



CHILD WITNESSING IN NIGERIA: A LEGAL ANALYSIS

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Abstract

The law and practice of evidence constitute one of the foundational frameworks for the determination of the rights and obligations of individuals and institutions engaged in disputes. Within this framework, the participation of children in legal proceedings presents a distinctive and sensitive dimension. In certain instances, a child may appear not only as a party to an action but also as a vital witness stricto sensu on behalf of contending parties. It is now widely accepted that a child is, in principle, a competent witness. However, the manner in which untainted and reliable evidence may be elicited from a child, as well as the probative weight to be ascribed to such testimony, remains a subject of concern largely attributable to the absence or inadequacy of protective measures designed to ensure that the child is sufficiently confident, secure, and free from intimidation both during and after the process of testifying. This paper undertakes a critical analysis of child witnessing within the Nigerian legal system, with particular emphasis on the extent to which existing laws safeguard this vulnerable category of witnesses. Adopting a doctrinal methodology, the study draws upon extant statutory provisions, judicial authorities, and other relevant secondary sources. The findings reveal that many child witnesses are exposed to significant risks, exacerbated by inadequate infrastructural facilities and, more critically, by the ineffective implementation of existing legal safeguards. Accordingly, the paper recommends that Nigeria should improve its approach by adopting a more holistic framework that combines competency rules with structured special measures, intermediary use, guaranteed support persons, and enforceable privacy protections, thereby achieving a better balance between fair trial rights and child protection.

Keywords-Child, Child Witness, Court, Evidence,

1. Introduction

The participation of children in the adjudicatory process, particularly in the capacity of witnesses, engages complex considerations at the intersection of evidentiary reliability, procedural fairness, and the imperative of child protection. Although the law generally recognises the competency of children to testify, such competency is not absolute; rather, it is contingent upon a judicial determination that the child possesses sufficient intellectual capacity to understand questions, provide rational answers, and appreciate the moral obligation to speak the truth. This determination is typically undertaken through a preliminary inquiry.

Beyond questions of competence, the reception of a child's testimony raises concerns regarding the manner in which reliable and untainted evidence may be elicited without exposing the child to trauma, intimidation, or undue influence. Contemporary evidentiary practice has therefore evolved to incorporate protective measures tailored to the vulnerability of child witnesses. In some jurisdiction, these measures include, *inter alia*, the use of video-link testimony, the presence of guardians or intermediary support persons, and the adaptation of courtroom procedures to

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create a less adversarial and more child-sensitive environment. In this regard, the legal system is continually engaged in balancing two competing, yet equally compelling, objectives: the need to secure credible and probative evidence, and the obligation to safeguard the dignity, welfare, and psychological well-being of the child.

This protective orientation is firmly grounded in both domestic and international legal instruments. Statutes such as the Child Rights Act², alongside regional and international frameworks like the African Charter on the Rights and Welfare of the Child³ and the United Nations Convention on the Rights of the Child⁴, enshrine the principle that the best interests of the child shall be a primary consideration in all matters affecting the child. This principle underscores the necessity of shielding the child from harm while promoting their overall development and well-being.

In furtherance of these objectives, extant legal frameworks, including the Evidence Act⁵, contain provisions regulating the admissibility of evidence, the mode of its presentation, and the competence of witnesses, with implicit recognition of the unique status of child witnesses. Notwithstanding these provisions, significant challenges persist in practice, particularly in relation to the adequacy of protective measures and the effective implementation of existing safeguards.

Against this backdrop, this work undertakes a critical examination of the concept of the child witness within the Nigerian legal system. It analyses the relevant statutory and institutional frameworks with a view to assessing their effectiveness in protecting child witnesses. Particular attention is paid to the practical realities confronting such witnesses and the extent to which existing mechanisms address their inherent vulnerability. Ultimately, the study evaluates the impact of these frameworks on the protection of the rights and welfare of the child, who, by reason of immaturity, requires special care, protection, and consideration within the administration of justice.

