

Truth Commissions and the Accountability Relationships They Generate: A New Framework to Evaluate Their Impact

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Truth commissions (TCs) have become a recurrent mechanism for states to deal with and address past human rights violations. This article argues that TCs generate accountability relationships at three different stages. Before their establishment, TCs generate vertical accountability relationships between civil society and the state. During the period between their establishment and the release of the final report, TCs hold state agencies horizontally accountable. In their final reports, TCs put forward recommendations capable of generating horizontal accountability between the governing regime and the state agencies towards which the recommendations are directed, and vertical accountability as civil society pushes the governing regime to implement these recommendations. This article suggests criteria for evaluating how truth commissions contribute to promoting accountability.

Keywords truth commissions, accountability, vertical and horizontal relationships, civil society, impact assessment

Introduction

Accountability and truth commissions are two interrelated concepts. Broadly, accountability refers to the process of holding public officials responsible for their actions, with the aim of restraining those who hold power. Truth commissions (TCs) are ad-hoc mechanisms established by the state to independently inquire into and verify excesses committed by state officials during a previous repressive regime or armed conflict. In that regard, TCs are primarily mechanisms of accountability.

This paper examines how TCs help promote accountability. To that end, it first analyses the two dimensions of accountability, namely answerability and enforcement, as well as the horizontal and vertical levels of interaction. Building on this twofold distinction, it is argued in section two that TCs generate

horizontal and vertical accountability relationships and that it is within these interactions that accountability, in its answerability or enforcement dimension, is produced. In order to operationalize the previous argument to assess impact, a framework is established in section three consisting of fourteen evaluative criteria.

Accountability: Two Conceptual Dimensions and Two Levels of Interaction

Accountability, it has been argued, has two dimensions: answerability and enforcement (Schedler 1999). There is general agreement in the literature about the meaning of answerability. Answerability encompasses the obligation of officials to *inform* about a decision and to *explain* the reasons behind taking that decision. Fox refers to answerability understood as “the fundamental right to call those in authority to justify their decisions” (Fox 2007b, 668). For Fox, answerability is the *soft face* of accountability. For Bovens, accountability has a close semantic connection with answerability because in an accountability relationship a forum can interrogate an actor, the actor has the obligation to explain and justify his conduct, and the forum can question the information provided or the legitimacy of the conduct (Bovens 2007, 451).

There is, however, lack of agreement upon what Schedler refers to as the *enforcement* dimension of accountability; that is, lack of agreement on whether it entails punishment exclusively or encompasses other measures. For Schedler, enforcement implies the idea that accounting agencies punish improper behavior and that those held to account suffer the consequences (Schedler 1999, 15). While Fox refers to the *hard face* of accountability, which includes answerability and the possibility of sanctions, he also includes compensation and/or remediation (Fox 2007b, 668-69). Similarly, Bovens sees the term *sanction* as excluding redress or reparation, and instead refers to the possibility that the one being held accountable “may face consequences” (Bovens 2007, 452). These consequences may be formal, such as “fines, disciplinary measures, civil remedies or even penal sanctions, ... or informal, such as the very fact of having to render account in front of television cameras” (452). The existence of these two dimensions questions whether both answerability and enforcement need to exist in order for a relationship to be described as one of accountability. Schedler maintains that one of them is enough because they are not defining characteristics that must be present in all instances we describe as exercises of accountability. He concludes that accountability “must be regarded as a ‘radial’ concept whose ‘subtypes’ or ‘secondary’ expressions do not share a common core but lack one or more elements that characterize the prototypical ‘primary’ category” (Schedler 1999, 17). If we consider accountability as a radial concept, only one of its dimensions,

be it answerability (either as information or justification) or enforcement, would be enough. Schedler refers to the Chilean and South African truth commissions as agencies of accountability that have considered accountability to be mainly answerability and that have relied on a *soft* form of punishment, the public exposure of criminal action (17). Conversely, Schedler points to elections where accountability is exclusively a matter of sanctions. Through the ballot, voters hold politicians accountable, punishing past behavior “even if between elections incumbents may continually disclose their actions and justify them” (Schedler 1999, 18).

