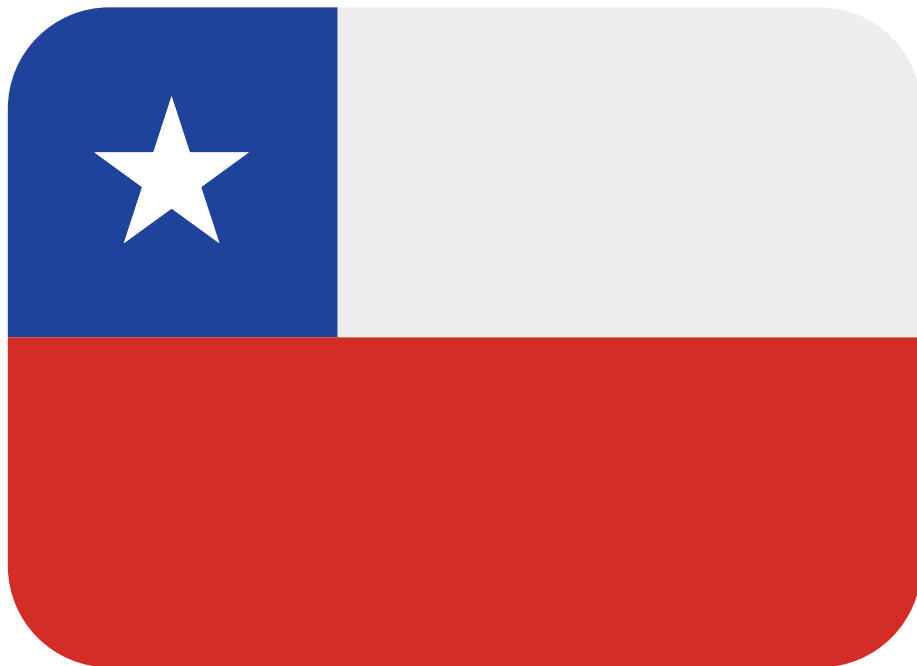


SOCIAL MOVEMENTS IN POST-DICTATORIAL CHILE AND THEIR QUEST FOR ACCOUNTABILITY AND JUSTICE (1988 - PRESENT)

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Introduction

During the 51st commemoration of the military coup, on the 11th of September of 2024, the Chilean President Gabriel Boric reiterated its will to process the repeal of the amnesty law that protects crimes against humanity in the context of the Pinochet dictatorship¹. This project of repeal aims at removing obstacles to the persecution of perpetrators of human rights violations during the Chilean dictatorship. It is also an attempt to address the demands of human rights organizations and members of civil society that denounce the impunity towards crimes committed by the military regime. The Amnesty law², instituted in 1978, during the dictatorship, has been the main legal argument for the impossibility of processing perpetrators of human rights violations. It is thus clear that the current debate sheds light on how the process of transitional justice in Chile has not come to an end yet.

The Chilean military dictatorship began with the military coup of the 11th of September 1973, after which date, the general Augusto Pinochet Ugarte seized power, ruling the country till 1990, when Chile transitioned *de facto* to democracy. During the golpe and throughout the dictatorship, military power committed several crimes against humanity, ranging from the infamous case of the *desaparecidos*, people that were forcibly disappeared, to sexual violence and torture. Members of civil society, organised in groups such as the *Agrupaciones de Familiares de Detenidos Desaparecidos* (AFDD), as well as international actors, denounced the crimes committed by the regime. However, the formal justice system was infertile ground for individuals seeking protection or redress for crimes of repression³.

The process of democratization had already begun in 1988, when a referendum took place, asking Chileans whether they wanted to keep Pinochet's government in place or not⁴. Chilean transition to democracy was a peaceful process, taking place through negotiation between the Concertation, a coalition of centre-left and left parties that ruled Chile during the democratic transition, and the military power. Amid this process, human rights violations played an important role. The legacy of clandestine social movements during the dictatorship

¹ <https://prensa.presidencia.cl/comunicado.aspx?id=289871>.

² Memoria Chilena, *Ley de Amnistía*: <https://www.memoriachilena.gob.cl/602/w3-article-95548.html>.

³ Collins, Cath. "Human Rights Trials in Chile during and after the 'Pinochet Years'", In *International Journal of Transitional Justice*, Volume 4, Issue 1, March 2010, p. 67.

