



Universal Periodic Review of South Africa

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Joint submission by:



The PACT
contactyouthpact@gmail.com
www.theyouthpact.org



SRHR Africa Trust
225 Jan Smuts Avenue, Parktown North,
Johannesburg, South Africa, 2196
www.satregional.org
singh@satregional.org



Sexual Rights Initiative
Rue de Monthoux 25, Genève, 1201
www.sexualrightsinitiative.com
anthea@srigeneva.com

SRHR Africa Trust (SAT) is an innovative organization with a regional footprint contributing to improved systems for Sexual and Reproductive Health and Rights (SRHR) of girls, adolescents and women in East and Southern Africa (ESA).

Through its UN-ECOSOC consultative status, SAT connects community voices and experiences to national, regional and international networks, while bringing global best practices in adolescent & youth SRHR to communities through strategic partnerships, innovation and advocacy.



The PACT

A Vibrant Coalition of 152+ youth Organizations working collaboratively and strategically in the global HIV response. Since 2013, we have been building solidarity across youth organisations to ensure the health, well-being and human rights of all young people.

Email: contactyouthpact@gmail.com website: www.theyouthpact.org

Sexual Rights Initiative

The Sexual Rights Initiative is a coalition of national and regional organizations based in Canada, Poland, India, Argentina, and Southern Africa that work together to advance human rights related to sexuality at the United Nations.

Address: Rue de Monthoux 25, Geneva, 1201. Website: www.sexualrightsinitiative.com

Email: anthea@srigenève.com

Phone: +41767656477

YPlus South Africa Network

Y+South Africa's (Y+SA) Network is a much-needed emerging peer network led by advocates and for young people living with HIV (YPLHIV.) The network aims to engage and empower YPLHIV as advocates; in order to secure our Sexual Reproductive Health and Rights (SRHR) and improve the HIV response for young people; and, ultimately, to improve the quality of life and well-being for YPLHIV.

Email: tngoato@gmail.com

MB Lifestyle

MB Teen Lifestyle is a Social Enterprise that focuses on decreasing the vulnerability of adolescents and young people to New HIV infections, Gender Based Violence and Unwanted Pregnancies.

Email: nkeletseng@icloud.com

Sonke

Sonke is a South African-based non-profit organisation working throughout Africa. We believe women and men, girls and boys can work together to resist patriarchy, advocate for gender justice and achieve gender transformation.

Email: thembelihle@genderjustice.org.za Website: www.genderjustice.org.za

Address: 1st Floor, Sir Lowry Studios, 95 Sir Lowry Road Cape Town, South Africa

ARASA

ARASA is a regional alliance of civil society partnerships across 18 countries in East and Southern Africa working to promote a human rights approach to HIV, AIDS and tuberculosis (TB) through capacity strengthening and advocacy.

Email: thuthukile@arasa.info Website: www.arasa.info

Address: 53 Mont Blanc Street, Windhoek, Namibia

The South African National AIDS Council

The South African National AIDS Council (SANAC) is a multisectoral coordination body which brings together government, civil society and the private sector to create a collective response to HIV, TB and STIs in South Africa.

Email: Koketso@sanac.org.za Website: <https://sanac.org.za/>

Address: 333 Grosvenor Street, Hatfield, Pretoria 0083, South Africa

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Executive Summary

1. In this joint submission, we examine the Government of South Africa's human rights record since its third-cycle universal periodic review (UPR) in 2017. Specifically, we assess the government's fulfilment of adolescent and youth sexual and reproductive health and rights. To this end, we analyse South Africa's implementation of recommendations received relating to these issues and provide specific, action-orientated follow-up recommendations at the conclusion of this submission. Between the 9th and 10th of March 2022, 15 youth led, serving and focused organizations in South Africa convened in person and virtually to deliberate on how COVID-19 has affected the HIV, SRHR and GBV/F outcomes of adolescents and young people in their diversity.

