

**PROMOTING
ACCOUNTABILITY IN
INTERNATIONAL
CYBERSECURITY: THE
NEED FOR AN
EFFECTIVE PEER REVIEW
MECHANISM**

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PROMOTING ACCOUNTABILITY IN INTERNATIONAL CYBERSECURITY: THE NEED FOR AN EFFECTIVE PEER REVIEW MECHANISM?

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1. Introduction

In 2023, the African Peer Review Mechanism (APRM) celebrated its 20th anniversary under the theme "Accelerating and Deepening Governance Reform, Measures, and Intervention", which identified key actions the mechanism could take to support and promote good governance and democracy as well as to encourage peer learning and experience sharing in Africa.¹ For this paper, the research has focused on how the APRM has evolved as well as challenges of intergovernmental peer review mechanisms and the actions that can be taken to develop an intergovernmental peer review mechanism for accountability in cyberspace. At the same time, conversations about multilateral accountability have increasingly focused on malicious use of cyberspace's effect on preventing weaponisation of emerging domains and promoting responsible behaviour.² For example, malicious ICT activities that impact critical infrastructure and critical information infrastructure, including CI and CII, that provide essential services have intensified and evolved significantly and is one of states' most significant concerns.³ In addition, malicious ICT activities are drivers of digital harms on society, organisations, and individuals, and these have direct, indirect, and cumulative order harms.⁴ While the APRM's potential for intergovernmental cyber accountability remains the focus of this report, its challenges, limitations, and the role of the regional mechanism cannot be considered separately from its broader impact on global governance. General lessons for consideration when considering accountability in cyberspace and other recommendations associated with intergovernmental peer review actions are highlighted in the report.

¹ "African Peer Review Mechanism 20th Anniversary Celebration," African Union, November 14, 2023, <https://aprm.au.int/en/news/press-releases/2023-11-14/african-peer-review-mechanism-20th-anniversary-celebration>.

² United Nations. "Without Adequate Guardrails, Artificial Intelligence Threatens Global Security in Evolution From Algorithms to Armaments, Speaker Tells First Committee | Meetings Coverage and Press Releases," October 24, 2023. Accessed June 28, 2024. <https://press.un.org/en/2023/gadis3725.doc.htm>.

³ (United Nations General Assembly, "Developments in the field of information and telecommunications in the context of international security" (1 August 2023) A/78/265. Accessed June 28, 2024. <https://documents.un.org/doc/undoc/ltd/n23/227/59/pdf/n2322759.pdf?token=VIsRyAEte0auJQUAGD&fe=true>

⁴ Jamie MacColl et al., "The Scourge of Ransomware: Victim Insights on Harms", *RUSI Occasional Paper*, January 2024, <https://static.rusi.org/ransomware-harms-op-january-2024.pdf>.

2. The African Peer Review Mechanism

The APRM has a number of elements, some of which have been core to the mechanism from inception, some that have evolved, and some features that are new: First the mandate and purpose of the APRM is to ensure that participating states conform to agreed values, codes, and standards in the declaration on democracy, political, economic, and corporate governance (hence forth known as the declaration) by fostering the adoption of codes through sharing of experiences, identifying successes and deficiencies, and providing capacity building⁵ and other relevant instruments. Member States that have signed up to the APRM also signed the memorandum of understanding (MoU) that established partnership between states and the APRM and was undertaken to implement agreed commitments.⁶

The declaration on democracy, political, economic, and corporate governance was adopted by heads of state and government of the African Union in 2002.⁷ Of significance, the heads of state and government committed to work together to foster socioeconomic development, democracy and good political governance, and economic and corporate governance. The APRM was separately established by the declaration to guide states and develop a peer review mechanism for adherence.⁸ Under each pillar, heads of state committed to sets of actions: To support good governance, they committed to ensure the effective functioning of parliaments and other accountability institutions in our respective countries, including parliamentary committees and anticorruption bodies. The leaders also committed to international obligations under the UN, highlighting the Charter of the United Nations and the United Nations Universal Declaration on Human Rights and all conventions relating thereto, especially the Convention on the Elimination of All Forms of Discrimination against Women and the Beijing Declaration.⁹

Third, there are four types of reviews.

