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# Paradox of Laws on Age of Consent for Children when Testing, or Participating in HIV/AIDS Research and Clinical Trials in South Africa

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## ABSTRACT
The purpose of the study was to explore the contradictions between the laws on the age of consent for children when consenting to test or participating in HIV/AIDS research and clinical trials exclusive of parental consent in South Africa. The methodology used was a qualitative method that incorporated a literature review, content analysis, internet sources, and databases to analyse children's consent to testing and treatment. Consent for children when testing for or participating in HIV/AIDS research and clinical trials is a controversial issue. The paper submits a finding that while it is welcomed that children below 18 years may undergo testing or consent to research or clinical trials for HIV without parental consent, this is a paradox as it leads to legal contradictions. The inconsistencies are that whereas other laws allow children of 12 years of age to consent to testing or participation in HIV/AIDS research, other rules do not permit such a minor to act on his or her behalf if his or her health is harmed in the process, until 18 years. In conclusion, the researchers recommended that parental consent to HIV testing, research, or clinical trials of a minor child should not be excluded by law. The study's contribution to scholarship is that it exposes inconsistencies in legislation that governs the age of consent for children and guides health professionals and researchers to understand the risks they assume when testing or conducting HIV/AIDS research or clinical trials.

*Keywords: Age of Consent, HIV/AIDS, Clinical Trials, Parental Consent, Assistance, Age of Majority.*

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## INTRODUCTION
Age remains one of the most significant elements influencing a child's status.[1] The authors submit that in law, a person between the ages of 7 and 18 is regarded as a minor and has limited or no legal capacity to act on his or her behalf. From the age of seven, a minor can enter into certain agreements assisted by his or her parent or guardian.[2] At age 10, the child must agree to his or her adoption. A minor, at the age of 12, may agree to treatment and surgery exclusive of the assistance of a parent or guardian.[3] However, in certain delicate spheres of life, legal and practical problems may arise. The capability of minors to decide about surgical and medical treatment without help from parents or guardians is one such potential

[1] Trynie Boezaart, " Child Law, the Child and South African Private Law," in *Child Law in South Africa*, ed. Boezaart Trynie (Cape Town: Juta, 2009), 19.
[2] Boezaart, " Child Law, the Child and South African Private Law," 19.
[3] Boezaart, " Child Law, the Child and South African Private Law," 19.

problem.[4] Ngwena argues that the issue of minors' consent to medication and operation, excluding parental or guardian help, is controversial. The researcher further contends that medicinal treatment or surgery could develop complications and dangerous outcomes for the health of minors. Consent to sex, contraceptives and abortion may bring the child and parent into a conflict.[5] Ngwena submits that other legal problems that could lead to potential conflicts between a minor child and a parent are consent to treatment, testing, and participation in HIV/AIDS research or clinical trials without the parental or custodian's help. The cause of this fight arises from the fact that in circumstances where the health of that minor child is harmed by such treatment, testing, or participation in HIV/AIDS research or clinical trials, he or she will need parental or guardian assistance to bring the matter to court. The study submits that this is the inconsistency in that while some laws permit minors to agree to tests, participation in HIV/AIDS research or clinical trials, medical treatment and surgery, other rules do not permit such minors to act on their own if their health is harmed in the process, until 18 years of age, when they become majors.

In common law, minors became majors at age 21.[6] The study submits that this was the position changed by the Children's Act (The Children's Act).[7] According to Bosman-Sadie, Corrie and Swanepoel, with the Children's Act, a minor became a major at 18.[8] This change conforms with section 28 of the Constitution (The Constitution).[9] At the age of majority, South Africans of both sexes leave behind childhood.[10] The major can now take out life insurance and establish a domicile of choice.[11]

In the following sections, the study will describe the research methodology and discuss, make recommendations, and draw conclusions.

## METHODOLOGY

Qualitative research methods were used in the study. This methodology sought information that cannot be communicated mathematically. The methods typically incorporate the analysis of researchers as they gather information. The main methods of this investigation are literature review, content analysis, internet sources and databases that deal with children's consent to testing and treatment.

## DISCUSSION

### The South African Constitution and laws about testing, treatment, and participating of children in HIV/AIDS research and clinical trials

### The Constitution

The Constitution stipulates that a "child" is a person below 18 years.[12] The study submits that this means that the age of majority according to the Constitution is 18 years and that a person under 18 is a minor.

