without in any way impairing the rights conferred on accused persons by the Political Constitution of the Republic and other laws, the investigatory stage of the trial shall be confidential, owing to the nature of the crimes to be investigated under this Law.

ARTICLE 56. Precautionary measures. In addition to the powers conferred on him by the Code of Criminal Procedure, the judge may, *ex officio* or at the request of a party, without the formulation of an incidental plea, decide on:

1. The provisional detention of the accused;
2. The attachment of property;
3. The recording of property in the property register;
4. The seizure of property;
5. The seizure of accounting records and ledgers;
6. The suspension of patents, permits or licences that have been duly issued and which may have been used in any manner for the commission of the unlawful act;
7. The freezing of bank accounts of the accused or of any persons who may have benefited directly or indirectly from offences committed by the accused;
8. The total or partial closure, for the time and to the extent strictly necessary, of hotels, guest-houses, establishments where alcoholic beverages are sold or consumed, restaurants, clubs, nightclubs, performance halls and, in general, any premises on which he knows that an offence established under this Law has been committed.

The precautionary measures specified in the preceding subparagraphs shall apply immediately in order to guarantee the effectiveness of any decisions issued and may be revoked by the judge *ex officio* or at the request of a party.

ARTICLE 57. Seizure and attachment. Judicial seizure shall encompass all instrumentalities and objects of the offence which are liable to confiscation, and attachment shall encompass sufficient property to meet the civil liability arising out of the offence.

In no circumstances shall any third party claims or interventions be allowed, during the investigatory stage, whose purpose is the return of assets constituting the *corpus delicti* or the release of attached property.

ARTICLE 58. Information. Banking secrecy shall not apply in the investigation of offences under this Law. Any information received shall be used solely for the purposes of the penal proceedings and may be ordered only by the competent judge *ex officio* or at the request of the Department of Public Prosecution.

ARTICLE 59. Witness protection. In order to protect witnesses who are in danger, the competent judge may release them from the duty to state their domicile and, in special circumstances, to furnish personal details. They shall also be permitted to change their identity provided that this is absolutely necessary.

ARTICLE 60. Evidentiary value. In cases involving offences under this Law, statements by co-perpetrators or accomplices in the same offence shall be valid and shall be assessed as evidence if, by application of the rules of free evaluation, they are consistent with the other evidence in the trial.

ARTICLE 61. Inadmissibility. The release on bail of any person charged as a perpetrator or accomplice, in connection with any offences established under this Law shall not be admissible, nor shall the sentence be suspended except in the cases referred to in articles 16 and 18 of this Law. Furthermore, it shall not be admissible to grant a pardon to any person who has been sentenced.

The granting of any remission in the serving of a prison sentence shall be subject to prior consultation with the Department of Public Prosecution, which may object by means of an interlocutory plea lodged before the competent court.

ARTICLE 62. Judicial disposal of property. In the final verdict, the judge shall rule on the confiscation of seized property and shall fix the amount of damages, whose non-payment within a period of three days from when the verdict becomes final shall give rise to the enforcement of the ruling, and the attached property shall be auctioned with allocation in payment, if applicable.

CHAPTER IX

INTERNATIONAL JUDICIAL ASSISTANCE

ARTICLE 63. Mutual assistance. In order to facilitate the investigation and legal proceedings connected with offences under this Law, the Department of Public Prosecution and the competent judicial authorities may provide assistance to and request assistance from other States for the purposes of:

- (a) Taking evidence or statements from persons;
- (b) Submitting judicial documents;
- (c) Making searches and seizures;
- (d) Examining objects and sites;
- (e) Furnishing information and evidentiary items;
- (f) Supplying originals or authentic copies of documents and records connected with the case, including banking, financial, corporate and commercial documentation;
- (g) Identifying or detecting proceeds, instrumentalities or other items for evidentiary purposes;
- (h) Any other form of mutual judicial assistance authorized by domestic law.

ARTICLE 64. Pre-trial detention. Provided that a reciprocal arrangement exists, States which have signed international treaties on narcotic and psychotropic substances and drugs that have been ratified by Guatemala may make a written request for the pre-trial detention of a person sought who is on the national territory.

The request shall contain:

- (a) Information regarding the description, identity, location and nationality of the person whose detention is requested;
- (b) A statement made by a judicial officer concerning the criminal act in respect of which the person sought is being prosecuted, the place and date of commission of the offence and the legal provisions establishing the offence;
- (c) An undertaking to request extradition subsequently through the appropriate channels;

(d) Accompanying documents evidencing the existence of a conviction of a valid committal order issued by the competent court in the country requesting the precautionary measure.

