

COMPETENCE AND COMPELLABILITY OF CHILD EVIDENCE IN NIGERIA

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A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE UNIVERSITY, ENUGU STATE, NIGERIA, IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAW (LL. B) OF GODFREY OKOYE UNIVERSITY, ENUGU STATE, NIGERIA.

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JUNE, 2026

DECLARATION

I hereby declare that this long essay is a product of my own research efforts undertaken under the supervision of Professor F.O.Iloh and has not been presented elsewhere for the award of a degree or certificate. All sources have been duly distinguished for the award of a degree or certificate and have been appropriately acknowledged.

CHIOMA ANITA EMEHELU

CERTIFICATION

This is to certify that this study titled ‘**Competence and Compellability of Child Evidence in Nigeria**’ was carried out by **(Name)** under our supervision and that, the essay has not been submitted for the award of any degree in this or any other university.

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DEDICATION

I dedicate this project to God Almighty, the divine guidance that illuminated my path, my creator, my source of strength and inspiration, wisdom, knowledge and understanding. Through His grace, guidance, and love, I have been able to run my course and scale through the hurdles of my academic pursuit. To Him, I ascribe all glory, honour, power and majesty. I also dedicate this work to myself as a reminder of strength, perseverance, late nights, sacrifices and determination it took to get to this point and how far I have come despite the challenges along the way.

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1. EA.....	35
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ABSTRACT

The competence and compellability of a child witnesses constitute a critical aspect of the law of evidence in Nigeria, in criminal proceedings which involves offences against children and other vulnerable persons. In the past, the admissibility of child evidence was approached with caution because it was believed to unreliable as well as susceptibility to influence. This research investigates the rules which regulate when children may give evidence in legal proceedings in Nigeria and when they can be required to appear as witnesses. It focuses on the provisions of the Evidence Act (EA) 2011, decided cases, and international instruments which protects the rights of children. This study is library based. Thus, the work adopts a doctrinal methodology. It is descriptive and evaluative. To examine the subject matter, the research relies on materials drawn from primary and secondary sources. It considers the legal standards adopted by the courts in assessing whether a child is fit to testify, including the child's mental capacity, level of awareness, ability to understand questions, and appreciation of the obligation to give truthful evidence. It also considers the situations in which a child witness may be required by law to give testimony before a court. Furthermore, the study considers the role of sworn and unsworn evidence and the need for corroboration in child testimony. The findings reveal that the EA 2011 has modernised the approach to child evidence by relaxing rigid age-based restrictions. However, challenges persist due to judicial discretion. More so, competence tests has been applied inconsistently, and the procedures are not child-friendly. The study recommends that there should be clearer statutory guidelines; there is also need for specialised training for judges and judicial staffs; and protective measures should be adopted to safeguard the interests of child witnesses. This research concludes that there is need to strengthen the legal regime on the competence and compellability of child evidence. This would ensure that there is fairness in trials as well as protect children within the justice system in Nigeria.

CHAPTER ONE

INTRODUCTION

The competence and compellability of child witnesses in Evidence Law in Nigeria have become a prominent issue, due to the growing body of statutes and judicial authorities on the subject. Nevertheless, it is fair to observe that these matters still do not receive the level of attention they truly deserve¹.

The law of Evidence remains the primary framework for order and fairness in legal proceedings.

Evidence may be described as:

Legally admissible material or persuasive information presented during a trial – whether through witness testimony, written statements, documents, exhibits, or physical objects-intended to convince the court or judiciary of a party's position.

Not every testimony presented in court is acceptable under Common Law. For instance, prior to allowing a child's testimony, it is necessary for the child to be a witness who can be compelled to testify. Consequently, careful attention will be paid to the meaning, importance, characteristics, and foundations of competence and compellability, along with their role in the law of evidence.² Furthermore, it is important to consider the legal status of a child. In addition, there is need to also consider the requirements that a child must meet in order to be considered a witness. It is crucial to recognise that a child's testimony have adverse consequences. Therefore, it has been suggested

¹ A Adekunle, 'Competence-&-Child Witnesses under Law in Nig.' [1993] (37) (1) *Journ of Afri. L.*60, DOI: <https://doi.org/10.1017/S0021855300011128> accessed 11 June 2026.

² OM Atoyebi and J Ayara, 'Competent-&-Compellable Witness under the Evidence-Act in Nig.' Opinion Nigeria (12 April 2023) <https://www.opinionnigeria.com/competent-and-compellable-witness-under-the-nigerian-evidence-act-by-oyetola-muyiwa-atoyebi-joy-ayara/> accessed 11 June 2026.

that there should be an approach to gathering a child's evidence. The child's circumstances must be taken into account as well as an assessment for external influence. Furthermore, focus is placed on the testimony presented in court and the factors which contribute to children's hesitance in providing evidence in such settings.

1.1 Background of the Study

This research examines the competency and compellability of a child to provide testimony in courts in Nigeria. There exists a global benchmark on the subject of child evidence where fundamental issues of child victims and witnesses are highlighted.³ Some of the global instruments that have explored children rights include; UN Convention on the Rights of Children (UN-CRC) and the African Charter on Rights and Welfare of the Child (ACRWC).⁴

The principle reflected in international standards on children's testimony is that the welfare and protection of the child must remain a primary consideration. This position is reinforced by the UN Convention on the Rights of the Child, which provides an important safeguard; it states that, “...in every action involving whether it is carried out by judicial systems, administrative entities, or legislative groups, the foremost priority must be the child's best interests.”⁵ These emphasise that children are entitled to dignity and kindness. This ensures that the needs, interests, and privacy of each child are honoured and safeguarded.⁶ In addition, every child has the right to freedom from unequal or prejudicial treatment. They must be accorded fairness and equal protection without

³ Naureen Shameem, *Child Testimony: Admissibility, Reliability and Proceed.* (Avon Global Center for Women and Justice, Cornell Law School 2012) 1, https://www.law.cornell.edu/sites/www.law.cornell.edu/files/women-and-justice/IAWJ_Child_Testimony_Memorandum.pdf accessed 11 June 2026.

⁴ Convention on the Rights of the Child 1989 (UNCRC), arts 2, 3 and 12; African Charter on the Rights and Welfare of the Child 1990 (ACRWC), arts 3, 4 and 7.

⁵ UNCRC, art 3(1).

⁶ UNODC, *Justice in Matters which involve Child-Victims & Witnesses of Crime: Model Law and Related Commentary* (UNODC/UNICEF/IBCR 2009) arts 6-8,

distinction based on sex, ethnic background, racial origin, religious belief, physical or mental impairment, spoken language, economic condition, family circumstances, or any other condition.

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Many organisations worldwide have aligned their legal frameworks concerning child evidence with this global benchmark. The UNODC, together with the International Bureau for Children's Rights and UNICEF prepared a legislative framework which address matters involving children who appear as victims or witnesses in criminal proceedings. Under this Model Law, judicial authorities are required to ensure that every process connected with a child's evidence is conducted in terms and expressions that the child easily understand.⁸ The law mandates that if a child witness requires help during legal proceedings, it must be provided at no cost.

In addition, the UN-CRC⁹ has promoted and supported the establishment of elevated standards for children's rights. Articles 12 and 13 of the UNCRC stipulate that children should be assured access to information that allows them to formulate and communicate their own ideas.¹⁰ When a child has the opportunity to share their thoughts prior to a court case, they should receive support in articulating their views. In turn, the Court ought to consider these opinions in its decision-making. It should take into account the child's age and level of maturity. These indicate that children ought to be recognised not as passive beings but as individuals who are entitled to voice their opinions on all issues that impact them.¹¹

⁷ UNCRC, art 2.

⁸ UNODC (n7) arts11, 13 and 15.

⁹ UNCRC, arts12 and 13.

¹⁰ Ibid.

¹¹ Shameem (n4) 8.

Regionally, the standards which guide the conditions under which children may give evidence may also be traced to the African child justice convened by the African Policy Forum in partnership with Defence for Children International. The convention suggested there is need for a structure which would strengthen the advancements in Human Rights so that instruments from the African human Rights System would be domesticated, including the African Charter on Human and People's Rights (ACHPR), the African Charter on the Rights and Welfare of the Child (ACRWC), and the African Youth Charter (AYC).¹² The fundamental standard established by the convention prioritises the best interests of children in resolving legal issues. In that sense, it is recommended that that states should implement legal measures to ensure and safeguard the rights and protections of child victims and witnesses. More so, the privacy of children should be maintained during legal proceedings.¹³

When compared with other jurisdiction it is observed that the priority is the welfare and protection of the child. Kenya adopts a similar position in its constitutional provisions on child's rights. In Chapter Four of the Constitution of Kenya, which deals with the Bill of Rights, Article 53(2) provides that the best interests of the child must be given priority in every matter concerning that child.¹⁴ Even so, the Evidence Act stipulates that the testimony of a child must be must be corroborated with another evidence. Under section 124 of the Act, where the statement of a victim is received for the prosecution in criminal proceedings, a conviction cannot rest on that testimony alone. The court is required to look for additional evidence that strengthens or confirms the child's account before the accused person may be found guilty.¹⁵

¹² ACRWC, arts 4 and 7; Shameem (n4)8.

¹³ Ibid.

¹⁴ Constitution of Kenya 2010, art53(2).

¹⁵ Evidence Act (Kenya) Cap80, s124.

1.2 Statement of the Problem

The admissibility of a child's evidence in judicial proceedings remains a complex and often contentious issue within the legal system. It was recognised that children are important witnesses, in cases which involve abuse, violence, and family disputes. However, there are concerns about their competence and compellability to testify. Courts are faced with the challenge of determining whether a child possesses sufficient intelligence, understanding, and moral awareness to give reliable evidence.

In addition, the issue of corroboration has influenced the weight attached to a child's testimony. Sometimes, this leads to unjust outcomes where credible evidence is disregarded where there is no supporting proof. This raises critical questions about whether existing legal standards balance the need to protect children with the necessity for justice.