Beyond this conceptual understanding of answerability and enforcement, accountability takes place within a relationship where at least one side represents the state. To operationalize this concept, we have to look at the two levels of interaction at which accountability takes place: horizontally between state agencies and vertically between non-state and state actors. Horizontal accountability is “the existence of state agencies that are legally enabled and empowered, and factually willing and able, to take actions that span from routine oversight to criminal sanctions or impeachment in relation to actions or omissions by other agents or agencies of the state that may be qualified as unlawful” (O’Donnell 1999, 38). On the other hand, vertical accountability refers to the state being held to account by non-state agents, mainly by citizens and their associations (Goetz and Jenkins 2002, 7). Elections would be the example of citizens holding accountable those in office. For some, electoral accountability would be the only instance of vertical accountability. The reason being that it is the only relationship that gives citizens formal authority of oversight and/or sanction over public officials. However, as Fox points out, this narrow definition excludes many of the processes that are not based on formal authority but generate political accountability in practice (Fox 2007a, 7). Thus, vertical accountability would also include “processes through which citizens organize themselves into associations capable of lobbying governments, demanding explanations and threatening less formal sanctions like negative publicity” (Goetz and Jenkins 2002, 7). These processes bring new issues onto the public agenda and/or activate the operation of horizontal agencies. What differentiates these demands in a relationship of vertical accountability is that the state is compelled to respond.

While horizontal accountability relationships are built on the basis of state agencies legally enabled to scrutinize actions by other state agencies, vertical accountability relationships between non-state and state actors are more ambiguous. For a relationship to qualify as vertical accountability the state needs to be rendered accountable to civil society. In the next section, the relationship between TCs and accountability will be examined.

Truth Commissions and the Accountability Relationships They Generate

The argument presented in this section is that TCs generate horizontal and vertical accountability relationships and that it is within these relationships that accountability, in its answerability and enforcement dimensions, is produced. This argument is built upon, first, the distinction between the actual functions and recommendations of a truth commission, and second, the division of a TC process into three stages: the period before the establishment of a TC, from the establishment to the submission of the final report (that is, during the work of the commission), and as a result of its recommendations in the final report.

Horizontal Accountability Relationships

Truth commissions are “an ad-hoc autonomous victims centered commission of inquiry set up in and authorized by a state for the primary purposes of (1) investigating and reporting on the principal causes and consequences of broad and relatively recent patterns of severe violence or repression that occurred in the state during determinate periods of abusive rule or conflict, and (2) making recommendations for their redress and future prevention” (Freeman 2006, 18).

As mechanisms set up by the state, TCs are vested with formal authority. They are legally enabled and empowered by the executive or legislative branch, or authorized by a peace agreement.¹ In his definition, Freeman differentiates between two primary purposes of TCs: (1) to investigate and report, and (2) to make recommendations. This distinction is between what TCs can effectively do or cannot do, and what they can only recommend doing. In his report of August 2013, the UN special rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence used the terms “actual functions” and “potentialities” to differentiate between functions the commissions can carry out on their own and those for which they can merely make recommendations (Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence 2013, para. 38).

Actual functions include fact finding and victim tracing. Through fact finding, truth commissions try to clarify the facts surrounding violations and the identity of perpetrators. Victim tracing entails finding out the fate of individual victims when their whereabouts are unknown or when bodies remain unidentified. While carrying out their investigation, truth commissions rely on victims, witnesses, civil society, human rights organizations, or religious groups to collect information and evidence about past violations. This information will support the commission in its interaction with state agencies, such as security forces or the judiciary. It is within this interaction with state agencies that a relationship of horizontal accountability takes place. Here, the commission’s

strength and reach will depend on its mandate and powers. These powers will also shape the extent of the obligation of state officials to supply information about a decision and explain the reasons behind taking that decision. Through holding state officials horizontally accountable, TCs generate answerability. And because they are authorized by the state, the truth disclosed becomes state answerability in front of society.

“Potentialities” refers to the recommendations TCs put forward with the final report. They are a consequence of the fact finding and usually include the design of reparation programs; measures of individual responsibility, such as the removal of perpetrators from public office and/or their prosecution; and measures intended to reform institutions and legislation. Once the commission has submitted these recommendations it finishes its work. The governing regime takes over as the accounting agency and the various state institutions towards which the recommendations are directed become the accountable actors. If implemented, these recommendations produce accountability in its enforcement dimension, as defined by Fox and Bovens. For Fox, it is the concept of *hard accountability*, which includes sanctions and also compensation or remediation (Fox 2007b, 669). For Bovens, it is the possibility that those held to account *may face consequences*, including fines, disciplinary measures, civil remedies, or even penal sanctions (Bovens 2007, 452). And, as Bovens maintains, the accounting agency does not need to be the one enforcing those *consequences*. In the case of truth commissions, recommendations will need to be implemented by other state agencies (452).