ARTICLE 65. Arrest order. The competent courts may issue an order for the provisional arrest of persons sought by another State in connection with offences relating to narcotic or psychotropic substances or drugs. The provisional arrest shall be discontinued if within 60 days thereof no extradition request has been received. Such release shall not prevent re-arrest or extradition if the request is subsequently transmitted in accordance with the legal formalities.

ARTICLE 66. Request for assistance. Requests for assistance made by other States may be transmitted through diplomatic channels or directly to the Department of Public Prosecution, which shall ensure that they are dealt with promptly by the competent courts. National requests for procedural assistance shall also be formulated and processed, through the appropriate channels, by the Department of Public Prosecution.

ARTICLE 67. Costs. The costs of executing a request for assistance shall be borne by the requesting party.

CHAPTER X

EXTRADITION

ARTICLE 68. Extradition and procedural formalities. For the purposes of this Law the following rules are established with regard to extradition, whether active or passive:

(a) Procedure of international treaties or conventions. Where international extradition treaties or conventions exist, extradition shall be requested and granted through diplomatic channels in accordance with the procedure established in such treaties or conventions, or, failing which and for any matters not regulated therein, in accordance with the provisions of this article;

(b) In the absence of treaties or conventions, the procedure shall conform to the principle of reciprocity and international custom and practice;

(c) Extradition shall operate provided that the requesting country affords the Republic of Guatemala the same treatment in similar cases;

(d) Evidence produced abroad shall be assessed in accordance with the evaluation criteria of the country which produced it, provided that such particulars are demonstrated by means of the procedures laid down by the Judiciary Act, with regard to proof of the validity of foreign laws, and provided that the country producing the evidence has a reciprocal arrangement with the Republic of Guatemala to that effect;

(e) When a foreign country requests the extradition of an accused person who is in Guatemala, the Supreme Court of Justice shall assess the request and, if it finds that the request is in accordance with the law, it shall appoint a judge to deal with it, who shall necessarily be one of the lower-court trial judges of the Department of Guatemala. The procedure shall take the form of an interlocutory plea and the decision pronounced on the merits of the case shall be referred to the competent higher court. Such decision shall, however, be subject to appeal;

(f) If a person is sought by more than one State at the same time, preference shall be given to meeting the request for extradition from the State on whose territory the offence carrying the heaviest penalty was alleged to have been committed, or, if there are two or more offences of equal apparent seriousness, to the request from the State which first requested the extradition; if an accused person is sought for the same criminal act by a number of States, extradition shall be granted to the country in which the offence was alleged to have been committed;

(g) If extradition has been declared admissible and the requesting State fails to remove the person sought in within 30 days of his being held with a view to surrender, that person shall be released forthwith on the day following expiry of the aforesaid period, and his extradition may not be requested again in respect of the same criminal act;

(h) Once the verdict has become final, the case file shall be sent to the Executive through the Office of the Chairman of the Judiciary and, if the extradition is denied therein, the Executive may not allow it; if, however, it is decided that the surrender of the person sought is admissible, the Executive shall be entitled to decide whether or not to abide by the decision of the courts of justice. In any event, the case records and all other evidence shall be returned to the original court so that they may be filed or, if applicable, so that the proceedings may be continued in Guatemala;

(i) If extradition is denied because the courts of justice have so decided or because the Executive has so ruled, Guatemala shall be obliged to try the non-extradited person and also to send to the requesting State a certified copy of the verdict.

This article shall apply to offences established under this Law.

ARTICLE 69. Waiver of extradition. The State of Guatemala may hand over the person sought to the requesting party without any formal extradition procedure, provided that the person sought agrees to such surrender before a competent judicial authority.

CHAPTER XI

COMMISSION ON DRUG ADDICTION AND TRAFFICKING

ARTICLE 70. Establishment. The Commission on Drug Addiction and Trafficking shall be established as a body attached to the Office of the Vice-President of the Republic, with full powers to receive resources on whatsoever basis and to take all steps to ensure the fulfilment of its aims.

ARTICLE 71. Responsibility. The Commission shall study and decide on national policies for the prevention and treatment of addiction as well as for the prevention of unlawful acts connected with drug trafficking in all its forms, and related activities.