2. Conceptual framework

2.1. Who is a child witness?

A child witness is a witness who is a minor, of tender age, or below the legal age of majority.⁶ To understand the meaning of a child witness, it is necessary to first understand the concept of a child. The very notion of a child is both historically and culturally conditioned subject to the philosophical interests or idiosyncrasies of scholars and the provisions of the different legal instruments protecting the rights of a child.⁷ For the purpose of this research, suffice it to say that a child is who the law or statutes of a state defines it to be. According to the Child Rights Act, a child is any person under the age of eighteen years⁸ This definition by the Child Rights Act, is in line with international standard.⁹ By *Article 1* of the United Nations Convention on the Rights of

² Act No. 26 of 2003, often codified as Cap C50, Laws of the Federation of Nigeria (LFN) 2004

³ OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999

⁴ (1989) Treaty no. 27531. United Nations Treaty Series, 1577, pp. 3-178.

⁵ Act No. 18 of 2011, which was amended by the Evidence (Amendment) Act, 2023

⁶ Umeobika, C. Q. (2016). Violence against children in Nigeria: Child battering in focus. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 7, 176-183.

⁷ Oti-Onyema, L. A. (2019). Right to Life and Defence of Property in Nigeria: The Child's Right Act in Focus. *AJLHR*, 3, 49.

⁸ Section 277

⁹ UNCRC, 1989



the Child, a child is every human being below the age of eighteen years unless the law applicable to the child, majority is attained earlier. The Worst Forms of Child Labour Convention¹⁰, another international instrument for the protection of the child, has the definition of the child as any person under the age of eighteen years. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed conflicts, Article 3 provides for eighteen years of age as the age of maturity. African Charter on the Rights and welfare of the Child, in its *Article 2* defines the child to mean every human being below the age of eighteen years. A child is, thus, a person below the age of eighteen years of age.¹¹

Secondly, a witness refers to a person who has obtained knowledge of an event directly through his senses, generally, through sight (eyewitness) or hearing (earwitness). These people are often called into a court of law to give testimony about what they perceived.¹² A child witness in Nigeria is therefore, a witness below the Age of eighteen years.

The Evidence Act which is the principal legislation for examination of witnesses, did not define a child. It only made reference to the exemption as witnesses persons who by reason of tender age are not competent to testify. For the Evidence Act therefore, the age of the child is irrelevant provided he is able to understand questions put to him and offer rational answers thereto. Applying the CRA, it means a child witness in Nigeria is any witness below the age of 18.

3. Legal Framework

The Court is imbued with the power to entertain claims and disputes for resolution between parties. The exercise of that power is hinged on the evidence of competent witnesses. Evidence is to the Court what breath is to man; it is the life wire of adjudication after the issue of jurisdiction.¹³ the child witness has been found to be qualified by law to offer evidence that can assist the court in its duty of fact-finding and decision-making over matters presented before it.

In time past, it was believed that children are prone to fantasy, suggestible and inherently unreliable evidence which has undoubtedly led to many perpetrators escaping conviction as the alleged victim was not deemed competent to give evidence, or the evidence was uncorroborated and there was nothing else to prove guilt beyond reasonable doubt.¹⁴ However, views regarding the reliability of the evidence of children have significantly progressed in recent times. It is generally now accepted that the view that children are inherently unreliable or a morally incompetent class of witnesses is wrong.¹⁵ This view follows contemporary psychological findings that ‘children from preschool years onward often show sophisticated understanding of the concepts of lying and truth-telling’¹⁶ and that there is ‘no correlation between age and

¹⁰ 1999 (No. 182), adopted by the International Labour Organization (ILO) on June 17, 1999.

¹¹ Umeobika, C. Q., & Oti-Onyema, A. (2025). The Rights of The Nigerian Child And The Role of Courts: Special Categories of Children In Focus. *Nnamdi Azikiwe University Journal of Private and Property Law*, 2(1), 108-117.

¹² ‘Percipient witness’, <https://www.law.cornell.edu/wex/percipient_witness>, accessed on 27/4/2026.

¹³ Otitodiri, O. O. (2019). SPECIFIC PERFORMANCE AS A LEGAL ALTERNATIVE TO AWARD OF DAMAGES: SOME LEGAL CONSIDERATIONS. *Journal of Commercial and Property Law*, 6.

