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PREFACE

This is the first in a series of reports on the Chilean electoral process that are to be prepared under the auspices of the International Human Rights Law Group Election Observer Project. This report is based on the findings of a Law Group delegation that visited Chile between August 5 and August 16, 1987. The members of the delegation were: Edward Weidenfeld, a member of the Law Group's Board of Directors who is an attorney in private practice in Washington, D.C., and participated in the Law Group's delegation to the 1986 elections in Chile; Carlos M. Vázquez, an Associate Professor of Law at American University; Carlos M. Vázquez, an attorney with the Washington, D.C. law firm of Covington and Burling; and Karen Penn, a Law Group staff member.

**INTERNATIONAL HUMAN RIGHTS LAW GROUP
REPORT ON THE CHILEAN ELECTORAL PROCESS**

The Law Group's Election Observer Project is designed to evaluate all aspects of an electoral process. The project has published Guidelines for International Election Observing, the leading handbook on the subject, and has observed elections in Argentina (1983), Nicaragua (1984), Uruguay (1984), Canada (1984), El Salvador (1985), Zimbabwe (1985), Guatemala (1985), the Philippines (1986) and Trinidad and Tobago (1986).

The Law Group thanks Messrs. Weidenfeld, Dinerstein and Vázquez and Ms. Penn for participating in the mission and preparing this report. The Law Group also thanks Larry Carter, Legal Director of the Law Group and the author of Guidelines, for helping to plan the mission and for editing the report, and Law Group Board Members Claudio Grossman and Mark L. Schneider and staff member Jean Bourdet for their comments on the report. Covington & Burling provided important administrative support for which we are also grateful. Finally, the Law Group thanks all of the Chileans and others who took the time to help schedule up meetings with the Law Group delegation both before and during the visit to Chile.

October 1987

Amy Young

Executive Director

October 1987

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EXECUTIVE SUMMARY
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**EXECUTIVE SUMMARY**

The International Human Rights Law Group, an organization of lawyers dedicated to promoting respect for human rights, sent a fact-finding mission to Chile in August 1987 as part of its Election Observer Project. The purpose of the mission was to observe and examine the conditions affecting the fairness of the upcoming electoral exercise. Specifically, the mission's goal was to examine the ability of Chileans to express their views freely and effectively, the ease with which Chileans are able to register to vote, and the safeguards against any intimidation of voters and any manipulation of the results. The delegation had free access to all Chileans it wished to meet, and ideas and opinions were freely expressed.

The following is a summary of the delegation's findings.

A military coup in 1973 ended Chile's proud tradition as the oldest democracy in Latin America. The military government that seized power adopted a virtual wartime stance, and during its tenure reports of summary executions, torture, disappearances, and exile have been widespread and the democratic form of governance has been suppressed.

Soon after the coup, the military Junta announced its intention to rule only for the limited period necessary to

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restore order to a society that it deemed to be in chaos.^{1/} Fourteen years later, however, the Junta remains in power, President (and Commander-in-Chief of the armed forces) Augusto Pinochet Ugarte continues to rule Chile, and the Government has not established the environment necessary for democracy to flourish. *Opinion*

As part of the Government's plan to establish a "protected democracy" in Chile, the Constitution that became effective in March 1981 specifically named General Pinochet as President of the Republic for an eight-year term. Sometime before the end of that term, the Constitution requires the Government to conduct a plebiscite in which the Chilean people will be asked to accept or reject the Government's presidential candidate. An affirmative vote would result in the Government candidate serving an eight-year term, at the end of which multi-candidate elections would be held. If the "no" votes prevail, General Pinochet would remain President for another year and would be required by the Constitution to hold multicandidate elections ninety days before the end of his term.

The plebiscite provided for in the Constitution falls short of the free and genuine election required by

^{1/} See Organization of American States, Report on the Situation of Human Rights in Chile 10 (1985).

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international instruments.^{2/} Nonetheless, for some Chileans, the plebiscite represents an opportunity to mobilize the population in establishing a democratic momentum and may represent a first step, albeit imperfect, towards an eventual return to democracy. Debate over the plebiscite is one facet of the complex current political atmosphere in which, for the first time in many years, there is space ("espacio") for the people of Chile to influence the future direction of their country's government.