⁴ Memoria Cshilena, *Plebiscito de 1988*: <https://www.memoriachilena.gob.cl/602/w3-article-92412.html>.

followed in post-transitional Chile, through a large constellation of social movements, human rights and feminist organizations.

The importance of studying the role played by civil society actors, organised in social movements, reside in the idea that civil actors in Chile have instigated and driven justice developments⁵. Different waves of social movements throughout democratic Chile's history evoked the need to end the impunity towards crimes committed by military power, to strengthen the democratization process. The *estallido social*, a wave of uprisings that took place in 2019, was, among other causes, provoked by the "latent memory of the impunity"⁶ over such crimes. As a political response to the uprisings, a new constitutional project was drafted, since the Constitution of 1980, enacted during the dictatorship, suffered from a lack of legitimacy⁷. However, such project, and a following one in 2023, failed, shedding light on the polarization and incertitude⁸ that revolves around whether and how Chile should come to terms with its dictatorial past. Despite several similarities with other countries, especially from the Southern Cone, the social movements and constitutional debate aforementioned explain the interest of taking Chile as a case-study.

In light of this, the paper will try to answer the following research question: What is the contribution of social movements in the making of transitional justice in Chile, and what strategies have been implemented by such movements?

The preliminary conclusion formulated by this paper will be founded on the existing academic literature, which covers transitional justice, human rights and social movements. Elements covered by literature will be combined with evidence from legal documents, such as the Truth Commissions reports and the annual reports provided by the *Instituto Nacional de Derechos Humanos*⁹ (INDH). Declarations by members of social movements will also be taken into account. The conception of social movements implied in this paper is wide and comprehensive of all forms of organizations that include human rights within their agenda.

Development

⁵ Collins Cath. "Human Rights Trials in Chile during and after the 'Pinochet Years'", art. cit., p. 86.

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⁷ Ruiz Rodríguez Leticia M., "Le cinquantième anniversaire du coup d'Etat de 1973 au Chili". Les Études du CERI, 2024, Amérique latine. L'Année politique 2023, 271-272, p. 41.

⁸ *Ibid*, p. 44.

⁹ The INDH is an autonomous public law institution, created after the promulgation of the Ley N° 20.405 in 2009. This national organ is in charge of producing knowledge upon human rights and guaranteeing the respect of international and constitutional norms on human rights.

A. literature review

Scholarly work has highlighted the central role of social movements in persecuting human rights violations' perpetrators and imposing justice. On this matter, the Argentinian sociologist Elizabeth Jelin highlighted the role of human rights groups, issued from civil society, as the main "memory entrepreneurs"¹⁰ in Cone Sur dictatorships (Chile, Argentina and Uruguay). Jelin adopts this term as a sociological concept to refer to actors who are responsible for spreading the practice of memory within a society.

Social movements in Chile comprehend a vast array of positions and movements. Among these, human rights groups had a preminent role, pushing other social movements to incorporate human rights matters among their realm of action. Such movements have also taken advantage of institutional and legal tools to push forward the human rights agenda. On this matter the article "Las comisiones de la verdad en la batalla de la memoria: usos y efectos disputados de la verdad extrajudicial en Chile", by Bernasconi Ramírez, Mansilla Santelices and Suárez Madariaga, shows how memory entrepreneurs used truth commissions as an arm in the "battle of memory". Because of the appropriation of this documentation made by social movements, its importance traspases the institucional sphere, and transforms truth commissions in memory devices to process collective trauma and move to a "postconflict" situation¹¹.

Finally, recent works have also put an accent on the creative relation that social movements undertook towards human rights archives. In inheriting the archives conserved by human rights movements throughout the dictatorship¹², social movements of democratic Chile produced different cultural and artistic practices that directly link to transitional justice and human rights documentation. According to Louis Blickford, such strategies are "attempts to heal through art, fiction and film"¹³. On this matter, several art forms have been employed, with special link to the *desaparecidos*, a key-figure in the human rights agenda of Southern Cone dictatorship. As an example, Sebastian Bustamante-Brauning highlights the alteration

¹⁰ Jelin, Elizabeth. *Los trabajos de la memoria*, collection « Memorias de la represión », siglo veintiuno de España editores, Madrid, 2002, pagg. 48-51.