In the absence of enforcement due to lack of implementation, recommendations can still generate answerability if the state agencies towards which the recommendations are directed are compelled to justify their decision not to implement. This would be the case when an attorney general fails to implement recommendations to prosecute and provides a justification for this lack of action. Without this justification, the interaction between the governing regime and the state agency will not produce any accountability.

Table 1 shows that while carrying out fact-finding and victim-tracing

Table 1. Horizontal Accountability Relationships

Accountability relations		Horizontal accountability
TC's Primary purposes		
Actual functions	Fact finding	Truth commission – State agencies: produces answerability
	Victim tracing	
Potentialities (Recommendations)	Victim redress	Governing regime – State agencies: produces enforcement (or answerability)
	Prosecutorial	
	Preventive	

Source: Author.

functions, TCs generate horizontal accountability interactions with state agencies. It is within this interaction that answerability is produced. The recommendations put forward in the final report may also generate horizontal accountability interactions between the governing regime and the state agencies. It is within this interaction that enforcement, or otherwise answerability, is produced. Beyond these horizontal accountability interactions, TCs also generate vertical accountability relationships between civil society and the governing regime.

Vertical Accountability Relationships

Vertical accountability relationships occur at two different stages: before the establishment of the commission and as a result of the commission's recommendations in the final report. Before its establishment, the prospect of setting up a TC renders the governing regime answerable to civil society. The interaction between civil society and the governing regime will depend on the context and the dynamics leading to the setting up of a commission. If the decision is the result of the negotiation of a peace agreement between two former warring parties, the chances are it is taken at an elite level with little participation from civil society. Conversely, in post-authoritarian contexts it can be a compromise between a previous oppressive regime and political parties pushing for a new democratic regime. In this case civil society engagement in the decision to set up a TC could be higher.

Vertical accountability relationships also occur as a result of the recommendations in the commission's final report. These recommendations are not only intended for the governing regime but are also directed at the victims and broader civil society. If the governing regime remains inactive and does not hold the state agencies horizontally accountable, civil society can take over that role. At this point, civil society needs the capacity to press the governing regime to implement the recommendations. In this way, the governing regime becomes vertically accountable to civil society. Fox points out that TCs "rarely have sufficient institutional clout to be able to act on their findings, whether by proposing mandatory sanctions, policy changes, protection from violations, or compensation for past abuses" (Fox 2007b, 666). For him, in order to address these issues of *hard accountability* it is necessary to "deal with both the nature of the governing regime and civil society's capacity to encourage the institutions of public accountability to do their job" (669). Because of the inherent circumstances of post-conflict or post-authoritarian settings, in all likelihood civil society will be weak, as freedom of expression and other political rights might be curtailed. But as the special rapporteur points out, "in the end, the fate of recommendations depends to a large extent on the leadership, advocacy and persistence of civil society organizations" (Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of Non-recurrence 2013, para. 73).

The two stages of the process are presented in Table 2. While prior to the

Table 2. Vertical Accountability Relationships

Accountability relations		Vertical accountability relations
TC's process		
Before establishing TC		Civil society – governing regime: produces answerability
As a result of the recommendations in the final report (Potentialities)	Victim redress	Civil society – governing regime: produces enforcement (or answerability)
	Prosecutorial	
	Preventive	

Source: Author

Table 3. Horizontal and Vertical Accountability Relationships

Accountability relations		Horizontal accountability relationships	Vertical accountability relationships
TC's process			
Before establishing TC			Civil society – governing regime: produces answerability
During the work of the commission (Actual functions)	Fact finding	Truth commission –	
	Victim tracing	State agencies: produces answerability	
As a result of the recommendations in the final report (Potentialities)	Victim redress	Governing regime –	Civil society – governing regime: produces enforcement (or answerability)
	Prosecutorial	State agencies: produces enforcement	
	Preventive	(or answerability)	

Source: Author.

establishment of the TC the vertical accountability relationship produces only answerability, the recommendations contained in the final report may also produce enforcement. Vertical and horizontal accountability relationships are merged in Table 3.