ARTICLE 72. Functions. The Commission's specific functions shall be:

(a) To plan, design and coordinate the implementation of policies and strategies for preventing and treating addiction and alcoholism;

(b) To establish epidemiological research and investigation, scientific, educational, information and technical training programmes for dealing with the national problem of addiction in all its aspects and dimensions;

(c) To coordinate all activities directed towards the effective treatment of persons who have become involved in any way in the abuse of the drugs referred to in this Law;

(d) To adopt recommendations on crime prevention and the treatment of offenders emerging from the conclusions of congresses held by national and international organizations, in particular scientific events, which relate to the object of this Law;

(e) To take decisions, make recommendations and prepare control and prevention plans for observance at the administrative level and implementation by the various national police authorities and by other security forces, with a view to suppressing and prosecuting unlawful acts connected with illicit drug trafficking in all its forms and related activities;

(f) To adopt, in coordination with the Ministry of Finance, appropriate measures for controlling customs operations relating to the import or export of narcotic drugs and psychotropic substances, as well as the other drugs referred to in this Law, precursors and chemicals that are essential for the manufacture thereof;

(g) To coordinate the campaigns and initiatives that each ministry and organization comprising the Commission has to carry out within its area of competence;

(h) To promote the improvement of the legal framework concerning drug-related offences;

(i) To give its opinion on the signing and ratification of the different international conventions on narcotic drugs and psychotropic substances;

(j) To follow up the related agreements signed by Guatemala;

(k) To propose Guatemala's participation in events whose importance and relevance so merit;

(l) To maintain contacts with foreign Governments and international organizations and to take steps with a view to coordinating the national action with that of other States and obtaining such assistance as may be necessary;

(m) To administer the special funds allocated to it under the relevant budget item as well as the resources which it receives on whatsoever basis, subject to the laws of the Republic on the management of the assets and liabilities of the State;

(n) Any other functions that may be necessary for the achievement of its aims.

ARTICLE 73. Membership. The Commission on Drug Addiction and Trafficking shall have the following membership:

(a) The Vice-President of the Republic, who shall chair the Commission;

(b) The Minister of the Interior, who shall serve as vice-chairman of the Commission;

(c) The Minister of Defence;

(d) The Minister of Public Health and Welfare;

- (e) The Minister of Education;
- (f) The Minister of Agriculture, Livestock and Food;
- (g) The Minister for Foreign Affairs;
- (h) The Minister of Communications, Transport and Public Works;
- (i) The Chief of the Department of Public Prosecution.

Ministers may only delegate deputy ministers to represent them. The Chief of the Department of Public Prosecution may only delegate the head of the Prosecution Section to represent him.

ARTICLE 74. Secretary. The Commission shall appoint an executive secretary, who shall be responsible for implementing the policies designed for the prevention and treatment of addiction, and shall also appoint the staff necessary for its operation. The executive secretary of the Commission shall hold the same qualifications as are required for the post of private secretary of the Office of the President of the Republic and shall enjoy the same privileges and immunities. The executive secretary shall also serve as special adviser to the Ministry of the Interior on drug-related matters.

The Ministry of the Interior, with the cooperation of the Ministry of Defence, shall be responsible for implementing the policies concerning the prevention and prosecution of all unlawful acts connected with drug trafficking in all its forms and related activities.

ARTICLE 75. Advisory board. On matters relating to the prevention and treatment of addiction, this Advisory Board shall be composed of the current National Council for the Prevention of Alcoholism and Drug Addiction.

ARTICLE 76. Cooperation. Government agencies and institutions may cooperate with the Commission, to the extent requested of them. Agencies whose activities have the object of preventing and treating addiction shall be guided by the policies established by the Commission in that regard.

ARTICLE 77. Subcommissions. The Commission may appoint subcommissions from among its own members or composed of persons who are not part of its membership. It shall appoint at least a subcommission on prevention and other necessary policies, whose functions shall be to develop and monitor the implementation of strategies and measures adopted by the Commission and to promote cooperation among investigating authorities and on the part of society in connection with the programmes adopted.

The Executive shall issue the regulations necessary for the proper operation of the Commission.

CHAPTER XII

FINAL PROVISIONS

ARTICLE 78. Supplementary legislation. The following are special laws supplementing the present Law: the Penal Code, the Public Health Code, the Code of Criminal Procedure, the Judiciary Act and the Law on the Executive.

ARTICLE 79. Revocation. All laws or provisions that contradict this Law are hereby revoked.

ARTICLE 80. Effect. This Law shall come into force fifteen days after its publication in the Official Gazette.

TO BE SUBMITTED TO THE EXECUTIVE FOR PUBLICATION AND IMPLEMENTATION.

DONE AT THE SEAT OF THE LEGISLATURE, IN GUATEMALA CITY, THIS TWENTY-THIRD DAY OF SEPTEMBER, NINETEEN HUNDRED NINETY-TWO.

[Signed]

Edmond Mulet, President

[Signed]

Luis Ernesto Contreras Ramos, Secretary

[Signed]

José Eduardo Rottmann Ruiz, Secretary

[Stamp of the Congress of the Republic of Guatemala, Central America]