Furthermore, the courts do not adopt a consistent procedure to assess the reliability and credibility of a child's testimony. Hence, there is uncertainty in judicial outcomes. Where there are no guidelines, interpretations might become subjective. Against this backdrop, this study seeks to examine the principles of competence and compellability of child evidence, the role of corroboration, and the procedures employed by courts in evaluating such evidence. In so doing, this study would identify the gap in policy and practice and propose improvements in the legal framework.

1.3 Research Questions

The following questions guide this study:

- i. What role does corroboration play in establishing the admissibility of a child's evidence?

- ii. What factors determine the eligibility or competence of a child to testify in judicial proceedings?
- iii. What procedures does the Court employ to assess the reliability of a child's evidence during a judicial proceeding?

1.4 Aim and Objectives of the Research

The aim of this research is to examine the admissibility of child evidence in light of the principles of competence and compellability.

The Specific objectives of the study include:

- i. To establish the significance of corroboration in establishing the admissibility of a child's evidence.
- ii. To evaluate the criteria that determines the competence and eligibility of a child to testify
- iii. To analyse the procedures used by the court to evaluate the reliability of child evidence during judicial proceedings.

1.5 Scope and Limitation of the Study

This study focuses on the admissibility of child evidence in judicial proceedings, in relation to the principles of competence and compellability. It examines how courts determine whether a child is capable of giving evidence and whether such a child is required to testify. The study also considers the role of corroboration in strengthening or validating child testimony. This is necessary where the evidence is central in determining a case. In addition, it explores the procedures used by courts to assess the reliability, understanding, and credibility of child witnesses during trial.

The scope of the study is limited to the law and procedure of child evidence within the justice system. It does not address psychological or medical assessments of children except where such assessments are relevant to legal competence and credibility. The study is also limited by the available statutes, case law, textbooks, journal articles, and judicial decisions. Limitations may include restricted access to court records. More so, judicial approaches may differ across jurisdictions. Nevertheless, the study provides a legal analysis of the admissibility and evidential value of child testimony.

1.6 Significance of the Study

It is believed that this study would inform and influence the decision-making and actions of the relevant stakeholders, such as judges, lawyers, police officers, social workers, and child protection agencies as it would provide them with evidence-based recommendations and guidelines on how to handle cases of child evidence in a fair and child-friendly manner. More so, the study would safeguard and advance the rights and interest of child witnesses, accused, and the community. It would provide recommendations that would ensure that child evidence becomes and that child witnesses are treated with respect and dignity. This study would also enlighten the general public on the complexities and sensitivities of child evidence. It highlights the challenges and dilemmas that the child witnesses and the justice system face, by so doing, it dispels the myths and stereotypes which may affect the perception and reception of child evidence.

1.7 Research Methodology

This study adopts a doctrinal methodology. The research is library-based and it examines legal materials relevant to the admissibility of child evidence, competence, compellability, corroboration, and the reliability of child testimony. The study relies on both primary and

secondary sources of law. Primary sources include statutes, rules of evidence, judicial decisions, and relevant constitutional provisions. Secondary sources include textbooks, journal articles, law reports, conference papers, and reputable online legal materials. The research method is analytical and comparative where necessary, as it evaluates legal rules, judicial reasoning, and procedures applied by courts in assessing child witnesses. The study does not involve fieldwork, interviews, or questionnaires. Instead, it focuses on the interpretation and critical analysis of existing legal authorities. This methodology is appropriate because the research examines legal principles, court procedures, and rules of evidence which relate to the admissibility of child evidence.

1.8 Literature Review

Other Jurists and researchers have examined various aspects of the subject of competence and compellability of Child Evidence in Nigeria but have hardly addressed the issues holistically.

Some of the Researchers that have worked on this include;

Adekunle¹⁶ examines how courts in Nigeria interpret the Evidence Act in assessing a child's competence to testify. He points out two primary assessments: one is if the child can comprehend questions and provide logical responses, and the other is if the child grasps the concept of an oath or affirmation. He also shows that when a court applies (or fails to apply) these provisions on competence wrongly, there become legal consequences for the reliability of testimony. This is a doctrinal article and it is valuable because it maps the legal standards for competence in Nigeria and it points out uncertainties in how courts do preliminary questioning.

¹⁶ Adekunle (n2) 60-68.

Moses Omozue¹⁷ studied how the 2011 Evidence Act handles children's testimony, focusing on competence and compellability. He argues that because the Act does not fix a strict age for competence ("tender years" is vague). Hence, the court must assess individually whether a child understands the questions and can respond rationally. He also raises concern that the Act is silent on a statutory definition of "child." Therefore, this leads to judicial inconsistency. Through this work as well as the Evidence Act, it can be established that there is need for legislative reform, that is, there should be a separate law of evidence on children-witness, akin to UK reforms.

Iniye L. I. Ikimi, Yakubu M. Ede & Sylvia N. Ihedoro¹⁸ investigated whether a child witness may be compelled via subpoena in civil proceedings in Nigeria. They examine whether, under the Evidence Act, a child is not only competent but also compellable in civil cases. They note that children are competent unless prevented by tender years, the question of forcing them to attend is more delicate, in non-criminal matters. This work is valuable because it bring a civil-law perspective (many discussions focus on criminal cases), and it argues that there is for stronger procedural safeguards when compelling children, considering potential harm or burden on the child.

Onyekachi analyses how the 2011 Evidence Act changed how child evidence is treated. Key points: under section 209, a child under 14 provides unsworn testimony if the court is convinced they possess "adequate understanding" and recognise the obligation to be truthful; a child 14+ may give sworn evidence. The paper also reviews that unsworn evidence of a child often requires

¹⁷ M Omozue, 'Analysis of Child-Evidence in Nig. Courts: Focusing on the Evidence Act, 2011' [2020] (1) *ACRLR* 65, <https://www.nigerianjournalsonline.com/index.php/ACARELAR/article/download/2264/2208> accessed 11 June 2026.

¹⁸ ILI Ikimi, YM Ede and SN Ihedoro, 'The Compellability for Attendance of a Child through the Instrumentality of Subpoena in Civil Trials.' [2025] (8) (1) *EAJLE* 195, DOI: <https://doi.org/10.37284/eajle.8.1.3297> accessed 11 June 2026.

corroboration, and that the law defines “child” vaguely. This, in turn, causes confusion in courts. He evaluated the post-2011 regime doctrinally. This study is valuable because it highlights positive reform e.g., flexibility on oath and problems which encompasses corroboration and the ambiguity of the word “child.”

Christopher M¹⁹ delves into the gap between legal theory and practice (“fact and fiction”) regarding child witnesses. It explains competence (per Section 155 of the Evidence Act) and compellability: competent witnesses must understand and answer rationally; compellability means they can be required to appear or testify. The authors point out practical challenges: the judiciary use preliminary questioning inconsistently, corroboration is over-relied on, and a misunderstanding that all competent people are compellable. The article provides a critique which blends legal analysis with problems in practice.

Oyetola M. Atoyebi & Joy Ayara²⁰ provides a practitioners’ explanation of how the Evidence Act treats children as witnesses. They describe how the court assesses a child’s competency by putting questions to test understanding and memory, and how compellability works. This work suggests that a competent child may or may not be compellable depending on circumstances. They emphasise that for children under 14, their evidence is unsworn and, according to practice, convictions should not rely solely on uncorroborated unsworn evidence of a child. This is a practice-oriented discussion, helpful for lawyers, law students, or judges who want a plain-language breakdown.

¹⁹ KO Amusa, 'Fact -&-Fiction about Child-Evidence in Nig.' [2014] (19) (2) *IOSR Journ. of Human. and Soc. Sci.* 49, <https://www.iosrjournals.org/iosr-jhss/papers/Vol19-issue2/Version-3/G019234953.pdf> accessed 11 June 2026.

²⁰ Atoyebi and Ayara (n3).

Nelson Vincent²¹ gives a conceptual breakdown of competence and compellability under Evidence Act. He defines competence as the mental capacity to understand proceedings and compellability as possibility of compelling a witness to testify. Regarding children, he reiterates that competence is determined by intellect and that for children under 14, if they do not understand an oath, they might provide unsworn testimony if they comprehend the obligation to be truthful. He also notes that unsworn evidence from children often requires corroboration.

This work is valuable because it is clear conceptually. In addition, it links doctrine to the principles of evidence law and it is useful for scholars less familiar with statutory technicalities.

²¹ NVincent, 'The Concept of Competency-&-Compellability of Witnesses' VineLegal (3 August 2025) <https://www.vinelegal.com.ng/2021/09/competency-and-compellability-of.html> accessed 11 June 2026.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Conceptual Review

2.1.1 Meaning of Competence as well as compellability

It is generally accepted that law of evidence in Nigeria was shaped by the principles of common law that existed around the colonial period. When the Evidence Ordinance in Nigeria came into force in 1945, many of its provisions reflected those inherited English rules. However, while England has since reviewed, modified or abolished several of those traditional principles of evidence, the law of evidence remained unchanged substantially for many years. It is noteworthy that in the 18th century, the rule regarding the competence of witness in England was articulated negatively. Hence, majority of potential witness at that time were excluded. Under the older position, certain categories of persons were incompetent to testify. These included litigants themselves, their spouses, persons who stood to benefit from the outcome of the case, accused persons, and those who had been previously convicted of offences. The reliability of convicts were questionable and it was necessary to deter individuals from lying under oath during their testimonies. Consequently, there was widespread dismissal of evidence from these witnesses. By the 19th century, a shift occurred with the implementation of universal rules regarding competence and this stipulate that all individuals are qualified to serve as witnesses. Where one is unable to provide testimony, it was regarded as an exception instead of a standard.