Relevant laws and policies

2. Laws, policies and strategies relevant to adolescents, youth and HIV and SRHR in South Africa:

- National Youth Policy 2020 -2030¹
- Adolescent & Youth Health Policy 2017 - 2020²
- National Strategic Plan on HIV/STIs & TB 2017 – 2022³
- National Strategic Plan on GBV & Femicide 2020 - 2030⁴
- Domestic Violence Amendment Bill (Amendments to the Domestic Violence Act 116 of 1999)⁵
- Sexual Offences & Related Matters Amendment Bill (Amendment Act 23 of 2007)⁶
- Criminal & Related Matters Amendment Bill (Amendments to the Magistrates Court Act 32 of 1944, Criminal Procedures Act 51 of 1977 and Superior Courts Act 7 of 2013)⁷
- Policy on the Prevention & Management of Learner Pregnancy in Schools 2021⁸
- Integrated School Health Policy 2012⁹
- Department Basic Education National Policy on HIV, STIs and TB 2017¹⁰
- Choice on Termination of Pregnancy Act 92 of 1996 (Amendments 2004, 2008)¹¹
- National Integrated SRHR Policy 2020¹²
- South Africa's National Human Rights Plan 2015-2020¹³
- South African National LGBTI HIV Plan 2017 - 2022¹⁴

3. During its 3rd UPR cycle in 2017, South Africa received and supported 2 recommendations on the implementation of comprehensive sexuality education in the basic education schooling system. Upon analysis of relevant national legal and policy commitments outlined in section 3, these recommendations are found to be partially implemented with severe gaps pertaining to the training of educators to deliver scientifically and medically accurate, age and developmentally appropriate, gender transformative CSE.

4. As much as there has been notable progress with South Africa renewing its agreement to the East & Southern African Ministerial Commitment on Education for Health & Well-being, as well as launching the scripted lesson plans for CSE since these recommendations were

Comprehensive sexuality education

139.173 Recommendation from Iceland to South Africa:

“Improve knowledge among health care workers and adolescents about SRHR, including through comprehensive sexuality education that involves men and boys”

139.172 Recommendation from Denmark to South Africa:

“Ensure comprehensive sexuality education in the school curriculum, including on consent, contraception and gender-based violence”

¹ South Africa's national youth development policy which has a thematic focus on health, well-being & SRHR of young people.

² Aims to promote the health and well-being of young people aged 10 – 24 years old.

³ Serves as roadmap for South Africa's next stage on the journey towards a future where HIV, TB & STIs are no longer public health threats.

⁴ South Africa's comprehensive national strategic response to GBV with a specific focus on violence against all women – across age, physical location, disability, sexual orientation, sexual & gender identity and national identity – as well as violence against children and how these serve to reinforce one another.

⁵ Amendment seeks to address practical challenges, gaps and anomalies which have manifested since the act was operationalized in 1999

⁶ Amendment expands the scope of the national register for sex offenders to include the particulars of all sex offenders and not only of sex offenders who have committed violations against children or persons with intellectual disabilities.

⁷ Amendment seeks to address GBV and offences committed against vulnerable persons, and provides for additional procedures to reduce secondary victimization of vulnerable persons in court proceeding.

⁸ Policy provides guidance on the reduction of unintended pregnancies, management of their pre- and post-natal consequences, limitation of associated stigma & discrimination against affected learners and , importantly, the retention and re-enrolment of affected learners in school.

⁹ A policy implemented jointly between the departments of health & basic education which seeks to extend, over time, the coverage of school health services to all learners in primary and secondary school with a strategic objective to increase knowledge and awareness of health promoting behaviors.

¹⁰ Policy which seeks to accelerate the implementation of a comprehensive strategy for prevention, treatment, care and support – particularly among children living with, affected or made more vulnerable by the diseases, along with those grappling with issues related to unintended pregnancies.

¹¹ The Act gives women, regardless of age or marital status, the right to access abortion services within the first 12 weeks of pregnancy. The act can also extend access to 20 weeks of pregnancy in specific cases (serious medical reasons).

¹² The policy creates the conditions under which South Africans are able to enjoy quality SRHR across their lifespan with a goal to promote high quality and safer reproductive health services and practices by women, men and youth through informed choice and a human rights-based approach.

¹³ The plan aims to set out a comprehensive response to human rights related barriers to HIV, TB services and gender equality in South Africa for people living with HIV, people with TB & other key and vulnerable populations.

