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**SUPPLEMENTAL REPORT ON
THE CHILEAN ELECTORAL PROCESS**

Based on a fact-finding mission of the International Human
Rights Law Group's *Election Observer Project*

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August 29, 1988

Copies of this report and the previous Chile report
can be obtained for \$5.00 each from:

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PREFACE

This report supplements the International Human Rights Law Group's *Report on the Chilean Electoral Process* published in November 1987. The material in this report is based on a Law Group mission to Chile in April 1988 by Executive Director Amy Young and *pro bono* associate D. Lea Browning. Recent developments, including the lifting of the states of emergency, are also covered.

The Law Group would like to express its deep appreciation to Ms. Browning, the author of the report, for participating in the mission and for her commitment to the project. The Law Group is grateful to Ms. Browning's firm, Hogan and Hartson, and especially to Ms. Pat Williford for assistance in preparing the report.

Special thanks to Ms. Judybeth Greene of the D.C. Bar, Mr. Carlos Vazquez of Covington and Burling, and Ms. Laura Trejo of Laxalt, Washington, Perito and Dubuc for their work on the report. The Law Group is indebted to Ms. Isabel Mignone for her excellent translation of the report into Spanish.

In April the delegation met with lawyers, journalists, human rights activists, leaders of opposition and civic groups, labor leaders, religious leaders and government officials in D.C. and Santiago. The Law Group appreciates the continued cooperation of the Government of Chile. Finally, this report could not have been completed without the courage and candor of the many Chileans from all sectors of society who desire the restoration of democracy in their country. It is to these people that this report is dedicated.

Amy Young
Executive Director
August 29, 1988

INTERNATIONAL HUMAN RIGHTS LAW GROUP'S SUPPLEMENTAL REPORT ON THE CHILEAN ELECTORAL PROCESS — AUGUST 1988

EXECUTIVE SUMMARY

The International Human Rights Law Group is a nonpartisan, nonprofit, public interest organization of lawyers founded in 1978 which seeks to promote observance of internationally recognized human rights. In furtherance of this goal, the Law Group established its Election Observer Project in 1983. The legal and theoretical underpinning of the Election Observer Project is respect for the right of political participation, a right recognized in all major human rights instruments. When the right to political participation is denied, other basic rights are in jeopardy. Thus, the Law Group believes that the right to genuine and periodic elections should be monitored to the same extent that other basic rights are monitored by international organizations.

In 1984, the Law Group published *Guidelines for International Election Observing*, which contains guidelines for organizing and conducting an election observer mission and standards for evaluating the electoral processes of any country. Since that time, the Law Group has observed elections in Nicaragua (1984), Uruguay (1984), Grenada (1984), El Salvador (1985), Zimbabwe (1985), Guatemala (1985), the Philippines (1986) and the Republic of Korea (1987).

In anticipation of the plebiscite provided for by the 1980 Chilean Constitution, the Law Group sent fact-finding missions to Chile in August 1987 and April 1988 to observe and examine the conditions affecting the fairness of the plebiscite and the degree to which it can be expected to reflect the free and informed will of the Chilean people. In November 1987, the Law Group published its first *Report on the Chilean Electoral Process*, which presented the Law Group's analysis and conclusions concerning the plebiscite process. The Report also contained the Law Group's recommendations regarding political and legal changes, needed for the plebiscite to be considered a legitimate expression of the popular will.

The April 1988 delegation investigated the extent to which the Law Group's recommendations had been implemented since the first mission. Subsequent to its April 1988 mission, the Law Group has continued to monitor closely developments in the electoral process. The Law Group finds that there have been significant improvements in certain areas. For example, as a result of efforts by the government, citizen groups and opposition forces, voter registration has increased substantially, so that more than seven million Chileans, out of an estimated 8.2 million voting age population, are registered to vote as of mid-August 1988. Six political parties had been officially "recognized" nationally and six others had been officially "recognized" regionally as of August 1988.

Political debate also has increased; since early 1988 weekly political debate programs have been televised in which opposition leaders have been seen on television for the first time in 15 years. The government has amended the Electoral Law to guarantee the government and the opposition access to television for 15 minutes daily during

the official campaign period. However, because the broadcast time is 10:45–11:15 p.m., it will not be viewed by a large segment of the population, especially in the provinces. On August 26, the government lifted the states of exception that have been in place in one form or another since the 1973 coup. Finally, the government announced on July 9, 1988, that the Commanders-in-Chief would be meeting on August 30 to designate a presidential candidate for the plebiscite; because the electoral rolls will close shortly thereafter, the announcement served as a warning that those who wished to register to vote should promptly do so.

Notwithstanding these significant developments, the Law Group believes that changes, some of a very basic nature, remain necessary if the plebiscite is to be regarded as an authentic expression of the public will. The most fundamental changes necessary, which the Law Group urges the Chilean government to adopt promptly, are the following:

1. There must be a significant improvement in the human rights conditions in Chile as the plebiscite approaches; the continuing incidents of "disappearances," kidnappings, torture, forced internal exile and other human rights violations have produced a climate of fear and intimidation that threatens the legitimacy of the plebiscite.

2. The arrests, detentions and threats against leaders and volunteers working for political parties, for free elections movements, and in civic education campaigns, impede and deter the peaceful participation of the Chilean people in the electoral process and should cease immediately.

3. The opposition should be given access to television during prime time (i.e., between 8:30–10:00 p.m.) in order to provide the electorate with an understanding of all points of view, and to redress the imbalance of overwhelming pro-government news coverage and extensive government campaigning.

4. Government prosecution of journalists should cease, and imprisoned journalists should be released immediately; the legal actions that have been pending against over 30 journalists and publishers this past year are perceived as an attempt by the government to stifle political debate and restrict freedom of expression.

In addition to the above recommendations, the Law Group urges the Chilean government to ensure that all of the safeguards contained in the electoral laws, as adopted in April 1988 and subsequently amended in August 1988, be strictly enforced in both letter and spirit.

BACKGROUND

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 abolished.

Soon after the coup, the military junta announced its intention to rule only for the limited period necessary to restore order to a society that it deemed to be in chaos.¹ Fifteen years later, however, the junta remains in power. President and Commander-in-Chief of the Army Augusto Pinochet Ugarte continues to rule Chile, and the government inhibits the environment necessary to reestablish democracy.

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. By February 1, 1989, 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. 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.

The plebiscite provided for in the Constitution falls short of the free and genuine election required by international instruments.² Democracies have traditionally been characterized by free, contested pluralistic elections. The upcoming plebiscite is not a free and genuine election because voters have no role in selecting the candidate. Furthermore, political parties will have at best a limited role in the electoral process and no role in the selection of the candidate for the plebiscite.

A "yes" victory in the plebiscite would result in the government's candidate serving an eight-year term as President, at the end of which multi-candidate elections would be held.³ If the "no" vote prevails, Transitory Provision 29 of the 1980 Constitution provides that General Pinochet would remain President for an additional year. Ninety days before the expiration of that period (i.e., nine months after the plebiscite), Transitory Provision 29 would require free and open elections for the presidency and Congress.

In addition to remaining President for another year if the "no" vote prevails, under Transitory Provision 8, General Pinochet would remain Commander-in-Chief of the armed forces for at least another four years and could not be removed during this period; under Article 45(a) of the Constitution, he remains a Senator for life; he remains on the Council of State;⁴ and under Article 95 and Transitory Provision Twenty-Five, he remains a voting member of the National Security Council. Thus, even if General Pinochet is selected as the candidate and rejected by the people in the plebiscite, he will retain significant power.

On July 9, 1988, the government announced in the *Diario Oficial* that the Commanders-in-Chief of the armed forces would meet on August 30, 1988 at noon to select the government's presidential candidate for the plebiscite. It is virtually certain that

General Pinochet will be selected as the government's candidate.⁵ According to the decision of the Constitutional Tribunal in April 1988, General Pinochet should convoke the plebiscite within 48 hours from the time the name of the candidate is presented. The convocation is effective upon publication of the convocatory decree (i.e., publication of the name of the candidate). The plebiscite must be held no sooner than thirty nor later than sixty days after the convocatory decree is published in the *Diario Oficial*.

On the day the plebiscite is convoked, voter registration ceases. New voter registration was required because the government destroyed the electoral rolls when it came to power in 1973. In spite of the cost and inconvenience involved in the two-step registration process,⁶ as of mid-August 1988, over seven million people, out of a total estimated voting age population of 8.2 million, had registered to vote.

Despite the shortcomings of the plebiscite concept, for many Chileans the plebiscite represents an opportunity to mobilize the population in establishing a democratic momentum, and it may represent a first step, albeit imperfect, towards an eventual return to democracy. Debate over the plebiscite and efforts to mobilize the people to participate in the electoral process are facets of the complex political atmosphere in which, for the first time in many years, there is room for the people of Chile to influence the future direction of their country's government. In support of this democratic momentum, the Law Group has been monitoring since January 1987 the process leading up to the plebiscite and will continue doing so until the process is completed.

IMPLEMENTATION OF MINIMUM STANDARDS AND RECOMMENDATIONS

To encourage a meaningful electoral process in Chile, the Law Group's November 1987 Report urged that certain minimum standards be met. These standards were 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 Law Group publication. Following each minimum standard, the Law Group made specific recommendations for their practical implementation. This section sets forth in bold print the standards and recommendations of the November 1987 Report followed by an analysis of the extent to which the recommendations have been implemented.

I. GENERAL

As a member of the international community and 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.**

On August 26, 1988, prior to the convocation of the plebiscite, the Chilean government lifted the states of exception that have been in effect in one form or another since the 1973 coup. This is a positive development and fulfills the government's pledge that the plebiscite would not be conducted under a state of exception.

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

The percentage of cases in the military courts involving civilians has risen from 70% to 90% since last year.⁷ Military courts can and usually do exercise jurisdiction in cases in which a member of the armed forces is either a defendant or a "victim." Once a military court takes cognizance of a case, all related cases are transferred to its jurisdiction as well. There are indications that the government has been increasing prosecution of cases in the military courts because of its comparative lack of success in the civil courts.

The government continues to arrest and prosecute individuals and opposition leaders for expressing political beliefs. For example, on April 26, 1988, while the Law Group's delegation was in Santiago, Jose Sanfuentes, a leader of the Christian Left, was arrested for "offenses against the armed forces" based on statements he had made in the press.⁸ Similarly, Clodomiro Almeyda, the former Foreign Minister of Chile and current President of the United Left, a major political coalition, was arrested in late 1987 upon his return to Chile after being in exile for 12 years. Mr. Almeyda has been imprisoned since his arrest on charges brought under Article 8 of the 1980 Constitution. He is not accused of personally committing acts that violate Article 8 but of being an "apologist" for those who propagate doctrines that violate Article 8.⁹ On May 13, 1988, a Santiago Appeals Court affirmed a sentence of 541 days imprisonment for Mr. Almeyda, based on his having expressed certain political opinions during press interviews while abroad.¹⁰

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.

Throughout the military government's rule in Chile, murder, torture, arbitrary arrests and imprisonment, disappearances, kidnappings, intimidating acts and other actions inconsistent with international standards have been a disturbing reality. There had been, however, a relative improvement in the human rights situation during 1987: the number of forced exiles decreased significantly as those in exile were allowed to return to Chile;¹¹ the government declared unlawful the use of secret torture centers by the *Central Nacional de Investigaciones* ("CNI");¹² and the number of "disappearances" and arrests declined.