### Children's Act

Children's Act declares that 'child' means anyone below 18.[13] Further, it instructs that a person is a major at 18.[14] The study submits, therefore, that the Children's Act[15] is now aligned with the Constitution, that

[4] Charles Ngwena, "Health Care Decision-Making and the Competent Minor: The Limits of Self- Determination," in *Children's Rights* , ed. Keightley Raylene (Cape Town: Juta & Co Ltd, 1996), 133.
[5] Ngwena, "Health Care Decision-Making and the Competent Minor: The Limits of Self- Determination," 133.
[6] Iain Currie and Johan De Waal, *The Bill of Rights Handbook* (Juta and Company Ltd, 2013), 602; Ngwena, "Health Care Decision-Making and the Competent Minor: The Limits of Self- Determination," 133.
[7] Section 17 of the Children's Act 38 of 2005 (hereinafter "The Children's Act").
[8] Hester Bosman-Sadie, Lesley Corrie, and Erno J Swanepoel, *A Practical Approach to the Children's Act* (LexisNexis, 2010), 38.
[9] Section 28(3) of the Constitution of the Republic of South Africa of 1996 (hereinafter "The Constitution").
[10] Bosman-Sadie, Corrie and Swanepoel, *A Practical Approach to the Children's Act*, 38. However, see Currie and De Waal, *The Bill of Rights Handbook*, 602-603, who argue, "A more controversial question relates not to when childhood ends, but to when it begins. Section 28(3) refers to 'a person'; thus, it is important to determine when 'personhood' begins." They cited two cases, *Christian Lawyers Association of South Africa v Minister of Health* 1998 (4) SA 1113 (T) and *S v Mshupa* 2008 (1) SACR 126 (E), where the courts found that the right to life did not extend to the unborn child.
[11] Bosman-Sadie, Corrie, and Swanepoel, *A Practical Approach to the Children's Act*, 38.
[12] Letitia Pienaar "Access to the Medical Records of a Child: Legislative Review Required," *SAJHR* 30 (2014) 510. See Section 28(3) of the Constitution.
[13] Letitia Pienaar, "Access to the Medical Records of a Child: Legislative Review Required," *South African Journal on Human Rights* 30, no. 3 (2014): 510; See Section 28(3) of the Constitution.
[14] Section 17 of the Children's Act stipulates that "A child, whether male or female, becomes a major upon reaching the age of 18 years." However, section 10 of the Children's Act determines the age of participation of a child.
[15] Sections 1 and 17 of the Children's Act.

a child and a minor are persons under 18.[16] Furthermore, the Constitution and Children's Act agree that a child becomes a major at 18.

**National Health Act**

National Health Act[17] (NHA) governs and safeguards child participants in health research.[18] The study submits that the NHA regulates research and clinical trials in children. Section 71 of the NHA distinguishes between the participation of a minor in therapeutic or non-therapeutic research.[19] Section 71(2) of the NHA states that therapeutic research may only be done (a) if it is in the minor's best interest; (b) in such a way and under such circumstances as may be prescribed; (c) with the consent of the parent or guardian of the child; and (d) if the minor can understand, with the minor's permission.[20]

Some writers argue that mandatory consent of the minor's parents or guardians is required for research participation.[21] However, other scholars believe that section 71(2) of the NHA may be interpreted to mean that, in the case of therapeutic research, the consent of the minor is needed, but only the assent of parents. Such an analysis, however, is refuted that it is unlikely to be adopted by the courts, as the subsection precisely uses the word "consent" and not "assent".[22] In support of the latter argument, the study submits that the NHA intended a compulsory 'consent' and not 'assent' of the minor's parents or guardians for research participation.

The researchers submit that section 71 of the NHA does not give a definite age of consent for the involvement of minors in research. However, the paper submits that when section 71 of the NHA is read together with the Children's Act and the Constitution, it seems to agree that the age of independent involvement of young persons in clinical trials should be 18 years. The study submits that the reason for that submission is because sections 71(2) and (3) only mention the term 'minor' in therapeutic or non-therapeutic research without mentioning age. In the past, a minor was considered anyone below 21, while a "child" was anyone below 18.[23]