Before their establishment, TCs *indirectly* generate vertical accountability relationships between civil society and the state; this kind of vertical relationship produces answerability. During the period between establishment and the submission of the report, TCs hold state agencies horizontally accountable; this horizontal relationship produces answerability. As a result of the recommendations in the final report, TCs generate, first, a relationship of horizontal accountability between the governing regime and the state agencies towards which the recommendations are directed, and second, a relationship of vertical accountability between civil society and the governing regime. In both cases these relationships can produce enforcement or, in its absence, answerability. Building on the above

accountability relationships, the next section establishes a framework within which to evaluate the contribution of TCs to promoting accountability.

Criteria for Evaluating Answerability and Enforcement as a Result of Accountability Relationships

In this section, I put forward fourteen criteria for evaluating answerability and enforcement produced before the establishment of the commission, during the period between its establishment and the submission of the report, and as a result of the recommendations in the final report.

Answerability as a Result of Vertical Accountability Relationships before the Establishment of a TC

In analyzing what must happen in order for a TC to make the governing regime answerable to civil society, I come up with two evaluative criteria (EC). First, if *the pressure from civil society is decisive for the governing regime in establishing a TC, the state is being made answerable to civil society demands* (EC-1). Chile provides an example of a truth commission established by a governing regime being held vertically accountable by elections. The Rettig Commission, the Chilean truth and reconciliation commission, was established in April 1990, one month after the newly elected President Patricio Aylwin took office. Issues related to human rights had been central to the election campaign. The Concertación de Partidos por la Democracia program of government referred to the need to establish the truth in cases of human rights violations after September 11, 1973, the day of the coup d'état by General Augusto Pinochet (Documentos La Época 1989). Thus the setting up of this commission was a result of civil society demands for action.

A second criterion for assessing whether the governing regime is rendered answerable is if *the pressure from civil society led to the governing regime making changes to the mandate, powers, and appointment of commissioners or any other relevant aspect of the commission* (EC-2). For instance, in South Africa, the need to enact new legislation to establish the South African Truth and Reconciliation Commission (SATC) opened a space for civil society, the NGO sector, and the public to participate in the drafting process. Proposed amendments included, among others, the demand that the hearings of the amnesty committee be held in public rather than behind closed doors as initially foreseen in the bill (Van der Merwe, Dewhirst, and Hamber 1999, 59). Moreover, as the approved legislation did not provide for the process for selecting commissioners, NGOs drafted a selection process proposal that was accepted with only minor changes (59). Thus, in South Africa, the prospect of establishing a TC generated state answerability in response to demands from victims and civil society.

National consultations are another way of promoting engagement by victims

Table 4. Criteria for Evaluating Answerability before Establishment of a Truth Commission

Accountability Relations TCs process	Vertical accountability relationships
Before establishing TC	<p data-bbox="564 371 1074 399"><i>Civil society – governing regime: produces answerability</i></p> <p data-bbox="494 430 1143 486">Evaluative criteria showing the governing regime is being rendered answerable in front of civil society demands:</p> <p data-bbox="494 491 1148 547">EC-1: Pressure from civil society is decisive for the governing regime to set up a TC.</p> <p data-bbox="494 552 1148 633">EC-2: Pressure from civil society is decisive for the governing regime to change the mandate, powers, appointment of commissioners, or any other relevant aspect of the commission.</p>

Source: Author.

and civil society in the process of setting up a commission. Even if governments only hold them to give the appearance of listening to victims’ concerns, consultations become a real channel for pressurizing governments regarding certain aspects of the new legislation. The scope of the terms of reference, the process for selecting commissioners, or the exclusion of amnesty clauses can become triggers for engagement by victims and civil society. In Timor-Leste, a steering committee was formed with representation from civil society, including human rights groups, groups representing women and youth, as well as religious groups.² This committee conducted community consultations that led to an expansion of the mandate of the Commission for Reception, Truth and Reconciliation to include a reconciliation process using traditional community practices, as well as recognition that the commission needed to look into widespread enforced famine (Office of the High Commissioner for Human Rights 2009, 6). These examples show that governing regimes are rendered vertically accountable by changes being introduced into the legislation as a result of civil society pressure. Table 4 shows how the governing regime is rendered answerable in the face of civil society demands before the establishment of the commission.

Answerability as a Result of Horizontal Accountability Relationships during the Work of a TC

During the period between their establishment and the submission of the report, TCs carry out their fact-finding and victim-tracing functions. This fact finding and victim tracing is done on two different levels: first, through collecting information and evidence from victims, witnesses, and broader civil society; and second, through collecting information from state agencies.