¹¹ Bernasconi Ramirez Oriana, Mansilla Santelices Daniela, Suarez Madariaga Rodrigo. "Las comisiones de la verdad en la batalla de la memoria: usos y efectos disputados de la verdad extrajudicial en Chile", *Colombia internacional*. 2019, p. 31.

¹² Groppo, Bruno. « Chapitre v – Les archives des droits humains. Documenter la répression et la résistance au Chili et en Argentine ». In *Documenter les violences*, édité par Camille Goirand et Angélica Müller. Paris: Éditions de l'IHEAL, 2020, p. 131-149

¹³ Bickford, Louis. "The Archival Imperative: Human Rights and Historical Memory in Latin America's Southern Cone." *Human Rights Quarterly* 21, no. 4 (1999), p. 1098.

of memorialization rituals produced by the practice of enforced disappearances in the Southern Cone. In response to the absence of the body of the beloved person, photographic practices, especially on digital platforms, have helped families to mourn¹⁴. Such works are important to understand the place of transitional justice among the repertoire of actions of social movements, that go beyond the merely legal sphere.

B. Judicialization of social movements

By the end of dictatorship in 1990, Chile adopted the model of transitional justice¹⁵, which is understood as “the set of measures that a society uses to confront a past of massive and systematic human rights violations, consisting of various mechanisms that express the international obligations of States”¹⁶. This definition already includes the whole society as protagonists of the making of such measures, conceiving justice as a collaborative open process. Recognition of the role of society can be attributed to the major work undertaken by human rights organizations during the dictatorship, which thoroughly documented the crimes against humanity committed by the regime, in constant dialogue with international organizations such as the UN or Amnesty International¹⁷.

One of the first steps that the Concertation took to implement transitional justice, was the institution of a National Commission of Truth and Reconciliation (CNVR) in 1990¹⁸. This commission led to the publication of the Rettig report¹⁹, investigating the most severe human rights violations committed by the regime, resulting in death or disappearance. In 2004, another fundamental report was published, the Valech report²⁰. This document was the result of the investigation undertaken by the National Commission on Political Imprisonment and Torture. Valech report’s extended the findings established by the Rettig report, concerning disappearances and death, but also imprisonment and torture practices. In continuity with civil society’s opposition during the dictatorship, social movements in democracy grasped the importance of transitional justice, as a means to put forward their demands. For example, the

¹⁴ Bustamante-Brauning, Sebastian. “[Re]-appearances online: photography, mourning and new media ecologies for representing the Southern Cone’s disappeared on two digital memory platforms”, *Photographies*. 2022, vol.15 n° 3. p. 382.

¹⁵ Instituto Nacional de Derechos Humanos, “Informe anual 2023. Situación de los derechos humanos en Chile, 2023”, p. 20.

¹⁶ INDH, 2017, p. 132.

¹⁷ Bernasconi Ramirez Oriana, Mansilla Santelices Daniela, Suarez Madariaga Rodrigo. “Las comisiones de la verdad en la batalla de la memoria: usos y efectos disputados de la verdad extrajudicial en Chile”, art. cit., p. 38.

¹⁸ INDH, 2023, p. 20.

¹⁹ Memoria Chilena. *Informe Rettig*: <https://www.memoriachilena.gob.cl/602/w3-article-94640.html>

²⁰ Memoria Chilena. *Informe de la Comisión Nacional Sobre la Prisión Política y Tortura*: <https://www.memoriachilena.gob.cl/archivos2/pdfs/MC0053682.pdf>.

Colectivo de Desclasificación Popular fought against the attempt to silence the data found by the commissions, advocating for its public disclosure²¹. rough reinterpretation of the ley 19.992 [annex 1], the collective accompanied former political prisoners that took part in the Commission, to publicly disclose their personal archives²².

According to Cath Collins, norms on secrecy are not the only obstacle to the efficacy of the Truth Commissions reports. In addition to that, she claims that the Valech Report came with institutional effort to “decouple truth, justice and reparations”²³. -issue basis approach stand more holistic views of transitional justice, that bundle together the three elements²⁴. On this matter, the dispute between social movements, pushing for more justice, truth and reparations, and political power, can be conceived as the opposition between different perspectives on transitional justice.

