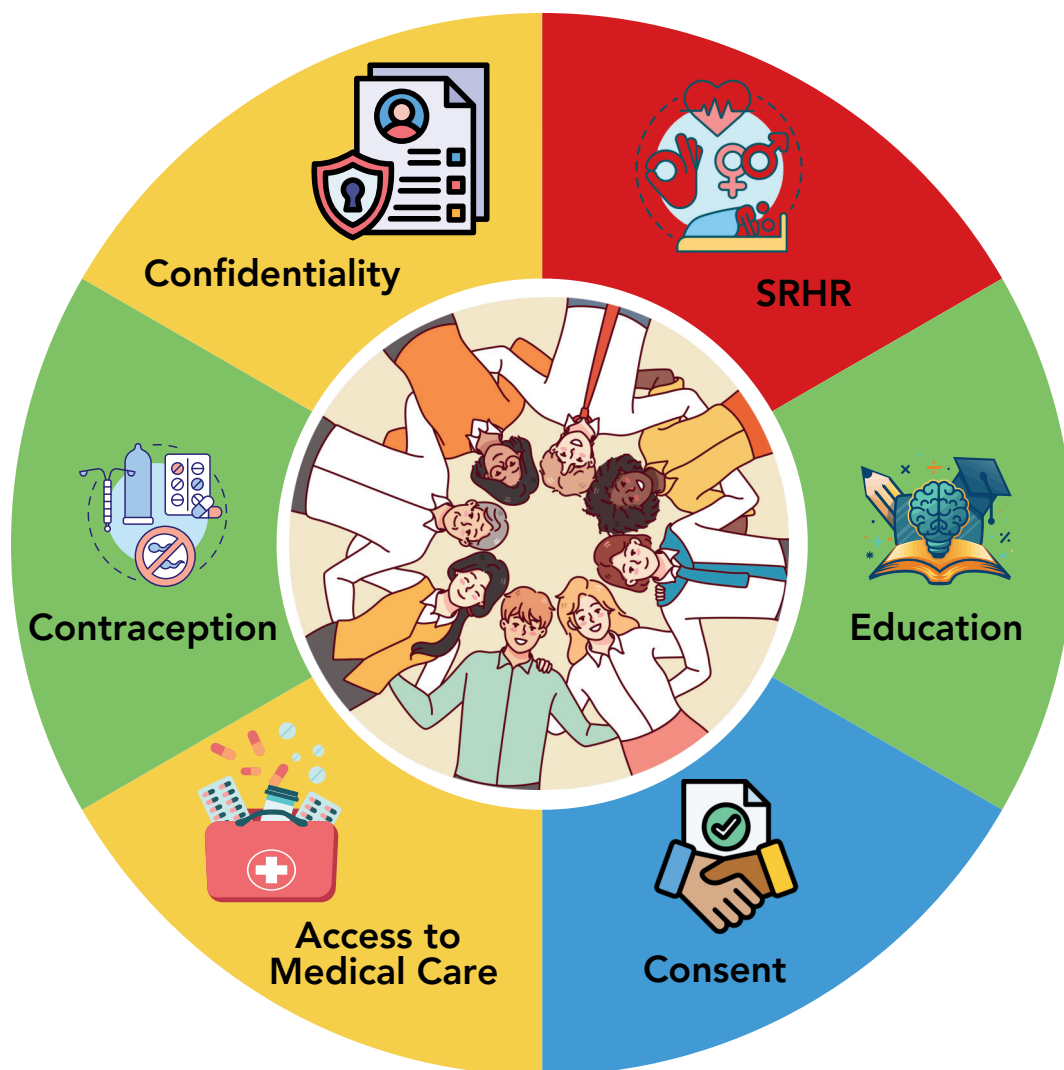


Mental Incapacity & Medical Consent for Adolescent Health

Legal Frameworks for the Reproductive Health of Minors in South Africa



Ibis Reproductive Health

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WOMEN'S LEGAL CENTRE

CONSENT TO MEDICAL TREATMENT

MENTAL INCAPACITY AND MEDICAL CONSENT

MEDICAL TREATMENT

1

Children aged 12 and older may consent to their own medical treatment—including reproductive health services (e.g. contraceptives, gender affirming services, and abortion)—provided they demonstrate sufficient understanding of the benefits, risks, and social implications.

MENTAL INCAPACITY

2

All children over age 12 are presumed to have the capacity to request medical treatment without the need for a maturity assessment. However, some individuals may be declared mentally incapable of making their own decisions, even with assistance, either due to mental illness, intellectual disability, or brain injury.

CONDITIONS FOR MENTAL INCAPACITY

3

Having a mental illness (e.g. depression or anxiety) or a disability alone is not a reason to take away the right to consent from a child over age 12. An official process or assessment involving a court of law or medical professional is required before that right can be taken away.