The International Human Rights Law Group supports the holding of free, pluralistic and honest elections. The August 1987 mission to Chile was one part of a project of the Law Group, which will continue through the inauguration of the next President, to promote an electoral process consistent with international norms. This report sets forth the

^{2/} Universal Declaration of Human Rights, art. 21; American Declaration of the Rights and Duties of Man, art. 20; International Covenant on Civil and Political Rights, art. 23. For the texts of these articles, see Guidelines for International Election Observing (1984), ("Guidelines"), published by the International Human Rights Law Group, which sets out criteria for assessing the fairness of national elections. See especially Guideline VC, Minimal Conditions for a Free and Fair Election, and Guideline VD, Other Conditions Necessary for a Free and Fair Election, and the commentary thereto at 34-38. Where appropriate, this Executive Summary will refer to the Guidelines or the commentary in assessing the Chilean electoral process.

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observations of the Law Group's mission and, based on those observations, presents a number of conclusions and recommendations concerning the electoral process.

CONCLUSIONS

A. Free elections. International human rights instruments recognize the importance of free and genuine elections to the vindication of human rights. Free, contested, pluralistic elections are essential prerequisites to the existence of a democracy. The upcoming plebiscite does not constitute such a free and genuine election because voters are not given a choice among more than one candidate, and they have no role in selecting the candidate.

Despite the criticisms of the plebiscite concept, however, the Chilean Government's current plan to hold a yes/no plebiscite presents a reality that cannot be ignored. The officially-stated purpose of the plebiscite is to provide Chileans with an opportunity to express their confidence or lack thereof in the current regime, but some members of the opposition believe that the plebiscite has been designed to extend the current regime for an additional period.

B. Human Rights. Arbitrary arrests and mass searches, forced exile, torture and other actions inconsistent with international standards are a reality in Chile, along with inadequate judicial redress for violations of human rights. Individuals who work with respected non-governmental human rights groups have been harassed and imprisoned.

Opinion

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C. The Plebiscite. The plebiscite presents the following problems:

1. The Chilean people will have only a limited political choice, that is, a choice for or against the government-selected presidential candidate. The people have no role in the selection of the candidate.^{3/} Political parties will have at best a limited role in the electoral process.

2. Although the plebiscite must be held by February 1, 1989, it can be called at any time before that date. With only two million people registered to vote as of August 31, 1987, many Chileans fear that the Government will hold the plebiscite on short notice to ensure its victory. Government officials uniformly stated, however, that they would not seek to hold the plebiscite until at least five to six million voters have been registered. The latter figure correlates with estimates from both Government and opposition leaders of the number of people who would have to be registered for the results of the plebiscite to represent a valid expression of the popular will.

3. The plebiscite can be called on very short notice; the period between the public announcement of the

^{3/} See Guidelines, VC.1 at page 18 (citizens should have the right to be elected to office).

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plebiscite and its occurrence could be twenty days or even shorter. Such a short period allows an inadequate amount of time for political campaigning. This limitation is especially significant because of the lack of publicity surrounding the plebiscite and because opposition political parties have been denied access to television, by far the most important mass communications medium.

4. In the event that the "no" votes prevail in the plebiscite, General Pinochet nevertheless retains the Presidency for another year, becomes a Senator for life, and continues as Commander-in-Chief of the armed forces for another four years. Many people are skeptical that a Government that has maintained such strong control over the political apparatus for so long would willingly relinquish power.

Opinion

D. Freedom of Expression and Access to the Media^{4/}

1. Television, the most important mass communications medium in Chilean society, is completely controlled by the Government. Television viewers therefore receive a very one-sided view of the political process. There are no present plans to allow political parties access to free television time during the campaign process.

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^{4/} See id., Guideline VC. and commentary thereto at page 36 (importance of free press).

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2. Newspapers and magazines are not allowed to publish or change the frequency of their publication without Government approval. The press is especially vulnerable to crackdowns during states of siege. During the 1986-87 state of siege, most of the opposition press was shut down.

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3. Currently, there is a very active opposition press, which publishes articles critical of the Government and covers the opposition political parties. However, a number of newspaper and magazine publishers and reporters have been indicted before the military courts for allegedly "defaming" the armed forces in their publications, and many have been imprisoned. Even more frequently, the Government has harassed journalists by detaining them without subsequently bringing charges. In September 1986, the managing editor of one opposition magazine was murdered.