B. The influence of feminist movements in transitional justice

The evolution in terms of transitional justice goes hand in hand with the expansion of crimes investigated. For example, while the Rettig Commission mainly focused on absent victims, Valech also acknowledged the experience of survivors. On this matter, the role played by feminist activism is key to explain the growing recognition of sexual and gender-based violence (SGBV) among the crimes committed by Pinochet’s regime. Feminist movement has gained an important momentum all over the region, leading to the Mayo Feminista in 2018 in Chile, a wave of feminist mobilization that is said to have anticipated and prepared the basis for the *estallido social*, which also had a strong feminist component²⁵.

The fight against SGBV and impunity in present times led feminist colectives to bring to the public debate SGBV committed by the Pinochet’s regime²⁶. From a theoretical standpoint, feminist collectives elaborated the term of “violencia politico-sexual”, to refer to

²¹ Campos Vera, Javiera Pilar. “Contra los 50 años de secreto, hay Desclasificación Popular”: disputas frente a la desclasificación de los archivos Valech”, 2018 (1), p. 1: http://conti.derhuman.jus.gov.ar/2018/01/seminario/mesa_9/campos_mesa_9.pdf.

²² *Ibid.*

²³ Collins, Cath. “Truth-Justice-Reparations Interaction Effects in Transitional Justice Practice: The Case of the ‘Valech Commission’ in Chile.” *Journal of Latin American Studies* 49, no. 1 (2017), p. 76.

²⁴ *Ibid.*, p. 58.

²⁵ Ponce Lara, Camila. “La politización de lo íntimo en el mayo feminista chileno y el movimiento #ChileDespertó”, *Revista de Estudios Feministas*, 30 (2), 2022, p. 4.

²⁶ Davidson, Caroline. « Nunca Más Meets (hashtag) Niunamenos: Accountability for Pinochet-Era sexual violence in Chile », *Columbia human rights law review*. 2019, vol.51 n° 1. p. 168-169.

the political use of SGBV of the Chilean state²⁷. The multiplication of accusations of sexual violence made by the police allowed social movements to enlighten how military and police forces have frequently and repeatedly used SGBV as a tool for repression, from the dictatorship to democracy. Once again, survivors from the dictatorial period were at the forefront of the battle. In 2014, the *Colectivo de Mujeres Sobrevivientes Siempre Resistentes* (CMSSR) was created. The Colectivo regrouped political prisoners from the *Venda Sexy*, a centre of detention in Santiago, where systematic acts of sexual torture were perpetrated. In the words of the women participating in the Colectivo, their experience in the *Venda Sexy* was at once a terrible trauma, but also an occasion to come together and find shelter and relief through collective action [annex 2]. The activism of CMSSR contributed in adding gender analysis to the justice treatment of survivors' experience.

Therefore, the strategy of feminist movements, in their quest for accountability on SGBV committed during the dictatorship, includes judicialization. This can be explained on the one hand by the improvement in recognition of SGBV within Chilean society, but also by the progressive implementation of international norms in trials. The regional improvement towards the incorporation of a gender perspective in truth commissions, for example in Peru, encouraged feminist movements from the region to incorporate international norms into domestic activism and strategic litigation²⁸.

By giving voice to the experience of sexual torture survivors, Chilean feminists contributed in overcoming the dyad State-Victim²⁹, which conceived relatives of executed and forcibly disappeared people as “the main referent group for victimhood”³⁰. On the contrary, contemporary social movements in Chile highlight the importance of fighting for memory, justice and impunity besides any potential familiar tie with absent victims³¹. By doing so, they assure the persistence of collective mobilization beyond the generation that lived through the dictatorship, framing transitional justice demands within the contemporary

²⁷ Doran, Marie Christine, Fernández Droguett, Francisca and Peñafiel, Ricardo. “Violencia Político-Sexual: Genealogía de un concepto de lucha”, Facultad de Derecho y Humanidades, Universidad Central de Chile, p. 118.

²⁸ Davidson, Caroline. « Nunca Más Meets (hashtag) Niunamenos: Accountability for Pinochet-Era sexual violence in Chile », art. cit., p. 173.

²⁹ Bernasconi Ramirez Oriana, Mansilla Santelices Daniela, Suarez Madariaga Rodrigo. “Las comisiones de la verdad en la batalla de la memoria: usos y efectos disputados de la verdad extrajudicial en Chile”, art. cit., p. 35

³⁰ Collins, Cath. “Truth-Justice-Reparations Interaction Effects in Transitional Justice Practice: The Case of the ‘Valech Commission’ in Chile.”, art.cit., p. 67.

