



- [Versión en Castellano](#)
- [Main \(Home\) Page](#)
- [Under the Dictatorship](#)
- [Highlights of History](#)
- [Cronology '73-98](#)
- [Concentration Camps](#)
- [Human Rights Today](#)
- [Profile of Chile](#)
- [Take the Tours](#)
- [Photo Galleries](#)
- [Books and Resources](#)
- [Related Sites and Links](#)

THE JUDICIARY UNDER THE DICTATORSHIP

[Victims](#) - [Perpetrators](#) - [Judiciary](#) - [International](#)

[[1](#) | [2](#) | [3](#) | [4](#) | [5](#) | [6](#)]

IMPUNITY AND AMNESTY LAW

What is the Amnesty Law?

Decree law 2191, personally drafted by Monica Madariaga, Justice Minister from April 1977 to February 1983, and known as the Amnesty Law, was published in the Diario Oficial legislative journal on April 19, 1978.

It exculpates from criminal responsibility all persons who committed crimes, were accomplices in crimes or covered up crimes committed between the day of the military coup, September 11, 1973 and March 10, 1978, when the state of siege was lifted.

Since the advent of the first democratic transitional government in March 1990, human rights defenders have insisted that the law be repealed or amended, but all such initiatives have failed.

Excluded from the amnesty, which makes no distinction between common and politically-motivated crimes, are persons who faced charges for certain crimes at the time the law was dictated - crimes such as aggravated or armed robbery, abduction of minors, and fraud. People indicted or sentenced at the time the law came into effect were also excluded from its effects.

Expressly excluded from the amnesty was the passport falsification case that was a prelude to the assassination in 1976 of Orlando Letelier. Its exclusion was a result of pressure from the United States, which had initiated extradition proceedings a few months before the law was enacted.

The preamble to DL 2191 explains the "ethical imperative" that motivated the law, which is "to strengthen the ties that bind Chile as a nation, leaving behind hatred that has no meaning today, and fostering all measures that consolidate the re-unification of all Chileans."

In his analysis of the amnesty law, however, former Vicaria of Solidarity attorney Camilo Marks notes that this is not the case. "Experience has shown that ...since the day it was published until the present, this law and its application by Chilean courts has achieved precisely the opposite. Not only has it divided the country deeper than it was at the time the law was enacted, but its very existence is an insurmountable obstacle for national reconciliation."

Initially, the amnesty law raised expectations among opponents of the regime, particularly political prisoners and exiles, that the military regime was easing its grip. The suggestion from Monica Madariaga that, in the spirit of reconciliation, exiles start packing their bags to head home to Chile also reinforced this perception.

Other than some 69 political prisoners released shortly after the amnesty was enacted, few opponents of the military regime in fact benefited from the law. As the courts began to apply the law, it became clear that its main beneficiaries would be the perpetrators of the crimes against humanity committed in the early years of the military regime.

Justice Minister Madariaga reacted with indignation when a reporter asked in July 1978 whether the real objective of the amnesty was to protect human rights abusers: "That is the most disgusting lie I have ever heard in my life! It is a denial of...everything this government stands for. The government was only thinking about those who carried out activities against it, so that they could be re-incorporated into national affairs."

In 1988, after having resigned as Chile's representative before the Organization of American States, Madariaga herself acknowledged the amnesty law as "one sided."

Inconsistencies of the Amnesty Law

There are evident inconsistencies in the criteria used to determine which crimes would be subject to the amnesty. In an open letter presented to the Supreme Court in 1978, four attorneys with the Vicaria of Solidarity criticized what they called the "incomprehensible distinction" between the crimes the Amnesty law pardons and those it does not, as follows:

HISTORY
IS STILL HAPPENING

Credit Repair

- * It pardons all forms of falsifications and check swindles, yet it punishes fraud and other corrupt practices.
- * It pardons all crimes committed by public employees through the exercise of their office, with the only exception being malfeasance and fraud.
- * It pardons homicide and physical injury but punishes armed robbery or intimidation.
- * It pardons property damage, but punishes arson, and other property destruction.
- * It pardons abortion, the abandonment of minors and bigamy, but punishes corruption of minors, rape and incest.

It should be noted that this list of common crimes shielded by the amnesty law harbors some of the commonly used tools of the DINA and CNI secret police's trade: homicide, physical injury, and property damage.