**Inconsistencies of legislations which regulate the age of consent for children**

**Table 1: The following is an illustration of inconsistencies between laws which regulate children's consent**[24]

| Legislation | Medical Procedure/ Legal Capacity | Age of Consent |
|---|---|---|
| Section 130(2)(a)(i) of Children's Act | HIV testing | 12 |
| Section 129(2) of Children's Act | Medical treatment | 12 |
| Section 129(3) of Children's Act | Surgical operations | 12 |
| Section 134(2) of Children's Act | Contraceptives | 12 |
| Section 5 of the Termination of Pregnancy Act[25] | Termination of pregnancy | Any age |

[16] Section 28(3) of the Constitution. See Mariana Buchner-Eveleigh and Fred Vogel, "Section 71 of the National Health Act: A Call for a Review of the Consent the Consent Requirement for Child Participation in Health Research," *De Jure* (2015) 281.

[17] Section 71 of the National Health Act 61 of 2003 (hereinafter the NHA).

[18] Mariana Buchner-Eveleigh and Fred Vogel, "Section 71 of the National Health Act: A Call for a Review of the Consent Requirement for Child Participation in Health Research," *De Jure* 48, no. 2 (2015): 281, https://doi.org/10.17159/2225-7160/2015/v48n2a2.

[19] Annelize Nienaber, "The Statutory Regulation of Children's Participation in HIV-Related Clinical Research: More Questions than Answers," *THRHR* 71 (2008): 672; Melodie Labuschaigne, Safia Mahomed, and Ames Dhai, "Evolving Capacity of Children and Their Best Interests in the Context of Health Research in South Africa: An Ethico-legal Position," *Developing World Bioethics* 23, no. 4 (2023): 358–66. See Section 7(2) of the NHA for therapeutic or 7(3) for non-therapeutic research.

[20] Section 71(2) of the NHA. Nienaber, "The Statutory Regulation of Children's Participation in HIV-Related Clinical Research: More Questions than Answers," 672. See Labuschaigne, Mahomed and Dhai, "Evolving Capacity of Children and Their Best Interests in the Context of Health in South Africa: An Ethico-Legal Position," 362.

[21] Labuschaigne, Mahomed, and Dhai, "Evolving Capacity of Children and Their Best Interests in the Context of Health Research in South Africa: An Ethico-legal Position," 362.

[22] Nienaber, "The Statutory Regulation of Children's Participation in HIV-Related Clinical Research: More Questions than Answers," 673.

[23] Nienaber, "The Statutory Regulation of Children's Participation in HIV-Related Clinical Research: More Questions than Answers,"672.

[24] See also the table of Nienaber, "The Statutory Regulation of Children's Participation in HIV-Related Clinical Research: More Questions than Answers," 676.

[25] Section 5 of Termination of Pregnancy Act 92 of 1996.

| | | |
|---|---|---|
| Section 12(8) of Children's Act and Section 28(2) of Customary Initiation Act[26] | Male circumcision | 16 |
| Section 71 of the National Health Act | Research or Clinical trials | No age specified |
| Criminal Law (Sexual Offences and Related Matters Amendment Act[27] | Sex | 16 |
| Section 17 of the Children's Act | Legal capacity | 18 |
| Section 28(1)(h) of the Constitution and Section 17 of the Children's Act | Litigation | 18 |

As shown in the above table, the study submits that, there are many inconsistencies between legislation regulating children's age of consent and various health or legal matters. Regarding health matters, Strode, Slack and Essack observe that the variety of consent norms applied across a spectrum of health-related interpositions indicate an inconsistent method for children's emerging autonomy.[28]

As will be presented below, the authors submit that these inconsistencies in these legislations may lead to ethical dilemmas for researchers and health practitioners during the treatment or participation of children in research or clinical trials.

**Involvement of minors in HIV/AIDS research or clinical trials and the ethical dilemma it presents analysed**

The study submits that researchers who would like to involve children in research or clinical trials face an ethical dilemma of balancing the protection of children during research and access of children to research. In pointing out this dilemma, Nienaber observes that the HIV epidemic in South Africa shows no signs of declining.[29] Statistics demonstrate that children and young adults are especially vulnerable to contracting the disease: female children and young adults between the ages of 15 and 24 have a[n] HIV prevalence rate of 16,9%. The situation for children and young adults between the ages of 15 and 24 who live in informal settlements is particularly dire – they show a prevalence rate of 25,8%.[30] In this context, not only is it vital that clinical research is conducted to find interventions which may curb the spread of HIV, but also such research must include children and young adults.[31]

In South Africa, teenagers are in great danger of HIV infection.[32] For instance, in 2002, it was projected that 9.3% of adolescents (15-24 years) were infected with HIV.[33] In 2003, another survey reported that 10.2% of the same group were infected.[34] Children's participation in research involving HIV inoculation trials guarantees their fair access to safe and effective products. However, teenagers are a weak group, and their involvement brings about complicated moral and legal matters.[35] Therefore, the study submits that though children should be involved in research and clinical trials to their benefit, their safety and protection against harm should also be guaranteed. Clinical trials, for instance, though beneficial to the participants, may also harm their health.