¹⁴ The plan seeks to guide all stakeholders in HIV & STI prevention, care and treatment of all members of the LGBTIQ+ populations in South Africa, inclusive of all sexual minorities living in the country. The plan outlines five interlinked service packages: health, empowerment, psychosocial support, human rights and evaluation.

made¹⁵, the subsequent closures of schools,¹⁶ as a result of the COVID-19 pandemic, has resulted in the de-prioritization of the life orientation curriculum and disrupted the delivery of in-school CSE.

5. These disruptions come at a time when South Africa has recorded a sharp increase in learner pregnancies as well as in new HIV infections among adolescent girls and young women.¹⁷ The reprioritisation and rechanneling of funds towards the national COVID-19 response has also caused delays in the CSE roll-out throughout the country.

6. The June 2020 Supplementary Budget review indicated a budget cut from the HIV/AIDS conditional grant of R60 million and a further R40 million which was allocated to COVID-19 education in schools. This budget cut meant that there were less funds remaining for Life Skills teacher training and CSE in school roll-out.

7. The closure of schools highlighted the need to invest further in out of school comprehensive sexuality education including through the digitization of CSE in some settings for older adolescents to accelerate positive SRH outcomes amongst this demographic. Digital penetration continues to expand and more adolescents and young people resort to social and new media as their primary source of information, education and knowledge for sex and sexuality.

Adolescent Youth Friendly SRH Services & Access to Termination of Pregnancy:

8. During its 3rd UPR cycle in 2017, South Africa received and supported 4 recommendations pertaining to its health system, HIV and broader SRH issues. South Africa's progressive legal and policy environment should, in theory, facilitate young people's autonomous access to high quality sexual and reproductive health and rights (SRHR) information, education and health services. However, in practice, the protection, promotion and realisation of SRHR for every adolescent and young person in South Africa is not yet a reality.

9. Uncoordinated policy mechanisms, inefficient bureaucracy and a lack of political will are some of the challenges that need to be addressed. Adolescents and youth are vulnerable to social policy and programming failures,¹⁸ which in turn contribute to unacceptably high rates of adolescent fertility and mortality, violence against young people in all their diversity (young women, young LGBTQI & gender non-conforming people in particular), knowledge gaps on how to prevent unintended pregnancies, HIV infections, and other sexually transmitted diseases and infections. These knowledge gaps were exacerbated due to the impacts of COVID-19 on the roll out of in-school CSE provision.

139.167 Recommendation from Libya to South Africa: "Continue its efforts in the fight against HIV by adopting a comprehensive national policy to deal with the epidemic and diseases that are sexually transmitted"

139.170 Recommendation from Angola to South Africa: "Strengthen national policies in the area of public health coverage, particularly in the fight against HIV/AIDS in rural areas"

139.166 Recommendation from Japan to South Africa: "Continue its measures to eliminate discrimination and increase its efforts to tackle HIV infection by ensuring equal access to treatment and support"

139.174 Recommendation from Iceland to South Africa: "Prevent unwanted pregnancies as provided under the Choice on Termination of Pregnancy Act"

¹⁵ The new structured scripted lesson plans are purposeful to help learners build an understanding of concepts, content, values and attitudes around sexuality, sexual behaviour as well as leading safe and healthy lives. The scripted lesson plans comprise of 80 one-hour lessons which are developed for grades 4 – 12.

¹⁶ The impact of disrupted education since the COVID-19 outbreak has been devastating, with learners between 75 per cent and a full school year behind where they should be, according to latest statistics. Rotational attendance, sporadic school closures and days off for specific grades, have resulted in school children losing 54 percent of learning time. Some 400,000 to 500,000 learners have reportedly also dropped out of school altogether over the past 16-months (UNICEF South Africa, July 2021).

¹⁷ The number of children born to teen mothers in South Africa's most populous province, Gauteng, has jumped 60% since the start of the COVID-19 pandemic. More than 23,000 girls aged under 18 gave birth between April 2020 and March 2021 – of which 534 were aged under 14 – compared to 14,577 girls aged 19 and under giving birth in the same period a year earlier (Gauteng Department of Health, August 2021).

¹⁸ The evaluation findings indicate that adolescents in South Africa are faced with tremendous challenges when it comes to meeting their sexual and reproductive health. An analysis of interview data shows that some of the issues affecting adolescents include inadequate access to SRH information, and insufficient access to SRH and youth friendly services, vulnerability to STI and HIV infection, high rates of unplanned and teenage pregnancies, and cultural and religious barriers amongst many others. This is also consistent with the findings of the situation analysis that informed the development of the framework strategy (Implementation evaluation of the national adolescent & youth friendly SRHR framework strategy 2014-2019).