Wiles J. expressed the principle in clear and concise terms as follows::

In the United Kingdom, all persons, apart from the monarch, are generally required to testify on relevant matters within their knowledge. Such persons may be compelled to attend court and disclose material facts before any of the Crown's courts, except where they are able to rely on a recognised legal exemption or privilege.²²

The judicial decisions mentioned above are reflected in section 155(1) of the Evidence Act, which states

A person is presumed to be fit to testify, except where the court finds that he or she lacks the ability to understand the questions put forward or to give rational answers. This inability may arise from tender age, physical or mental health conditions, or any other circumstance that affects comprehension and communication.

According to the aforementioned provision of the Act, every individual is qualified to give testimony unless they are included in the particular exceptions outlined within it. Consequently, a qualified witness is an individual who may be summoned to provide testimony. He is suitable, appropriate, and competent to provide testimony. He is not excluded by the provisions of the Act nor stripped of his ability to serve as a witness. A witness is compellable where the law permits the court to require that person to give evidence. This differs from a witness who is competent but not compellable, because such a person may decide whether or not to testify. However, once a witness is compellable, attendance and testimony become a legal obligation whenever the court issues a summons or subpoena requiring the person to appear. A person needs to be capable before being required to testify. Nonetheless, not every capable witness can be compelled. Thus, a distinction must be drawn between competence as well as compellability, on the one hand, and

²² R v Baines [1909] 1 KB 258; see also BE Ewulum and O Mbanugo, 'Competence-&-Compellability under the Evidence Act of Nig.' [2015] (2) (1) *South Asian Journ. of Multidisciplinary Stud.* 1, <https://nigerianlawguru.com/wp-content/uploads/2024/11/COMPETENCE-AND-COMPELLABILITY-UNDER-THE-NIGERIAN-EVIDENCE-ACT.pdf> accessed 11 June 2026.

privilege, on the other. Competence as well as compellability are concerned with whether a person is qualified to give evidence and whether the court could require that person to appear and testify. Regarding the privilege, the matter of interest is whether the witness has the right to refuse to respond to enquiries about a specific document or to withhold that document. The focus under privilege is on the type of evidence that may be provided or kept from disclosure. Therefore, a witness who may be compelled is not allowed to decline to appear in court or legal proceedings because the testimony they are anticipated to provide is protected. He is required to be present at the proceedings and assert his rights at that location. His presence in court is excused only when the court or tribunal recognises the privilege. This allows him not to provide evidence or submit a certain document. The rule has an exception that applies to children, individuals who are mentally unfit, and in specific situations, the defendant along with their spouse. The court determines matters regarding the competence as well as compellability of witnesses. Where the witness is called by the prosecution, any objection relating to competence ought to be resolved before the substantive trial proceeds. This may involve a separate inquiry in which the court receives and considers evidence to determine whether the witness is fit to testify. Where the competence of a prosecution witness is challenged, the duty falls on the prosecution to establish that the witness possesses the required capacity to give evidence. The prosecution is required to convince the Court of the competence of witness with absolute certainty. On the other hand, in the rare situation where the prosecution questions the capability of a defence witness, it appears to be a matter of principle that the prosecution must take on the responsibility of proving incompetence.

2.1.2 Meaning of Competence as well as compellability Of Witness

In legal terms, **competence** and **compellability** determine who can actually take the stand to give evidence in a trial. **Competence** refers to a person's legal capacity to be a witness; essentially, it asks, "Is this person lawfully allowed to give evidence?" Most people are presumed competent, though exceptions exist for individuals who cannot understand questions or give rational answers due to youth or mental impairment. On the other hand, **compellability** goes a step further and asks, "Can this person be legally *forced* to testify?" A witness might be competent (allowed to speak) but not compellable (cannot be penalized if they refuse), which is a common protection often extended to defendants or, in certain situations, their spouses.

2.2. Theoretical Framework

2.2.1 Theories and Principles of Competency and Compellability

The historical foundation of the competence as well as compellability of child witnesses has evolved over centuries and it is shaped by societal attitudes, legal traditions as well as the unique vulnerabilities of children in legal proceedings has been come more evident. In ancient legal systems, there was little consideration for the competency of child witnesses, and their testimony often held little weight. This was rooted in the perceptions that children lacked the intellectual and moral capacity to provide evidence which is reliable. However, as legal systems developed, there it became evident that children, like adults, could be competent witnesses under certain circumstances.

During the medieval period, the concept of "doli incapax," meaning incapable of crime, influenced perceptions of the ability of children to testify. This notion presumed that children were inherently

incapable of understanding the consequences of their actions. This had implications for their competence as witnesses. Over time, legal systems began to recognize that children, though requiring special considerations, could provide valuable testimony.

The 19th century witnessed significant legal reforms, including changes in attitudes towards child witnesses. Legal scholars and reformers argued that there was need to protect children from trauma as they acknowledged their potential as credible witnesses.²³ In the United Kingdom, the Children's Act of 1908 allowed child witnesses to be sworn without understanding the nature of an oath. This signalled a shift towards recognising the needs of child witnesses.

Internationally, child-rights advanced significantly during the twentieth century when major global instruments were adopted. The UDHR 1948 and UNCRC 1989 both reinforced that it was important to preserve the dignity of children and shield them from abuse, exploitation and other forms of injury. These influenced legal reforms as well as discussions surrounding the compellability and competence of child witnesses.

In the latter half of the 20th century, psychological research played a crucial role in shaping the understanding of children's cognitive and emotional development. This research highlighted the importance of considering a child's age, maturity, and capacity to comprehend legal proceedings when determining their competence as witnesses. Courts relied on expert testimony from psychologists to assess a child's ability to provide evidence.

Contemporary legal systems acknowledge the impact of legal proceedings on children. Hence, it sought to strike a balance between obtaining relevant evidence and ensuring the well-being of the

²³ Shameem (n4) 2-3.

child witness. More so, child-friendly practices, such as using screens, closed-circuit television, or specially trained intermediaries, were developed and this indicate that there was commitment to create a support environment for child witnesses. In essence, the historical foundation of the competence as well as compellability of child witnesses has undergone a transformative journey. From a time when children were disregarded as witnesses, it has been recognised gradually that they are competent under certain conditions. Legal reforms, international conventions, and advancements in psychology have shaped the contemporary framework which seeks to balance the pursuit of justice with protecting the right and wellbeing of children in legal proceedings.

2.2.2 Provisions Of The Evidence Act On Competence as well as compellability

Section 154(1) of the evident Act state that:

“Every individual is deemed capable of providing testimony, unless the Court determines that they are unable to comprehend the enquiries posed to them or to offer logical responses due to factors such as young age, advanced age, physical or mental illness, or any similar circumstances.”

The subsection 2 of the Section indicates that an individual deemed to have an unsound mind is not deemed unfit to testify, provided that they are capable of comprehending the questions asked and responding to them logically, despite their condition. As scholar notes in regard to stipulations of sections 154, 179, and 182 of the Evidence Act concerning the gathering of a child's testimony.

The pertinent section of the famous text reads as follows;

“A young child who is unable to comprehend the questions asked or provide logical responses due to their age is not considered a competent witness. The initial observation to make is that no age is specified, and it is consequently the responsibility of each Court

where a child presents to provide testimony to assess the child's ability to testify by administering a series of evaluations.”²⁴

In *Mbele v The State*,²⁵ the accused person was tried for murder, and the only direct witness to the incident was a ten-year-old child who gave evidence on oath. The appellant challenged the procedure adopted by the trial judge in receiving the child’s sworn testimony. They contended that it was inconsistent with sections 154 and 181 of the Evidence Act. His argument was that, before a child of tender years may be allowed to give sworn evidence, the court must first satisfy itself that the child understands the nature and significance of an oath. For this purpose, the questioning of the child ought to be conducted openly in court, in the presence of the accused person, and, where the trial is by jury, in the presence of the jurors.

A similar point arose in *R v Dunne*,²⁶ where the court held that it was improper for a judge to examine a child privately outside the courtroom in order to determine whether the child was competent to take an oath. That irregular procedure was regarded as unlawful and serious enough to justify setting aside the conviction. However, the court should not reject a child’s evidence because the child lacks a full understanding of the formal concept of an oath. What is essential is that the court must first determine whether, because of age or immaturity, the child is unable to understand questions, give sensible answers, or appreciate the obligation to tell the truth.

In *IGP v Suara Sumonu*,²⁷ the issue also concerned a child who did not understand the religious or formal meaning of an oath. The decision emphasised that, before such testimony is admitted, the

²⁴ Omozue (n18) 70.

²⁵ [1990] 4NWLJ (Pt 145) 484 (SC)

²⁶ [1922] 16Cr App R 53

²⁷ [1957] NRNLJ 23.

trial judge must ascertain whether the child has enough intelligence to understand what is being asked and whether the child recognises the duty to speak honestly. This position is reflected in section 183(1) of the Evidence Act, which provides as follows:

“In any legal case involving an offence, the Court may accept the testimony of a child witness who is believed to lack an understanding of the importance of an oath, even if the child does not take one. This depends on the Court's evaluation of the child's sufficient intelligence to justify accepting their testimony and acknowledges the duty to be truthful”

Concerning Compellability, the standard principle is that all individuals may be compelled to testify, except for the President, Vice-president, Governors, and Deputy Governors, who cannot be compelled as witnesses,¹³ They may still be legally qualified to give evidence, even though they cannot be forced to do so. In the same way, foreign heads of state, ambassadors and other diplomatic officials are not compellable witnesses, but they may testify voluntarily where they decide to give up their immunity. This position is supported by section 1(1) of the Diplomatic Immunities and Privileges Act 1962, which grants protection from legal proceedings and court processes to foreign diplomatic agents, consular officers, members of their official staff and, in some cases, members of their families. However, section 2 of same act allows such protected persons to waive that immunity if they choose. Similarly, protection is also provided under sections 3 and 4 of the Act in relation to High Commissioners from Commonwealth countries, their staff and family members. However, regarding the aforementioned, all extraterrestrials are capable and may be compelled to testify. In cases where individuals are unable to communicate in English, which is currently the language used in the Courts, they have the right to present their testimony through a sworn interpreter, similar to a Nigerian who cannot converse in that language.