4. Freedom of political assembly is seriously curtailed.^{5/} Theoretically, political parties in the process of formation have the right to solicit members, but the

^{5/} Id. at 36 ("[R]espect for freedom of assembly is a necessary condition for a free election. This includes placing no unreasonable restrictions on large political rallies . . .").

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delegation was informed that such parties have been prevented from doing so in public and that permits to hold outdoor rallies have not been granted. Groups such as the committees for free elections have not been granted permission to meet outdoors and have not been allowed to put up posters announcing legally permitted events. A draft electoral law currently being considered by the Junta would place severely limits on the amount of information that can be disseminated through signs, posters, and similar means.

E. Impediments to Voter Registration

1. As of August 31, 1987, approximately two million out of an estimated eight million eligible voters had registered. New registration is required because the Government destroyed the electoral rolls when it came to power in 1973.

2. In order to register to vote, a citizen must first obtain a new national identity card. For many Chileans, the identity card is expensive and administratively inconvenient to obtain, involving the potential loss of two working days. However, approximately 5.5 million people of voting age already have obtained their new identity cards; thus, the cost and inconvenience do not adequately explain the slow pace of registration.

3. The absence of a date certain for the plebiscite contributes to the slow rate of registration because people do not believe that they need to register any

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time soon. Some government officials maintain that natural procrastination is the cause of the slow rate of registration, and that people will register in greater numbers as the plebiscite approaches. However, under current law, the registration process ends upon the announcement of the plebiscite, and the people will therefore not know in advance the deadline for their registration. There also has been insufficient publicity concerning the plebiscite.

4. The manual registration ledgers are in the process of being transferred to computers, which will facilitate the monitoring of the registration process by interested groups. The Director of the Electoral Service has indicated that the computer rolls will be available for examination by such groups.

5. Registration boards are open for limited hours. Although employers are required by law to give employees time off from work without reduction in pay to register to vote, there is substantial evidence that employers have not been doing so. The absence of sanctions for failure to comply with this requirement renders it ineffective.

6. Public officials, all of whom are *PACSO*
appointed by the Government, comprise the election boards that, along with the government-appointed Director of the Electoral registry, appoint the members of the registration

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boards. Many people question the impartiality of these boards, which are critical to the fairness of the election and registration processes. During the delegation's visit, the Government reportedly distributed a document to a meeting of Chile's mayors and governors (all of whom are appointed by General Pinochet) urging these local officials to "neutralize the opposition" and to use municipal resources for the benefit of the Government's electoral campaign.

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7. For the first time in Chile's history, all military personnel are being allowed to vote. The delegation was told by reliable sources that military personnel were being allowed to register at their bases (in violation of the Electoral Registration Law) and that some military personnel were registering more than once.

FALSO

F. Political Parties

1. Political parties were officially disbanded shortly after the coup. Since then, political parties have had to survive at the margin of society, unable for many years to hold rallies, elect leaders, or obtain coverage in the mass media. Currently, there are no legal political parties.^{6/}

^{6/} See id., Guideline VC. commentary, at page 36 ("[W]here the laws of a country permit participation by all parties that register with the authorities, but registration is either administratively impossible or will subject supporters of a party to violence, conditions may not be appropriate for the holding of elections that are completely free." (emphasis added)).

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2. The recently-enacted Political Parties Law establishes a procedure by which all parties, except those proscribed by Article 8 of the Constitution, may become legalized and thereby enabled to participate in the political process. Article 8, which declares unconstitutional parties that "propagate doctrines which are antagonistic to the family, or which advocate violence or a concept of society, the State or the juridical order of a totalitarian character or based on class warfare," has been applied broadly to exclude a wide spectrum of parties on the political left from the political process. The remaining parties seeking legalized status must obtain the signatures of approximately 33,500 registered voters within a seven-month period.

3. Citizens, especially government workers, *DPi rida* have been deterred from registering as party members by threats that they will lose their jobs or suffer other forms of reprisal. Because of the fear of Government reprisal, many parties believe that they will have a difficult time obtaining the necessary signatures to become legally constituted.

4. One consequence of becoming a legal party is that party representatives are allowed to observe the voting and the counting of the votes in the plebiscite. However, the Political Parties Law requires that parties be legally constituted for a period of four months before they can so participate. It is possible that legalized parties

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would be unable to engage in critical election observation activities because of this provision.