³¹ Bernasconi Ramirez Oriana, Mansilla Santelices Daniela, Suarez Madariaga Rodrigo. “Las comisiones de la verdad en la batalla de la memoria: usos y efectos disputados de la verdad extrajudicial en Chile”, art. cit., p. 32

political discourse³². The tie between feminism and human rights activism in Chile is central, because feminist collectives recuperated in a critical way the realm of action of family's organizations opposing the dictatorship, which were mainly female-componed. On this matter, the example of the *Colectivo Cueca Sola* is key. The Colectivo retook the famous political performance of the *Agrupaciones de Familiares de Detenidos Desaparecidos*, the *cueca sola*³³. This practice consists in dancing *cueca*, the traditional Chilean dance, alone, to manifest the absence of the forcibly disappeared partner. However, the Colectivo actively updated the political discourse surrounding *cueca sola*, because they extended this practice to people that are no relatives of disappeared people, dancing in tribute to victims of state terrorism but also of SGBV in present times [annex 3]. Therefore, reappropriation of *cueca sola* can be linked to a wider movement of creative approaches to human rights mobilization, that inherits respectfully the courageous activism performed by oppositors throughout the dictatorship and elaborates innovative strategies to transpose legal issues related to transitional justice on a wider cultural and social standpoint.

Preliminary conclusions

The process of transitional justice undertaken by Chilean institutions to turn the page with their dictatorial past included civil society as a key actor. On the one hand, certain sectors of civil society proved either indifferent or actively adverse to further transitional justice measures. For example, according to 36% of the Chilean population in 2023, the golpe was justified, confirming the persistence of a “Pinochet clivage” in contemporary society³⁴. On the other hand, “memory entrepreneurs” from civil society pushed and keep pushing to establish collective memory and implement more transitional justice policies.

The interest toward transitional justice led to a certain degree of judicialization of demands of social movements. Institutional attempts to answer such demands varied through the governments.. For example, Bachelet's government has diverted from transitional justice measures, to implement other types of policies towards human rights violations during the dictatorship: she cultivated personal links wiht relatives' and survivors' movements, she inaugurated publicly founded memorial to victims and instituted the Museo de la Memoria y

³² Medalla Contreras, Tania Haydeé, and Gallardo, Milena. . «PARA UNA POLÍTICA DE LA INSISTENCIA: TRAYECTORIAS Y DESPLAZAMIENTOS DE LA CUECA SOLA EN CHILE (1978-2019)». *Index, Revista De Arte contemporáneo*, n.º 0, 2019, p. 199.

³³ Museo de la Memoria y los Derechos Humanos, *la Cueca Sola*: <https://fb.watch/wBoSwaXNg4/>

³⁴ Ruiz Rodríguez Leticia M. “Le cinquantième anniversaire du coup d’Etat de 1973 au Chili”, art. cit., p. 43

de los Derechos Humanos in Santiago³⁵. However, this did not tame the dissatisfaction of social movements towards State attitude and their demands for further justice, including civil compensation³⁶. Social and human rights movements are therefore at tension with political power, leaning towards a conciliatory position with conservative sectors of society. The overwhelming refusal of 2021's Constitutional project, rejected by 62% of Chileans³⁷, reflects the difficulty to put in place radical policies, including in terms of human rights.

Expanding on what has been previously said, the identity and composition of social movements is directly linked to the content of their demands and the evolution in terms of post-transitional justice that took place in the last decades. While the variety of actors fighting for memory and justice is too wide to be studied in a paper of this size, it is therefore essential to cite the contribution of the feminist movement, at the forefront of social mobilizations in Chile, from 2018 on. With the intersection between demands for transitional justice and feminist instances, Chile evolved towards acknowledgment of the gendered dimension of state terrorism, that specifically used SGBV practices to target female political opponents and control their bodies³⁸. Extending beyond gender, the meeting of human rights movements and other types of social movements, transitional justice and memory demands managed to expand to the narrow conception that characterized the transitional period. On this matter, since 1998, Collins has used the term "post-transitional justice" to describe Chile's evolution in terms of accountability, emphasizing the crucial role of human rights guarantees and the advocacy of social movements in strengthening the consolidation of democracy.