10. Given the State's programmatic focus¹⁹ on adolescent and youth SRHR, the full realization of adolescent and youth friendly SRH services including access to safe abortion, and post abortion care remain partially implemented with major gaps existing especially in accessing safe abortions within public health facilities. Over the past few years, South Africa has been experiencing stock-outs of the most popular contraceptives (i.e., injectables and oral hormonal pills) in the public health facilities.²⁰ The contraceptive shortages in addition to the negative attitudes of health-care workers have been a hindrance to accessing contraception for adolescent girls and young women in the country, leading to an increase in early and unintended pregnancies. The lack of knowledge about how to prevent a pregnancy and about other effective but unpopular methods of contraception (i.e., implant, intra-uterine device and female condoms) point to the greater need for CSE in schools.

11. Adolescent girls and young women living in rural and remote areas have limited to no access to sexual and reproductive health services, leading to even more early and unintended pregnancies.

12. The Choice on Termination of Pregnancy Act of 1996 guarantees every pregnant woman the right to terminate a pregnancy should they not wish to carry the pregnancy to term under special circumstances. Twenty-six years after the Act was put in place, adolescent girls and young women continue to face difficulties accessing safe abortion services and therefore resort to illegal and unsafe abortion services. There is a myriad of reasons why adolescent girls cannot access safe abortion in South Africa. These include: shortages of designated facilities that offer safe abortion, shortages of abortion drugs, conscientious objection from healthcare providers, lack of information about services, among many others.

13. In 2017, the Bhekisisa Centre for Health journalism conducted research across the country to determine how many designated facilities for abortion were still providing the service to the public. Out of a total of 450 designated facilities, the research found that only 246 facilities still offered safe abortion services. However, even for women and girls living near these facilities access to abortion related services is still an issue. Some are turned back due to stockouts of abortion pills or due to conscientious objection from healthcare providers. Organisations such as SECTION27 and the Treatment Action Campaign have been assisting young women and girls access safe abortion services. These young women have reported healthcare providers praying for them or telling them that they will “burn in hell” for wanting to terminate a pregnancy. Other healthcare providers blatantly refuses to offer safe abortion services based on their personal and religious beliefs.

14. In addition to the above, there is no referral system in terms of which women and girls are able to be referred to alternative public health abortion facilities. This is attributable to the fact that there are no alternative public designated abortion facilities to which women and girls could be referred. Some of the women and girls who had travelled long distances from neighbouring towns and districts with clinics that didn't offer abortion services or where such services were otherwise inaccessible or unavailable. This demographic of women is highly disadvantaged and most of the women who visit public health facilities in this region are impoverished. Many of the accounts received while interviewing the women seeking abortions at the clinic were from women who said that they had used their last monies in search of an abortion facility. Barely able to fend for themselves and their already existing children an abortion was their last hope to prevent from sinking deeper into poverty due to child-rearing costs.

15. There is also a significant power imbalance between health care users (pregnant women and girls) and health care providers (doctors and nurses). On the one hand, health care workers have specialist skills to perform abortions, they are also older, and they have the authority to grant or refusal abortions. On the other hand, the women and girls who access abortions in the public

¹⁹ Refer to section on legal & policy context.

²⁰ Investigations conducted by the Stop Stock Outs Project (SSP) reveal that health facilities across Gauteng, Mpumalanga, North West, Limpopo and the Eastern Cape have reported ongoing stockouts of contraception medications, including Nuri-sterate, Ovral, Triphasil and Depo Provera (Stop Stock Outs Project, February 2020).

sector tend to be younger, poor, and reliant on health care workers for access to information and services. Nurses have, for example, been witnessed making disparaging comments directed at the women, such as asking the women and girls who were there for an abortion why they insisted on filling up the benches of the clinic. The negative attitudes of nurses also instill fear in women and girls as they fear reprisal so much that they refrain from asking the nurses questions to get more information about their health status. In discussions with the nurses, they can advise that providing abortion services was something they were not compelled to do, and that at any point they could simply request to be transferred to provide other health care facilities.