The paper submits that, as already alluded to above, minors are legally allowed to be involved in a study or clinical trials at 18 years of age. Therefore, at 18 years old, a person can participate in a research study or complete questionnaires without parental consent. The authors submit that, however, below the age of 18, some authorities feel that parental or legal guardian consent should be sought.[36]

[26] Customary Initiation Act 2 of 2021.
[27] Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.
[28] Ann Strode, Catherine Slack, and Zaynab Essack, "Child Consent in South African Law: Implications for Researchers, Service Providers and Policy-Makers," *South African Medical Journal* 100, no. 4 (2010), 248.
[29] Nienaber, "The Statutory Regulation of Children's Participation in HIV-Related Clinical Research: More Questions than Answers."
[30] Nienaber, "The Statutory Regulation of Children's Participation in HIV-Related Clinical Research: More Questions than Answers," 671.
[31] Nienaber, "The Statutory Regulation of Children's Participation in HIV-Related Clinical Research: More Questions than Answers," 671.
[32] Catherine Slack et al., "Implications of the Ethical-Legal Framework for Adolescent HIV Vaccine Trials-Report of a Consultative Forum," *South African Medical Journal* 95, no. 9 (2005): 682–84.
[33] Slack et al., "Implications of the Ethical-Legal Framework for Adolescent HIV Vaccine Trials-Report of a Consultative Forum, " 682.
[34] Slack et al., "Implications of the Ethical-Legal Framework for Adolescent HIV Vaccine Trials-Report of a Consultative Forum, " 682.
[35] Slack et al., "Implications of the Ethical-Legal Framework for Adolescent HIV Vaccine Trials-Report of a Consultative Forum, " 682.
[36] See, for instance, Catherine Mathews, Sally J. Guttmacher, Alan J. Fisher, Yolisa Mtshizana, Andiswa Hani and Merrick Zwarenstein, "Written Parental Consent in School-based HIV/AIDS Prevention Research," *American Journal of Public Health* 95 no. 7 (2005) 1266, who

The study submits that children are weak. It is, therefore, advisable for researchers to seek written parental consent if they are to involve children under the age of 18 in research. Otherwise, they could be exposing themselves to litigation by the parents of those children should anything go wrong during that research.

**Informed consent**

The doctrine of informed consent declares that people are independent and should thus be allowed to make the final choice on situations regarding them, on the condition that the elements required for informed consent (or refusal) have been fulfilled.[37] Before exposing patients to any examinations or medication,[38] health practitioners need to obtain their agreement.[39] This is both an ethical and a legal requirement, as indicated by the dictates of the Constitution[40] and NHA.[41] It is, therefore, clear that informed consent is not an event over within a few minutes.[42]

Mujinga opines that informed consent in the context of vaccine trials means that all relevant information about the research must be provided to the research participants.[43] Thus, they can weigh the consequences and advantages of participating in this research.[44] They should also have time for reflection and told they can withdraw without penalty. Sections 129(2) and 129(3) of the Children's Act precisely want the capacity of the child (of twelve years and older) to know the appropriate values and dangers involved in a medical intervention or research.[45] However, even if they are mature, some adolescents may not understand the significance of partaking in certain types of research or trials and the dangers that can result from them.[46]

In *Castell v De Greef*[47] (*Castel* case), the plaintiff claimed damages against the defendant for medical negligence.[48] The court held that a doctor is obliged to advise a patient on the appropriate and essential dangers of any projected medication and operation.[49]

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argue that parental consent is needed because adolescents may not legally agree to participate in research in South Africa. South African research ethics committees accept "passive" parental consent procedures. Parents/guardians are informed (usually by letter) about the nature of the research, their permission for their child's participation is sought, they are alerted to their right to refuse this, and they are given directions for whom to contact if they wish. In the absence of such notification, it is assumed that consent has been given. In the United States, by contrast, "active" written parental consent for adolescents' participation in research is required by the US Department of Health and Human Services, the US National Institutes of Health, and most ethics review boards. The parents/guardians must be informed and must positively notify the school or researcher in writing that they permit their child to participate in the research, or else it is assumed that consent has been denied. In the United States and Canada, many parents fail to return consent forms, and so even though research shows that the overwhelming majority of "nonresponding parents approved of their child's participation, it is presumed that consent was denied.