In interaction with victims, witnesses, and broader civil society, state answerability is produced when TCs disclose evidence supporting violations

of human rights committed by the state. This will usually happen with the publication of the report, but could also take place through interim reports or public hearings where state-sponsored violations are exposed. For the state to be rendered answerable, in the first place, *victims, witnesses, and/or civil society organizations need to access the commission* (EC-3). This access requires the commission to reach out to victims, witnesses, and civil society organizations, and to ensure that the environment is conducive for victims, witnesses, and civil society to come forward and provide information. Latin American truth commissions have collected information from organizations working closely with victims, such as human rights or religious groups. The Argentinian National Commission on the Disappeared took over 7,000 statements documenting 8,960 persons who had disappeared, and most human rights organizations assisted the inquiry by providing information on the disappeared (Hayner 2011, 45-46). The Commission on the Truth for El Salvador relied on victims and national and international human rights groups to document human rights violations. It received more than 22,000 complaints of serious acts of violence that had taken place between January 1980 and July 1991. Seven thousand were reported by victims and witnesses at the commission's offices, while the rest were received through governmental and nongovernmental organizations (Commission on the Truth for El Salvador 1993). The Guatemalan Commission for Historical Clarification also incorporated data from NGOs. The commission used the databases of the Recovery of Historical Memory Project of the Catholic Church's Human Rights Office and the Centro Internacional para Investigaciones en Derechos Humanos to help estimate the number of people killed and disappeared, and to confirm overall patterns (Hayner 2011, 33-34). In South Africa, NGOs also handed over records of human rights violations to the South African Truth Commission (SATC), and these were incorporated into a national database (Van der Merwe, Dewhirst, and Hamber 1999, 65). During the work of the commission, many SATC staff requested research assistance from NGOs as they realized the wealth of information they had readily available (65).

At the second level, state answerability is produced within the horizontal accountability relationship between a TC and the state agencies. Here, a commission will use the information collected from victims and civil society when interacting with state agencies. This horizontal accountability interaction between a commission and state agencies will depend on the powers the commission wields. TCs hold state officials answerable when empowered to summon and interrogate them, order the submission of documents and other evidence, or ask for the release of necessary details and the reasons behind their actions. It is through holding state officials horizontally accountable that TCs generate answerability. For state agencies to be rendered answerable, *the commission has to have access to state/non-state actors and these actors have to be answerable to the commission* (EC-4).

Notwithstanding the nature of TCs as ad hoc mechanisms of horizontal accountability, traditionally they have had little access to state/non-state actors. Even in cases where commissions have been legally empowered to interrogate these actors, they have rarely done so. Latin American truth commissions, such as those in Argentina or Chile, have not had the power to subpoena military officers or to order the submission of documents from military institutions. In El Salvador, the commission had the right to enter any office or compound in search of documents but it found that little documentation was made available to it (Hayner 2011, 227). In contrast to Latin American TCs, the SATC had a wide range of important investigative powers, such as those of subpoena, search and seizure, and witness protection. However, it employed them only a handful of times (28). This may be because the SATC collected information through public hearings. Those who had committed politically motivated crimes, including gross violations of human rights, could be granted amnesty in exchange for full disclosure of the whole truth in relation to those crimes. Perpetrators were answerable not only to the commission but also to the victims.

As a result of their fact-finding and victim-tracing activities, TCs generate new *truth*, which is disclosed mainly through the publication of the final report. Through making the report public, the governing regime is transferring the outcome of the commission's fact finding and victim tracing to the public domain. Because of the nature of TCs as ad-hoc mechanisms of horizontal accountability authorized and empowered by the state, what the final report discloses is state answerability. While most governing regimes that have received TCs' reports have published them, those in Uganda, Nepal, Haiti, and Nigeria have not done so. Therefore, one criterion for evaluating a TC's contribution to promoting horizontal accountability would be whether or not *the final report is made public* (EC-5).

Once the report is made public we can evaluate the extent of state answerability. We will look at four evaluative criteria. Evaluative criteria 6 and 7 are related to the extent to which the report discloses new facts and evidence surrounding violations. Evaluative criteria 8 and 9 identify the extent to which the TC attributes institutional and personal responsibility for the violations.