18 months	Country requesting a review	As Necessary	Targeted Reviews
<ul style="list-style-type: none">• State party provides a national action plan to adhere to the declaration, a periodic review undertaken by the APRM secretariat and the review team	<ul style="list-style-type: none">• Own reasons	<ul style="list-style-type: none">• Participating heads of state and government may call for a review of a participating state; early signs review when there are signs of political or economic crisis	<ul style="list-style-type: none">• Which are short, topic-specific reports that cover a theme or sector of interest for governance in African states

The APRM also conducts targeted reviews, which are short, topic-specific reports that cover a theme or sector of interest for governance in African states. At the 2016 APRM

⁵ Ross Herbert, Steven Gruzd, and The South African Institute of International Affairs, "The African Peer Review Mechanism: Lessons From the Pioneers," *The South African Institute of International Affairs (SAIIA)*, February 2008. Accessed June 28, 2024. <https://saiia.org.za/wp-content/uploads/2008/07/The-African-Peer-Review-Mechanism-Lessons-from-the-Pioneers.pdf>.

⁶ "Memorandum of understanding the African Peer Review Mechanism," *NEPAD/HSGIC/03-2003/APRM/MOU*, March 9, 2003.

⁷ African Union, "The new partnership for Africa's development (NEPAD) Declaration on democracy, political, economic and corporate governance" (July 8 2002) AHG/235 (XXXVIII). Accessed June 28, 2024. https://archives.au.int/bitstream/handle/123456789/495/2002%20AHG%20235%20%28XXXVIII%29%20Annex%201%20_E.pdf?squence=1&isAllowed=y.

⁸ *ibid*

⁹ *ibid*

Forum, the mechanism was given additional responsibilities which includes monitoring governance not only in its current 41 Member States but also in non-Member States.¹⁰

The pillars of assessment for members of the APRM have also expanded to include governance responses to shocks and disasters, a response to the Covid-19 pandemic. The funding for reviews is also being addressed through partnerships with global and regional development actors including the UN Committee of experts in public administration, added to existing list of partners such as the African Development Bank, the UN Development Programme, and the UN Economic Commission for Africa (UNECA).¹¹

The APRM also includes civil society organisations (CSO) in its work as part of the country self-assessment questionnaire which guides the assessment of participating states' compliance with the principles contained in the declaration.¹² These CSOs include social groups such as those representing women, the elderly, and people with disability and special needs, and associations of social scientists, academia, business organisations, and cultural organisations.¹³ Some examples of references to civil society include those on how vibrant, independent, and influential civil society organisations are, which cover the legal regime governing civil society organisations; questions on key institutions, stakeholders, and processes for making economic policy and an expectation to outline categories of organisations in the not-for-profit sector.¹⁴

The APRM has been assessed against other peer review mechanisms, notably the Universal Periodic Review (UPR), in which two key points highlighted that the APRM is a more effective mechanism compared to the UPR.¹⁵ Firstly, the APRM is a voluntary process that allows countries to take ownership of their own governance and development.¹⁶ The APRM has a more comprehensive scope, covering not only human rights but also broader governance issues such as democracy, economic management, and development. This broader focus allows for a more holistic assessment of a country's governance and development challenges, enabling a more comprehensive and targeted approach to addressing them.¹⁷ Thirdly, the APRM has a more participatory and inclusive process compared to the UPR. It involves a wide range of stakeholders, including civil society organisations, academia, and the private sector in the review process.¹⁸ This inclusivity ensures a diversity of perspectives and inputs, leading to a more balanced and accurate assessment.

¹⁰ Kgothatso Semela, "Assessing the Implications of the APRM's Expanded Mandate," *SAIIA Occasional Paper No 328*, July 2021, <https://saiia.org.za/wp-content/uploads/2021/09/Occasional-Paper-328-semela.pdf>.