G. The Electoral Exercise

1. There have been two quasi-electoral events since the 1973 coup: the 1978 national consultation and the 1980 plebiscite on the new Constitution. There have been significant allegations of fraud and other irregularities in the conduct of these procedures. Although the draft electoral law appears to address many of these problems, there remains the possibility of unfairness, or the perception of unfairness, in the conduct of the plebiscite and any subsequent electoral process. Moreover, it is unclear which sections of the draft electoral law apply to the plebiscite.

2. Vocales (polling officials) are theoretically to be selected at random. However, if the plebiscite is held on short notice, it is possible that independent, impartial vocales will not have an opportunity to volunteer for these positions. Instead, the electoral boards, whose impartiality may be in question, would appoint them.

3. Apoderados (voting observers named by the political parties) serve an important function and provide an independent check on the fairness of the voting processes. Although the draft electoral law provides for their participation in the voting and scrutiny process, apoderados would not

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have the opportunity to be deployed if the plebiscite is held less than four months after any political parties become legally constituted.

4. Military personnel are expected to assist election officials in maintaining order at the polls. Members of the opposition expressed concern about the possibility that the military will intimidate voters and have observed that military personnel who interfere with the voting process could, under the draft electoral law, be subjected to less severe sanctions for such conduct than civilians.

5. The draft law allows announcement of election results to be delayed for six days after the election, thereby unnecessarily increasing the opportunities for manipulation or fraud.

A. The Government should end all states of exception and, at the very least, should terminate any such existing states prior to the occurrence of any electoral event.

B. The use of military courts to prosecute civilian crimes should end. Individuals imprisoned solely because of their political beliefs should be released immediately.

C. In order for Chileans to participate fully and effectively in the electoral process, they should be free from the fear of arbitrary arrest, torture, exile and other violations of human rights. Such violations should cease completely, and harassment of human rights workers should end immediately.

MINIMUM STANDARDS AND RECOMMENDATIONS

To encourage a meaningful electoral process in Chile, the Law Group respectfully urges that the following minimum standards be met. These standards are based on international criteria for the conduct of free and fair elections derived from international conventions and declarations and explained in Guidelines for International Election Observing, a publication of the International Human Rights Law Group.

Following each minimum standard, the Law Group makes specific recommendations for their practical implementation. These recommendations are drawn from the findings of the Law Group delegation that visited Chile in August 1987.

I. GENERAL

As a member of the international community and a signatory of the International Covenant on Civil and Political Rights, the Chilean Government should comply with all the provisions of the various international human rights instruments, including those pertaining to the conduct of free elections.

A. The Government should end all states of exception and, at the very least, should terminate any such existing states prior to the occurrence of any electoral event.

B. The use of military courts to prosecute civilian crimes should end. Individuals imprisoned solely because of their political beliefs should be released immediately.

C. In order for Chileans to participate fully and effectively in the electoral process, they should be free from the fear of arbitrary arrest, torture, exile and other violations of human rights. Such violations should cease completely, and harassment of human rights workers should end immediately.

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II. THE PLEBISCITE

International human rights instruments require that the Government conduct free and genuine elections. To comply with this precept, the upcoming electoral exercise in Chile should offer voters a free and genuine choice among competing candidates, and not be limited to a yes or no vote on the Government's candidate. Adequate time should be given to allow a sufficient number of voters to register. Political parties should be given adequate time to register and campaign.

A. The Government should announce officially as soon as possible its intention to hold the plebiscite on a date certain. That date should be far enough in advance to allow compliance with Recommendation B below and to allow the political parties time to register.

B. The Government should commit itself to refrain from holding the plebiscite until at least six million voters have registered.

C. The Government should lengthen the period during which the plebiscite campaign is to be conducted. Absent a constitutional amendment extending this period, the Government should at least commit itself to using the longest period now permitted, sixty days.

D. The President should announce the plebiscite immediately upon receiving the name of the President-Designate from the Junta or the National Security Council.

E. Voter registration should be allowed to continue for at least thirty days after the public announcement of the date for the plebiscite.

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III. FREEDOM OF EXPRESSION AND ACCESS TO THE MEDIA

A fair electoral exercise requires that the rights of freedom of expression, association and assembly be respected for a period adequate to allow political organizing and campaigning and to inform citizens about the candidates and the issues.