[37] Nompumelelo Bango-Rili, "Consent to Medical Treatment: To What Extent Does the Post 1994 South African Legal Framework on Consent Protect Patients: A Critical Review" (University of KwaZulu-Natal, 2021); Wandile Ganya, Sharon Kling, and Keymanthri Moodley, "Autonomy of the Child in the South African Context: Is a 12 Year Old of Sufficient Maturity to Consent to Medical Treatment?," *BMC Medical Ethics* 17 (2016): 4.

[38] Paul T. Mtunuse and Paul S. Masumbe, "Mandatory Vaccinations at the Workplace during Covid-19 Times in South Africa: Lessons Learnt for Future Pandemics," *E-Journal of Humanities, Arts and Social Sciences* 5 No. 5 (2024) 717-723, 719.

[39] Keymanthri Moodley, *"Respect for Patient Autonomy,"* in Keymanthri Moodley (ed), *Medical Ethics, Law and Human Rights: A South African Perspective,"* (Pretoria: Van Schaik Publishers, 2017) 55.

[40] Section 12 of the Constitution stipulates that: "(2) Everyone has the right to bodily and psychological integrity which includes the right-(c) not to be subjected to medical or scientific experiments without their informed consent."

[41] Section 7(1)(a) of the NHA instructs that "(1) Subject to section 8, a health service may not be provided to a user without the user's informed consent, unless-(a) the user is unable to give informed consent and such consent is given- (i) mandated by the user in writing to grant consent on his or her behalf; or (ii) authorised to give such consent in terms of any law or court order."

[42] Moodley, *"Respect for Patient Autonomy,"* in Moodley (ed), *Medical Ethics, Law and Human Rights: A South African Perspective,"* 53, who also observes that: "Informed consent has been described as a process consisting of the following elements: 1. Threshold elements – Competence (to understand and decide) – Voluntariness (in deciding) 2. Information elements – Disclosure (of information) – Recommendation (of a plan) – Understanding (of information and plan) 3. Consent elements – Decision (against or in favour of a plan) – Authorisation (of the plan)."

[43] Sandrina, Ntumba Mujinga, "The Participation of Children in HIV/AIDS Clinical Trials: Ethical and Legal Considerations" (University of South Africa, 2009).

[44] Mujinga, "The Participation of Children in HIV/AIDS Clinical Trials: Ethical and Legal Considerations," 18.

[45] Mujinga, "The Participation of Children in HIV/AIDS Clinical Trials: Ethical and Legal Considerations," 18.

[46] Mujinga, "The Participation of Children in HIV/AIDS Clinical Trials: Ethical and Legal Considerations," 18.

[47] Frederick Jacobus Vogel, "A Critical Evaluation of the Consent Requirement for Child Participation in Health Research" (LLM Dissertation, Pretoria: University of Pretoria, 2014), 35, http://gateway.proquest.com.

[48] *Castell v De Greef* 1994 (4) SA 408 (C) (hereinafter *Castel* case), the court stated that: "A risk is material if, in the circumstances of the particular case, a reasonable person in the patient's position, if warned of the risk, would be likely attach significance to it or if the medical practitioner is or should reasonably be aware that the particular patient if warned of the risk, would be likely to attach significance to it."

[49] Larisse Prinsen, "An Analyses of Consent with Specific Regard to Stem Cell Therapy and Research" (University of Pretoria, 2016), 397.