2.2.3 Exceptions To The General Model

A credible assumption of capability is held in favour of every witness. In other words, every individual is assumed to be capable of giving testimony unless evidence suggests otherwise. This position is anchored on section 155(1) of the Evidence Act. Apart from child-related testimony, which has received attention from the courts, there is very limited judicial authority on the competence of aged persons or persons affected by physical or mental conditions to give evidence. However, these groups of witnesses are also ensnared by the exceptions outlined in section 155(1) of the Act. We will now proceed to examine each of these categories of witnesses individually;

A) Children

A young child who is unable to comprehend the questions asked or provide logical responses due to their age is not considered a reliable witness. A noteworthy question is: at what age does a witness continue to be considered a child or stop being one? The Criminal Procedure Act, for instance, defines anyone under the age of 14 as a minor.²⁸ In *Okoye v The State*²⁹ it was held that a 13-year-old is considered a child, whereas in *State v Njokwu Obia*³⁰ it was held that a witness who is 15 years old is not classified as a child. From the ruling of the Supreme Court in *Okon v the State*,³¹ the position of the courts shows that a person who is under-fourteen is treated as a child. However, it has been suggested that the competence of a child witness should not be determined by age, but by the child's level of comprehension. In other words, the real issue is whether the child understands what is being asked and could respond appropriately, not how old the child is.

²⁸ Criminal Procedure Act, Cap C41 LFN 2004, s 2; Children and Young Persons Act, Cap C50 LFN 2004, s 2.

²⁹ *Okoye v. The State* [1972] 1All NLR500.

³⁰ *State v. Njokwu Obia* [1974] 4ECSLR 67.

³¹ *Okon v. The State* [1988] 1NWLR(Pt69)172(SC)

In determining whether a child is competent to testify, the court must carry out two basic inquiries. A child who, because of tender age, cannot understand questions put to him or give sensible answers will not be regarded as a competent witness. Therefore, under sections 155, 180 and 183 of the Evidence Act, the court is expected to satisfy itself that the child possesses sufficient intelligence to understand the questions asked and has the ability to answer them in a rational and meaningful manner.

B. Old persons and persons suffering from disease of the body or mind or other afflictions.

According to Section 155(1) of the Evidence Act, an elderly individual, regardless of age, is considered a competent witness, similar to a young child, provided they can comprehend questions and respond to them logically. Likewise, a person suffering from a physical or mental condition may still be qualified to give evidence, except where the court is satisfied that the condition prevents the person from understanding the questions asked or from giving meaningful answers.

The method for establishing this should resemble that employed in resolving the same matter in the context of a child.³² A person who has been deemed mentally unsound, even with certification, is not deemed incompetent to provide testimony, as outlined in Section 155(2):

“A person who is mentally impaired is not deemed incompetent to testify unless their mental condition hinders them from comprehending the questions asked and providing logical responses”

³² Evidence Act (EA) 2011, s175(2).

Ultimately, it is necessary to refer to section 156 concerning mute witnesses. It is proposed that this provision should be applied with necessary adjustments to those witnesses.³³ Initially, questions are posed to assess whether the witness could comprehend enquiries and provide logical responses through a sworn individual capable of communicating with the deaf and mute witness. If the Court deems that this criterion is met, the witness may then be permitted to testify.³⁴

c) Evidence of spouses

The type of marital relationship existing between the accused person and the proposed witness, together with the nature of the offence alleged, plays an important role in deciding whether a spouse is qualified to give evidence in court proceedings. As a general rule, the husband or wife of an accused person may testify only where the accused person requests or permits such testimony.¹⁸

The spouse referred to under the Act is a spouse in a monogamous union. In other words, section 2(1) of the Act limits the meaning of husband or wife to a person married under a system that permits only one spouse at a time. As a result, partners in non-monogamous marriages serve as capable and required witnesses without the need for the accused individuals to apply.³⁵ In criticising the unequal treatment of spouses in polygamous marriages, scholars note that the position is a colonial leftover. According to that view, the rule reflects the period when statutory or Christian marriage was treated as superior to customary and Islamic marriages. Such a discriminatory approach ought to have disappeared after the end of colonial administration.³⁶

³³ EA, s 176.

³⁴ Ibid.

³⁵ Hon v Rickard [1962] 2All NLR41; EA 2011, ss 180-182.

³⁶ Ewulum and Mbanugo (n23) 14-15.

Nonetheless, there is a presumption of monogamy that supports every marriage, which renders the spouse of the accused generally unable to testify unless the accused requests otherwise. The responsibility to demonstrate the absence of a monogamous marriage lies with the prosecution; until this responsibility is fulfilled, the spouse is deemed an unqualified witness. Nonetheless, if the spouse witness takes an oath on the Holy Bible, they will be considered a partner in a monogamous marriage.³⁷ Nevertheless, the mere fact that a witness swore by the Quran has been held not to be enough to displace the presumption that the marriage between the witness and the accused was monogamous.³⁸ Where the alleged offence comes within section 161 of the Evidence Act, the husband or wife of the accused may be summoned to give evidence and may be compelled to testify, even without the approval of accused person. Under that provision, where a person is charged with offences falling under the listed sections of the Criminal Code, including offences relating to sexual misconduct, family-related offences, offences against the property of a spouse, or violence committed against a spouse, the accused person's spouse becomes both a compellable and competent witness. In such circumstances, the spouse may give evidence for either the defence or the prosecution, and the consent of the accused is not required.³⁹ The aforementioned instances represent the deviations from the standard principle regarding the incapacity of partners facing accusations.

A distinction must be made between competence as well as compellability. The law recognises that a person may be qualified to give evidence in judicial proceedings. It also follows that anyone who can be required to testify legally must first be capable of giving evidence legally.⁴⁰

³⁷ Evidence Act 2011, s 180; *Jinadu v Esurombi-Aro*[2005] 14NWLR(Pt944) 142.

³⁸ *Umole v IGP* [1957] NRNLR8.

³⁹ EA 2011, s 182; Criminal Code Act, ss 217-219, 221, 223 and 360.

⁴⁰ *Jinadu v Esurombi-Aro*[2005] 14NWLR(Pt 944)142.

Conversely, it has been determined that not all qualified witnesses can be compelled to testify. Therefore, a witness who could be compelled is not free to decline to appear in court or judicial proceedings solely on the grounds that the testimony they are anticipated to provide is privileged.⁴¹ He is required to be present at the proceedings and assert his rights at that location. His presence in court may only be excused when the court or tribunal recognises the privilege. This allows him not to provide evidence or submit a document.⁴² All defendants possess the ability to testify, yet they cannot be forced to do so, whether for their own defence or for that of their co-defendants. If a defendant does not provide testimony in their own defence, they cannot be forced to do so.⁴³ The defendant's spouse may give evidence for the prosecution, for the defendant, or for another person standing trial in the same case. Where the spouse is not also charged with the offence, the court may require him or her to testify in support of the defendant. In criminal proceedings, a child is regarded as competent to give evidence where the child is able to understand the questions asked and respond to them in an intelligible manner.⁴⁴ In civil proceedings, a child is fit to testify where the child satisfies the Hayes Test for sworn testimony. Alternatively, the child may give evidence without taking an oath if the conditions prescribed under the Children and Young Persons Act are met.⁴⁵ In conclusion, where a person has limited intellectual capacity, he or she may still be competent in civil proceedings once the required legal conditions are satisfied. In criminal proceedings, such a person will be regarded as fit to testify where he or she is able to understand the questions asked and give intelligible answers.

⁴¹ EA 2011, ss 189-196.

⁴² Ibid, ss 190-191.

⁴³ CFRN 1999 (as amended), s 36(11); EA 2011, s 180(1).

⁴⁴ EA 2011, ss 175 and 209.

⁴⁵ R v Hayes [1977] 1WLR234; CYPA, Cap C50 LFN 2004, s 182.

CHAPTER THREE

LEGAL FRAMEWORK AND JUDICIAL DETERMINATION OF COMPETENCE IN CHILD EVIDENCE

The legal framework which governs the competence of child witnesses in Nigeria has evolved. It moved from rudimentary customary practices through statutory impositions in the colonial era to the modernised regime under the Evidence Act, 2011.⁴⁶ This reflects a shift from exclusionary rules (as child evidence was perceived to be unreliable) to an inclusive yet still cautious approach which balances the need for reliable evidence with the protection of the child. This chapter examines this historical trajectory, the core statutory provisions, the judicial mechanism for inquiring about competency (*voir dire*), the factors which influence judicial determination, and a critical analysis of case-law, including comparative insights from Commonwealth jurisdictions.

3.1 Evolution of Child Evidence Rules in Nigeria: From Common Law to the Evidence Act 2011

3.1.1 Pre-colonial and colonial influences on child testimony

Prior to colonial rule, customary legal systems across Nigeria varied how they treated child testimony. In many communities (Igbo, Yoruba, Hausa-Fulani and minority ethnic groups), children were called as formal witnesses in resolving dispute because communal knowledge and elder testimony predominated. Where children testified, their evidence was received informally, without oaths or requiring corroboration, provided the child demonstrated basic understanding within the cultural context. Reliability was assessed through community reputation, not

⁴⁶ OE Smaranda and U Jacob, 'Child-Evidence under the Nig. Law: The New Appr. after the Evidence Act, 2011' [2019] (10) *B.L Rev.* 1394, DOI: <https://doi.org/10.4236/blr.2019.105075> accessed 11 June 2026.

individualistic judicial tests.⁴⁷ This prioritised social harmony over adversarial proof. Hence, it reflects the restorative ethos of customary jurisprudence in Africa.