As the plebiscite approaches, the human rights violations and abuses in Chile once again have increased, resulting in a climate of fear and intimidation that deters participation by the Chilean people in the electoral process and seriously threatens the legitimacy of the upcoming plebiscite. Some of these abuses, such as the killing of

several *Carabineros* and an Army officer and the kidnapping of an Army colonel, have been attributed to far-left opposition forces. However, the overwhelming majority of the human rights violations and abuses have been attributed to the government or pro-government supporters.

Disturbing developments in the human rights area since the Law Group's August 1987 mission include: (a) the creation and use of new secret torture centers by the CNI;¹³ (b) the increased use of torture on persons arrested;¹⁴ (c) the "disappearance" of five men in September 1987;¹⁵ (d) a stepped-up campaign of harassment, including arrests, imprisonment and death threats against journalists;¹⁶ (e) an increased number of death threats against church leaders and workers, political leaders, and volunteers participating in voter registration drives;¹⁷ and (f) the arrest and detention of political leaders and volunteers participating in voter registration campaigns and working for the legalization of political parties.¹⁸

Most recently, the government has utilized internal exile as a punishment for two prominent Chilean labor leaders, Manuel Bustos and Arturo Martinez. Although Bustos and Martinez were initially acquitted of charges stemming from their call for a one day work stoppage in October 1987, on August 18, 1988 the "not guilty" verdict was reversed and the two men were sentenced to eighteen months of internal exile. This recent action is believed by some Chileans as designed to send an intimidating message to the people preceding the plebiscite.

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.

On July 9, 1988, the government announced that the Commanders-in-Chief of the armed forces would meet on August 30, 1988 to select the government's candidate for the plebiscite. Under the 1980 Constitution, the plebiscite must be held no sooner than thirty nor later than sixty days after the President convokes the plebiscite.¹⁹ Although the government did not give advance notice of the date of the plebiscite, the government's announcement of the date that the Commanders-in-Chief would be meeting to select the candidate was helpful because it alerted unregistered voters to the likely cut-off date for registration. It is still unclear, however, how long the campaign period will be.²⁰

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

The lack of a date certain for the plebiscite initially contributed to a slow pace of voter registration. For example, as of August 1987, only two million of a possible 8.2 million voters had registered. At the time, the opposition feared that the government would hold the plebiscite while voter registration was still low and while those registered included a large proportion of military personnel and pro-government supporters.²¹ By mid-August 1988, over seven million Chileans had registered to vote. Thus, 85% of those eligible to register have done so, exceeding the previous Chilean record for percentage of registered voters.

- 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.

Instead of lengthening the campaign period, the Electoral Law²² passed in May 1988 permits electoral propaganda only during the period between the thirtieth day and third day preceding the plebiscite. The Electoral Law also severely restricts how and when electoral propaganda (defined as any propaganda that seeks to induce voters to support particular candidates or particular positions in a plebiscite) can be disseminated. Obviously, the briefer the campaign period, the fewer opportunities for the opposition to communicate its positions and to offer alternatives to the public. The problem is aggravated by the opposition political parties' lack of access to television which is government-controlled and the most important mass communications medium. The opposition's free access to this medium will be limited to the official campaign period, during which the government and opposition are each provided 15 minutes of broadcast time daily. (See Section III.A for further discussion.)

The government is expected to benefit from a shorter official campaign period because of its direct and indirect control of much of the television media, which results in virtually total pro-government news coverage. Furthermore, in spite of the prohibition against electoral propaganda except during the thirty-day period preceding the plebiscite, General Pinochet and the government, under the guise of a non-partisan "publicity" campaign, have conducted a massive and expensive pro-government campaign using the communications media, municipal officials, and public resources throughout this past year. (See Section III.A for further discussion).

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

Under the first draft of the electoral law, the Law Group had been concerned that the campaign period could be shortened by the President, delaying the convocation of the plebiscite for 10 days after the nomination of the candidate. The Constitutional Tribunal has eliminated any such problem, however, by ruling that General Pinochet must convoke the plebiscite within 48 hours from the time he receives the name of the candidate and by ruling that the 30-60 day campaign period begins to run from the time General Pinochet publishes the convocatory decree.

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

Under the 1980 Constitution, voter registration ceases on the day the government's presidential candidate is publicly announced. The Law Group had been concerned that the lack of a certain date by which voters had to register would encourage Chileans to delay registering until it was too late. This did not happen as evidenced by the steady number of registrations each month. Moreover, the government has ameliorated this issue by announcing that the junta would be meeting on August 30, 1988 to select the government's candidate. Chileans who have not registered now know that they should register by that date if they intend to vote in the plebiscite.

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.**

Television is widely regarded as the most influential form of mass communication in Chile because it reaches a much larger audience than radio or the print media. Consequently, opposition leaders have emphasized that equal access to television is essential for a fair plebiscite. To address this matter, the government in August 1988 amended Article 31 of the Electoral Law²³ to guarantee those supporting and those opposing the designated candidate access to television during the campaign period for 15 minutes daily without charge. However, this "electoral propaganda" will not be televised at a time during which most of the viewers would be watching. Instead, the government is setting aside 10:45-11:15 p.m. for the presentations on television. Prime time, especially in the provinces, is from 8:30 to 10:00 p.m.

The government and pro-government parties and the opposition parties are required to share their respective 15 minutes. If they cannot agree on how to divide their broadcast allotment, the National Board for Radio and TV will allocate the time for them. The law provides that this will be the only "electoral propaganda" allowed on television during the campaign period, although political parties will be allowed to advertise in newspapers and on radio.

This guaranteed access, along with the recent airing of one-hour weekly television programs featuring political discussion and debate from both government and opposition officials and supporters, is a positive development for freedom of expression in Chile. These first steps, however, do not redress the imbalance resulting from the vast sums the government already has spent on the plebiscite and the overwhelming pro-government news coverage and programming. For example, one study during March 1988 found that the ratio of news coverage of government to opposition was more than 40-to-1.²⁴

Furthermore, the government already has far outspent the opposition on television advertising. During the first three months of the year, the government's publicity campaign cost \$3 million, most of which went for television advertising.²⁵ Genaro

Arriagada, the National Director of the Campaign for the No Vote, estimated recently that the government was outspending the opposition 30-to-1.²⁶

To counterbalance these government advantages, opposition parties should be provided free access to television during prime viewing time and should be permitted to purchase additional time, at standard commercial rates, so as to allow the dissemination of diverging views to the greatest number of Chileans.

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

Chilean journalists are forced to work under a series of government restrictions that limit their access to information and threaten them with punishment merely for reporting what opposition leaders may say. The lifting of the states of exception does not affect this. Journalists still are forbidden from reporting on certain organizations and politicians who hold certain political views. Article 8 of the Chilean constitution effectively bans organizations and individuals from participating in politics. Law 18.662 implementing Article 8 prohibits the media from reporting on people or organizations declared unconstitutional. Journalists have charged that Law 18.662 is an attempt by the government to silence segments of society by prohibiting the media from reporting on their activities or views.²⁷ This law was used in July 1988 for the first time to charge opposition journalists for reporting the Communist Party's announcement on June 15 that it would support the "no" movement. In contrast, pro-government publications that reported the same event were not charged.

Besides outright prohibition of coverage of persons or organizations declared "unconstitutional," the government also punishes coverage of certain topics and opposition leaders by charging journalists with such vague crimes as "offending the honor of the armed services" and "defaming the president." For example, journalist Monica Gonzales of *Analisis* magazine spent two weeks in jail in October 1987 because she quoted an opposition political leader who criticized General Pinochet.²⁸ The opposition leader who issued a public statement assuming responsibility for these statements was not charged.²⁹ The intimidating and selective use of such charges are among the government practices that led both the Catholic Church³⁰ and the Inter American Press Association³¹ to conclude that freedom of the press does not exist in Chile.

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

Charges against journalists are often brought in military courts and frequently the journalists are ordered jailed before their cases are brought to trial. The leading opposition publications find themselves targets of such tactics. During this past year, the heads of all of the independent or opposition media have had charges pending and over 30 journalists are currently being prosecuted on vague charges such as "insulting the armed forces."³² This government pattern of selective prosecution is evidently an attempt to intimidate Chile's small and tightly-knit community of journalists.

Besides legal harassment, journalists are the targets of threats and of violence from unidentified civilian groups that many believe are linked with the military regime.³³ For example, in March 1988, civilians identifying themselves as members of AChA (the Chilean Anti-Communist League), kidnapped a contributing journalist of *Cauce*, a weekly opposition magazine, and told him to transmit death threats to the magazine's director and assistant director.³⁴ Radio stations and their personnel face the same types of legal and extra-legal harassment as the print media, such as prosecution for "defaming" the armed forces and death threats. Death threats are not taken lightly in Chile, especially since Jose Carrasco Tapia, foreign editor of the weekly opposition magazine *Analisis* was abducted by unidentified civilians (widely believed to have been connected to the government) in September 1986 and found dead two days later.³⁵ Neither his slaying nor any of the cases of threats or kidnappings have been resolved.

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

The lifting of the states of exception removed the requirements for approval of new publications or changes in frequency of publication.³⁶ Moreover, during this past year, the government has not closed any communications media.

Radio broadcasters are worried that on the day of the plebiscite, the government will impose a news "chain" ("*cadena*"), that is, the obligatory reporting of the plebiscite results through one government-controlled source.³⁷ The government suggested in mid-April 1988 that it might impose such a *cadena*. However, the Minister of Telecommunications and Transportation at a meeting of the National Association of Radio Transmitters in Castro, Chile in late April 1988, stated the government would not do so. If the government were to impose the chain, as it has done in the past, it would preclude any independent source of news, as well as precluding news of independent vote counts conducted by the opposition or neutral organizations.

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.

Forms of communication other than the mass communications media — assemblies, street banners and posters and pamphlets — take on increased importance in a society like Chile where the government restricts and harasses the mass media. The Electoral Law permits posters on the windows of a political party's office, but effectively bans most political signs or posters by prohibiting their display on exterior walls, lampposts, bridges or other urban structures that often serve as impromptu political billboards. Sound wagons and videos also are prohibited as are political wall paintings, which have been a traditional feature of Chilean elections. Furthermore, the Electoral Law empowers police to determine that electoral propaganda is illegal and to remove it on their own initiative, without judicial involvement.

These restrictions on electoral propaganda effectively deprive those without substantial financial resources of the only media within their means. These restrictions also deprive the opposition groups of relatively inexpensive campaign tools to counter the government's superior advantage in campaign spending for the plebiscite.

The lifting of the states of exception on August 26, 1988, should restore the right to freedom of assembly. While the states of exception were in effect, the government required permits for public assemblies, which frequently were denied.³⁸ According to human rights groups in Chile, even if permits were obtained, the police would disrupt the rallies, at times using unnecessary force. In addition, the police frequently would make mass arrests at rallies, irrespective of whether the rally had a permissible purpose such as promoting voter registration.³⁹ The police would detain the participants for hours or days and then release them, with or without charges. When pressed, charges would not be for violations of the electoral laws but for disturbing the peace or a like offense. For example, in October 1987, *Carabineros* briefly detained more than 100 people who took part in a voter registration rally in Santiago charging them with "promoting disorder, provoking harm in the vehicular transit, like molesting the neighborhood by using wind instruments and percussion."⁴⁰

In contrast, there have been many pro-government rallies, either called for a specific event, such as awarding General Pinochet another medal,⁴¹ or spontaneously staged by municipalities, using government resources.⁴² Although such "spontaneous" rallies were presumably not authorized by permits obtained in advance, police have not interfered with them.