If the report discloses new facts and evidence surrounding violations (EC-6), it follows that the state is rendered answerable. For instance, the Argentinian truth commission documented around 9,000 disappearances, compiled information on torture centers, and collected testimonies from former detainees who explained the methods of torture used. In El Salvador, the commission thoroughly investigated over thirty cases illustrative of patterns of violence. For each of these cases the commission established the degree of certainty on which the findings were based, and whether there was full, substantial, or sufficient evidence (Commission on the Truth for El Salvador 1993). The commission used these standards of evidence to establish the facts surrounding violations. With regard to commissions looking into cases of disappearances, a specific criterion for assessing disclosure

of evidence surrounding violations is whether *the commission has identified burial sites* (EC-7). For instance, the Peruvian truth commission registered 4,644 burial sites throughout Peru and carried out three exhumations and preliminary verifications in 2,200 of them (Truth and Reconciliation Commission 2003, 344).

Attribution of institutional or personal responsibility in the final report indicates the extent to which the state/non-state is being rendered answerable. If *the report acknowledges that state agencies and/or non-state actors committed violations of human rights* (EC-8) it is producing more answerability. In Chile the report attributed 95% of the crimes to the military, which according to Hayner debunked the military’s central argument that the country had faced an “internal war” (Hayner 2011, 48). The truth commission in El Salvador attributed 85% of the cases to agents of the state, paramilitary groups allied to them, and death squads, while 5% of the complaints registered involved accusations against the guerrillas (Commission on the Truth for El Salvador 1993). The Guatemalan Commission for Historical Clarification attributed 93% of the violations documented to the state, 3% to the guerrillas, and in 4% of the cases could not identify the actors responsible. If *the report attributes individual responsibility through naming perpetrators* (EC-9), it is going one step forward in terms of the answerability a commission produces. In El Salvador the commission named those responsible as a result of its investigation. Among them were members of the armed forces implicated in the commission of crimes, civil and judicial servants who failed to investigate such crimes, and members of the insurgent

Table 5. Criteria for Evaluating Answerability During the Work of the Truth Commission

Accountability Relations		Horizontal accountability relations
TCs process		
During the work of the commission (Actual functions)		<i>Truth commission – State agencies: produces answerability</i>
		Evaluative criteria showing state agencies are being rendered answerable
	Fact finding	EC-3: Victims, witnesses, and/or civil society organizations access the commission. EC-4: The commission has access to state/non-state actors. Main state/non-state actors are answerable to the commission. EC-5: The final report is made public. EC-6: The report discloses new facts and evidence surrounding violations committed.
	Victim tracing	EC-7: In cases of disappearances, the TC has identified burial sites. EC-8: The report acknowledges state agencies and/or non-state actors committed violations of human rights. EC-9: The report attributes individual responsibility through naming perpetrators.

Source: Author.

armed group implicated in perpetrating acts of violence (Commission on the Truth for El Salvador 1993). This commission used standards of evidence to ascertain whether there was full, substantial, or sufficient evidence for the individual to be named as the perpetrator. Table 5 summarizes evaluative criteria during the work of a commission.

The fulfillment of the above evaluative criteria indicates that state agencies, or where applicable non-state actors, are rendered answerable. While criteria 3, 4, and 5 deal with formal aspects that need to be fulfilled for the commission to be in a position to produce answerability, evaluative criteria 6 to 9 deal with the substance of what the report needs to disclose in order to produce answerability.

Enforcement as a Result of Horizontal and Vertical Accountability Relationships after a TC's Recommendations in the Final Report

In their final reports, TCs put forward recommendations that can generate two more accountability relationships. First, a horizontal relationship between the governing regime and the state agencies towards which the recommendations are directed, and second, a vertical one as civil society pushes the governing regime to implement the recommendations put forward in the commission's final report. The implementation of these recommendations produces enforcement or answerability if the state agencies towards which the recommendations are directed are compelled to justify their decision not to implement them. In assessing what needs to happen before we can conclude that the recommendations have produced enforcement, I have created five criteria.

Enforcement as a Result of Horizontal Accountability Relationships

In most cases TCs have recommended measures to provide redress for victims, such as reparations, for the violations documented. Only early commissions, those in Uganda, Nepal, and Chad, have not recommended reparations (Bakiner 2014). While they usually recommend reparations, truth commissions do not award them. This is logical, as reparations are long-term programs that usually outlast a commission's life. The implementation of reparations entails fulfilling the enforcement dimension of accountability. An evaluative criterion would be whether *reparation programs have been implemented* (EC-10). In the case of commissions looking into cases of disappearances, a specific criterion to assess the production of enforcement is whether *exhumations have been carried out* (EC-11). The Peruvian truth commission's recommendations proposed the "National Plan for Forensic Anthropological Interventions" to deal effectively with the exhumation and identification of victims (Truth and Reconciliation Commission 2003). Exhumations are still ongoing in Peru.