[Download the complete text of the Amnesty Law](#) (spanish version in RTF format)

Impunity

With the enactment of the Amnesty Law, nearly all civil courts hastened to declare themselves incompetent, transferring their files on cases related to disappeared persons to the military courts, which promptly applied the amnesty law and closed the cases.

Lonquen Case

Santiago Appeals Court judge Adolfo Bañados, appointed to clarify the crimes discovered at Lonquen in 1978 ([link](#)), concluded that Army lieutenant Lautaro Castro Mendoza and eight Carabineros police were responsible for the massacre of 15 persons there. But, after drawing these conclusions, he declared himself incompetent and transferred the case to the military courts without making any indictments, even though some of the crimes committed at Lonquen were excluded from the law, such as the abduction of minors. One of the victims unearthed at Lonquen was the minor Ivan Gerardo Ordoñez Lama.

On October 29, 1979, relatives of the Lonquen victims filed a motion in the Supreme Court objecting to the decision from the Military Court to permanently close the case. The Supreme Court turned down the motion six months later.

The Amnesty Law remained largely uncontested henceforth until 1986.

Calama Case

In April 1986, Ana Luisa Gonzalez filed a criminal suit in Calama for the premeditated abduction and homicide of her son, 17-year-old Jose Gregorio Saavedra. Jose, president of his high school student body association, had been taken from Calama prison in late 1973 and killed along with the other 25 prisoners shot by Gen. Sergio Arellano Stark's "caravan of death." Although the family was informed of Jose's death, they never recovered his remains. Among the defendants named in the legal action were the former prison warden who had been responsible for the minor in his custody and members of Arellano Stark's brigade.

The lawsuit argued that, unlike homicide, the crime of abduction is expressly excluded from the amnesty law. Gonzalez contended that abduction is a crime that is ongoing, as opposed to the momentary nature of the crime of execution. Therefore, the investigation of an abduction cannot conclude until the victim is found. (Other relatives of disappeared persons in Chile had long sustained the same argument, but only after this case did it gain greater acceptance among judges.)

The Antofagasta military judge claimed jurisdiction in the case but the Calama magistrate refused to relinquish it. It fell to the Supreme Court to decide this jurisdictional battle. The high court ruled that the case involving Jose Gregorio Saavedra pertained to the military court and joined it to the other Calama executions. Citing the Amnesty Law, the military court proceeded to close the case.

Although Gonzalez did not succeed in winning justice for her son, this initial challenge to the amnesty law created a slight rupture in courts' immediate acceptance of amnesty. Since that time, judges have not automatically accepted the application of the law in cases involving disappeared persons.

Criticisms of the Amnesty Law

Critics contend DL 2191 is not, from a legal standpoint, a true law of amnesty but rather a "self-pardon." Several documents by academic and human rights experts describe the amnesty law as "self-pardon" by the military regime to benefit its own agents who committed human rights violations.

A true amnesty, human rights jurists contend, is meant to be a device by which a State renounces its penal authority in light of compelling political and social factors shared by the majority of the population. It must also be general and objective in nature, not intended to favor a specific group of

people.

But according to the August 1989 edition of the journal "Reflección y Debate" the Chilean amnesty "is an abuse of power that denies the foundations of a constitutional state by preventing the judiciary from fulfilling its mandate to protect the rights of persons and investigate and punish crimes."

In 1989, the United Nations General Assembly determined that Chile's amnesty law infringes upon the right of victims of human rights violations to judicial redress.

In 1997, the Inter American Human Rights Commission denounced the law as an infringement of judicial guarantees and a violation of the American Convention of Human Rights.

In 1989, Archbishop Raul Silva Henriquez declared in a public statement:

"When the amnesty law was enacted, I sincerely believed that it would usher in a new and different era, in which basic individual rights would begin to be respected... Dialogue did not open up... nor did the human rights situation improve. There were more unsolved deaths, more disappeared persons, and other ways of assaulting human rights... It became clear that the underlying goal of an amnesty of this type, which is to achieve true national reconciliation, would not take place."

continue:

[Bowling to Military Courts](#)
[Dissidence within the Judiciary](#)

[back to main](#)

All rights reserved ©2002. Design & Engine by [The Chiron Group, Inc.](#)