During this past year, municipal officials have been using government resources to support the government's campaign and to impede campaigning by the opposition,⁴³ in accordance with a document distributed to Chile's mayors and governors, all of whom are appointed by General Pinochet, urging them to "neutralize the opposition" and to use government resources for the benefit of the government's electoral campaign.⁴⁴ This was reported to be a particular problem in towns and the countryside in the provinces.⁴⁵ Human rights groups in Chile have reported that several mayors who were not supporting the "yes" vote enthusiastically enough have been dismissed.⁴⁶ Furthermore, the government has taken an active role in the campaign; in fact, the Minister of the Interior, Sergio Fernandez, is the official head of the "yes" campaign.

Chilean human rights groups also contend that the government has made it clear that it expects the full support of the armed forces in the "yes" campaign. They report that the Army appears the most deeply and actively involved in the "yes" campaign, but that the Air Force and Navy have requested personnel to refrain from political involvement.

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.

Given the number of Chileans who obtained the national identity cards ("*carnets*"), which are a necessary prerequisite to registering to vote, the complaints that the *carnets* were costly and administratively inconvenient to obtain are no longer a matter of serious concern.⁴⁷

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.

The government did extend the hours for voter registration in Santiago from 9:00 a.m. until 2:00 p.m., Monday through Saturdays,⁴⁸ but in other places they remained 9:00 a.m. until noon, Monday through Saturdays.⁴⁹ Registration sites were not expanded. However, given the significant voter registration, this no longer is a serious concern.

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.

Although the Registration Law was not amended to provide for sanctions against employers who penalized their employees for leaving work to register to vote or to obtain the national identity card, this also is no longer a concern given the high percentage of the Chileans who are now registered to vote.

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 electoral boards.

The Registration Law was not amended to provide for appointment of members of the registration and electoral boards by non-governmentally appointed persons. General Pinochet appointed the Director of the Electoral Service, who, in turn, appointed the members of the registration boards. The possibility that the registration boards are perceived as partial could possibly aggravate a situation in which there already exists allegations of multiple registration (see Section IV.F).

The members of the electoral boards⁵⁰ are all public officials appointed by, and widely regarded as partial to, the government. Their perceived partiality also may be a concern because these boards play an important role in selecting the voting officials ("*vocales*") who are to receive and scrutinize the votes during the plebiscite (see Section VI.B).

E. A broad array of organizations should be allowed to observe the registration process at local electoral boards. These organizations should include committees for free elections, political parties (whether or not legalized), civic organizations and similar entities.

The Law Group's April 1988 delegation heard no complaints regarding access to observe the registration process at local electoral boards. When the Law Group's April 1988 delegation visited the town of Curico, it had free access to observe voter registration at the local registration board.

F. The Electoral Service should make available the computer tapes of registered voters to any interested organization or individual. Any fee charged for the tapes should be nominal.

The Electoral Service will sell computer printouts of the voter registration rolls but will not sell the computer tapes, which are necessary to detect multiple registrations or other irregularities.⁵¹ Instead, the opposition's access to the computer tapes of the electoral rolls has been limited to using a computer terminal at the Electoral Service to check isolated specifics, *e.g.*, to determine at which voting table a certain person is registered.

In explaining the Electoral Service's refusal to make available the computer tapes of the voter registration rolls, the Director stated that he did not want to provide information in excess of what he must under the law. The Director proffered to the Law Group three specific justifications for not releasing copies of the computer tapes: first, the computer tapes are not a legal document as defined by the law and therefore are not legally certifiable; second, he was concerned that the tapes might be altered; and third, he was concerned that someone might attempt to use the tapes commercially (*e.g.*, to target certain sections of the population for advertising).

The Electoral Service's justifications for not releasing copies of the computer tapes are unpersuasive. If it had been deemed necessary for the tapes to be legally certifiable before they could be released, the Electoral Law could have incorporated a provision for certification of the tapes. Alternatively, the Electoral Registration Law easily can be amended to provide for, or dispense with, such certification. The argument that the tapes can be altered provides no support at all — any documents, including the computer printouts, can be altered (although perhaps not as easily). By maintaining the original of the tapes, the Electoral Service can adequately detect any alterations. Finally, anyone who wanted to make commercial use of the voter registration rolls could do so with the computer printouts as well as with the computer tapes.

The government's refusal to make the computer tapes available is troubling in light of allegations of multiple registration by members of the military. In July 1988, the Christian Democratic Party charged that due to double registration of soldiers from nearby areas, there were more registered voters than inhabitants in the town of Tocopilla, located in northern Chile. A high-ranking official of a prior administration (not associated with the political left) told the August 1987 delegation that he had learned that members of the military who were thought to be favorably disposed towards the government were being provided with multiple identity cards, all with their photographs but bearing different names. These soldiers had been instructed to register under different names in different parts of the country. The person told the delegation that he had personally verified the accuracy of this allegation in conversations with soldiers who had been so instructed.

If these allegations are accurate, the government would be able to conduct the plebiscite with a lower percentage of the population registered than appeared in the official rolls. In addition, if the soldiers succeeded in voting more than once, the results of the plebiscite would be skewed in the government's favor.

Even if the opposition were allowed access to the computer tapes, they would not

be able to detect multiple registration by people using different national identity cards. However, by having access to the computer tapes, the opposition could detect double registration by anyone who registered at more than one voting table using the same name and national identity card. For this purpose the computer tapes should be made available to the opposition.

G. The committees for free elections should review the computer tapes or printouts to detect irregularities in the registration process.

The National Command for the No unsuccessfully has sought access to the computer tapes to detect the multiple registrations or other irregularities to the extent possible. Leaders of the opposition maintain that a computer printout of the electoral rolls is totally inadequate to detect even the simplest case where a person has registered (improperly) at more than one voting table using his same name and identity card. To detect multiple registration of this kind, the opposition would have to cross-check the name and identity card number of each individual voter registered in each *comuna* against seven million other individuals. It is impossible to do this manually. Because the opposition parties had been unable to secure the computer tapes, they were seeking resources to enable them to input the registration rolls as listed on the computer printouts into computer banks.

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.

The Law Group is unaware of any prosecutions for improper registration. However, the Director of the Electoral Service told the Law Group's April 1988 delegation that the Electoral Service was engaged in the process of detecting multiple registration. He reported that to detect multiple registration the Electoral Service had cross-checked the voter registration rolls with the computer rolls of the *carnets* maintained by the Civil Registry. As of August 1988, approximately 100,000 names had been removed from the registration lists due to death, change of address and criminal convictions.

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 and remove unreasonable limitations, such as 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.

For over fifty years, the Chilean political arena accommodated political parties from the far left to the far right within a pluralistic tradition of political activity. Historically, dozens of parties have participated successfully in the Chilean political process. During this century more than forty parties were represented in Congress before it was dissolved.⁵² For national elections, parties formed coalitions to propose candidates.

Soon after the coup in 1973, all political parties were dissolved and declared illegal. While continuing to function *de facto*, parties remained in legal limbo until the adoption of the Constitutional Organic Law Concerning Political Parties ("Political Parties Law") in March 1987. This law sets forth a procedure by which political parties may become legally constituted and regulates the internal organization and financing of parties and similar matters.⁵³

Parties subject to Article 8 of the 1980 Constitution may not become legally constituted. Article 8 declares illegal

any action intended to propagate doctrines which are antagonistic to the family, or which advocate...a concept of society...of a totalitarian character or based on class struggle.

It also declares unconstitutional "[t]he organizations and political movements or parties which, due to their purposes or the nature of the activities of their members, tend toward such objectives."

At present, two parties have been declared unconstitutional: the Communist Party and the Socialist Party (Almeyda faction). Hence, they cannot be legalized and will be unable to have voting observers for the day of the plebiscite and for the vote count. They are participating, however, in other ways. The Socialist Party (Almeyda faction) is a member of the National Command for the No, a coalition of 14 political parties working for a "no" victory in the plebiscite. In addition, both parties officially have urged their members to register to vote and to vote "no" in the plebiscite. The Law Group believes that all political parties that desire to participate peacefully in the democratic process should be allowed 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 problems that may exist with the current party registration process.

Although the government did not reduce the number of signatures necessary to form a party, or provide a lengthier registration period, there has been significant progress in the legalization of political parties. As of August 1988, six national parties (*i.e.*, National Renovation Party, Humanists Party, Christian Democratic Party, Party for Democracy, National Advance Party, and the Radical Party) and six regional parties (*i.e.*, National Party, Radical Democracy Party, Southern Party, Social Democratic Party and the Green Party, Chilean Socialist Party) had been legalized.

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

Many individuals, particularly public employees, are afraid that they will lose their jobs if they join a political party. Since party registrants must register before notaries public, who are government officials, and disclose their addresses and national identification numbers, the fear of being identified by party affiliation is quite real. Moreover, the fear of losing employment is not unfounded, according to some people with whom members of the April 1988 delegation met.

For example, the leaders of the National Party, a conservative party that has advocated multi-candidate elections, told the Law Group's April 1988 delegation that approximately 100-150 public employees were fired after registering as party members. In the end, however, many people overcame their fears; permitting the legalization of a larger number of parties than had been expected.

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

Political parties are allowed by law to publicize their positions and call for citizens to join them. The Electoral Service confirmed that it is not illegal to solicit signatures of new members in the open streets. Nevertheless, virtually all opposition parties were harassed during their period of formation;⁵⁴ frequently their workers were arrested and detained and/or prohibited from soliciting signatures.⁵⁵ In spite of these impediments, as noted, six national parties and six regional parties were legalized prior to the plebiscite.

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

The Political Parties Law states that only those parties which have completed registration procedures *four months prior to an election* are entitled to maintain headquarters at the polling places and to send observers ("*apoderados*") to monitor the voting and the counting. This four-month requirement has no apparent legitimate purpose and is particularly disturbing because the Electoral Law gives the government candidate the right to have his own *apoderado* at every voting table. However, the practical impact of this requirement has been vitiated by an August 1988 amendment to the Electoral Law which provides that within five days after convocation of the plebiscite, independent groups that can produce the signatures of 20,000 people may register to observe the plebiscite.

VI. ELECTORAL EXERCISE

A free electoral exercise requires that the integrity of the balloting process be respected. Thus, any electoral exercise should be announced 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 certainty in the electoral and registration process.

The junta submitted the draft electoral law to the Constitutional Tribunal, and the Tribunal ruled on its constitutionality in April 1988. In May, the law was published in the Official Gazette (*Diario Oficial*) but without any of the changes required by the Tribunal. In August 1988, amendments to the electoral law were approved, including the changes required by the Constitutional Tribunal. The pertinent laws thus appear

to have been finalized. For a summary of the Electoral Law and the electoral process, see Appendix I.