A. Political parties and free elections committees should have access to free television time during any electoral campaign period and should be able to purchase television time at reduced rates so as to enable them to appear on television.

B. Television and other government-controlled media should not be prohibited from reporting about political activity, including activity engaged in by opposition parties and organizations.

C. Harassment of opposition print media should cease and the use of the military courts to intimidate journalists should be forewarned. Efforts should be made to distinguish clearly between proscribed terrorist activity and the mere reporting of such activity.

D. The Government should refrain from shutting down opposition media and should remove the requirements for approval of new publications or new publishing schedules.

E. Political parties, whether or not legally constituted, and groups such as the committees for free elections, should be allowed to hold outdoor rallies and put up posters and other signs.

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IV. VOTER REGISTRATION

To ensure that all Chileans have an opportunity to participate in the political process, adequate opportunity should be given for all voters to register. The registration process should be conducted in a fair, impartial manner and the rolls of registered voters should be made public.

- A. National identity cards should be made available to indigents without cost. The waiting period for obtaining identity cards should be shortened and the Government should consider making the cards available on weekends.
- B. As provided for in the draft amendment to the electoral registration law, the hours for voter registration should be extended and registration on Sundays should be permitted. On-site registration at the workplace, church, or other settings should be allowed.
- C. The electoral registration law should be amended to provide a sanction against employers who do not release employees without salary reduction in order to register to vote or obtain an identity card. The Government should stress the importance of compliance with this provision of the law and prosecute violators.
- D. The electoral registration law should be amended to provide for the participation of individuals or commissions not appointed directly or indirectly by the President in the appointment of officials of registration and election boards.
- E. A broad array of organizations should be allowed to observe the registration process at local election boards. These organizations should include committees for free elections, political parties (whether or not legalized), civic organizations and similar entities.
- F. The Election Service should make available the computer rolls of registered voters to any interested organization or individual. Any fee charged for such access should be nominal.

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G. The committees on free elections should review the computer rolls to detect irregularities in the registration process.

H. All allegations of improper or fraudulent registration should be investigated expeditiously and, if appropriate, prosecuted vigorously in the criminal courts as provided for by the electoral registration law.

V. POLITICAL PARTIES

A free electoral process requires respect for freedom of association. Thus, the Government should review the requirements for the participation of political parties in the electoral process to remove unreasonable limitations, particularly the requirement that parties be registered for four months before they can exercise any rights under the electoral law.

A. All political parties that desire to participate peacefully in the democratic process should be permitted to do so.

B. The Government should reduce the number of signatures required to form a party, and should allow for a lengthier registration period if necessary. The Government should explore with a wide range of political parties any additional problems that may exist with the current party registration process.

C. Individuals should not be subjected to reprisals such as the loss of jobs solely because they have registered in a political party.

D. The right of political parties to hold rallies and demonstrations for the purpose of attracting members should be respected.

E. The requirement that parties be officially registered for four months before being able to participate in the election observation process should be eliminated.

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VI. ELECTORAL EXERCISE

A free electoral exercise requires that the integrity of the balloting process be respected. Thus, any electoral exercise should be announced clearly and well in advance of the event. An electoral law should provide adequate safeguards against fraud and intimidation, and those safeguards should be strictly enforced. Elections should be conducted in a fair and impartial manner, and independent observers should be allowed to monitor the exercise.

A. The Government should finalize the electoral law and all pertinent draft laws so as to provide some certainty in the electoral and registration process.

B. The Government should assure that vocales and apoderados are appointed independently, and that the plebiscite is not scheduled so as to preclude the participation of independent citizens in these positions.

C. The Government should clarify whether there are any provisions of the electoral law that it deems inapplicable to the upcoming plebiscite.

D. The provisions of the electoral law prohibiting military personnel from serving as vocales should be strictly enforced. The sanctions for military interference in the electoral process should be strengthened.

E. The electoral results should be announced as soon as practicable by the Electoral Service.

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VII. INTERNATIONAL OBSERVATION

In accordance with contemporary practice,
particularly in Latin America, the Government should permit
international observation of the upcoming electoral exercise
and of the environment in which the process occurs.

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CONTENIDO: Informe sobre sistema electoral en Chile preparado por
International Humans Rights Law Group.
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