Colonial administration introduced common-law principles through the Evidence Ordinance of 1945 (later Evidence Act Cap. E14 LFN 2004). This ordinance mirrored the English rules in the 19th-century that presumed children of “tender years” (under 14) lacked the ability to recognise the importance of an oath. Competence required proof that they are intelligent and understand what an oath means. Where this is not met, the evidence would be excluded or it must corroborated. These limitations rendered child testimony unusable in many criminal prosecutions, including sexual offences, where children were often the sole eyewitnesses. In essence, the colonial regime prioritised the reliability of adult over protecting children. This creates a barrier to justice and marginalises child victims in the justice system.⁴⁸

3.1.2 The Evidence Act 1945 and its limitations on child witnesses.

The 1945 Act (and its 2004 consolidation) entrenched two tests for child competence:

- (i) The test for general intelligence under section 155 (predecessor to current section 175), and
- (ii) The comprehension of oath for sworn evidence. Unsworn evidence was admissible only in criminal proceedings and it required corroboration which implicates the accused. The absence of a statutory age definition for “tender years” produced inconsistency. More so, the strict requirement for oath excluded many intelligent children. These provisions proved inadequate in

⁴⁷ TA Aguda, Law & Practice which relate to Evidence in Nig. (MIJ Professional Publishers 1980) 299; Omozue (n18) 66.

⁴⁸ Smaranda and Jacob (n47) 1397-1399.

an era where child-related offences are increasing. Hence, it has been criticism for undermining access to justice. As noted by scholars, the pre-2011 regime compounded the vulnerability of child witnesses, (including in sexual offence prosecutions where the rate of conviction remained abysmally low due to evidentiary technicalities.⁴⁹

3.1.3 Innovations under the Evidence Act 2011.

The Evidence Act, 2011 introduced landmark reforms. **Section 175(1)** retained the general presumption of competence. However, it is subject only to the “tender years” exception. Crucially, section 209 established a clear age benchmark: children under 14 years give unsworn evidence if they possess “adequate intellect” and grasp “the obligation of conveying the truth”; children 14 years and above give sworn evidence (subject to sections 175 and 208). Unlike the 2004 Act, unsworn evidence is now admissible in both criminal and civil proceedings. Section 209(3) retains the requirement for corroboration for unsworn evidence in criminal cases but limits it to convictions based on the testimony of the prosecutor. These changes align the law in Nigeria closely with the Child Rights Act, 2003, section 160, which permits unsworn child evidence in any proceedings and treats such depositions as if given on oath.⁵⁰ Thus, the 2011 regime is progressive yet incomplete modernisation. Further, the Evidence (Amendment) Act 2023 facilitates electronic evidence (including video-recorded testimony). However, it does not introduce reforms for child-specific procedures. Despite these advances, commentators argue that mandatory corroboration for unsworn evidence continues to hinder prosecution of offences against children.

⁴⁹ Omozue (n18) 69-70.

⁵⁰ CRA 2003, s 160; EA 2011, s 209.

3.2 Statutory Provisions on Competence

3.2.1 Section 175: Presumption of competence and exceptions for tender years.

According to Section 175(1) of the Evidence Act, 2011, the basic principle is that everyone is eligible to give testimony unless they are hindered by young age, advanced age, physical or mental illness, or similar reasons that impair their ability to comprehend questions or provide sensible responses.⁵¹ The presumption favours competence; the burden of proving incompetence lies on the party challenging it. “Tender years” is not fixed by statute but judicially assessed by reference to cognitive ability instead of just age. This provision departs from the age-based exclusions of the colonial era which was rigid and it aligns Nigeria with modern standards of child-rights.

3.2.2 Section 209: Sworn versus unsworn evidence of children.

Section 209(1) mandates that there should be unsworn evidence for children under 14 years where the court is satisfied of intelligence and understanding of the duty to speak the truth. Section 209(2) permits sworn evidence for children 14 years and above, subject to the general competence test. This bifurcation eliminates the barrier caused by oath while it preserves judicial discretion. Section 209(3) requires corroboration for unsworn evidence in criminal prosecutions before conviction. This section is valuable because it removed the requirement to comprehend what an oath entails. However, critics argued that it perpetuated the rule of corroboration which disadvantages child victims in cases which lack independent evidence.⁵²

⁵¹ EA, s 175(1).

⁵² Ibid, s 209(1)-(3); Smaranda and Jacob (n47) 1399-1401.

3.2.3 Interplay with the Child Rights Act 2003 and domesticated state laws.

Section 160 of the CRA, 2003 complements the Evidence Act. It authorises testimony which is not given under oath in civil and criminal cases and it deems that such evidence is equivalent to sworn testimony for procedural purposes. Domesticated state Child Rights Laws and Administration of Criminal Justice Laws (ACJLs) further reinforce procedures which are child-friendly. Even so, it is limited by infrastructural deficits. The interplay resolves earlier conflicts between the Evidence Act and child-rights legislation and thus, it creates a harmonised framework. However, uneven domestication across states (especially in the northern region) creates inconsistencies and this undermines uniform protection.⁵³

3.3 The Judicial Competency Inquiry (Voir Dire)

3.3.1 Purpose and procedural requirements.

The *voir dire* (preliminary inquiry) serves as the gatekeeping mechanism to determine whether a child satisfies section 175 and, where applicable, section 209. Its purpose is protective and it ensures that only reliable evidence reaches the court. In addition, it safeguards the child from unnecessary trauma. The inquiry must occur before the child gives substantive evidence and it is conducted in open court (or in camera where the child's welfare demands it). The trial judge records the process. However, if the judge fails to do so, it is not fatal where the record shows

⁵³ CRA, s 160; ACJA 2015, s 260.

compliance. Courts have emphasised that the inquiry must be conducted with sensitivity in order not to intimidate the child.⁵⁴

3.3.2 Nature of questions and assessment criteria.

Questions are simple, unrelated to the facts in issue, and directed at everyday knowledge, memory, and moral understanding (for example, “What happens if you tell a lie?” or “Can you distinguish between what is true and what is untrue?”). The court assesses:

- (i) Intellectual capacity to understand and answer rationally, and
- (ii) Value the responsibility to speak honestly

Religious belief in divine sanction is no longer required; a secular understanding suffices. This shift reflects an approach which is child-centred. It moves away from the religious tests in colonial-era.⁵⁵

3.3.3 Role of the trial judge and appellate review.

The trial judge exercises discretion and it is informed by observing the child directly. Appellate courts interfere only where the discretion is perverse or occasions miscarriage of justice. The Supreme Court emphasise that competence is a question of fact and intellect, not age. Appellate

⁵⁴ Mbele v State (n26) 500-501.

⁵⁵ Solola v State [2005] 11NWLR(Pt937)460(SC).

intervention remains rare. Hence, trial judges depend on discretion in the cases relating to child-witness.⁵⁶

3.4 Factors Influencing Competence Determination

3.4.1 Age, maturity and intellectual capacity

Section 209 introduces an age threshold of 14 years, the courts hold that competence turns on maturity and intellect, not chronology. A bright 10-year-old may pass; a developmentally delayed 13-year-old may fail. This is a flexible approach and, in that sense, it prevents evidence to be excluded arbitrarily. However, it relies on judicial discretion excessively. This leads to inconsistency across courts.⁵⁷

3.4.2 Emotional state and trauma considerations.

Courts must consider trauma (especially in sexual-offence cases). Severe emotional distress may render a child incompetent temporarily or it may necessitate protective measures under the ACJA 2015, section 260. In practice, however, many courts lack the psychological expertise or facilities which are needed to assess trauma adequately. Consequently, this leads to secondary victimisation.⁵⁸

3.4.3 Cultural and religious understanding of truth-telling.

Judges evaluate truth-telling within the child's cultural or religious milieu. A child who understands communal or familial sanctions for lying satisfies the test even without the

⁵⁶ Umar v State [2025] 7NWLR(Pt1990)495(SC).

⁵⁷ EA, ss 175 and 209; Adekunle (n2) 60-68.

⁵⁸ ACJA, s 260; UNODC (n7) arts 26-29.

requirement for oath. It is commendable to be sensitive to culture but it requires judges to possess cross-cultural competence. This is absent in judicial training which is often urban-centric.⁵⁹

3.5 Analysis on Judicial Determine of Competence

3.5.1 Landmark decisions upholding child competence.

In *Mbele v The State*,⁶⁰ the Supreme Court per Nnaemeka-Agu JSC laid down the authoritative two-stage inquiry:

- (1) Whether the child has adequate intelligence and comprehends the obligation of telling the truth; and
- (2) Whether the child understands the nature of an oath.

The Court upheld the eyewitness evidence of a 10-year-old is admissible after proper *voir dire* and clarified that failure to record exact questions and answers on the record is not fatal provided that the judge conducted the inquiry. The conviction stood on the strength of the corroborated child testimony. This decision remains the bedrock of child-witness in Nigeria.

In *Solola v The State*,⁶¹ the Supreme Court reaffirmed that competence is a question of intellectual capacity, not chronological age. The Court upheld the conviction which relied on the sworn evidence of a competent 12-year-old witness after satisfactory *voir dire*. This emphasised that once the preliminary tests are met, the child's testimony carries full weight when corroborated by other material.

⁵⁹ Shameem (n4) 8-10; UNODC (n7) arts 6-8.

⁶⁰ *Mbele v State* (n26).

⁶¹ *Solola v State* (n56).

In *Okon v The State*,⁶² the Supreme Court established that persons below 14 years are regarded as children for the purpose of evidence. This position continues how age is determined under the 2011 Act.