- 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 their positions.**

The procedure for appointing polling officials ("*vocales*") has changed for the worse since the Law Group's August 1987 visit. The draft law then provided that *vocales* were to be chosen at random from among volunteers. The procedure that was ultimately enacted in the election law passed in May 1988 requires each member of the electoral board to choose five persons from among those registered to vote at a given table. The members are to choose those they consider best suited to be *vocales*. (In a newspaper interview, Juan Ignacio Garcia, Director of the Electoral Service, said that the electoral boards would nominate *vocales* based on information in the voter registration books, such as the voter's profession and literacy).⁵⁶ These 15 names are to be placed on a list in alphabetical order, and the lists are to be maintained in public books by the secretary of the electoral board.

On the 19th day before the plebiscite, the electoral boards are to choose by lot five numbers from 1 to 15. The names corresponding to these numbers on the lists are to serve as *vocales* at each voting table. The electoral boards are also to pick five additional numbers, which are to represent alternates, in case any of the first five are disqualified or excused.

In short, there has been a shift from a system of choosing *vocales* from among volunteers to a system whereby *vocales* are chosen from among persons nominated by the electoral boards. The Electoral Law provides a procedure, albeit limited, for challenging the selection of a particular *vocal*. Challenges to a *vocal* must be lodged with the Electoral Board within three days after publication of the results of the lottery for selection of *vocales*. The Electoral Board is then supposed to hold a hearing and resolve the challenge. This procedure would not allow a challenge to a *vocal* on the day of the plebiscite, for example, if a voter were to recognize a member of the military serving as a *vocal* in civilian dress. The electoral boards for each province are comprised of the following government officials: the district attorneys, the public defender, and the registrar of deeds.

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

Article 2 Transitory of the Electoral Law provides that the provisions of the Electoral Law would apply to the plebiscite "insofar as they are applicable." However, it seems evident now that the Electoral Law as it was adopted in April and amended in August 1988, will be applicable to the upcoming plebiscite in light of the numerous transitory provisions dealing specifically with the 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.**

As noted above, *vocales* are now to be chosen from among names selected by the electoral boards, and the electoral boards are to choose the persons they consider most "suitable" to serve as *vocales*. The Law Group's August 1987 delegation was informed that members of the military had been ordered (purportedly for national security reasons) to register as "public employees." It will thus be impossible to tell from the registration rolls who is and who is not a member of the armed forces. Indeed, since it is likely that "public employees" will be deemed particularly "suitable" to serve as *vocales*, it is possible that members of the military will ultimately be selected to serve as *vocales* unless some method is found to enforce the provision of the electoral law that prohibits the military from so serving.

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

The final version of the Electoral Law adopted in April 1988 did not change the provisions of the 1987 draft on this question — the Director of the Electoral Service still has until the sixth day following the plebiscite to begin releasing provisional results. However, in addition to this official count, there will be unofficial counts conducted by, among others, the Minister of the Interior, the National Command for the No, and the Committee for Free Elections. These counts should be available within several hours after the polls close on the day of the plebiscite.

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.

While the Chilean opposition has enthusiastically welcomed the presence of international observers for the plebiscite, the Chilean government has adopted a more ambivalent attitude. In a Diplomatic Note sent by the Chilean Foreign Ministry to all foreign diplomats based in Chile in May 1988, the government indicated that it would "not recognize for any foreign citizen the attributes of 'inspector,' 'comptroller' or 'examining observer.'"⁵⁷ The Note continues by stating that "foreign citizens may * * * witness the development of the election acts in which voters recognized by the political constitution and legislation are participating."⁵⁸ Thus, as subsequently made clear by government officials, foreign citizens will be able to enter Chile on tourist visas, will be able to go where and talk with whom they want and will be free to observe the actual voting process to the same extent as ordinary Chileans (but observers will not have the same access to the balloting process as would the *apoderados*). While it is hoped that the government will provide observers with some official credential, the regulations announced by the Foreign Ministry should not prevent observers from fulfilling the functions they have fulfilled in other recent Latin American elections.

CONCLUSION

This Supplemental Report has emphasized the plebiscite process. However, as Chileans recognize, regardless of which side wins the plebiscite, there will be a need for negotiations between the government and Chile's political leaders over fundamental issues. The political opposition, undoubtedly, will seek amendments to the Constitution so as to eliminate its more pernicious provisions. According to the 1980 Constitution, elections for a national legislature (and president if the no wins) must be scheduled for sometime before March 1989. The potential for violence and increased human rights violations also should not be overlooked. Consequently, the Law Group will continue to monitor the situation in Chile during the critical period after the plebiscite is conducted. It urges the international community to do likewise.

FOOTNOTES

¹ See Organization of American States, *Report on the Situation of Human Rights in Chile*, at 10 (1985).

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 Supplemental Report will refer to the Guidelines or the commentary in assessing the Chilean electoral process.

³ Political Constitution of the Republic of Chile [hereinafter "1980 Constitution"], Transitory Provision Twenty-Eight.

⁴ The Council of State was established in 1976 to review the actions and decisions by the various government officials to determine whether they protect the "new institutional order" and also to advise the President on such matters as proposed constitutional amendments, executive decrees, and implementation of international agreements. The role of the Council of State continues until the Congress is established.

⁵ The Commanders-in-Chief have 48 hours to come to a unanimous decision; if they do not, the National Security Council would select the candidate.

⁶ For a description of the voter registration process, see International Human Rights Law Group, *Report on Chilean Electoral Process*, at 25-29 (November 1987).

⁷ Interview with Vicariate of Solidarity, Santiago, Chile (April 1988); See also "Chile at the Crossroads," A Report to the House of Delegates of the American Bar Association by the Delegation to Chile, at 11 (to be published in September 1988).

⁸ Interview with Vicariate of Solidarity, Santiago, Chile (April 27, 1988).

⁹ Under Article 8 of the 1980 Constitution, individuals or organizations that espouse "doctrines that are antagonistic to the family, or...advocate...a concept of society...of a totalitarian character or based on class struggle" may be declared unconstitutional.

¹⁰ America's Watch, *CHILE: Human Rights and the Plebiscite*, at 58, Washington, D.C. (July 1988).

¹¹ Vicariate of Solidarity, 1987 Annual Report on Human Rights Violations, ¶ 9, Santiago, Chile (1988); Fernando Volio Jimenez, Special Rapporteur, United Nations, "Question of Human Rights in Chile," ¶ 94 (February 5, 1988).

¹² On June 11, 1987, the government promulgated Law No. 18.683 which required that the CNI detain persons solely in their houses or prisons. America's Watch, *CHILE: Human Rights and the Plebiscite*, at 86, Washington, D.C. (July 1988).

¹³ Interview with Vicariate of Solidarity, Santiago, Chile (April 1988); Interview with United Left, Santiago, Chile (April 27, 1988).

¹⁴ Vicariate of Solidarity, Preface, 1987 Annual Report on Human Rights Violations, ¶ 6, Santiago, Chile (1988); Fernando Volio Jimenez, Special Rapporteur, United Nations, "Question of Human Rights in Chile," *passim* (February 5, 1988).

¹⁵ Fernando Volio Jimenez, Special Rapporteur, United Nations, "Question of

Human Rights in Chile," ¶¶ H.1 and H.2 (February 5, 1988); Vicariate of Solidarity, Preface, 1987 Annual Report on Human Rights Violations, ¶ 4, Santiago, Chile (1988).

¹⁶ Inter American Press Association, Report of the Committee on Freedom of the Press and Information, at 4-6, Santiago, Chile (November 1987); *see also* Inter American Press Association, Report of the Committee on Freedom of the Press and Information, Costa Rica (March 1988).

¹⁷ *New York Times*, August 26, 1988 (reporting on the issuance of an Amnesty International report that said "that 128 Chileans had been assaulted or kidnapped in the last 18 months and that hundreds more had received death threats").

¹⁸ Interview with Vicariate of Solidarity, Santiago, Chile April 27, 1988; Interview with United Left, April 1988; Vicariate of Solidarity, "Right to Freedom of Opinion and Information, September 1987-April 1988," at 5-8, Santiago, Chile (April 1988); *see also* Fernando Volio Jimenez, Special Rapporteur, United Nations, "Questions of Human Rights in Chile," ¶¶ C.4, C.14 (February 5, 1988).

¹⁹ 1980 Constitution, art. 95 and Transitory Provision 27.

²⁰ Although electoral propaganda is permitted officially only from the 30th to the 3rd day preceding the plebiscite, there will undoubtedly be some form of campaigning during the entire period from the convocation to the day of the voting.

²¹ For example, on April 30, 1988, an election official in the town of Curico told the Law Group's delegation that military personnel were ordered to register shortly after the voter registration process began and were allowed to register at the military bases.

²² Organic Constitutional Law on Voting and Scrutiny, adopted in April 1988 and published in the *Diario Oficial* on May 6, 1988.

²³ *See* Appendix I.

²⁴ Conference of Catholic Bishops, Report on Bishops' Criteria for an Open and Honest Plebiscite, at 6, Santiago, Chile (March 1988).

²⁵ *La Epoca*, April 28, 1988.

²⁶ Lecture by Genaro Arriagada, Georgetown Latin American Forum, Washington, D.C. (June 29, 1988).

²⁷ Interviews with members of the Journalists Union, Santiago, Chile (November 1987).

²⁸ Conference of Catholic Bishops, Report on Bishops' Criteria for an Open and Honest Plebiscite, at 5, Santiago, Chile (March 1988); Fernando Volio Jimenez, Special Rapporteur, United Nations, "Questions of Human Rights in Chile," at 47 (February 5, 1988). Ms. Gonzalez was sentenced to 61 days in jail by a Santiago Court of Appeals. The sentence was suspended and Ms. Gonzalez is now free, under the jurisdiction of a parole board. However, Ms. Gonzalez subsequently was charged for a violation of the military code for disseminating "offensive statements" after publishing an interview with Ms. Karin Alicia Eitel, in which Ms. Eitel denounced being tortured while in government custody.

²⁹ Inter American Press Association, Report of the Committee on Freedom of Press and Information, at 2, Costa Rica (March 1988).

³⁰ Conference of Catholic Bishops, Report on Bishops' Criteria for an Open and Honest Plebiscite, at 5, Santiago, Chile (March 1988).

³¹ Inter American Press Association, Report of the Committee on Freedom of Press and Information, at 6, Santiago, Chile (November 1987); Inter American Press Association, Report of the Committee on Freedom of Press and Information, at 1, Costa Rica (March 1988).

³² On August 25, 1988, the government arrested Francisco Herreos, the editor of an opposition news magazine, for the offense of "insulting the armed forces." *New York Times*, August 26, 1988.

³³ Amnesty International has found "convincing evidence" that the kidnappings and hundreds of death threats in Chile were perpetrated by groups linked to security forces. *New York Times*, August 26, 1988. Interview with Vicariate of Solidarity, Santiago, Chile (April 27, 1988); Interview with Journalists Union, Santiago, Chile (April 1988).

³⁴ Conference of Catholic Bishops, Report on Bishops' Criteria for an Open and Honest Plebiscite, at 6, Santiago, Chile (March 1988).

³⁵ See International Human Rights Law Group, *Report on the Chilean Electoral Process* at 21 (November 1987).

³⁶ Previously, newspapers and magazines were required to obtain a government permit before starting publication or before changing their publication schedules.