¹⁴ J D Heydon, *Evidence: Cases and Materials*, (Butterworths, 2nd ed, 1984) 84

¹⁵ Karen Schultz, ‘The Need for Competence Tests: Queensland Judicial Perspectives on Non-accused Child Witnesses in Criminal Proceedings, Part 1’ (2003) 22 *University of Queensland Law Journal* 199, 222

¹⁶ Australian Law Reform Commission, *Uniform Evidence Law*, Report No 102 (2005) 97 [4.8] (‘ALRC Evidence Report 2005’); see also Victoria Talwar et al, ‘Children’s Conceptual Knowledge of Lying and its Relation to their Actual Behaviours: Implications for Court Competence Examinations’ (2002) 26 *Law and Human Behaviour*, 395, 396



honesty'.¹⁷ However, it has also been established that while children will generally understand that telling the truth is good and lying is bad, they may not understand more complex expressions such as 'the obligation to tell the truth'.¹⁸ That obligation has been described as something more than a promise: 'It is an appreciation of the nature of the duty to tell the truth. It is a prerequisite for taking an oath or affirmation, which exposes the person to punishment for being untruthful.'¹⁹ This obligation and the manner in which it is to be discharged have been provided for by legislation, as can be seen below.

3.1 Child's Right to Testify

3.1.1 International Legal Framework

In the global sphere, the child's right to express views, opinions, and information within their knowledge has received significant recognition. The key international instruments governing a child's right to testify are the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

Article 12 of the UNCRC imposes a duty on States to ensure that a child who is capable of forming their own views has the right to express those views freely in all matters affecting them, with such views being given due weight in accordance with the child's age and maturity. For this purpose, the child must, in particular, be given the opportunity to be heard in any judicial or administrative proceedings affecting them, either directly or through a representative or appropriate body, in a manner consistent with the procedural rules of national law.

Similarly, *Article 7* of the African Charter on the Rights and Welfare of the Child provides that every child capable of communicating their views shall be assured the right to express opinions freely in all matters and to disseminate those opinions, subject to such restrictions as may be prescribed by law.

3.1.2 Constitution of the Federal Republic of Nigeria²⁰

Every citizen is entitled to the right to a fair hearing, which is often realised through the presentation and evaluation of evidence. The connection between the principle of fair hearing and evidence was clearly articulated in *Judicial Service Commission, Cross Rivers State v Young*²¹, where the Apex Court stated as follows:

"In a judicial or quasi-judicial body, a hearing in order to be fair must include the right of the person affected

- i. to be present all through the proceedings and hear all the evidence against him.
- ii. to cross-examine or otherwise contradict all the witnesses that testify against him.
- iii. to have read before him all the documents tendered in evidence at the hearing.
- iv. to have disclosed to him the nature of all relevant material evidence including documentary and real evidence.

¹⁷ Michael Harris and Gregor Urbas, 'Children's Unsworn Evidence: Historical Developments and Contemporary Issues' (2017) 40(4) *University of New South Wales Law Journal*, 1.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ 1999(as amended)

²¹ (2014) ALL FWLR (PT. 714) 40 at 59 paras E-G



- v. to know the case, he has to meet at the hearing and have adequate opportunity to prepare for his defence and
- vi. to give evidence by himself, call witnesses if he likes and make oral submissions either personally or through counsel of his own choice.

Where this right is denied in judicial proceedings, the outcome amounts to nullity, as consistently held by the Supreme Court. In *Gov. Zamfara State v. Gyalange*²², the Court held that: it is when the case of both sides are considered and weighed against each other that the concept of fair hearing will be said to have been met. In other words, to arrive at a just determination of a case and avoid miscarriage of justice, the opponent must be given the same deserved attention as the party who sought a remedy from the court and unless this done, the court will fail in its duty as vested in it by the law and the decision will be declared null and void.”

3.1.3 Evidence Act

Every person is a competent witness, except in cases provided under the law. Thus, Evidence Act²³ provides that every person shall be a competent witness unless the court considers that the person is prevented from understanding the questions put forward to him or her or from giving rational answers to them, by reason of tender years, extreme old age, disease, whether of body or mind, any course of the same kind. The Act further provides²⁴ that in any proceeding in which a child who has not attained the age of fourteen years is tendered as a witness, such a child shall not be sworn and shall give evidence otherwise than on oath or affirmation, if in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking the truth. Furthermore, the Act provides that a child who has attained the age of fourteen years shall give sworn evidence in all cases except on the basis of religious belief and other factors. In *Ibrahim Abubakar v The State*²⁵, the Supreme Court stated that “while Section 175(1) of Act is a general provision regarding the competence and incompetence of witnesses, Section 209(1) of the same Act is a specific provision relating to witnesses under the age of 14 years. By Section 209(1) of the Evidence Act, a witness below the age of 14 years is not permitted to testify on oath. Such witness may testify without being sworn or affirmed, if the Court is satisfied that the witness is possessed of sufficient intellect to understand the duty of speaking the truth.”