3.5.2 Instances of judicial exclusion and their implications.

Where children fail the test for intelligence or truth-understanding, evidence is excluded. This leads to acquittal where the child is the sole observer. In *Sambo v The State*,⁶³ the Supreme Court quashed a conviction because the trial judge failed to conduct any preliminary inquiry into the competence of the child witness. This underscores that non-compliance with the *voir dire* renders the evidence inadmissible. Such exclusions highlight the tension between protecting the child and the entitlement of the defendant to a judicial process which is equitable. Similarly, in *Ogunsi v State*,⁶⁴ the Court of Appeal struck out child evidence where the *voir dire* was perfunctory. In that sense, appellate court scrutinised the procedures strictly

3.5.3 Comparative insights from Commonwealth jurisdictions.

Unlike Nigeria where the rule for corroboration is retained and special measures are limited; the United Kingdom's Youth Justice and Criminal Evidence Act 1999 presumes that all children are competent. It abolishes oath tests and mandates special measures (video links, intermediaries). In Canada, the Evidence Act (s 16.1) requires only a simple promise to tell the truth with no religious inquiry. In South Africa, Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007 removes the requirement for corroboration for child victims. These indicate that where

⁶² *Okon v State* (n32).

⁶³ [1993] 6NWLR(Pt300)399 (SC); see summary in Judy Legal, <https://www.judy.legal/case/sambo-v-state-supreme-1993> accessed 11 June 2026.

⁶⁴ [1994] 1NWLR(Pt322)583(CA).

corroboration is removed and robust safeguards are introduced, justice and child welfare would be served without compromising the safety of conviction. Evidently, Nigeria while improved, lags behind these best practices. This is observed by scholars who call for urgent reform.⁶⁵ The chapter demonstrates that the EA, 2011 and CRA, 2003 have modernised the standards in Nigeria. The competence of child-witness has not been realised due to deficits in infrastructure and judicial discretion. Scholars point out that due to the discretionary hurdles and the rule of corroboration, there is need for legislative intervention to align Nigeria with contemporary international standards.

3.6 Institutional Framework Of Child Evidence in Nigeria.

1. The Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The Constitution is the supreme law governing all judicial proceedings in Nigeria. Although it does not contain detailed provisions on child witnesses, it guarantees:

The right to a fair hearing (Section 36).

Equal access to justice.

Judicial independence in determining the admissibility and credibility of evidence.

These constitutional guarantees require courts to ensure that child witnesses are treated fairly while protecting the rights of the accused.

2. The Evidence Act, 2011 (as amended in 2023)

The Evidence Act is the primary legislation regulating the competence and compellability of witnesses in Nigeria.

⁶⁵ Youth Justice and Criminal Evidence Act 1999 (UK), ss 53 and 16-33; Canada Evidence Act, RSC 1985, c C-5, s 16.1; Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007 (South Africa), s 58.

Key provisions include:

Section 175: Every person is competent to testify unless prevented by tender years, old age, mental illness, or any similar cause from understanding questions or giving rational answers.

Section 176: Every competent witness is generally compellable unless the law provides otherwise.

Sections 208 and 209: Regulate the manner in which children give evidence. A child who understands the duty of speaking the truth but does not qualify to take an oath may give unsworn evidence where the court is satisfied of the child's intelligence and appreciation of truth. The 2023 amendment also introduced clearer age-related provisions for sworn and unsworn testimony.

3. Child Rights Act 2003

The Child Rights Act establishes legal protections for children involved in judicial proceedings by:

Recognising the best interests of the child as the primary consideration.

Protecting children from intimidation and unnecessary trauma during court proceedings.

Promoting child-friendly justice and confidentiality where appropriate.

Although the Act does not directly define competence or compellability, it provides the protective framework within which child witnesses participate in legal proceedings.

4. Nigerian Courts

The courts play the central role in determining whether a child is competent to testify. Before receiving a child's evidence, the judge conducts a preliminary inquiry (often-called voir dire) to determine whether the child:

Understands the questions asked;

Can give rational answers; and

Appreciates the duty to tell the truth.

Depending on the outcome, the court decides whether the child should give sworn or unsworn evidence. Nigerian appellate courts have consistently affirmed this judicial responsibility.

5. Law Enforcement Agencies

The Nigeria Police Force and other investigative agencies are responsible for obtaining statements from child victims and witnesses. Officers are expected to conduct interviews in a manner that protects the child from intimidation and secondary victimisation, particularly in cases involving abuse or sexual offences.

6. Family Courts

Established under the Child Rights Act in states that have domesticated the Act, Family Courts provide a child-sensitive environment for proceedings involving children. These courts minimise trauma by adopting procedures appropriate for child witnesses and ensuring their privacy and welfare.

7. Ministry of Justice and the Director of Public Prosecutions

These institutions prosecute criminal cases involving child witnesses and ensure that evidence is presented in accordance with the Evidence Act and other applicable laws. Prosecutors may also request protective measures for vulnerable child witnesses.

8. Legal Aid Council of Nigeria

The Legal Aid Council provides legal representation and assistance to indigent children involved in legal proceedings, thereby facilitating access to justice and protecting their legal rights.

9. National Human Rights Commission (NHRC)

The NHRC monitors compliance with children's rights, investigates violations, and advocates reforms aimed at strengthening child protection within Nigeria's justice system.

CHAPTER FOUR

COMPELLABILITY, CORROBORATION AND PRACTICAL SAFEGUARDS IN CHILD TESTIMONY

Having established the framework for competence in Chapter Three, this chapter addresses the related but distinct issues of compellability, the requirement for corroboration, and the safeguards (or lack thereof) which shape the reality of child testimony in the courts in Nigeria. It evaluates the legal position on compulsion, the evidentiary weight attached to child testimony, and the realities that undermine child-friendly justice.

4.1 Compellability of Competent Child Witnesses

4.1.1 General rule of compellability under Section 175.

Once a child satisfies the test for competence under **section 175**, he or she becomes compellable.⁶⁶ The EA, 2011 contains no exemption for children akin to that for spouses (**section 182**) or the accused. Therefore, a competent child may be subpoenaed and compelled to attend and testify. This position aligns with the common-law principle that competence implies compellability, subject only to specific statutory or constitutional privileges.

4.1.2 Absence of statutory exemptions for children.⁶⁷

Unlike the accused person (competent but not compellable against himself) or diplomatic personnel, children enjoy no statutory immunity from compulsion. The CRA, 2003 imposes no bar. Instead, it stipulates that they should be protected during testimony, not exempted from it.

⁶⁶ EA, s 175; Atoyebi and Ayara (n3).

⁶⁷ CRA 2003, ss 1 and 160; Ikimi, Ede and Ihedoro (n19) 198-203.

Scholars have noted that while children are protected from harm in other contexts, they remain compellable in civil and criminal proceedings. This exposes them to trauma without safeguards.

4.1.3 Discretionary judicial protections against compulsion

Courts retain the discretion to protect vulnerable children. Under ACJA 2015, section 260, the court may exclude the public or certain persons while a child testifies. In extreme cases of psychological harm, a judge may decline to compel. Such decisions are rare and it must be justified on the record. The 2025 study on subpoena in civil trials underscores the need for clearer guidelines to prevent arbitrary compulsion of child witnesses.⁶⁸

4.2 Corroboration Requirements and Evidentiary Weight

4.2.1 Mandatory corroboration for unsworn evidence (Section 209(3))⁶⁹

Section 209(3) provides that an accused person cannot be convicted only on the basis of unsworn evidence given for the prosecution by a child who is under-fourteen. There is need for independent material evidence which implicates the accused. This rule applies only to criminal convictions and only to unsworn testimony. Sworn evidence of children (whether under or over 14) attracts no mandatory corroboration. Even so, judges may still warn themselves of inherent risks. Critics has argued that this rule is a relic of the colonial distrust of child-testimony (especially in sexual offence cases where independent corroboration is often unavailable).

⁶⁸ ACJA, s 260; Ikimi, Ede and Ihedoro (n19) 195-206.

⁶⁹ EA, s 209(3).

4.2.2 Nature and sources of corroborative evidence.

Supporting evidence needs to be unbiased and point to the guilt of the accused, and confirm a material particular of the child's account. Medical evidence, eyewitness testimony, or recovered exhibits may suffice. The corroboration need not be direct but must connect the accused to the offence. In *Dagayya v The State*,⁷⁰ the Supreme Court upheld a conviction for culpable homicide where the evidence of a 14-year-old granddaughter was corroborated by medical and circumstantial evidence. This illustrates that circumstantial corroboration satisfies the statutory threshold.

4.2.3 Judicial warnings and evaluation of sworn child evidence.⁷¹

For sworn child evidence, no mandatory corroboration exists. However, prudent judges issue the classic warning which regards the danger of acting on uncorroborated child testimony. This is common where suggestibility or coaching is possible. Appellate courts uphold convictions where the trial judge evaluated the case carefully. There is need for a discretionary warning so as to provide a safeguard but it relies on the diligence of the judge.

4.3 Procedural Safeguards and Child-Friendly Mechanisms

4.3.1 Use of intermediaries and support persons.⁷²

The law in Nigeria does not provide for registered intermediaries as in the United Kingdom. Support persons (social workers or parents) may be permitted under the court's discretion or state

⁷⁰ [2006] LPELR-912(SC).

⁷¹ *Solola v State* (n56).

⁷² *Ikimi, Ede and Ihedoro* (n19) 201-204.

ACJLs. However, implementation remains inconsistent. There is no formal intermediary system and this leaves child witnesses exposed to aggressive cross-examination without neutral assistance.

4.3.2 Video-recorded evidence and live-link testimony.

ACJA 2015, section 260 permits exclusion of the public and, in appropriate cases, reception of evidence through video link where facilities exist. However, rural courts lack infrastructure. This renders this safeguard theoretical. The Evidence (Amendment) Act 2023 expands electronic evidence. However, it does not mandate child-specific protocols for video. Reports on ACJA implementation highlight that there is a gap in infrastructure and this is a barrier to child-friendly justice.⁷³

4.3.3 Closed-court sessions and anonymity provisions.⁷⁴

Section 260 of the ACJA 2015 and equivalent state provisions authorise closed sessions for child witnesses. Anonymity orders are rare and granted only in exceptional circumstances under the court's inherent powers or CRA. These measures are adhoc and they fail to provide shielding for child witness consistently

4.4 Challenges in Enforcement and Practical Application

4.4.1 Infrastructural deficits in rural courts.

Most magistrates' and High Courts outside major urban centres lack infrastructures (this includes video-link facilities, sound-proof rooms, or trained support personnel). Consequently, children

⁷³ Evidence (Amendment) Act 2023; ACJA, s 260.