³⁷ Interview with Radio Cooperativa, Santiago, Chile (April 28, 1988).

³⁸ All meetings which occurred in public places had to be authorized by the Zone Chief for the State of Emergency, according to Edict No. 54 of June 1, 1988.

³⁹ Vicariate of Solidarity, "Right to the Freedom of Opinion and Information, September 1987-April 1988," at 5-8, Santiago, Chile (April 1988).

⁴⁰ Vicariate of Solidarity, "Right to the Freedom of Opinion and Expression, September 1987-April 1988," at 5-6, Santiago, Chile (April 1988).

⁴¹ Interview with United Left, Santiago, Chile (April 27, 1988).

⁴² Interview with United Left, Santiago, Chile (April 27, 1988); Interview with Commission of Human Rights, Curico, Chile (April 30, 1988).

⁴³ Interview with United Left, Santiago, Chile (April 27, 1988); Interview with Commission of Human Rights, Curico, Chile (April 30, 1988).

⁴⁴ America's Watch, *CHILE: Human Rights and the Plebiscite*, at 160-164, Washington, D.C. (July 1988).

⁴⁵ Interview with United Left, Santiago, Chile (April 27, 1988); Interview with Commission of Human Rights, Curico, Chile (April 30, 1988).

⁴⁶ America's Watch, *CHILE: Human Rights and the Plebiscite*, at 164, Washington, D.C. (July 1988).

⁴⁷ Interview with United Left, Santiago, Chile (April 27, 1988).

⁴⁸ Interview with Director of the Electoral Service, Santiago, Chile (April 29, 1988).

⁴⁹ Interview with registration officials, Curico, Chile (April 30, 1988).

⁵⁰ The Registration Law establishes three-person electoral boards for each province, comprised of the district attorney, the public defender, and the registrar of deeds.

⁵¹ For example, in early 1988 the Christian Democratic Party purchased the computer printout of the electoral rolls for \$3,000 (U.S. dollars). But when the National Command for the No (a coalition of opposition political parties) formally requested a copy of the computer tapes, the Electoral Service refused to either sell or give a copy to the opposition forces. It is, of course, possible to make copies of the computer tapes, for when the April 1988 delegation toured the offices of the Electoral Service, it was shown two sets of the tapes.

⁵² A. Valenzuela, "Electoral Traditions in Chile," in *Chile on a Path to Change*, at 4 (Washington Office on Latin America 1986).

⁵³ This law emanates from article 19, ¶ 15 of the 1980 Constitution. That provision states, *inter alia*, that "[p]olitical parties may not intervene in activities other than their own..." Thus there appear to be activities that are illegal for parties to engage in, but it is not clear what those activities are.

⁵⁴ Vicariate of Solidarity, "Right to the Freedom of Opinion and Information, September 1987–April 1988," at 5, Santiago, Chile (April 1988).

⁵⁵ Most recently, the Humanist Party reported that its workers were being arrested daily, interrogated and detained for up to three days. Furthermore, three of its workers had been tortured.

⁵⁶ *El Mercurio*, January 24, 1988.

⁵⁷ Diplomatic Note, Rules Governing Plebiscite Observers (issued May 31, 1988) (on file with the Law Group).

⁵⁸ *Id.*

APPENDIX

SUMMARY OF CHILEAN ELECTORAL LAW

The Constitutional Organic Law on Popular Voting and Scrutiny (hereinafter "Electoral Law")^{1/} regulates the acts preparatory to an election or plebiscite, including the dissemination of electoral propaganda; the conduct of the voting; the scrutiny of the votes at the local, regional, and national levels; the maintenance of public order throughout the process; and the sanctions and judicial procedures applicable to violations of the Electoral Law. It also includes transitory provisions specifically addressing the plebiscite.

A draft of this law was published on June 25, 1987 and summarized in Appendix C of the International Human Rights Law Group's November 1987 Report on the Chilean Electoral Process. A modified version was approved by the governing junta on January 14, 1988 and submitted to the Constitutional Tribunal for its review. The Tribunal handed down its decision on April 8, 1988, finding several provisions unconstitutional and holding that additional provisions were required, including provisions regulating access to television for purposes of electoral propaganda.^{2/} On April 19, 1988, President Pinochet signed and promulgated the January version of the law, with certain minor modifications, and this version was published in the Diario Oficial on May 6, 1988. The law was amended on August 2, 1988, to cure many of the deficiencies found by the Constitutional Tribunal.

What follows is a summary of the version of the Electoral Law promulgated on May 6, 1988, as amended on August 2, 1988.

1. Convocation of the Plebiscite

The 1980 Constitution provides that the plebiscite is to be held not less than thirty days or more than sixty days after the date on which "the name of the person who should assume the post of President of the Republic" is "propose[d] to the country" (Constitution, article 27

1/ *Ley Orgánica Constitucional Sobre Votaciones Populares y Escrutinios*, Ley Núm. 18.700, Diario Oficial, May 6, 1988, as amended August 2, 1988.

2/ See La Segunda, April 8, 1988, pp. 10-11.

transitory).3/ The same article provides that "the designation is to be communicated to the President of the Republic for the effects of convoking the plebiscite" (id.).

The Electoral Law provides that the President is to convoke the plebiscite by issuing a supreme decree within forty-eight hours after the name of the designee is communicated to him by the Junta or the National Security Council, and that the plebiscite is to take place not less than thirty days or more than sixty days after the date the name of the designee is "proposed" (article 4 transitory).

The Electoral Law does not indicate whether the thirty-to-sixty-day period begins to run from the date of the submission of the designee's name to the President or from the date of the President's convocation of the plebiscite. It also does not specify the time or manner of announcing the plebiscite to the public. The Constitutional Tribunal held, however, that the convocatory decree is to be published in the Diario Oficial and that the thirty-to-sixty-day limitation begins to run from the date of the decree's publication.

2. Preparatory Acts

a. Ballots. The Electoral Law specifies that the ballots are to be designed by the Electoral Service and printed in a clearly legible form on paper that is not transparent, carries the seal of the Service and indicates where it is to be folded (article 22). It is to be headed "Plebiscite -- President of the Republic," and the name of the person designated is to be printed below the heading, with two horizontal lines on its left (article 6 transitory). One of the lines is to have the word "YES" printed over it, and the other the word "NO" (id.). The voter is to indicate his preference by forming a cross with a vertical line in the appropriate place (id.)

The ballot is to contain adhesive on the top border so that it can be closed simply by moistening or pressing when folded as indicated (article 22). It is to be designed so that, when closed, it is absolutely impossible to detect the preference marked by the voter (id.). A stub ("talón") is to be attached by perforation to its upper right side, indicating its series and number (id.).

3/ Unless otherwise specified, all citations are to the Electoral Law.

On the tenth day before the plebiscite, and again on the day before the plebiscite, the Electoral Service is to publish a facsimile of the ballot in a newspaper of general circulation in each province (article 29). Posters reproducing facsimiles of the ballot are to be placed by the Electoral Service in public places during the ten days preceding the plebiscite (id.).

b. Electoral Propaganda. The Electoral Law defines "electoral propaganda" as any propaganda seeking to induce voters to cast their votes for particular candidates or to support particular positions with respect to questions that are the subject of a plebiscite (article 30). The draft law provides that electoral propaganda may only be financed with funds originating within the nation (id.).

Electoral propaganda in the press and on radio and television is permitted only from the thirtieth through the third day preceding an election or plebiscite (article 31). The same is true with respect to electoral propaganda through flyers or lighted or projected notices, or on banners (article 32). Electoral propaganda is prohibited in movie theaters and video halls, and is permitted through loudspeakers only to transmit speeches at public gatherings (id.). The law prohibits the painting or affixing of electoral propaganda on exterior walls, posts, bridges, sidewalks, public service installations, and other urban fixtures such as fountains, statues, stoplights, and benches (id.).

During the twenty days preceding the plebiscite, municipalities are required to place and maintain in public places billboards or murals containing propaganda for both sides on any question that is the subject of a plebiscite (article 34). In every locality, there must be at least one such billboard or mural for each 10,000 people, up to a maximum of fifteen (id.).

Political parties may display signs, banners, posters, and other electoral propaganda on the façades of their official headquarters and propaganda offices, up to a maximum of five in each ward ("comuna"), during the thirty days preceding the plebiscite (article 33).

The Electoral Law requires all television channels of free reception to devote thirty minutes daily to electoral propaganda free of charge (article 12 transitory). The time is to be divided equally between the presidential candidate on the one hand and those that support a "no" vote on the other

(id.). The political parties and independents^{4/} that support a "no" vote are to allocate the time among themselves by mutual agreement (id.). If they cannot agree, the time is to be allocated among them by the National Council on Radio and Television (or, if that Council is not yet in existence, by the National Council on Television) in proportion to the number of members they have (articles 12 transitory, 14 transitory). No other electoral propaganda may be broadcast on television (article 31 *bis*).

The *Carabineros* are to monitor compliance with the Electoral Law's provisions concerning electoral propaganda, except those dealing with the press, radio, and television (article 35). They have the power to remove any noncomplying propaganda, either on their own initiative or at the request of any person, and they must report any such removal to the competent judge (id.).

c. Voting Tables. The purpose of the voting tables ("*mesas receptoras de sufragios*") is to receive the votes, to scrutinize the votes, and to perform the other functions provided in the law (article 36). Ordinarily, there is to be one voting table for each registration book, but registration books may be combined so long as no voting table is responsible for more than 350 voters (id.). The Director of the Electoral Service is to determine the number of voting tables and the electoral registers corresponding to each table on the fifth day following the convocation of the plebiscite (article 38).

Each voting table is to be manned by five *vocales* (article 38), although they may function with as few as three (article 57). The following persons may not be *vocales*: anyone who is a candidate or related to a candidate (the degree of consanguinity is specified); ministers of state; subsecretaries; *intendentes*^{5/}; governors; mayors; chiefs of services; the Comptroller General; members of the armed services or of the public order and security forces; blind persons; illiterates; and persons who have been found guilty of electoral crimes or violations (article 40).

4/ Independents are given the same rights as political parties under the Electoral Law if they obtain a specified number of signatures and satisfy certain other requirements (article 13 transitory).

5/ "*Intendentes*" denotes heads of regions.

Vocales are to be chosen as follows: Each member of the electoral board is to choose five names from among those persons registered to vote at each table within its jurisdiction (article 41).^{6/} They are to choose the persons that they consider most suitable to serve as vocales (id.). (The law does not set forth criteria for determining which voters are most "suitable" to be vocales.) The fifteen names chosen for each table are to be listed in alphabetical order, and the names are to be numbered consecutively from 1 to 15 (id.). With respect to those registration books that have been closed, the electoral boards were to have begun compiling these lists ("nóminas") at the time the Electoral Law entered into force (article 8 transitory). The lists are to be collected in books which are to be maintained by the secretary of the electoral board and which are to be public (article 42). With respect to those registration books which had not been closed at the time of the plebiscite's convocation, the lists cannot be compiled until the Director of the Electoral Service designates the voting tables pursuant to article 38 (which is to be done five days after the plebiscite's convocation).