On the procedures of taking unsworn evidence of a child, the Court of Appeal²⁶ while adopting the decision of the Supreme Court in *Idi v State*²⁷ listed them as follows:

- (a). The first duty of the Court is to determine first of all, whether the child is sufficiently intelligent to understand the questions he may be asked in the course of his testimony and to be able to answer rationally. This is tested by the Court asking him preliminary questions which may have nothing to do with the matter before the Court.
- (b). If, as a result of these preliminary questions, the Court comes to the conclusion that the child is unable to understand the questions or to answer them intelligently, the child is not competent witness within the meaning of Section 155 (1). But if the child passes the

²² (2013) ALL FWLR (PT. 658) 821 at 841 paras A-B

²³ Evidence Act, 2011, ss.175.

²⁴ *Ibid*, s 209.

²⁵ (2026-01) Legalpedia 62070 (SC)

²⁶ *Dantullu v The People Of Kebbi* (2025-03) Legalpedia 61860 (CA)

²⁷ 2017) LPELR -- 42587 (SC)



preliminary test, then the Court must proceed to the next test as to whether, in the opinion of the Court, the child is able to understand the nature and implication of an oath.

- (c). If after passing the first test, he fails the second test, then being a competent witness, he will give evidence which is admissible under *Section 183(2)* though not on oath. If on the other hand, he passes the second test so that in the opinion of the Court, he understands the nature of an oath, he will give evidence on oath."

A child who has passed the text of competence is obligated to speak the truth. Any failure to do so will result in a crime punishable under the criminal Code. Thus, if a child, whose evidence is received under this section, willfully gives false evidence in such circumstances that he would, if the evidence had been given on oath have been guilty of perjury, he shall be guilty of an offence under section 19J of the Criminal Code and on conviction shall be dealt with accordingly.

Children with disability are also protected under the Act. Thus the Evidence Act²⁸, provides that a witness who is unable to speak may give his evidence in any manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in the court, and the evidence so given shall be deemed to be oral evidence.

3.1.4 Child's Right Act

In any proceedings, whether civil or criminal, the evidence of a child may be given unsworn. A deposition of a child's unsworn evidence shall be taken for the purposes of any proceedings, whether civil or criminal, as if that evidence had been given on oath.²⁹ *Section 214* further guarantees that in any trial involving a child, the principles of fair hearing and due process must be strictly observed. This ensures that the child is treated justly, given an opportunity to be heard, and protected from unfair or oppressive procedures during trial.

3.2 Corroboration of the Evidence of a Child Witness

The general rule is that no particular number of witnesses shall be required for proof of any fact in issue.³⁰ The imaginary scale of justice used in assessing judicial evidence concerns itself with cogent, credible and convincing facts. Therefore, the testimony of a single witness that is relevant and admissible can secure a conviction in a criminal trial or establish the fact in issue in a civil trial.³¹ In *Ogbodu v the State*³² it was held that what is important to the court is the quality and not the quantity of evidence adduced. The court of law cannot take into account the number of witnesses that have given evidence for each side as a relevant factor in deciding which side should succeed. There are however exceptions to the general rule and the unsworn evidence of a child constitute one of the exceptions.

The unsworn evidence of a child in criminal trials cannot be acted upon except with corroboration. In Nigerian law, corroboration of a child witness' evidence in civil cases is generally not required as a rule of law. "Corroboration is not a technical term or art, but means no more than evidence tending to confirm, support and strengthen other evidence sought to be corroborated. It need not consist of direct evidence that the accused committed the offence, nor need it amount to a confirmation of the whole account given by the witness, provided that it corroborates the evidence in some respects material to the charge. Admission by the accused that

²⁸ *Ibid* s. 176.

²⁹ Section 160 of the CRA

³⁰ Evidence Act, s200.