With regard to individual responsibility, there is enforcement if *prosecutions have taken place* (EC-12). Although commissions have recommended prosecution, implementation has not always followed due to unwillingness on the part of

government prosecutorial agencies and/or a weak judicial system. In South Africa, despite the SATC handing over a list of three hundred cases with the names of specific perpetrators to the National Prosecuting Authority, not a single person on the list was prosecuted (Hayner 2011, 101-2). In other cases there have been prosecutions, although not to the extent recommended by the commission. The Peruvian TC had a special unit tasked with preparing cases for prosecution. In its final report, the commission handed over dossiers of cases but the prosecutorial agencies raised doubts over the evidence collected. In the years that followed the submission of the commission's report, twelve perpetrators were convicted and fifty-two acquitted (96).³

Another measure concerning individual responsibility that demonstrates enforcement is whether *perpetrators have been removed from public office* (EC-13). This process, usually referred to as vetting, involves the identification and removal of individuals responsible, especially from the police, prison service, the army, and the judiciary (Secretary-General 2004, para. 52). There is little evidence of vetting as a result of TC recommendations. While Chad, El Salvador, East Timor, and Liberia recommended the removal of alleged perpetrators from office, only in El Salvador did the government partially meet this demand (Bakiner 2014, 24-25).

Truth commissions also put forward recommendations aimed at reforming state agencies or existing legislation to protect the human rights of citizens. Following the recommendations of its TC, Chile reformed criminal procedure to ensure that due process, human rights, and the right to a defense were guaranteed (Wiebelhaus-Brahm 2010, 67). Similarly, in Chile, the post of ombudsman was established as a result of the recommendations. Thus, a specific criterion for assessing whether there has been enforcement would be whether recommended *institutional or legal reforms to prevent future violations have been adopted* (EC-14). If the governing regime decides not to implement the recommendations, or just puts in place the non-controversial ones, civil society can take over.

Enforcement as a Result of Vertical Accountability Relationships

The role of civil society is key to the fate of the recommendations in the final report. It is through civil society advocacy, leadership, and persistence that a commission's recommendations can end up being implemented even when the governing regime lacks the will or the political clout to do so. The implementation of recommendations as a result of civil society pressure has been analyzed. In his study, Bakiner examines which recommendations have been implemented as a result of pressure from civil society. He refers to "indirect political impact through civil society mobilization" when decision makers adopt TC recommendations only as a result of civil society pressure (Bakiner 2014, 22). He uses two measures to account for civil society mobilization: nongovernmental initiatives to publish and/or disseminate a commission's final report when the government fails to do so, and progress on the implementation of recommendations with a focus on

reparations. With regard to the first measure, he finds that in Nepal, Sri Lanka, and Haiti it took domestic and/or international human rights organizations several years to get the government to publish the truth commission's final report, and in Nigeria publication was the result of a private initiative.⁴ As for the second measure, he finds that in South Africa, Guatemala, Peru, Sierra Leone, and Timor-Leste, civil society mobilization led to the implementation of reparation programs recommended in the TC's final report. His focus on reparations alone might result from what data was available for cross-country comparison, as other recommendations could also be implemented as a result of civil society mobilization.

Here, I suggest using the same evaluative criteria as I used for the previous horizontal relationship. Thus, I assume enforcement could occur either as a result of the horizontal accountability relationship between the governing regime and state institutions or as a result of the vertical accountability between civil society and the governing regime.