At a public session to be held at 2:00 P.M. on the nineteenth day before the plebiscite at the office of the secretary of the electoral board, the electoral boards are to choose at random ten numbers from 1 to 15 (article 41). Copies of the lists of the fifteen names that had been selected for each table are to be posted at the secretary's office during this session (article 42). The names on each list corresponding to the first five numbers chosen at the public session are to be the vocales at each voting table within the electoral board's jurisdiction (article 41). The remaining five are to serve as alternates (id.).

The secretary of the electoral board is to publish the minutes of the public session, including the names of the vocales chosen for each table, in a newspaper within five working days of the session, and this information is also to be posted at the secretary's office (article 43). Within the same period each vocal chosen is to be notified of his

^{6/} The electoral boards were established pursuant to the Constitutional Organic Law on the Electoral Registration System and the Electoral Service, which became effective in October 1986 (Law No. 18.556) [hereinafter "Registration Law"]. There is one electoral board in each province, comprised of the public defender, the registrar of deeds, and either the district attorney or the notary public (id., articles 4, 6).

selection in a certified letter indicating the date, time, and place in which he is to function as a vocal and the names of the other *vocales* chosen for his table (id.).

During the three working days following the publication of the public session's minutes, *vocales* may seek to be excused, but only on specified grounds (article 44). During the same period, any person may seek to exclude any person from serving as a vocal on the ground that he does not meet the qualifications set forth in the Law (id.). The electoral board is to meet at 9:00 A.M. each morning from the second to the fifth days following the publication of the public session's minutes to consider any requests for excusal or exclusion (article 45). If any vocal is excused or excluded, the electoral board is to designate the replacement selected at the public session (article 46). The minutes of these excusal or exclusion sessions are to be published by the secretary of the electoral board within two days (id.).^{7/}

The *vocales* of the tables are to meet at 2:00 P.M. on the last Saturday before the third day preceding the plebiscite (article 49). The meeting is to be held at the place where the voting table is to function or at another place designated by the electoral board (id.). The delegate appointed by the electoral board for that voting precinct is to preside over these meetings (id.). (The responsibilities of these delegates are discussed below at page 12.)^{8/}

At this meeting, the voting table is to constitute itself and its members are to elect a president, a secretary, and a deputy (article 50). If a majority of a table's *vocales*

^{7/} It is unclear whether there will be an opportunity to request excusal or exclusion of these replacement *vocales*. Although the law does not expressly contemplate it, presumably excusal or exclusion of alternates may be sought during the same three-day period applicable to *vocales*; anyone who has cause to challenge the qualifications of an alternate would be well advised to do so during this period. However, the Law does not appear to require that the names of the alternates be published, or that the alternates be notified of their selection as alternates.

^{8/} It is unclear how this will work, as there will be many voting tables meeting simultaneously at each precinct, but only one delegate per precinct.

do not show up for this meeting, however, the table is not to be constituted until the day of the plebiscite (article 51).^{9/}

d. The Voting Locations. The locations at which voting is to take place are to be designated at the same public session at which the vocales are named (article 52). In designating locations, the electoral boards are to take into account the views of the military chiefs of the corresponding municipalities (id.). The pertinent military chief is required to report to the electoral board by the fifth day following the plebiscite's convocation on the public or private locations best suited for the functioning of the tables, the installation of voting booths, and the maintenance of public order (id.). The chief or his representative may also attend the public session and propose other locations (id.). Once the locations have been designated, they may be changed only for cause and with the approval of the Electoral Service (id.). The locations selected are to be published in the minutes of the public session, and the owners of any private property or the governors of any public property selected are to be notified at least ten days before the election (id.).

The municipalities are responsible for installing the tables at the designated locations and providing the tables, chairs, urns, and voting booths, as well as installing the electrical power necessary to illuminate the place where the voting is to take place (article 53). The urns are to have a lock, and are to be transparent on the side facing the public (id.). The voting booth is to have only one door and no window, and is to be designed in such a way as to assure the total privacy of the voter (id.). There may be more than one voting booth per voting table (id.).

^{9/} Any vocales who do not show up to this meeting at the appointed time would be guilty of an electoral offense under article 141 of the Law, and, if convicted, would be ineligible to serve as vocales under Article 41. It is unclear, however, whether there will be an opportunity to request be exclusion of vocales after the electoral board's excusal and exclusion sessions described above. The delegates of the electoral boards are responsible for making sure that the voting tables are duly constituted and designating replacements for vocales that do not show up (article 54). It is unclear whether this power extends to replacing vocales who become ineligible to serve as vocales as a result of their conviction for failure to show up for the meeting described in section 49.

The electoral boards are to maintain an electoral office at each voting location, each of which is to be in the charge of a delegate of the electoral board, who is preferably to be a notary public, or, in his absence, a public official of one of several other specified categories (article 54). The delegate is responsible for informing voters where they are to vote, supervising the constitution of the voting tables and designating replacements for *vocales* that do not show up, delivering the electoral implements, instructing blind voters on the use of the special ballot provided for them, receiving the electoral implements after the voting has ended, collecting the results of the scrutinies by the voting tables in the precinct and informing the Provincial Governor and the Director of the Electoral Service of the results, and summoning, when necessary, the public force responsible for the maintenance of public order (id.).

3. The Electoral Act

a. The Installation of the Voting Tables. The *vocales* of each table are to meet at the designated voting places at 7:00 A.M. on the day of the plebiscite (article 57). If a quorum of *vocales* (three) is not present, the delegate is to choose replacements from among the literate, able-bodied voters registered in the precinct (not necessarily at the table) until a quorum is formed (id.). When a quorum is formed, the *vocales* are to proceed to elect a president, a secretary, and a deputy, if that has not already been done (article 58). They are then to receive from the delegate of the electoral board the packet containing the necessary voting implements (id.). After opening the packet, they are to indicate on the blank pages in the registration book the time of installation of the voting table, the names of the *vocales* present, the names and party affiliations of the *apoderados* present,^{10/} and a detailed description of the voting implements inside the package and the state of the seal (id.). The *vocales* that arrive late are to be incorporated into the table until the table has a total of five *vocales* (id.).

The *vocales*, in the presence of the *apoderados*, are then to proceed to fold the ballots as indicated thereon and then to unfold them so that they may be given to the voters in that form (article 59). The president is then to place the urn on the table, check the voting booth to make sure that it

^{10/} *Apoderados* are representatives of political parties (and certain other persons or groups). Their rights and duties are discussed at pages 37-38, below.

complies with the requirements regarding privacy, and remove any political propaganda that may be present in the chamber (id.). After this is done, he is to declare the voting open (id.).

b. Voting. All citizens are required to vote, and those who do not are subject to a fine (articles 60, 139). Only registered citizens and foreigners are eligible to vote (article 60).11/

The vote is to be cast in secrecy and without any pressure (article 61). All voters, except those who are blind or handicapped, are to approach the voting table and enter the voting booth unaccompanied (id.). If a voter violates this norm, the president is to make sure that he votes without any pressure, and, after the vote is cast, he is to have the voter and his companion taken to the criminal judge (id.). Simple accompaniment is a sufficient cause for detention (id.).

Upon arriving at the voting table, the voter is to give the president his national identity card (article 62). After verifying the identity of the voter and the validity of the identity card, the secretary or a vocal is to note the number of the identity card on the corresponding line in the signature notebook that is to be provided by the delegate from the electoral board (id.). The voter is to sign or place his thumbprint on the corresponding line in the notebook (id.). If there is a clear and manifest disparity between the voter's signature or thumbprint in the signature notebook and that in the registration book, the president is to summon the identification expert who is to be present at each voting location (article 63). The voter is to be permitted to vote only if the expert determines that there is not in fact a disparity (id.). If the expert finds a disparity, this fact is to be noted in the registration book and the voter is to be taken to the criminal judge immediately (id.).

Once the voter is found to be eligible to vote, he is to be given an unfolded ballot, the number of which is to be noted down next to the signature or thumbprint in the signature notebook (article 64). He is also to be given a black graphite pencil with which to mark his preference (id.). The voter is then to enter the voting booth and remain therein for no more than one minute (id.). The vocales and the

11/ Foreigners may register to vote if they have resided in Chile for more than five years and meet the additional requirements applicable to citizens (Constitution, article 14; Registration Law, article 37).

apoderados are to make sure that the door or curtain remains closed while the voter is in the booth and that the voter's privacy is maintained while he is voting (id.). Inside the booth, the voter is to mark his preference and then close the ballot by folding it as indicated and moistening or pressing it as appropriate (article 65).

After closing the ballot, the voter is to exit the booth and hand it to the president so that the *vocales* can verify that it is the same one that was handed to him (id.). After ascertaining that the ballot does not contain any external marks, the president is to remove the stub and return the ballot to the voter, who is then to deposit it in the urn (id.). After depositing the ballot in the urn, each voter is to place his right thumb in indelible ink at the voting table, and only after having done so is his identity card to be returned to him (article 66).

If a ballot is rendered unusable by the voter, this fact is to be noted on the back of the ballot and the voided ballot is to be saved so that it may be taken into account during the scrutiny of the votes (article 67). The president of the table is then to hand the voter another ballot so that he may vote (id.). However, no voter is to be given more than one replacement ballot and, as there will be only ten percent more ballots than voters registered to vote at each table, no more than ten percent of the ballots may be used for replacement purposes, unless immediately before the closing of the voting ballots are remaining (articles 55, 67).

The voting is to be declared closed after all of the voters registered to vote at the table have voted, or after the table has been functioning for nine consecutive hours and there are no other voters that desire to vote (article 68). In any event, the voting must be closed by midnight (id.). The secretary or a *vocal* is to write "did not vote" in the signature notebook next to the names of the registered persons who did not vote (id.).

c. Scrutiny of the Votes at the Voting Tables.

After the voting has been declared closed, the votes are to be scrutinized by the *vocales* at the same place where the votes were received, in the presence of the public and of the *apoderados* and candidates that may be present (article 69). Any scrutiny of the votes that is conducted at a place other than that at which the votes were received is presumed to be fraudulent (id.).

This scrutiny is to be conducted as follows:

1. The president is to count the number of voters who have voted according to the signature notebook, and the number of stubs removed from the ballots submitted during the plebiscite (article 71(1)).

2. The urn is then to be opened and the ballots counted and signed on the back by the president and the secretary, or by the vocales designated by the president. Any disparity between the number of the signatures in the signature notebook, the number of stubs, and the number of ballots is to be indicated in the registration book. However, this disparity does not prevent the scrutiny of all of the ballots that have been cast (article 71(2), (3)).

3. The secretary is then to open the ballots and the president is to read them out loud (article 71(4)).

4. A ballot is to be considered null and is not to be scrutinized if more than one preference is marked on it (article 71(5)). If a ballot is annulled, this fact, and whether or not a claim was made with respect to its annulment, are to be explained on the back of the ballot (id.).

5. The ballots that the voting table considers marked are to be scrutinized, but accidents deemed to be marks are to be noted in the registration book (id.). Ballots that are submitted without the necessary folds are to be considered marked (id.).

6. Votes not containing the mark that the voter was required to make are to be scrutinized as blank (id.).

7. The foregoing operations are to be performed by the president, the secretary and the remaining vocales (article 71(6)).

8. After the scrutiny is completed, the secretary is to deliver to the delegate of the electoral board the minutes containing the results signed by the vocales, and a copy of the minutes is to be affixed to a visible place at the table (article 71(7)).