¹¹ *ibid*

¹² African Union, "The African Peer Review Mechanism (APRM): A Vision and Plan for the Future." *Strategic Plan. African Peer Review Mechanism*, 2016.

¹³ African Union. "The new partnership for Africa's development (NEPAD) Declaration on democracy, pollical, economic and corporate governance"

¹⁴ *ibid*

¹⁵ McMahon, Edward R., Kojo Busia, and Marta Ascherio. "Comparing Peer Reviews: The Universal Periodic Review of the UN Human Rights Council and the African Peer Review Mechanism." *African and Asian Studies* 12, no. 3 (January 1, 2013): 266–89. <https://doi.org/10.1163/15692108-12341265>.

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ *ibid*

Challenges and Limitations of the African Peer Review Mechanisms

Implementing intergovernmental peer review mechanisms faces several challenges. These challenges include limited political will, lack of financial resources, inadequate capacity, and potential conflicts of interest. However, strategies can be employed to address these challenges and enhance the effectiveness of such mechanisms.

To address this lack of political will, it is crucial to emphasise the benefits of peer review, such as improved governance, increased accountability, and enhanced international standing. Engaging in diplomatic efforts and building consensus among Member States can help overcome this challenge.¹⁹ Another challenge is the lack of financial resources to support the implementation of peer review mechanisms. Conducting comprehensive reviews requires significant funding for research, data collection, and capacity building activities. To address this, it is important to secure adequate financial support from both domestic and international sources. Encouraging Member States to allocate sufficient resources to the implementation of peer review mechanisms and seeking partnerships with international organisations and donors can help overcome this challenge.

Conducting thorough reviews requires a skilled and knowledgeable workforce. Many countries face capacity constraints in terms of human resources, technical expertise, and research capabilities. To address this, it is crucial to invest in capacity building initiatives, including training programmes. Member States may be hesitant to criticise or expose the shortcomings of their peers due to political alliances or economic dependencies. To address this, it is important to ensure the independence and impartiality of the review process. While intergovernmental peer review mechanisms have the potential to contribute to accountability, their limitations must be acknowledged. Addressing these limitations – such as by enhancing enforceability, reducing political influence, expanding scope and coverage, increasing transparency, improving follow-up mechanisms, and including non-state actors – can strengthen the effectiveness of these mechanisms in promoting accountability.²⁰

¹⁹ African Union, "APRM: A Vision and Plan for the Future."

²⁰ Rafael Mesquita and Antonio Pires, "What Are UN General Assembly Resolutions for? Four Views on Parliamentary Diplomacy," *International Studies Review* 25, no. 1 (December 29, 2022), <https://doi.org/10.1093/isr/viac058>

3. Analysis of the APRM's Potential for Intergovernmental Accountability in Cyberspace

So far, we have weighted the APRM as a regional and voluntary intergovernmental peer review mechanism to ensure that participating states conform to agreed values, codes, and standards. As discussed previously, there are several intergovernmental peer review mechanisms that bring together states on a regional or global level. This section elaborates on key elements for implementing peer review mechanisms by looking at the mandate, participation, review process, stages of peer review process, duration of the review, funding of the review, and review of the mechanisms.

A clear mandate is essential for intergovernmental peer review mechanisms to fulfil their intended purposes effectively. A clear mandate ensures that participating countries have a shared understanding of the objectives, scope, and desired outcomes. This clarity enables effective policy coordination and implementation, leading to better outcomes for Member States. For instance, the OECD's mandate focuses on promoting economic growth, improving living standards, and fostering sustainable development through policy dialogue and peer learning and the WTO's mandate, for example, emphasises the importance of transparency in trade policies, allowing Member States to review and assess each other's trade measures to ensure compliance with agreed-upon rules. Participation in the APRM was intended to be open to all Member States of the AU and countries wishing to participate in the APRM will notify the chairman of the NEPAD Heads of State and Government Implementation Committee. As noted on the extended mandate, specific mechanisms such as the targeted reviews can be done for non-APRM states on specific issues. This level of clarity around participation is important.