16. The attitude of the nurses is born from a misapprehension of the principle of conscientious objection. Seemingly, the prevailing understanding is that the principle can be applied haphazardly and can be used as leverage over the heads of the women seeking abortions. The power imbalances are likely to be exacerbated by the State's recognition of conscientious objection (or refusal to care) in the [National Clinical Guideline for the Implementation of the Choice on the Termination of Pregnancy Act](#) (2019). This is because an appropriate balance between a woman or girl's right to abortion and a health care worker's right to invoke conscientious objection is contingent on a health care worker being able to refer a woman to an alternative facility, which are limited, and on a woman having means (time and finances) to honour that referral. With women who access an abortion in the public sector being already impecunious, they would be disadvantaged by the invoking of conscientious objection.

17. It was also noted that there are cases of unsafe abortion providers soliciting clients at the entrance to a clinic. One such individual promised to assist women who are as far along as nine months pregnant with abortion services. There are also allegations that some of the nurses refer patients to illegal abortion service providers. These are serious allegations.

18. Young women have reported to organisations who are part of this submission, different experiences of the denial of services. One 19-year-old woman explained that she was a student at the local university, and she had arrived early that morning in order to guarantee she would access an abortion. Neither her family nor partner knew that she was pregnant. She wanted to terminate her pregnancy so that it would not interrupt her studies. After she had been attended at the clinic, she advised one of the submitting organisations that she been refused an abortion. She said that the nurses at the clinic had told her that she was pregnant with twins. They also advised her that she was 20 weeks pregnant, making her no longer eligible for an abortion in terms of South African law. Later, after she was assisted to get a second opinion from a private doctor, she learnt that was only 17 weeks pregnant and was in fact eligible for a second trimester abortion and that she was carrying only one foetus.

19. Another young woman had travelled from Mqanduli, about 40km away from the clinic, to have an abortion. She had been part of the reported cohort of women who had camped overnight outside. Although she had managed to eventually access an abortion, she had experienced great difficulty in accessing it. She reported that the night before she had slept outside the facility it had rained quite heavily; she had also been turned back previously because the clinic was only taking in a certain number of women and girls for an abortion; she was unemployed and had a child that she was battling to support.

Gender based violence and femicide

20. During its 3rd UPR cycle in 2017, South Africa received and supported 18 recommendations pertaining to gender-based violence, discrimination and the eradication of harmful practices. South Africa has extremely high levels of GBV, defined as physical, economic, sexual and psychological abuse as well as rape, sexual harassment and trafficking of women and men for sex, and sexual exploitation. Youth have not escaped the high rates of GBV.

21. A 2012 study from the Department of Social Development and the Department of Women, Children and People with Disabilities found that 61% of children under the age of 15 years, and 29% of children under the age of 10 years, had experienced sexual assault. The COVID-19 national lockdown has exacerbated these conditions. In the first week of South Africa's nationwide lockdown the police recorded 2,300 GBV complaints while private organisations saw similar increases.

22. In a broader analysis of GBV/F by various gender justice organizations and movements in South Africa, we understand that the roots of GBV/F extend deeply into our nation's historical and recent past. Colonialism and apartheid inflicted deep, layered, and extreme levels of violence against the vast majority of South Africans with few able to say that they hadn't witnessed it or been violated. The rampant role of patriarchy, misogyny and prescribed gender roles have too been highlighted as key driving factors which have remained unchecked and unchanged within South African society and have aided the further normalization of historical violence. Power imbalances, male entitlement, and attitudes of ownership of women by men/male partners further add to the stripping of women's agency and are often highlighted as leading factors which influence the dynamics of GBV/F in South Africa.

23. Considering the exacerbating factors and increase of GBV/F during South Africa's COVID-19 lockdown, it was noted that profound economic inequalities also contributed significantly, as more men found themselves out of jobs and displaced as traditional breadwinners, and had to rely on what they previously categorised as "secondary incomes" brought in by their intimate partners. This resulted in many men feeling "emasculated" due to falling short of patriarchal standards of provision, and choosing to re-establish their dominance over female partners through violence and force. In addition to the circumstances of South Africa's COVID-19 lockdown, restrictions and requirements for everyone to stay at home often meant that many young people were forced to quarantine with their abusers. The rates of early and unintended pregnancies among pubescent girls under the age of 12 years were shockingly high between 2020 and 2021 pointing to high prevalence of sexual violence in the home.²¹

24. Although some commendable progress has been made in terms of the launch of the National Strategic Plan on GBV/F, the Emergency Response Fund and subsequent amendments to South African law, major challenges remain especially around the justice system and its response to victims and survivors. In areas where there have been high levels of GBV/F in the community, the South African police services (SAPS) have been engaged and issues pertaining to their stretched human capital were raised.