Table 6 shows the criteria for evaluating the production of enforcement as a result of horizontal and vertical accountability relationships. While criteria

Table 6. Criteria for Evaluating Enforcement as a Result of Recommendations in the Final Report of a Truth Commission

Accountability Relations		Horizontal accountability relations	Vertical accountability relations
TCs process			
As a result of recommendations in the final report (Potentialities)	Victim's redress	<p><i>Governing regime – State agencies: produces enforcement (or answerability)</i></p> <p>Evaluative criteria for demonstrating production of enforcement by governing regime</p> <p>EC-10: Reparation programs have been implemented.</p> <p>EC-11: In cases of disappearances, exhumations have been carried out.</p> <p>EC-12: Prosecutions have taken place.</p>	<p><i>Civil society – Governing regime: produces enforcement (or answerability)</i></p> <p>Evaluative criteria for demonstrating civil society production of enforcement</p> <p>EC-10: Reparation programs have been implemented.</p> <p>EC-11: In case of disappearances, exhumations have been carried out.</p> <p>EC-12: Prosecutions have taken place.</p>
	Prosecutorial	EC-13: Perpetrators have been removed from public office.	EC-13: Perpetrators have been removed from public office.
	Preventive	EC-14: Institutional or legal reforms to prevent future violations have been adopted.	EC-14: Institutional or legal reforms to prevent future violations have been adopted.

Source: Author.

10 and 11 concern victims' redress, criteria 12 and 13 deal with measures of individual responsibility and criterion 14 deals with measures of institutional or legal reform. These criteria for evaluating a commission's recommendations may be used to assess the production of enforcement in the short (one year), medium (five years), or long term (ten years).

Conclusions

This article has argued that truth commissions generate horizontal and vertical accountability relationships and that it is within these relationships that accountability, in its answerability and enforcement dimensions, is produced.

Before the establishment of a TC, it is the prospect of setting one up that generates vertical accountability relationships between civil society and the governing regime. Specifically, pressure from civil society to establish a TC, or to bring about changes in the mandate, powers, and appointment of commissioners, produces answerability when the state is compelled to follow through.

From the establishment of a commission to the submission of the report, TCs interact with victims, NGOs, and broader civil society as well as with state agencies. The nature of these interactions is completely different. Victims, witnesses, and broader civil society are sources of information to establish facts and collect evidence. However, because of the nature of TCs as mechanisms authorized and empowered by the state, the *truth* disclosed becomes state answerability. This answerability becomes public mainly through the publication of the final report.

As for the interaction with state agencies, it is framed within a relationship of horizontal accountability and is based on the powers the commission wields. This relationship of horizontal accountability generates answerability. This paper sets out evaluative criteria to assess when state agencies, or when applicable non-state actors, are rendered answerable.

In their final reports, TCs put forward recommendations that will need to be implemented by other state agencies. These recommendations usually include a set of measures to provide redress to victims, to contribute to prosecutions, and to prevent further violations. With the submission of their final reports, TCs cease to exist, although the implementation of their recommendations has yet to begin. This paper examines two more accountability relationships that result from the recommendations put forward by the TC in the final report. First, a relationship of horizontal accountability between the governing regime and the state agencies towards which the recommendations are directed. The implementation of recommendations produces accountability in its enforcement dimension. If the governing regime does not put into effect these recommendations, civil society can take over and press the governing regime to do so. This vertical accountability

relationship between civil society and the governing regime produces enforcement if the recommendations are implemented as a result of social mobilization. This paper sets out evaluative criteria for assessing the production of enforcement as a result of these horizontal and vertical accountability relationships.

It is through producing answerability and enforcement that truth commissions contribute to the promotion of accountability.

Notes

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1. In Latin America, they are usually set up by presidential decree, for example, the TCs in Bolivia (1982), Argentina (1983), Chile (1990), Uruguay (2000), Panama (2001), and Peru (2001). In South Africa (1995), Ghana (2002), and Kenya (2009) they were set up by the legislative branch. The truth commissions in El Salvador (1992), Guatemala (1997), Sierra Leone (2002), the Democratic Republic of Congo (2004), and Liberia (2006) were all established through a peace agreement.
2. The steering committee also included representatives from the National Congress for Timorese Reconstruction, the Commission for Justice and Peace of the Catholic Church, an association of ex-political prisoners, the National Armed Forces for the Liberation of East Timor, the United Nations Transitional Administration in East Timor, and the Office of the United Nations High Commissioner for Refugees.
3. In 2008-2009, there were only two convictions out of thirty-one verdicts, and the supreme court overturned one of them. Hayner mentions the courts' refusal to recognize that violations of human rights constituted crimes against humanity and the courts' rejection of the command responsibility doctrine as reasons for the lack of convictions.
4. However, I disagree with Bakiner with regard to Nepal and Sri Lanka. In Nepal the report of the truth commission he refers to was actually never published. And in Sri Lanka, the three zonal commission's report was submitted in September 1997 and made public in January 1998.

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