⁷⁴ ACJA, ss 260-261; CRA 2003, ss 8 and 205.

testify in open court and this exposes them to victimisation. Research indicates that over 70% of courts in rural Nigeria lack basic child-protection infrastructure.⁷⁵

4.4.2 Suggestibility, coaching and risks of false testimony.⁷⁶

Children's suggestibility raises legitimate concerns. Frequently, defence counsel exploit voir dire or cross-examination to highlight inconsistencies. Sometimes, this excludes otherwise truthful evidence. The rule for mandatory corroboration exacerbates this where independent evidence is unavailable. Research confirms that repeated questioning distorts child memory, yet the courts in Nigeria lack the protocols to mitigate this risk.⁷⁷

4.4.3 Cross-examination trauma and secondary victimisation.

Traditional adversarial cross-examination retraumatises child witnesses, (especially in cases of sexual-offence). The law in Nigeria provides no statutory right to pre-recorded cross-examination or intermediary-assisted questioning. This leaves judges to improvise protective measures. This gap contravenes the principle of best-interest enshrined in the CRA and international instruments.⁷⁸

⁷⁵ UNICEF, Access to Justice for Child-Victims-&-Witnesses (Technical Brief 7, 2025) <https://www.unicef.org/media/174686/file/Reimagine%20Justice%20-%20Technical%20Brief%207%20-%20Child%20Victims%20and%20Witnesses.pdf> accessed 11 June 2026.

⁷⁶ Shameem (n4) 14-16.

⁷⁷ Ibid; UNODC (n7) arts 25-31.

⁷⁸ Ikimi, Ede and Ihedoro (n19) 201-206; CRA 2003, s 1; UNCRC, art 3.

4.5 Reform Proposals and International Best Practices

Comparative experience demonstrates reforms which are viable. Lessons learnt from other jurisdiction include that; there is need to abolish the requirement for corroboration of child evidence (as in England and Wales post-1999); special measures should be made mandatory (video links, intermediaries, screens); judges should be given specialised training. For Nigeria section 209(3) should be amended to remove mandatory corroboration, Comprehensive special measures should be incorporated into the Evidence Act or ACJA. There should be a uniform child-witness protocols aligned with the UN Model Law on Child Victims and Witnesses. Scholars stress that there is urgent need for reform to address these persistent deficiencies. This would enhance conviction rates in genuine cases and protect the child without sacrificing the standard for fair-trial.⁷⁹

⁷⁹ UNCRC 1989, arts 3 and 12; UNODC (n7) arts 26-31; Youth Justice & Criminal Evidence Act 1999 (UK), ss 16-33.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

The analysis yields five interlocking findings and they emerge from the analysis the preceding chapters. Firstly, the Evidence (Amendment) Act 2023 has modernised the competence regime.

It breaks decisively from the colonial 1945 Ordinance's blanket exclusionary tendencies. Innovations include; the universal presumption under Section 175(1), the age-differentiated sworn/unsworn bifurcation under Section 209, and the extension of unsworn evidence to civil proceedings

Secondly, corroboration remains a barrier prosecution. Under Section 209(3), there is a mandatory requirement for independent evidence that points to the guilt of the accused prior to a conviction which rely on unverified testimony from a child.⁸⁰ As Chapter Four demonstrated, this rule was retained despite the 2011 reforms. This echoes the colonial distrust of child in Chapter Three. In sexual-offence cases, where medical or circumstantial corroboration is often absent, the rule operates as a de facto mechanism for exclusion. It undermines the protective ethos of the CRA and participatory rights under Article 12 in the UNCRC. The finding confirms that indeed sworn evidence of children over 14 attracts only a discretionary warning. However, the unsworn testimony of younger children (who constitute the majority of victims in abuse cases) labours

⁸⁰ Research Question One; EA, s 209(3).

under a safeguard which anachronistic and prioritises the right of the accused rights over protecting the child.

Thirdly, compellability (once competence is established) is the position with virtually no statutory carve-outs. Chapter Four confirms that children enjoy none of the exemptions accorded to accused persons or diplomatic agents. Indeed, the courts retain inherent discretion to decline compulsion in extreme trauma cases. Nonetheless, such decisions are rare and unreported. As Ikimi and others⁸¹ underscores, even in non-criminal proceedings the child remains vulnerable to compulsion without safeguards. In essence, there is moral tension. It is a legal system which proclaims the best interests of the child (UNCRC Article 3) yet compels testimony without psychological support.

Fourthly, the safeguards for infrastructural and procedural remain largely illusory. Video links, intermediaries, closed sessions and support persons exist in statutory fragments (ACJA s 260, Evidence (Amendment Act 2023)). However, they are unavailable in the majority of rural courts. As Omozue⁸² and Ikimi⁸³ point out, there persist infrastructural deficits and there is no intermediary regime. Consequently, children are victimised secondarily. They are to aggressive cross-examination, public exposure as well as recounting of trauma. This finding reveals that the “modernised” framework of 2011 is parchment justice. It is beautiful on statute books but impotent on the ground.

⁸¹ Ikimi, Ede and Ihedoro (n19) 195-206.

⁸² Omozue (n18) 70-72.

⁸³ Ikimi, Ede and Ihedoro (n19) 201-206.

Collectively, these findings demonstrate that the Evidence (Amendment) Act 2023 and CRA 2003 represent genuine progress legislatively. However, the reliability of child evidence and the dignity of child witnesses is compromised by mandatory corroboration, discretionary opacity, infrastructural voids and attitudinal inertia. The research questions have been answered comprehensively. Firstly, Corroboration is as a gatekeeper (RQ1). Secondly, competence rests on whether the judge assessed the intelligence of the child and truth-understanding (RQ2). The procedures for reliability remain ad hoc and trauma-insensitive (RQ3). The objectives have been achieved. However, the study reveals that there is a lacunae which demands creative, multi-layered reform.

5.2 Recommendations

The recommendations that follow are not incremental adjustments. Rather, they constitute a bold, creative and multi-pronged blueprint for a child-centric regime for evidence. Each proposal is anchored in the findings of the study above. More so, it reimagines existing institutions creatively and draws inspiration from but surpasses international best practices. Success indicators are delineated to ensure that it is feasible within the federal structure in Nigeria.

Recommendation 1: Enact a standalone “Child Evidence Protection and Participation Act 2027” (CEPP Act)

Building on the critique in Chapters Three and Four that the piecemeal amendments to the Evidence Act have proven insufficient, the National Assembly should enact a comprehensive, child-specific statute. The CEPP Act would:

- (a) abolish Section 209(3)'s requirement for mandatory corroboration. It replaces it with a judicial warning which should be mandatory and should be calibrated to the child's age and maturity;
- (b) insert a statutory definition of "child" as any person under 18 years (this harmonises with the CRA);
- (c) codify a special-measures protocol nationally and this should mandate video-recorded evidence-in-chief for all children under 14, live-link testimony where available, and registered intermediaries for cross-examination; and
- (d) establish a presumption against open-court testimony unless the child elects otherwise after receiving independent legal advice.

Creatively, the Act would introduce "trauma-informed voir dire guidelines" and this should be developed by the National Judicial Institute (NJI) and the Nigerian Psychological Associations jointly. There is need to also standardise question banks. There should also be a mandatory pre-inquiry psychological screening. Child advocate should also conduct inquiry. There should be pilot implementation in Lagos, Abuja and Kano for two years. This would generate data for nationwide rollout. For the Fundig, initially, NGN 2.5 billion should be budgeted for infrastructure and training. This would be funded through a 0.5% levy on federal court filing fees earmarked for the Child Witness Protection Fund. For success matric, it is expected that this would increase the rates of child-related conviction by at least 35% within five years and it would reduce the complaints about victimisation by 50%. This recommendation flows from the critique of corroboration (Finding 2) and the gaps in infrastructure (Finding 5).

Recommendation 2: Institutionalise Mandatory Specialised Judicial and Prosecutorial Training with Certification

Chapter Three analysed inconsistent voir dire and Chapter Four assessed the concerns about trauma. Thus, there is need capacity-building which should be transformative. The NJI should establish a permanent “Child Witness Justice Academy.” This offers a 40-hour certified course on child cognitive development, suggestibility science, cultural competency, and trauma-informed questioning. Every judge and magistrate who handle child-related matters must obtain recertification every three years. Prosecutors in the Ministry of Justice and police units on child-protection must complete a parallel 20-hour module.

Creatively, the modules for virtual-reality simulation should be incorporated where judges practise voir dire with AI-generated child avatars which exhibits varying levels of distress, cultural backgrounds as well as developmental stages.

Nationally, there should be an annual moot-court competition on child evidence. This would foster the dissemination of best-practice. For funding, the existing budge of the NJI should be integrated into the existing budget of the NJI with supplementary grants from UNICEF and the EU Rule of Law Programme. For Success metric, there should be 100% compliance with certification within 24 months and a 40% reduction in the reversals for appellate on competence grounds. In that sense, technology is deployed creatively to addresses the opacity identified in Finding 6 and the psychological insensitivity in Finding 3.

Recommendation 3: Establish a National Child Witness Support Network (NCWSN) with Intermediaries and Digital Infrastructure

To bridge the chasm in infrastructure exposed in Chapter Four, the Federal Ministry of Justice, in partnership with state Ministries and NGOs, should create the NCWS. This would be decentralised network of child-witness suites for 774 local government-level. Each suite would feature sound-proof rooms, high-definition video-recording equipment, live-link capability, and a roster of registered intermediaries (trained social workers and child psychologists).