³¹ *Salisu Bubguga v The State* (1996) 7SCNJ 217.

³² (1986) 5NWLR 294.



he committed the offence may amount to corroboration. Circumstantial evidence and medical evidence may also amount to corroboration."³³ It is trite law that the test applicable to determine the nature and extent of corroboration is to establish that the evidence is an independent testimony which affects the accused by connecting or tending to connect him with the crime.³⁴ The position is this-the Judge must ask himself whether or not he believes the evidence of the accomplice and, if he believes the evidence, then he must warn himself that it is unsafe to convict on it alone: he then looks for some additional evidence (not that of another accomplice) rendering it probable that the story of the accomplice is true and that it is safe to act upon it.³⁵

"By the provision of *Section 209(3)*, an accused person cannot validly be convicted for any offence on the unsworn evidence or testimony of a child under the age of fourteen (14) years, alone and without some other material evidence in support thereof implicating him." A child can therefore give evidence on oath or not depending on the age of the child and his or her ability to understand the duty of speaking the truth. It is pertinent therefore that the child witness is protected when giving sworn evidence or unsworn evidence. Although it appears justifiable, by reason of the higher standard of proof required in criminal cases, to require corroboration of a child's unsworn evidence, it is not clear why the same standard should not be applied in civil cases, given the concern about the potential unreliability of a child's unsworn evidence.

3.3. Protection Afforded to Child Witnesses

Protecting a witness refers to a range of measures, which can be applied at any stage in any proceedings, to ensure the safety of the witness to gain their cooperation in providing testimony in court or any judicial proceedings. Protecting the witness is an important step in obtaining credible evidence and ultimately attaining justice. Simply put, measures ought to be put in place to protect a witness for the purpose of administering justice. This can be achieved through an effective witness protection scheme. Witnesses are usually better composed to give evidence in court if they are afforded proper protection and prepared well for the case. It is even more ideal with child witness. Children due to their immaturity usually appear without appreciating or understanding the court proceedings, rules, and the role they have come to play. The question remains, what protection can be offered to a child to enable him or her give credible and admissible evidence.

The greatest protection granted to the child witness is the best interest principle recognized nationally and internationally. In all cases concerning children whether undertaken by public or private welfare, institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be the primary consideration. Thus, it follows that the best interest of the child witness should be envisaged.³⁶

Furthermore, by *Articles 40* of the UNCRC and *17 of the ACRWC*, States have international obligation to ensure that a child offender is treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. To this end, states shall ensure that such a child is not to be compelled to give testimony

³³ *Enaho Odigie v The State*

³⁴ *Michael Edhigere v The State*

³⁵ *Michael Adedapo Omisade & Ors v The Queen*

³⁶ Article 3(1) of the UNCRC; Article 4(1) of the ACRWC and section 1 of the CRA



or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality.³⁷

There are certain provisions of laws in Nigeria that confer roles on the court to protect the child witness. They include: establishment of the Family Court for hearing matters involving children.³⁸ The setting of a Family Court is less formal than that of a regular court, thus the child witness will feel free and relaxed and less exposed. However, this provision protects only the child witness in the Family Court and does not protect a child witness testifying in a regular court. The same Act provides³⁹ that no person other than the members and officers of the Court, the parties to the case, their solicitors and counsel, parents or guardians of the child and other persons directly concerned in the case, shall be allowed to attend the court, members of the press are equally excluded from attending court proceedings. This provision gives the child witness privacy. The Act further provides that; no person shall publish the name, address, school, photograph, or anything likely to lead to the identification of a child whose matter is before the court, except in so far as is required by the provision of this Act. This provision offers protection to the child witness who appears in the Family Court to the extent that his identity is banned from publication. The rights of the child to privacy are to be respected at all stages of child justice administration to avoid harm being caused to the child by undue publicity. The CRA further provides⁴⁰ that the proceedings in the court shall be conducive to the best interest of the child and shall be conducted in an atmosphere of understanding, allowing the child to express himself and participate in the proceedings. The above provisions are geared towards protecting the child witness. The role of the court is obvious in promoting the rights of the child to the child justice system and basic protection when testifying in other courts. Though many States have adopted the CRA, the Family courts existing in those States are not as intended in the CRA in terms of structure and personnel. Only Lagos State has the semblance of the Family court as intended in the Act, though there are a lot of gaps.