9. The vocales, apoderados and candidates are to have the right to request a certified copy of the results of the scrutiny after it is completed (article 71(8)).

Once the scrutiny is completed but before closing the minutes, the president is to place the ballots in the corresponding envelopes provided by the electoral board, separating the ballots that were scrutinized and not objected to, those scrutinized and objected to, those counted as null or blank, those not used or rendered unusable, and the stubs

(article 72). The signature notebooks are also to be placed in their corresponding envelopes (id.). The envelopes are to be closed and sealed, and are to be signed by all of the *vocales* and by the *apoderados* that wish to do so (id.).

The minutes of the scrutiny must be written in the registration book (article 73). They must indicate the time at which the scrutiny began and ended, the number of votes received for each proposition, and any incident or claim made with respect to the voting or scrutiny (id.). In addition, two special "minutes of scrutiny" forms are to be completed (id.). These forms are to have the legal status for all purposes of reliable copies of the minutes (id.). The minutes and the two special forms are to be signed by all of the *vocales* and by the *apoderados* that wish to (id.). Once completed, the two special forms are to be sealed in the envelopes provided, which are to be signed by the *vocales* on the outside (id.). One of the special forms is to be deposited by the secretary of the table at the nearest post office or "mail transportation office" within one hour of the closing of the minutes for remittance to the Director of the Electoral Service (at remote locations, the Director may extend the time limit to three hours) (article 74). If it is not deposited within the specified time period, the minutes are presumed fraudulent (id.). The other special form is to be delivered to the *colegio escrutador* by the president of the table at the meeting of the *colegio* that is to take place at 2:00 in the afternoon the day following the election (see below) (id.).

d. Return of the Ballots and Electoral Implements.

The envelopes containing the ballots are to be placed in a package along with the registration books (with their corresponding indices) and the other electoral implements, and the packet is to be closed and sealed and signed by the *vocales* and by the *apoderados* that wish to (article 75). The deputy of the table is to deliver the packet to the delegate of the electoral board within two hours, but in no case is he to leave the precinct before having done so (article 76). The delegate is to open the package in the presence of the deputy and ascertain that the seals and the signatures have not been altered. He is then to issue a receipt (id.).

Within twenty-four hours of the plebiscite, the electoral board is to dispatch the envelopes and the implements (but not the registration books) to the Director of the Electoral Service by delivering it either to the post office or to the special delegate designated by the Director of the Electoral Service for this purpose (article 77). The material pertaining to each voting table is to be placed in separate envelopes (id.). The registration books are to be

delivered to the electoral board (no time limit is specified) (id.).

4. Scrutiny at the Local Level.

The minutes of the scrutiny conducted by the voting tables are to be collected and their results calculated and totaled at the local level by the *colegios escrutadores* (article 79). The *colegios*, however, have no authority to determine the validity of the votes (id.).

a. The Colegios Escrutadores. The Director of the Electoral Service is to determine the number of *colegios escrutadores* that are to exist, and his resolution on this subject is to be published in the *Diario Oficial* within fifteen days after the publication of the Supreme Decree convoking the plebiscite (article 80). The resolution is to indicate the location of each *colegio* and the voting tables that each is to scrutinize (id.). No *colegio* may scrutinize more than 200 voting tables (id.). There is to be at least one *colegio* at each location where an electoral board is situated (id.).

The *colegio* is to be composed of six members, six supplementary members and a secretary (article 81). Only presidents of the voting tables that the *colegio* is to scrutinize are eligible to be members of the *colegios* (id.). The presidents of the voting tables are to meet in public session at 2:00 P.M. on the day following the plebiscite at the locations designated by the electoral board (article 82). The meeting cannot take place without the presence of an absolute majority of the presidents of the voting tables (id.). Once a majority of the presidents of the voting tables is present, they are to proceed to elect six of their number as members of the *colegio* and six as supplementary members (id.).

The Director of the Electoral Service is to designate a secretary of each *colegio* (article 84). Preferably, the secretary is to be either a secretary of a tribunal of first instance, an auxiliary of administrative justice, or another notarizing officer (id.). The designation is to be communicated to the corresponding electoral board, which in turn is to inform the designee by certified letter (id.). The secretaries do not have the right to vote within the *colegio* (id.).

At the start of the meeting, the presidents of the voting tables are to deliver the sealed envelopes containing the minutes of the scrutiny of the voting tables to the secretary of the *colegio* (article 82). Thus, the secretary will have the minutes of the scrutinies while the *colegio*

escrutador is being formed. There are no provisions governing the time limit for selection of the members of the *colegio escrutador*.

b. Scrutiny By The Colegios. The secretary is to select by lottery a president of the *colegio*, who is thereafter to preside over the meeting (article 86). After certain specified information is recorded in the minutes (*id.*), the *colegio* is to proceed to add the votes at a public session in accordance with the following rules (article 87): The secretary is to read the minutes of the voting tables out loud, and each member of the *colegio* may verify the accuracy of his reading (article 88). Each member of the *colegio*, separately, is to note down the results as they are read (*id.*). If the minutes from any table are missing, or if there are errors or omissions such that the true and complete results cannot be ascertained, the *colegio* is to scrutinize the minutes contained in the registration book (which is to be provided by the electoral board) (*id.*). If these are similarly defective, the *colegio* is to indicate in its minutes that the votes from the voting table were not scrutinized and explain the reason why (*id.*). The *colegios* may not fail to scrutinize any minutes for any reason other than the ones given above, although, if they detect other defects or irregularities, they are to note them down in their minutes (*id.*).

Once this procedure has been completed, the *colegios* are to note down the results of each voting table in triplicate in a table ("*cuadro*") in accordance with instructions to be provided by the Electoral Service, and a set of minutes must then be prepared in triplicate indicating the results of the scrutiny (article 89). Each copy of the table and the minutes must be signed by the secretary and by the members of the *colegio*, and by the candidates and *apoderados* that wish to do so (article 90). One copy of each is to be incorporated into the book of minutes (*id.*). Each of the other two copies is to be placed in an envelope and sealed, and the envelope is to be signed on the side containing the seal by all of the members of the *colegio*, the secretary, and the *apoderados* that wish to do so (*id.*). One of the envelopes is to be dispatched by the president of the *colegio* to the Director of the Electoral Service through the mails within two hours (article 91). The other is to be delivered personally by the secretary to the president of the electoral board within twenty-four hours, along with the book of minutes and any registration books that were provided by the board (*id.*). A copy of the minutes is also to be sent by the secretary of the *colegio* to the Electoral Service (*id.*).

The secretary is required to note at the end of the book of minutes any claims that were raised during the

scrutiny concerning irregularities in the *colegios'* proceedings which he declined to record in the minutes (article 94). The candidates and *apoderados* have the right to be provided with a certified copy of the table and the minutes (id.).

Within twenty-four hours of the completion of the *colegios'* duties, the electoral board must dispatch to the Electoral Service the tables and minutes of the *colegios* that operated in their respective jurisdictions (id.). On the sixth day following the plebiscite, the Electoral Service must make known the results obtained through the scrutiny by the *colegios* (article 95). This information may be provided before that time if the results of more than fifty percent of the voting tables have been received (id.). In either case, the Electoral Service must publish supplementary bulletins until all of the minutes and tables have been received from the *colegios* (id.). To ascertain the results for this purpose, the Director of the Electoral Service is to open one of the sealed envelopes, maintaining the other one sealed for use by the Electoral Qualifying Court (id.). In making this information public, the Electoral Service is to make it clear that the results are provisional (id.). After the first bulletin is issued, the political parties and candidates may request that the Electoral Service provide them with detailed information concerning the contents of the tables and minutes received (id.).

5. Electoral Complaints

Any voter may raise claims relating to the nullity of the plebiscite if it was vitiated in any of the following respects: the election or functioning of the voting tables or the *colegios escrutadores*, or the proceedings of the electoral boards; the scrutiny of the votes by the voting tables or by the *colegios*; acts of the authorities or other persons that restricted the freedom of voting; failure of any voting table to function; or bribery or use of force or violence (article 96). Claims based on the foregoing grounds will lie only if the alleged irregularities could have given rise to a result different from the one that would have prevailed if the irregularity had not occurred (id.). Any voter may also request the correction of any scrutiny in which there was any arithmetical error or omission (article 97).

Claims of nullity or for correction are to be presented within ten days of the plebiscite before the criminal judge having jurisdiction over the territory in which the acts on which the claim is based took place (id.). If the *colegio escrutador* has not completed its duties within five days of the plebiscite, this period is extended to five days after the *colegio* completes its duties (id.). Within five

days after the judge's issuance of his resolution with respect to the claim, the pertinent briefs are to be presented to the judge (article 98). The court is to issue separate reports on claims based on coercion, the exercise of force, the intervention of the authorities, or any other act restricting the liberty of the voter or the free exercise of the vote (id.).

Immediately after the aforesaid period has run, the judge is to remit all of the facts collected to the Electoral Qualifying Court, without rendering any decision (article 99). If he fails to do so, any citizen may make a claim before the secretary of the Electoral Qualifying Court, who is to adopt whatever measures are necessary to obtain this information and notify the President of the Supreme Court (id.).

6. Scrutiny By The Electoral Qualifying Court

The Electoral Qualifying Court is established by the 1980 Constitution and is to be composed of five members. (Constitution, article 84). Three are to be current or former justices of the Supreme Court, to be elected by secret ballot by the members of the Supreme Court (id.). One is to be a lawyer selected by the Supreme Court, and the fifth is to be a former president of the Senate or of the Chamber of Deputies (id.).^{12/}

The Electoral Qualifying Court is to conduct the general scrutiny and qualification of the election and to resolve any claims and make any necessary corrections (article 100). The Court is to meet for this purpose on the tenth day following the plebiscite, and on every day thereafter until its duties are completed (id.).^{13/} At the first meeting, the secretary of the Court is to report on the scrutinies conducted by the *colegios escrutadores* and the electoral claims that have been presented (article 101). The Court is then to take cognizance of the claims of nullity, assessing the facts as a jury and determining the extent to which the

^{12/} The Law Group's August 1987 delegation was informed by the President of the Supreme Court that, for purposes of the plebiscite, the Qualifying Court will have to function with four members, as there are no former presidents of the Senate or Chamber of Deputies.

^{13/} The June 1987 draft provided that the Court was to have the power to receive evidence and to compel the production of minutes, electoral registries and any other documents it considers necessary for the discharge of its mandate, but the law as promulgated omits this provision.

free manifestation of the voters' will was impeded, and it is to declare the plebiscite valid or null in accordance with the law (article 104).

Acts, defects, or irregularities that do not affect the general results of the plebiscite, whether they occurred before, during, or after the voting, are not cause for declaring the plebiscite null (id.). However, the acts of the electoral boards in designating the voting tables, and those of the voting tables and the *colegios escrutadores*, are always to be declared null if the relevant body was functioning without the required number of persons or at places different from those designated, absent *force majeure* (id.).

If the Court declares the voting at one or more voting tables null, the voting at such tables is to be repeated only if it would affect the overall results of the plebiscite (article 105). If that is the case, the voting is to be repeated only at the tables involved (id.). The voting tables are to have the same composition as before unless the nullity related to the selection of their members or was caused by the members' illegal acts (such as bribery or adulteration of results) (article 106). In the latter cases, new *vocales* are to be designated in accordance with the procedures outlined above (id.).