Researchers submit that legal obligations for informed consent, as dictated by the Constitution and the NHA, also apply to a child of 12 years of age when subjected to health investigations, operations, or treatment. The authors argue that, as shown in the *Castel* case above, it is doubtful if a child of 12 years of age would have sufficient informed consent to appreciate the advantages, complexities and dangers of health interventions such as surgery or treatment.[50]

**Best interests of the child**

The Constitution commands that a child's best interests are paramount in every matter regarding the child.[51] The Children's Act states that in all matters relating to a child's care, safety and well-being, the standard that a child's best interest is of utmost value must be applied.[52]

This study submits that the Children's Act agrees with the Constitution and endorses the paramountcy of this standard. Bosman-Sadie, Corrie and Swanepoel observe that 'paramount' means highest or important.[53] According to this section, the 'best interests of the child' standard is the most important principle in this Act.[54]

In the case of *Minister of Welfare and Population Development v Fitzpatrick*,[55] the court declared section 81(4)(f) of the Child Care Act[56] to be invalid because it prevented the adoption of a South African child by non-citizens.[57]

The researchers submit that the 'child's best interests' principle is valued highly by both the Constitution and the Children's Act. The authors, therefore, submit that if a child of 12 years of age is consenting to be tested, treated, or participate in research or clinical trials without parental or guardian's assistance, that should only be done if it is in that child's best interests.

## RECOMMENDATIONS

The study recommends that health practitioners and researchers act cautiously when testing, treating, or involving children under 18 in research or clinical trials without their parental or guardian consent. To be on the safe side of the law, health practitioners and researchers should seek written parental or guardian consent before testing, treating, or involving children under 18 years of age in research or clinical trials. This will help them avoid litigation by the parents or guardians of the child should anything go wrong during such research or clinical trials.

## CONCLUSION

The study has exposed the paradox or inconsistency between laws that govern minor children's consent to treatment, testing, and participation in HIV/AIDS research or clinical trials. The contradiction is that while some laws allow a minor child of 12 years of age to consent, without parental or guardian assistance, to treatment, testing, and participation in HIV/AIDS research or clinical trials, other laws do not permit such a minor to act on his or her own if his or her health is harmed in the process, until 18 years of age, when he or she reaches the age of majority. This paradox causes a conflict between minor children and parents or guardians in the fact that in circumstances where the health of that minor child is harmed by such treatment, testing, and participation in HIV/AIDS research or clinical trials, he or she will need

[50] Admark Moyo, " Balancing Child Participation Rights, Parental Responsibility and State Intervention in Medical and Reproductive Decision-Making under South African Law" ( University of Cape Town, 2014), 218, http://hdl.handle.net/11427/12914

[51] Chantelle Van der Heever, "The Sexual Orientation of a Parent as Factor for Consideration in the Granting of Care" (North-West University, 2011); Ann Skelton, "Too Much of a Good Thing? Best Interests of the Child in South African Jurisprudence," *De Jure Law Journal* 52, no. SPE (2019): 557–79; Sandra Ferreira, "The Best Interests of the Child: From Complete Indeterminancy to Guidance by the Children's Act," *THRHR* 73 (2010): 201. Section 28(2) of the Constitution. See also the case of *A.M v S.W* (7813/2022) [2022] ZAWCHC 84 para 14, www.saflii.org, where the court held that the Constitution clearly articulates the principle in Section 28(2) that a child's best interests are of paramount importance in every matter concerning the child.

[52] Van der Heever, "The Sexual Orientation of a Parent as Factor for Consideration in the Granting of Care, " 13; Frans Mashilo Mahlobogwane, "Parenting Plans in Terms of the Children's Act: Serving the Best Interests of the Parent or the Child?," *Obiter* 34, no. 2 (2013): 218–32, 221.

[53] Moyo, "Balancing Child Participation Rights, Parental Responsibility and State Intervention in Medical and Reproductive Decision-Making under South African Law" 218.

[54] Bosman-Sadie, Corrie, and Swanepoel, *A Practical Approach to the Children's Act,* 28.

[55] *Minister of Welfare and Population Development v Fitzpatrick* 2000 (3) SA 422 (CC) (hereinafter *Fitzpatrick* case).

[56] Child Care Act 74 of 1983.

[57] *Fitzpatrick* case.

parental or guardian assistance to bring the matter to court as he or she will lack legal capacity. The inconsistency also causes a dilemma for health professionals and researchers in that parents or guardians might sue them if the health of their children is harmed during such testing, participation in HIV/AIDS or clinical trials which was consented to by the minor child without his or her parental or guardian consent. The study recommends that parental consent to HIV testing, treatment, research, or clinical trials of a minor child should not be excluded by law unless it is in the best interest of the child to do so.

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