In addition, there is need to introduce “digital child passports” secure, blockchain-protected electronic files containing the child’s preferred communication style, cultural triggers, and pre-recorded ground rules for testimony. These passports would travel with the case file. This ensures that there is continuity across jurisdictions. Rural suites would be solar-powered and equipped with Starlink-type satellite connectivity to overcome bandwidth challenges. Pilot should start in 100 LGAs in Year 1 and it would scaled nationally by Year 4. For funding, NGN 15 billion would be required over five years. This would be financed through the Child Witness Protection Fund and corporate social responsibility contributions from telecom giants. For success metrics, 80% of child testimonies should have been conducted through special measures within five years. This would measure by court statistics annually. These remedies Finding 5 directly and operationalises the protective ethos of the UNODC Model Law in Chapter One.

Recommendation 4: Amend the CRA and State ACJLs to Mandate Family Courts with Exclusive Child-Evidence Jurisdiction

To resolve jurisdictional fragmentation and the uneven domestication (which is critiqued in Chapter Three), the CRA should be amended to designate specialised Family Courts in every state

capital and major urban centre. These courts would exercise original jurisdiction over all civil and criminal matters which involve child witnesses. Procedures which are streamlined should be applied under the proposed CEPP Act. State ACJLs would be harmonised to mirror federal standards.

In addition, there is need to “child voice officers” independent guardians ad litem who are trained in both law and child psychology and who represent the participatory rights of the child throughout the proceedings, including advising on special measures and appeal options. This institutionalises Article 12 UNCRC rights in a manner far beyond current discretionary practice. It should be rolled out within three years, with federal funding for court construction. It is expected to unify jurisprudence, reduce delays, and the increase the score for child satisfaction. This flows directly from the gaps in harmonisation identified in Findings 1 and 7.

Recommendation 5: Develop AI-Assisted Preliminary Competence Screening Tools and National Guidelines

Leveraging the critique of discretion in Finding 6, the NJI should commission the development of an open-source AI application (in partnership with universities in Nigeria and international tech partners). This would assist judges in structuring voir dire questions. The tool would analyse child responses in real time for indicators of understanding. It would also suggest follow-up questions, flag potential trauma markers, as well as generate a standardised report for the record.

The AI would incorporate in cultural datasets in Nigeria (Hausa, Igbo, Yoruba proverbs on truth-telling). This ensures that the assessment is sensitive culturally. Guidelines would mandate the use as a decision-support tool (not replacement for judicial discretion) and human override should be mandatory. Privacy should be protected through end-to-end encryption. Pilot should be started in

ten High Courts in Year 1. For funding, there should be NGN 800 million development grant from TET Fund and international donors. For success metrics, there should be 50% reduction in errors in procedures on appeal and consistency nationwide. Where there is technology is used innovatively, operational inconsistency which is lamented in Chapters Three and Four would be tackled directly.

Recommendation 6: Launch a Public Awareness and School-Based Civic Education Campaign Nationwide

To address the societal myths and stereotypes noted in Chapter One, the Ministry of Information, in collaboration with the Nigerian Bar Association and UNICEF, should roll out a multi-year campaign which is titled “Every Child’s Voice Matters.” It should contain the following: (a) there should be radio and television dramas which depict the processes for child-friendly testimony; (b) The principles of child rights and evidence should be integrated into the national school curriculum from Primary 5; (c) there should be annual “Child Witness Week” with community dialogues; and (d) there should also be media training for journalists to report sensitively on child cases.

Importantly, there is need to establish a national “Child Evidence Ambassadors” programme where former child witnesses (now adults) share anonymised, empowering stories. This turns survivors into advocates. For funding, NGN 1.2 billion should be budgeted over five years. This would be funded through CSR and international grants. This would shift public perception from scepticism to support. In that sense, there would be less reluctance to report and testify.

5.3 Conclusion

The competence as well as compellability of child witnesses in Nigeria stand at a historic crossroads. This project has demonstrated that the Evidence (Amendment) Act 2023 and allied legislation have dismantled many colonial barriers. However, the regime remains shackled by mandatory corroboration, inconsistency in applying discretion, deficits in infrastructure and inadequate architecture for protection.

The recommendations advanced in this chapter are not utopian. Each is grounded in existing institutions. They are costed where possible and sequenced for phased implementation within the federal realities in Nigeria. Collectively, they reimagine the child not as a suspect source of unreliable evidence but as a participant who has right and whose dignity, voice as well as psychological safety are paramount.

Implementation will demand political will and budgetary commitment. Agencies must also collaborate. Yet the moral imperative is clear. A justice system that compels a child to testify must protect the humanity of the child. If these reforms are embraced, Nigeria will not only align with international best practices but it will pioneer a model of child-centric evidentiary justice in Africa; one that honours the right to fair hearing under the constitution⁸⁴ and also safeguard the most vulnerable among us.

Ultimately, the admissibility of child evidence is not a technical legal question. Rather, it is a litmus test of our collective commitment to the next generation. When every child in Nigeria could enter the courtroom and be confident that their voice will be heard, protected and believed, the promise of the CRA and the Evidence (Amendment) Act 2023 will have been fulfilled. Therefore,

⁸⁴ CFRN 1999 (as amended), s 36.

this study ends not with a conclusion but with a call to action. Let the reforms begin. The children of Nigeria deserve nothing less.

BIBLIOGRAPHY

1. Books

- Naureen Shameem, *Child Testimony: Admissibility, Reliability and Procedure* (Avon Global Center for Women and Justice, Cornell Law School 2012) 1.
- TA Aguda, *Law and Practice Relating to Evidence in Nigeria* (MIJ Professional Publishers 1980) 299.

2. Journal Articles

- A Adekunle, 'Competence and Child Witnesses under Law in Nigeria' [1993] (37)(1) *Journal of African Law* 60.
- M Omozue, 'Analysis of Child-Evidence in Nigerian Courts: Focusing on the Evidence Act, 2011' [2020] (1) *ACRLR* 65.
- ILI Ikimi, YM Ede and SN Ihedoro, 'The Compellability for Attendance of a Child through the Instrumentality of Subpoena in Civil Trials' [2025] (8)(1) *EAJLE* 195.
- KO Amusa, 'Fact and Fiction about Child-Evidence in Nigeria' [2014] (19)(2) *IOSR Journal of Humanities and Social Science* 49.
- BE Ewulum and O Mbanugo, 'Competence and Compellability under the Evidence Act of Nigeria' [2015] (2)(1) *South Asian Journal of Multidisciplinary Studies* 1.
- OE Smaranda and U Jacob, 'Child-Evidence under the Nigerian Law: The New Approach after the Evidence Act, 2011' [2019] (10) *Beijing Law Review* 1394.

3. International Treaties & Model Laws

- Convention on the Rights of the Child 1989 (UNCRC), arts 2, 3, 12 and 13.
- African Charter on the Rights and Welfare of the Child 1990 (ACRWC), arts 3, 4 and 7.

- UNODC, *Justice in Matters which involve Child-Victims and Witnesses of Crime: Model Law and Related Commentary* (UNODC/UNICEF/IBCR 2009) arts 6–8, 11, 13, 15 and 25–31.
- UNICEF, *Access to Justice for Child-Victims and Witnesses* (Technical Brief 7, 2025).

4. Statutes & Constitutional Provisions

- Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36(11).
- Evidence Act 2011, ss 175, 176, 180–182, 189–196, and 209.
- Administration of Criminal Justice Act 2015 (ACJA), ss 260–261.
- Child's Rights Act 2003 (CRA), ss 1, 8, 160 and 205.
- Evidence Act (Kenya) Cap 80, s 124.
- Constitution of Kenya 2010, art 53(2).
- Criminal Procedure Act, Cap C41 LFN 2004, s 2.
- Children and Young Persons Act, Cap C50 LFN 2004, s 2.
- Criminal Code Act, ss 217–219, 221, 223 and 360.
- Youth Justice and Criminal Evidence Act 1999 (UK), ss 16–33 and 53.
- Canada Evidence Act, RSC 1985, c C-5, s 16.1.
- Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007 (South Africa), s 58.
- Evidence (Amendment) Act 2023.

5. Judicial Precedents (Case Law)

- *Okon v The State* [1988] 1 NWLR (Pt 69) 172 (SC).
- *Mbele v State* [1990] 4 NWLR (Pt 145) 484 (SC).
- *Sambo v State* [1993] 6 NWLR (Pt 300) 399 (SC).
- *Solola v State* [2005] 11 NWLR (Pt 937) 460 (SC).
- *Jinadu v Esurombi-Aro* [2005] 14 NWLR (Pt 944) 142.
- *Umar v State* [2025] 7 NWLR (Pt 1990) 495 (SC).

- *Okoye v The State* [1972] 1 All NLR 500.
- *Hon v Rickard* [1962] 2 All NLR 41.
- *Umole v IGP* [1957] NRNLR 8.
- *R v Hayes* [1977] 1 Target/WLR 234.
- *R v Baines* [1909] 1 KB 258.
- *R v [Unspecified]* [1922] 16 Cr App R 53.
- *[Unspecified] v [Unspecified]* [1957] NRNLR 23.
- *State v Njokwu Obia* [1974] 4 ECSLR 67.
- *[Unspecified] v [Unspecified]* [1994] 1 NWLR (Pt 322) 583 (CA).

6. Online Legal Opinions & Commentary (Blogs/Websites)

- OM Atoyebi and J Ayara, 'Competent and Compellable Witness under the Evidence Act in Nigeria' *Opinion Nigeria* (12 April 2023) <<https://www.opinionnigeria.com/>...> accessed 11 June 2026.
- N Vincent, 'The Concept of Competency and Compellability of Witnesses' *VineLegal* (3 August 2025) <<https://www.vinelegal.com.ng/>...> accessed 11 June 2026.