Some peer review processes involve an interactive dialogue where the country under review presents its national report, followed by questions, comments, and recommendations from other Member States. This dialogue allows for an open and constructive discussion on the situation, challenges, and progress made by the country under review. The APRM was designed with four stages of review, starting with a study of the political, economic, corporate governance and development environment in the country to be reviewed by the APRM secretariat.²¹ This is followed by Stage 2, which includes a visit by the review team for consultations; Stage 3 involves preparation of the report; Stage 4 sees submission of the report to the state under review.²²

The duration of reviews, though timed, may last as long or as short as the resources required by the state under review and the functioning of the APRM. For the APRM, it

²¹ African Union, "APRM: A Vision and Plan for the Future."

²² Kgothatso Semela, "Assessing the Implications of the APRM's Expanded Mandate."

should be six months for the base review.²³ Funding has a big impact on the functioning of the review mechanism. It influences various crucial aspects of the APRM, including covering the costs of reviewers and institutional partners, as well as supporting the maintenance of skills and management essential for the APRMs operation. Setting out a clear funding mechanism, such as assessed contributions from participating Member States, is a good way to ensure the sustainability of the mechanism.

²³ African Union, "APRM: A Vision and Plan for the Future."

4. What States Will Be Accountable for in Cyberspace

Accountability and responsible state behaviour in cyberspace are mutually reinforcing. The framework for responsible state behaviour in cyberspace, including voluntary rules, norms and principles of responsible state behaviour, international law, and confidence building measures (CBM), provides a set of "expectations and standards of the international community regarding the behaviour of States in their use of ICTs and allow the international community to assess the activities of States".²⁴ Moreover, the Framework informs the content of development of accountability mechanisms. On the other hand, without accountability, responsible state behaviour cannot be adhered to and implemented in a sustainable manner. This section looks at key areas of accountability in cyberspace by looking at existing international norms and frameworks and evaluating the APRM's capacity to address these areas of accountability.

By applying best practices in existing peer review mechanisms to responsible state behaviour and considering the UN resolution that established the OEWG as a mandate, states could hold each other accountable for various issues. These could include implementing of rules, norms, and principles of responsible state behaviour; initiatives ensuring ICT security; studying, sharing, and promoting common understandings of existing and potential information security threats, including data security; and demonstrating cooperative measures to counter such threats, as well as how international law applies to state use of ICTs.²⁵

As noted, the APRM is based on a political declaration. There are several advantages to using the UNGA resolution as a starting point; UNGA resolutions, being majority political decisions, have effects on international affairs.²⁶ UNGA resolutions are often criticised as diluted text that reflects the lowest common denominator. However, it is important to consider it an achievement that countries could come together to agree on pressing international issues and cooperate multilaterally on how to address them.²⁷ This captures the second advantage: that UNGA resolutions are linked to real world issues and developments in international politics.²⁸ The third advantage is that there is adherence between resolutions and state behaviour. A good example of this is the resolution on "the policies of apartheid of the government of the Republic of South Africa" which requested Member States to take measures, separately or collectively, in conformity with

²⁴ United Nations General Assembly, "Final substantive report -Open-ended working group on developments in the field of information and telecommunications in the context of international security" (March 10 2021) A/AC.290/2021/CRP.2. Accessed June 28, 2024. <https://dig.watch/wp-content/uploads/2022/08/OEWG-Report.pdf>

²⁵ United Nations General Assembly 2021, " Developments in the field of information and telecommunications in the context of international security" (January 4 2021) A/RES/75/240. Accessed June 28, 2024. <https://documents.un.org/doc/undoc/gen/n21/000/25/pdf/n2100025.pdf?token=HqjKzFHBVgAt3JsGZx&fe=true>

²⁶ Rafael Mesquita and Antonio Pires, "What Are UN General Assembly Resolutions for? Four Views on Parliamentary Diplomacy."