139.277 Recommendation from Germany to South Africa:

"To take all necessary measures to end sexual and gender-based violence, especially by developing adequate gender sensitive training programmes for law enforcement agencies, the national prosecuting authority and judicial officers and by adopting specific legislation addressing the practice of child marriage (uKuthwala)"

139.195 Recommendation from Czechia to South Africa:

"Step up its fight against gender-based discrimination and violence, uproot its social acceptability and increase efforts for the protection of victims and redress for violations of their rights as well as efforts on accountability of perpetrators"

139.196 Recommendation from the Philippines to South Africa:

"Prevent and combat all forms of discrimination and eliminate violence against women, including domestic violence"

²¹ One factor that has contributed to this is violence against women and girls. In South Africa one in three women experience gender based violence and one in five children under the age of 18 experience sexual abuse (South African medical research council, September 2021).

When police stations were engaged on SAPS gender sensitivity training for frontline officers, issues were raised such as these trainings only being availed to cadettes leaving other officers of various ranks not knowing how to deal with GBV/F, often resulting in the misinterpretation of laws by officers.

25. In certain cases that make it before the judiciary, the judiciary hands down a sentence lower than minimum sentence, victims/survivors are told to relive their traumatic experiences in court, and do not get psychosocial support from state which this causes secondary victimisation, and in other cases the police do not investigate reports further. This further negatively impacts victims/survivors who often suffer several mental health issues. In cases of femicide, victims' families are affected by laws not being fully implemented, because they experience secondary trauma during the trial, hearing gruesome details of how their loved ones were murdered or raped, seeing photographic exhibits in court and essentially reliving the trauma of losing someone.

Recommendations

1. Fast-track the establishment of the national coordinating structure on GBV/F and ensure that it is given adequate financial resources to deliver on the aspirational outcomes of the NSP in line with all resolutions, as well as commitments to the Nairobi Summit on ICPD @25 and the Generation Equality Forum.
2. Designate more safe abortion facilities (especially second trimester abortion facilities) and monitor designated facilities to ensure that they are continuing to provide such services; and establish a network of designated abortion facilities and an efficient referral system to refer women to alternative public abortion facilities.
3. Enforce stricter measures to address conscientious objection of healthcare provider: provide nurses and doctors with regular values clarification & attitudes clarification sessions so that they are aware of their ethical duties to women and girls, to prevent abortion stigma from undermining the quality of the services they provide and the experiences of women and girls who receive those services.
4. Take policy and legislative steps to make at-home pharmaceutical termination of pregnancy widely available and affordable.
5. Prioritize the predictable, continuing, and accessible supply of modern contraceptive & HIV commodities to ensure that adolescent & youth friendly services are fully implemented and realised.
6. Resource, fully implement, and monitor implementation of the Schools Health Act and Integrated School Health Policy as accelerators to health, well-being and SRHR access for all in-school young people.
7. Digitize information on range, benefits, and side effects of modern contraceptives and HIV prevention interventions for adolescents and young people to access freely, including the promotion of pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP).
8. Intensify collaborations with youth-led and -serving organizations (and broader civil society) for country-wide innovative, youth responsive demand-creation programming for SRHR services and commodities, and for social accountability of these.

Report on the status of implementation of in-school CSE in 2023 at the global review of the SDG's and thematic indicator 4.7.2: [percentage of schools that provided life skills-based HIV and sexuality education within the previous academic year.](#)

10. Meaningfully engage with youth-led and -serving organizations on the compilation of national reports to global, continental and sub-regional population and development processes over the next 5 years, including but not limited to: the 10 year review of the Addis Ababa Declaration on Population and Development, the International Conference on Population & Development @30, UN High-Level Meeting on Universal Health Coverage and the global review of the Sustainable Development Goals 2023.