CONSENT TO MEDICAL TREATMENT

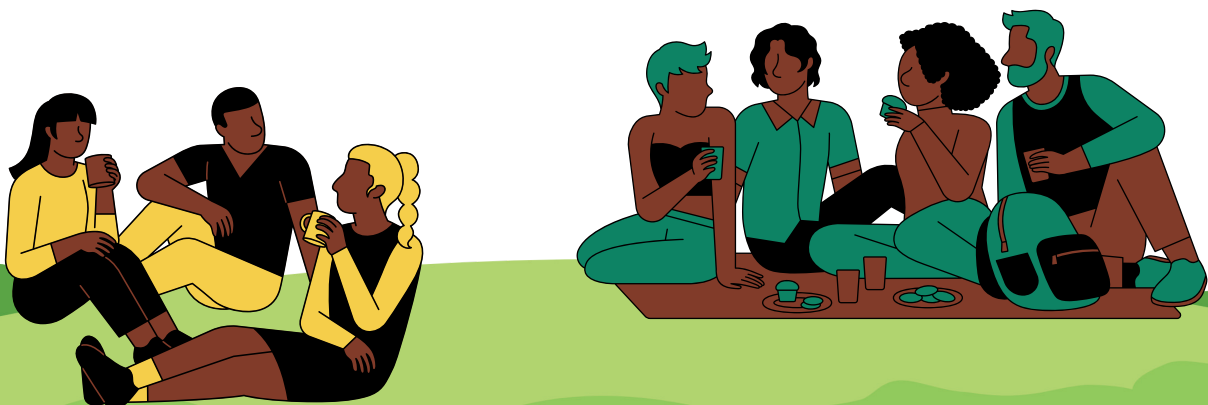
MENTAL INCAPACITY AND MEDICAL CONSENT

DISABILITY WITHOUT MENTAL INCAPACITY

4

Where children have a mental illness or intellectual disability but have not been declared as being unable to make their own decisions;

- Having a disability or illness does not automatically take away your right to make decisions about your health and body (UN Convention on the Rights of Persons with Disabilities).
- If you are 12 or older and can understand information about contraceptives, you can consent to using them, even if you have a mental or intellectual disability.
- In such cases, healthcare providers are encouraged to:
 - Use simple words, pictures, or tools to help them understand
 - Provide sufficient time for them to think and ask questions
 - Respect their choices, even if others disagree
- If further assistance is needed for understanding, support can be sought from a trusted adult, caregiver, or friend to explain things, with the patient still making the final decision.



CONSENT TO MEDICAL TREATMENT

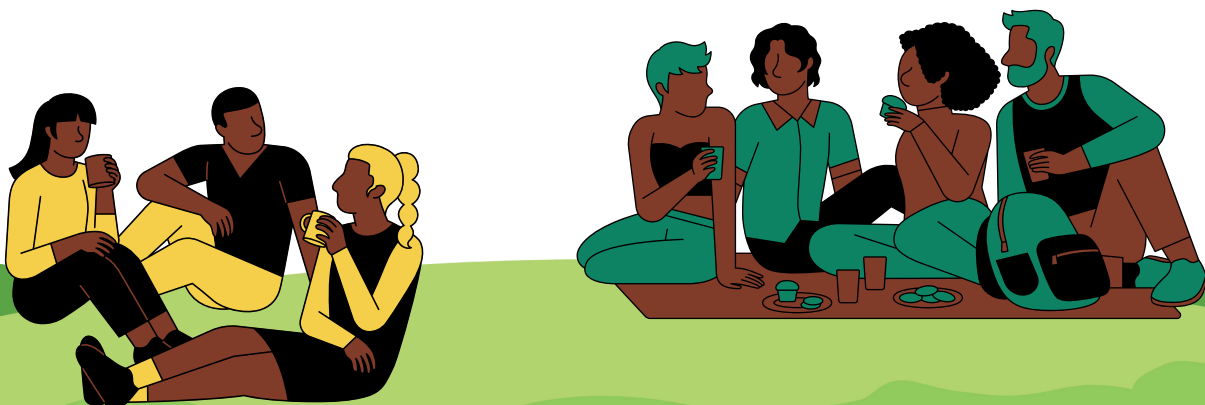
MENTAL INCAPACITY AND MEDICAL CONSENT

DECISION MAKING WITH MENTAL INCAPACITY

5

In cases where a child is formally declared mentally incapable of making their own decisions, a parent, guardian, or court-appointed official is appointed to make decisions on their behalf.

- They may give consent to:
 - Medical treatments (Section 129(4) of the Children's Act and 9(1)(a) of the Mental Health Care Act 17 of 2002)
 - Contraceptives
 - Termination of pregnancy (Section 5(4) of the Choice of Termination of Pregnancy Act)
- Appointed parents, guardians, or caregivers may only provide consent on a minor's behalf if:
 - A decision is in the minor's best interest,
 - The minor cannot understand the information, even with support, and
 - The decision is not only made for convenience or control purposes.
- As part of their right to dignity, bodily integrity, and equality (Sections 10 and 12 of the Constitution), even when someone else gives consent:
 - The young person must still be involved in the process as much as possible.
 - Their wishes, feelings, and rights must be respected.



This document was prepared in collaboration by Ibis
Reproductive Health and Women's Legal Centre.

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frameworks as they relate to
Adolescents' Reproductive Rights