²⁷ *ibid*

²⁸ *ibid*

the charter, to amongst others break off diplomatic relations with the government of the Republic of South Africa or refrain from establishing such relations in order to undermine the government's apartheid policies.²⁹ It is also useful to note that resolutions can also be used to convene conferences that result in treaties and inform the text of binding instruments.³⁰

Exploring how the UNGA resolution on the UN OEWG can be the basis for a peer review mechanism provides an opportunity to create consensus on the form and substance of the peer review mechanism.

There are however some disadvantages to the UNGA resolution on developments in the field of information and telecommunications in the context of international security, as a basis. The resolution was adopted by a recorded vote of 57 to 31, with 63 abstentions.³¹ There are varying degrees of consensus, at times this could result in a defensive approach against the validity of the outcome.³² In weighing the advantages and disadvantages, it is worthwhile considering that discussion on the basis document would constitute progress in the context of cyberspace.

Progress is also an important factor for the second part of the question of what states will be accountable for. The discussion here is on the type of information required: inputs, processes, outputs, or outcomes as different stakeholders could have varying interests for different kinds of compliance targets.³³ For example, some stakeholders may be concerned with holding states accountable for malicious ICT activities in the cyber domain and internationally wrongful acts, thereby influencing national security decisions. Other actors may focus on the process of holding states accountable, including steps on attribution. There could be many other interests, an overview of national interventions during the UN OEWG and study of similar terms that states use when also suggesting accountability, such as monitoring and expectations, could be a useful future study. The process of holding states accountable for specific targets and deciding which one therefore represents complex questions.

The APRM as a case study, provides some guidance by looking at the multiple reviews. Starting with the base review, the questionnaire has both open questions and indicators to assess states compliance with the agreed standards and codes. The questions focus on what the country did regarding the objectives and the codes, how it did so, and with what results; they also highlight which indicators were the type of evidence that were expected in the responses of countries and recognised as measures of performance and results.³⁴ The APRM questionnaire is comprised of over twenty protocols, conventions, and declarations that are referred to as standards and codes. They are further divided

²⁹ United Nations General Assembly, "The policies of apartheid of the Government of South Africa," (2 December 1968) A/RES/2396. Accessed June 28, 2024 <https://www.refworld.org/legal/resolution/unga/1968/en/8042>

³⁰ Mesquita and Pires, "What Are UN General Assembly Resolutions for? Four Views on Parliamentary Diplomacy."

³¹ (United Nations General Assembly, " Developments in the field of information and telecommunications in the context of international security," (November 16 2020) A/75/394 . Accessed June 28, 2024. https://digitallibrary.un.org/record/3892631/files/A_75_394-EN.pdf

³² Mesquita and Pires, "What Are UN General Assembly Resolutions for? Four Views on Parliamentary Diplomacy."

³³ Michael R. Reich, "The Core Roles of Transparency and Accountability in the Governance of Global Health Public-Private Partnerships," *Health Systems and Reform* 4, no. 3 (July 3, 2018): 239-48, <https://doi.org/10.1080/23288604.2018.1465880>.

³⁴ African Union. "The new partnership for Africa's development (NEPAD) Declaration on democracy, political, economic and corporate governance".

into standards that need ratification and those that do not.³⁵ The APRM also requests states under review provide "copies of other surveys and reviews" that may be related to the APRM's task.

A peer review mechanism would be wise to consider the survey of national norms implementation for responsible state behaviour as an existing self-assessment tool. It should further consider all relevant protocols, conventions, and declarations. The second stage of country visits would also consider copies of national maturity assessments and cybersecurity indices. This initiative should combine existing initiatives and the peer review to reflect the process and activities for accountability.