After all claims against an election or plebiscite have been passed upon, the Court is to proceed to conduct its general scrutiny in accordance with the following rules (articles 102, 103, 107):

a. If the minutes of the *colegios escrutadores* took into account all of the minutes of the voting tables and no claims were presented in relation to them, the Court is to conduct the general scrutiny forthwith (article 103(1)). If minutes were not received from any *colegio*, an authorized copy of the one in the book of minutes is to be requested (id.).

b. If the *colegios* failed to scrutinize one or more of the minutes of the voting tables, or altered the results or committed any arithmetical error, the Court is to complete or correct the scrutiny using the minutes of the voting tables remitted to the Director of the Electoral Service by the voting tables and the electoral boards (article 103(2)).

c. If the Director of the Electoral Service did not receive any of the aforementioned copies of the minutes, the Court is to request the registration book in which the minutes of the voting table were recorded (article 103(3)).

d. If the copies of the minutes of a voting table received by the Electoral Service are inconsistent, the Court is to request the registration book and scrutinize the version of the minutes that is consistent with the minutes therein, so long as it is stamped on the pertinent page and does not appear to be adulterated (article 103(4)).

e. If no scrutiny was conducted, the Court is to conduct the scrutiny itself in public, using the packet of ballots remitted to the Director of the Electoral Service by the electoral board (article 103(5)).

Once judgment has been rendered on all claims and the general scrutiny has been completed, the Court is to proclaim the results of the plebiscite (article 108). In the case of a presidential election,^{14/} the Court is to proclaim as elected the candidate who obtained more than half of the validly cast votes (article 109). For this purpose, blank and null votes are to be considered as not having been cast (*id.*). The Tribunal's decision proclaiming the President-elect is to be communicated in writing to the President of the Republic, the President of the Senate, and the candidate who was elected (*id.*).

7. Public Order

From the second day preceding the plebiscite until the *colegios escrutadores* complete their duties, the armed forces and the *Carabineros* are responsible for maintaining public order (article 110). Twenty-five days before the plebiscite is to take place, the President is to appoint a chief of the army, navy, air force, or the *Carabineros* to command the armed forces in the maintenance of public order in every locality where voting tables and *colegios escrutadores* are to function (article 111). These appointments are to be published in the *Diario Oficial* no more than one day after the time they are made (*id.*). The chiefs are to have direct responsibility for the maintenance of public order in their respective localities and are subject to the obligations imposed by the Electoral Law (*id.*).

The Ministry of the Interior, in coordination with the Ministry of National Defense, is to issue regulations for the armed services for the maintenance of public order, which are to be published in the *Diario Oficial* at least five days

^{14/} It is unclear whether the plebiscite would be considered a "presidential election" for these purposes. Technically, it is not one.

before the plebiscite (article 112). The Ministry of National Defense is to issue the pertinent instructions to the forces in charge of maintaining public order (id.). The regulations are to be included in a Book of Orders, which is to be maintained by the chief in each locality, and which is to be at the disposal of the candidates, their *apoderados*, and the representatives of political parties, who are to have the right personally to verify compliance with the regulations and to make claims before the chief at any time with respect to the failure to observe the individual guarantees the public force is obligated to protect (id.).

The public force is responsible for maintaining free access to the localities where the voting tables are to operate, and is to prevent the gathering of any crowds that make it difficult for voters to reach the tables or that pressure the voters by words or actions (article 113). The forces are also to prevent the holding of public protests (id.).^{15/}

The members of the public force are not to station themselves within a radius of twenty meters from a voting table or place where a *colegio escrutador* or electoral board is functioning, except when requested by the president of the body involved (article 114). In such an event, they must remove themselves from that area as ordered by the president of the pertinent body (id.). If they do not do so, the president may suspend the functioning of the table, *colegio*, or electoral board, and report to the competent Court (id.).

Meetings or assemblies of an electoral nature and electoral propaganda of any form are prohibited from the second day before the plebiscite until four hours after the closing of the voting at the voting tables (article 115). During this period, all secretariates of propaganda and offices or organizations that attend to voters are to be closed by the public force (id.). Theaters and places where artistic, cultural, or sporting events are held are to remain closed during the day of the plebiscite until four hours after the close of the voting in the pertinent locality (article 116). All places serving or selling alcoholic beverages are to remain closed that day as well, except those in hotels catering to their guests (id.). The public force is to close

^{15/} The June 1987 and January 1988 drafts provided that the public forces were also to prevent gathering of crowds at the headquarters of the political parties, but the law as promulgated omits this provision.

any establishment that violates any of the foregoing provisions (id.).

The competent criminal judge and the chief of the public force are personally to inspect the headquarters of the political parties to determine whether voters are being coerced, whether there are any arms or explosives there, and whether electoral propaganda is being disseminated during the prohibited period (article 117). They must also conduct such investigations at any place where such activity has been reported (id.). If any of the foregoing activities have been committed, the place involved is to be closed (id.).

The presidents of the voting tables, *colegios escrutadores*, and electoral boards are responsible for preserving order and freedom of voting and scrutiny at the places where their respective bodies are functioning and within a radius of twenty meters therefrom, and they are to issue any orders that may be necessary for that purpose (article 118). In no event, however, may they order the withdrawal of the members of the body or of the *apoderados* (id.). The delegates of the electoral boards are to preserve order at the electoral offices, and for this purpose may require the aid of the public force (id.).

The presidents of the electoral boards, voting tables, and *colegios escrutadores* are to ensure that access to the place where they are functioning remains free, and they are to prevent the gathering of crowds at the entrances and in the vicinity that may hinder the voters' access thereto (article 119). At the request of any voter, the presidents are to order the dispersal of such crowds (id.). If the orders are not obeyed, they are to order the removal of the persons involved by the public force and, if necessary, suspend the operations of the table or *colegio* (id.). The president of the pertinent body is to seek the help of the chief of the public force to complete its duties, and the requested authority is to provide the requested aid immediately (id.).

If crowds form or disorders arise within the area where voting is taking place, the president is to order the public force to arrest the persons involved and place them at the disposal of the competent criminal judge (article 120). However, if any such person claims to be a voter who has not yet voted, he shall be allowed to vote before he is taken to the criminal judge (id.). In no event are candidates or *apoderados* to be removed from the precinct, nor may any voter be removed before he has voted (id.).

The presidents of the electoral boards, voting tables and *colegios-escrutadores* as well as the delegates of

the electoral boards, may also order the apprehension and arrest of any person who incites disorder, assaults or insults any of the body's members, uses violence to hinder voters from exercising their rights, arrives in an inebriated state, or distributes liquor among those present (article 122).16/

The chiefs of the force responsible for maintaining order are obligated to lend any aid requested by the presidents of the board, table or *colegio*, and by the delegates of the electoral boards, and must comply with any orders given by the presidents of these bodies (article 123).17/

8. Judicial Proceedings and Sanctions

The Electoral Law creates a public action for electoral torts, violations and crimes (article 143), and contains provisions regulating the procedure in such cases (articles 143-153). It also contains detailed provisions regarding sanctions for violations of the Electoral Law (articles 124-142).

9. Independence and Inviolability of Voters, Electoral Bodies and Apoderados

The electoral boards, voting tables, and *colegios escrutadores* are to operate with complete independence from any other authority, and their members are not to obey any order that impedes the exercise of their functions (article 155). However, they are subject to the supervision ("*fiscalización*") of the Electoral Service and, in fulfilling their duties, they are to follow the instructions of the Service concerning procedures (*id.*).

16/ The law as promulgated omits the provisions of the June 1987 draft that authorized the arrest of persons who arrived at the premises with arms and of public employees who stationed themselves in the precinct and exerted pressure on any member of the board, table, or *colegio* and who refused to obey an order to leave.

17/ The June 1987 draft provided expressly that, if members of the public force were requested by the president to enter the precinct, they were to remain subject to the president's exclusive command, and the chief of the force was to have no power therein except by virtue of orders given by the president.

The Electoral Law declares the day on which an election or plebiscite is to be held a legal holiday (article 169). No authority or employer may require service or work that prevents any voter from voting (article 155). With respect to those activities that must necessarily continue to function during the day of the plebiscite, workers are to be granted the right to be absent for two hours for the purpose of voting without any reduction in pay (article 155). Employers are also to grant permission for their employees to be absent without any reduction in pay if they have been designated a *vocal* of a voting table, a member of a *colegio escrutador*, or a delegate of an electoral board (article 156).

The political parties are to notify the competent criminal judge and the electoral board of the locations of their official headquarters at least fifteen days before the plebiscite (article 157).^{18/} The electoral board must notify the chiefs of the public forces of the locations of these headquarters within two days after the expiration of this period (*id.*). The headquarters must be situated no less than 200 meters from the place where the voting tables are to function (*id.*). On the day of the plebiscite, they may be used only until 10:00 A.M., and only for the purpose of attending to and distributing *apoderados*; they may not be used to provide any service to voters or to disseminate any political or electoral propaganda (article 158).

The political parties also have the right to designate an *apoderado* to be present while the activities of the electoral boards, voting tables, *colegios escrutadores*, and local electoral offices specified in the law are conducted (article 159). The *apoderados* are to have the right to be heard at the bodies where they are functioning, but not to vote (*id.*). The *apoderados* must possess a notarized commission issued by the president and secretary of the political party's Regional Council, specifying the board, table, *colegio* or electoral office to which he is accredited (*id.*). In addition, the parties have the right to designate a general *apoderado* for every precinct in which voting tables are functioning for the purpose of attending to the *apoderados* functioning at the tables (*id.*). If there are more than thirty tables at a given precinct, the parties may designate an additional general *apoderado* for every additional twenty

^{18/} The June 1987 draft provided that all political parties were to have the right to maintain official headquarters in every locality where a voting table is to function, even during the day of the plebiscite, but the law as promulgated omits this provision.

tables (id.). Only registered citizens who are qualified to be *vocales* are eligible to be *apoderados* (article 160).

The *apoderados* have the right to sit next to the members of the electoral body involved, to observe the proceedings, to formulate objections and require that they be recorded in the relevant minutes, to verify and object to the identities of the voters, and in general to do whatever is necessary to perform their duties (article 162). The board, table, or *colegio* must record in the minutes any fact that the *apoderado* requests be noted, and may not fail to do so for any reason (id.).

For purposes of the plebiscite, the law gives the President-designate the same rights with respect to *apoderados* as the political parties (article 5 transitory). He is to designate up to three persons in each region to be in charge of naming his *apoderados* (articles 7, 5 transitory). This designation is to be notified to the Electoral Service by the fifth day following the plebiscite's convocation, but may be modified any time until the twelfth day before the plebiscite (id.). The Director of the Electoral Service is to notify the pertinent electoral boards of these designations within five days of the time they are made or modified (id.).

The International Human Rights Law Group is a public interest law center based in Washington, D.C. which seeks to promote and protect human rights around the world. The Chile missions are being conducted as part of the Law Group's Election Observer Project. The Project has sent missions to elections in Nicaragua, Uruguay, Grenada, El Salvador, Zimbabwe and Guatemala and has published *Guidelines for International Election Observing* which has been widely used by international observers.