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Annex:

³⁵ Collins Cath. "Human Rights Trials in Chile during and after the 'Pinochet Years'", art. cit., p. 85.

³⁶ *Ibid.*

³⁷ <https://www.bcn.cl/portal/noticias?id=historica-participacion-plebiscito-2022>.

³⁸ Doran, Marie Christine, Fernández Droguett, Francisca and Peñafiel, Ricardo. "Violencia Político-Sexual: Genealogía de un concepto de lucha", art. cit., p. 120.

1:

Ley 19.992, Título IV. Del secreto:

Artículo 15.- Son secretos los documentos, testimonios y antecedentes aportados por las víctimas ante la Comisión Nacional sobre Prisión Política y Tortura, creada por decreto supremo N° 1.040, de 2003, del Ministerio del Interior, en el desarrollo de su cometido. En todo caso, este secreto no se extiende al informe elaborado por la Comisión sobre la base de dichos antecedentes.

El secreto establecido en el inciso anterior se mantendrá durante el plazo de 50 años, período en que los antecedentes sobre los que recae quedarán bajo la custodia del Ministerio del Interior.

Mientras rija el secreto previsto en este artículo, ninguna persona, grupo de personas, autoridad o magistratura tendrá acceso a lo señalado en el inciso primero de este artículo, sin perjuicio del derecho personal que asiste a los titulares de los documentos, informes, declaraciones y testimonios incluidos en ellos, para darlos a conocer o proporcionarlos a terceros por voluntad propia.

Los integrantes de la Comisión Nacional sobre Prisión Política y Tortura, así como las demás personas que participaron a cualquier título en el desarrollo de las labores que se les encomendaron, estarán obligados a mantener reserva respecto de los antecedentes y datos que conforme al inciso primero de este artículo tienen carácter secreto, durante todo el plazo establecido para aquel. Estas personas se entenderán comprendidas en el N° 2 del artículo 201 del Código de Procedimiento Penal o del artículo 303 del Código Procesal Penal, según corresponda.

La comunicación, divulgación o revelación de los antecedentes y datos amparados por el secreto establecido en el inciso primero, será sancionada con las penas señaladas en el artículo 247 del Código Penal.

2.

extract from an interview with CMSSR in 2022, reported in: Doran, Marie Christine, Fernández Droguett, Francisca and Peñafiel, Ricardo. “Violencia Político-Sexual:

Genealogía de un concepto de lucha”, Facultad de Derecho y Humanidades, Universidad Central de Chile, p. 130 :

“Del Estado, significó una reparación profunda para muchas de nuestras compañeras sobrevivientes que no están acá en Chile, [...] que sé yo, que lo sintieron como una reparación. O sea, sintieron que ese acto que nosotras hicimos en el Congreso fue una reparación importante para ellas. Sí, fue muy bien acogido y con eso ya para nosotras, ya eso es suficiente. Nos reparamos en nosotras, porque no hay otra posibilidad en este Estado”.

3.

Open call for participants for the first performance made by the Colectivo Cueca sola, for the 8th of March 2016, the International Women’s Day:

“Somos Colectivo Cueca Sola, un grupo amorosamente decidido a mantener viva la memoria histórica, porque reivindicamos la memoria como una construcción colectiva y social. Bailamos la Cueca Sola para desprivatizar la memoria, porque las que bailaron antes que nosotras nos enseñaron una forma transgresora, revolucionaria y que resignifica la imagen de la danza, en especial de la cueca. La danza como herramienta de lucha resignifica a su vez las prácticas e imaginarios políticos: los abre a otras preguntas y esferas, lo complejiza, lo enriquece, lo desestructura. No se equivoque nadie. No solo estamos familiares y amigos y amigas. Están todos aquellos que se han conmovido con la historia de nuestro pueblo. No solo estamos las mujeres. Están también los hombres que buscan transgredir y revolucionar con su baile, con su canto y su cuerpo. En nuestro gesto está la memoria de las mujeres luchadoras de la Agrupaciones en dictadura; la memoria de nuestros pueblos danzantes; la rebeldía de Lemebel y sus Yeguas, la cueca popular y resistente y la memoria de la subversión del espacio público: tomarnos las calles por asalto”.