The Administration of Criminal Justice Act⁴¹ provides that with respect to rape, defilement, incest, unnatural or indecent offences against a person, offences under the terrorism(Prevention)(Amendment) Act, offences relating to Economic and Financial Crimes, Trafficking in Persons and related Offences and any other offence in respect of which an Act of the National Assembly permits the use of such protective measures or as the judge may consider appropriate in the circumstances; the names, addresses, telephone numbers and identity of the victims of such offences or witnesses shall not be disclosed in any record or report of the proceedings and it shall be sufficient to designate the names of the victims or witnesses with a combination of alphabets.⁴² The Act further provides that where in any proceedings the court deems it necessary to protect the identity of the victim or a witness, the court may take any or all of the following measures: receive evidence through video link; permit the witness to be screened or masked; receive written deposition of expert evidence; and any other measure that the court considers appropriate in the circumstance. The Law certainly has more elaborate provision on protection measures for witnesses, since it provides for certain new measures not mentioned in other laws. The effect of this provision is that the court is given wide powers and discretion to make orders for the protection of the child witness. However, since it is not mandatory for the court to do so, such measures may not be taken and the interest of the child would be jeopardized.

³⁷ Article 40 of the UNCRC

³⁸ Child Right's Act, s 149.

³⁹ Child's Rights Act, s 156.

⁴⁰ *Ibid*, ss. 157 and 158.

⁴¹ The Administration of Justice Act, 2015.

⁴² *Ibid*, s. 232(1-2).



Again, the limitation of this protection to certain offences is not a good one. Every offence where a child is called as a witness, the protection should apply. The court should in such criminal cases exercise its role in the best interest of the child, and in doing so promote and protect the rights of the child witness.⁴³

One of the protective measures for a child witness that is often overlooked is the proximity of the court to the child. Where courts are distant or difficult to reach, children may be exposed to unnecessary physical, emotional, and financial burdens, which can undermine their willingness and ability to testify effectively. Excessive travel, unfamiliar environments, and prolonged waiting periods may also increase anxiety and reduce the quality of their evidence. Ensuring geographical and procedural accessibility therefore forms an indirect but important aspect of protecting child witnesses. Accordingly, proximity of the court should be understood as part of a broader access-to-justice framework, in which the efficiency, location, and structure of court proceedings are designed to minimise hardship on vulnerable participants. In the context of child witnessing, this reinforces the need for a justice system that is not only fair in law but also practically reachable, child-sensitive, and supportive in its operation. By this the court must be proximate to the litigants and their witnesses.⁴⁴

The Evidence Act appears not to provide protection for a witness in court except the procedure for examination of witnesses. This is a loophole for a nation that desires to protect the child.

4. Comparative Position on Child Witness Protection in Other Jurisdictions

4.1 Scotland-

We shall focus on two major laws on child witness in Scotland to wit: the Criminal Procedure (Scotland) Act⁴⁵ and The Vulnerable Witnesses (Criminal Evidence) (Scotland) Act⁴⁶.

Section 271A of the Criminal Procedure (Scotland) Act provides that where a child witness or deemed vulnerable witness is to give evidence in relevant criminal proceedings, they are entitled to the benefit of special measures designed to assist them in giving evidence. The party citing the witness must lodge a vulnerable witness notice within the required time, specifying the special measures considered most appropriate or stating that none are required, and including a summary of the witness's views and any prescribed information. The court initially considers the notice in the absence of the parties and must authorise standard special measures (live television link, screen, or supporter), while non-standard measures are authorised only if the court is satisfied of their appropriateness.

The Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 is a key reform statute in Scots criminal procedure aimed at improving how vulnerable witnesses—especially children—give evidence in criminal cases. It enhances protection for children and vulnerable witnesses in criminal proceedings. In particular, *Section 271 BZA* of the Criminal Procedure (Scotland) Act 1995, inserted by the 2019 Act, forms part of this reformed framework.

The Act applies where a child (other than the accused) is to give evidence in solemn proceedings involving a defined list of grave offences. These include crimes such as murder, culpable

⁴³ Information obtained by the researcher during visits to the aforementioned institutions in Lagos, Abuja and Awka respectively.