³⁵ *ibid*

5. Conclusion

This paper focused on how to answer the questions of to whom, for what, and how states can be held accountable for their actions in relation to responsible state behaviour in cyberspace. It was guided by the case study of the APRM as a model mechanism for an intergovernmental peer review, in which there are general lessons for consideration when considering accountability in cyberspace. Five sets of recommendations emerge from this analysis and can be summarised as follows:

- **Intergovernmental peer review mechanisms** can empower states to hold each other accountable for agreed values, codes, and standards, including implementing the rules, norms, and principles of responsible state behaviour. They can also help states study, share, and promote common understandings of existing and potential threats in the sphere of information security, as well as demonstrate possible cooperative measures to prevent and counter such threats. The potential of peer review mechanisms to improve accountability in cyberspace can be established by the relationship between regional peer review mechanisms and the OEWG. The OEWG can encourage states to be more transparent with their activities, including involving the multi-stakeholder community in country self-assessments and compliance monitoring, developing voluntary, flexible peer review types and stages with the potential for additional thematic areas, a dedicated leadership and management that reflects states' political will, proper allocation of resources for reviews, and measures to address identified gaps.
- **Different types and stages of review** in intergovernmental peer review mechanisms are an important means of establishing political buy-in and enforceability of review outcomes. States should make full use of different reviews by completing questionnaires of national assessments and requesting targeted reviews based on specific themes and sectors. They should even engage in country visits and validation meetings. These review types and stages serve as stepping stones towards building a culture of accountability. A voluntary approach, including an expanded mandate to review states that are not parties to the APRM, is a beneficial model that could strengthen accountability in cyberspace.
- Recognising the limits of a regional peer review mechanism, the paper notes the importance of **cooperation and division of labour between intergovernmental organisations**, specifically the OEWG and a potential peer review mechanism. Transparency and accountability are important elements of good governance. The OEWG measures to promote transparency can support states willing to engage in peer review measures by building on already existing transparency activities like participation in substantive meeting and national statements.

Many important questions remain about the APRM model's and intergovernmental peer review mechanism's effectiveness at improving accountability in cyberspace, specifically with regards to what states should be held accountable for and to whom that accountability should flow. Regarding the different approaches to and institutional overlap of governance in cyberspace, which approach is better suited for peer review mechanisms? How can the APRM model for robust civil society engagement be extended for accountability in cyberspace? And could the OEWG mandate be used as a basis for a peer review mechanism? Could other regional organisations incorporate peer review mechanisms for responsible state behaviour, and if so, what relationship would they have with the OEWG or future intergovernmental process/body under UN auspices?

In terms of approaches to cyber governance, their success is likely to be determined by whether the mechanisms are closely tied to or simply engaged with UN processes. This is a matter that must be left to states to determine how review outcomes should be enforced, what level of flexibility for review types and stages is appropriate, and what the leadership and management of the mechanism and its funding looks like. Lastly, regional organisations are ideally placed to promote accountability mechanisms amongst Member States, but peer review mechanisms rely on voluntary participation. How can regional organisations develop cyber peer review mechanisms? And how can regional mechanisms that look at the issue of responsible state behaviour be incorporated? – all the while maintaining the role of the OEWG in promoting transparency and regional mechanisms that encourage accountability. These could all be good for cyber governance more generally.

About the author

Moliehi Makumane is a research consultant in cyber diplomacy and international security. Previously, she worked at South Africa's Department of International Relations and Cooperation where she was senior advisor in the UN Group of Governmental Experts (GGE) and where she led the international cybersecurity file as negotiator in the Open-ended Working Group on security of and in the use of information and communications technologies. Her publications focus on developments in the use of ICTs in the global South and cyber confidence building measures in Africa.

About EU Cyber Direct

EU Cyber Direct – EU Cyber Diplomacy Initiative supports the European Union’s cyber diplomacy and international digital engagements in order to strengthen rules-based order in cyberspace and build cyber resilient societies. To that aim, we conduct research, support capacity building in partner countries, and promote multistakeholder cooperation. Through research and events, EU Cyber Direct regularly engages in the discussions about the future of international cooperation to fight cybercrime and strengthen criminal justice systems globally.