⁴⁴ Onyema, O., & Oti-Onyema, L. A. (2020). Limitations of the Legal Aid Council of Nigeria: Need for Action Plan. *IJOLACLE, 1*, 149.

⁴⁵ 1995

⁴⁶ 2019



homicide, assault to the danger of life, abduction, and plagium, as well as a range of offences relating to sexual conduct, domestic abuse, and abusive behaviour with aggravations under the Domestic Abuse (Scotland) Act 2018 and the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. It also extends to offences concerning human trafficking and exploitation under the Human Trafficking and Exploitation (Scotland) Act 2015, and offences relating to female genital mutilation under the Prohibition of Female Genital Mutilation (Scotland) Act 2005, including aiding and abetting such conduct.

In these circumstances, the section ensures that child witnesses are treated as requiring special measures when giving evidence, reflecting the seriousness of the offences and the vulnerability of the witness. The aim is to safeguard the child's welfare and support the giving of evidence in a way that minimises distress while maintaining the integrity of the judicial process. Attempts to commit any of the listed offences are also covered, ensuring that the same protections apply even where the crime was not completed.

The central principle is that the court must ensure that all of the child's evidence is taken in advance of the trial. This represents a strong presumption in favour of pre-recorded evidence. The requirement is satisfied where the court makes an order allowing the child's evidence to be given using specific special measures and does not permit any part of that evidence to be given live in court or without such measures. The two key measures envisaged are the use of a prior statement for evidence-in-chief and the taking of evidence by a commissioner for questioning. In *Regina v. Camberwell Green Youth Court*⁴⁷ the reinforce the principle that vulnerable witnesses are entitled to protective measures without automatically infringing defendants' rights.

This structure effectively creates a default "pre-recorded model" in which the child does not attend the trial. It is reinforced by restrictions on the court's ability to later vary its order: unless an exception applies, the court cannot revoke or alter arrangements in a way that would reintroduce live testimony or incompatible measures.

An exception to this default approach is tightly controlled. It is only justified where taking all evidence in advance would create a significant risk to the fairness of the proceedings or the interests of justice, and that risk outweighs the potential harm to the child of giving evidence at trial. A further exception exists for children aged 12 or over who express a wish to give live evidence, provided that doing so is in their best interests.

Even where an exception is accepted, the legislation still strongly protects the child from appearing in court. The court cannot require the child to be physically present in the courtroom unless strict conditions are met, mirroring the same balancing exercise between fairness and the child's welfare, or respecting the informed wishes of an older child.

The Act also modifies the general rules on special measures. In these cases, the usual framework is adjusted so that the court is effectively directed toward the commissioner model and prior statements as the primary means of taking evidence. Parties must justify any attempt to depart from this approach, and the court retains the power to impose the default measures even if they are not requested.

Provision is also made for review of earlier decisions, but again with limits: the court cannot undo the pre-recorded evidence arrangement unless the statutory exceptions are met. There is also a mechanism ensuring that, where only a prior statement has initially been authorised, commissioner-led questioning can still be added if requested.

⁴⁷ [2005] UKHL 4



Finally, the legislation distinguishes this regime from the general rules applicable to child witnesses under 12. In cases falling within this new section, the earlier provisions are disapplied or adjusted so that this stricter, more protective framework takes precedence.

Overall, the effect of these amendments is to entrench a presumption that, in the most serious cases, a child's evidence will be captured fully in advance of trial using recorded and commissioner-led procedures, with live courtroom testimony becoming the rare exception rather than the norm.

4.2 Malaysia

In Malaysia, the law governing the competency of witnesses is primarily found in the Evidence Act 1950. Section 118 provides that all persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers by reason of tender years, extreme old age, disease, or similar causes. This establishes a capacity-based test, meaning that a child is competent to testify if he or she can understand questions and provide rational answers.

With regard to unsworn evidence, *Section 133A* of the Evidence Act 1950 specifically addresses the testimony of children of tender years. Where a child does not understand the nature of an oath, the court may still receive the child's evidence unsworn, if, in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth; and his evidence, though not given on oath, is admissible.

A crucial feature of Malaysian law is the requirement of corroboration. Where unsworn evidence of a child is admitted on behalf of the prosecution, the accused cannot be convicted solely on that evidence unless it is supported by other material evidence implicating the accused. This rule reflects judicial caution in relying on potentially vulnerable testimony.

This position of the law in Malaysia is on all fours with the Nigerian law on child witnessing. However, unlike Nigeria, Malaysia has enacted a specific law on child witnessing which centres on the protection of the child witness. The Evidence of the Child Witness Act⁴⁸ defines —child witness to mean a person under the age of sixteen years who is called or proposed to be called to give evidence in any proceedings but does not include an accused or a child charged with any offence.

Under the Child Witness Evidence Act, a child witness may tender evidence by means of special measures designed to safeguard the welfare of the child while preserving the integrity of judicial proceedings. Such evidence may be adduced as provided in section 3, from behind a **screen** shielding the child from the accused, via live link, or through video-recorded testimony, whether singly or in combination. Notwithstanding the mode adopted, such evidence is statutorily deemed to have been given in open court.

By section 8 of the Act, the court may further direct that the examination-in-chief, cross-examination, and re-examination of the child be conducted through an intermediary, including the court, an interpreter, or any other person authorized for that purpose. The intermediary is tasked with facilitating communication by conveying questions to the child and transmitting the child's responses to the court and may clarify such questions or answers where necessary. However, the intermediary must act impartially and is prohibited from prompting, coaching, or influencing the child's testimony or otherwise interfering with the course of examination. Where an accused

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person is unrepresented, he is precluded from directly cross-examining the child and must do so through the intermediary.

In addition, *section 9* states that the court may, in the exercise of its discretion and where the interests of justice so require, permit the child witness to be accompanied by one or more supporting adults while giving evidence. Such persons are similarly restrained from influencing the child's evidence or disrupting the proceedings.

These provisions collectively reflect a protective evidential regime, balancing the need to shield vulnerable witnesses from intimidation with the imperative of ensuring a fair trial and adherence to due process.

Strict provisions are imposed in *section 14* to preserve the anonymity and privacy of a child witness in judicial proceedings. No person shall publish or broadcast in any mass media or electronic medium any particulars likely to lead to the identification of the child witness, including the child's name, address, or educational institution. Furthermore, the publication or transmission of any photograph, image, or depiction of the child, or of any person, place, or thing that may reasonably result in the identification of the child, is expressly prohibited. A contravention of these provisions constitutes a criminal offence, punishable upon conviction by a fine not exceeding ten thousand ringgit, or imprisonment for a term not exceeding five years, or both. These provisions underscore the law's commitment to safeguarding the confidentiality, dignity, and welfare of child witnesses within the judicial process.

4.3. Lessons for Nigeria

Several clear lessons can be drawn for Nigeria from the Malaysian and Scottish approaches to child witnesses and vulnerable witness protection.

First, although Nigerian law recognises the competency of children under the Evidence Act 2011, it largely relies on a basic capacity test and does not develop a fully structured procedural system for how child testimony should be taken. Malaysia and Scotland, by contrast, go beyond competency rules and creates a comprehensive procedural framework that regulates how children actually give evidence in court. Nigeria could therefore strengthen its system by moving from a *competency-based approach* to a more procedure-focused protective regime.

Secondly, Scottish and Malaysia's use of special measures such as live links, screens, and video-recorded testimony shows a strong commitment to reducing the trauma of court appearances for children. While Nigerian courts may occasionally use similar practices informally or in the limited offences contained in ACJA, they are not consistently or systematically embedded in legislation. A key lesson is the need for Nigeria to codify and expand special measures, ensuring that vulnerable witnesses are routinely protected rather than accommodated on an ad hoc basis.

Thirdly, the Malaysian introduction of intermediaries is particularly instructive. Intermediaries act as communication facilitators between the court and the child, ensuring questions are properly understood and answers accurately conveyed without intimidation. Nigeria lacks a formalised intermediary system. Adopting such a mechanism would significantly improve both the quality of child testimony and the fairness of proceedings, especially in complex or adversarial cross-examinations.

Fourthly, Malaysia's allowance for support persons to accompany child witnesses highlights the importance of emotional and psychological support during testimony. Although Nigerian courts may exercise discretion in this regard, there is no structured statutory entitlement. Nigeria could



benefit from expressly recognising the right of child witnesses to be accompanied by trained support persons, thereby enhancing their comfort and reliability as witnesses.

Finally, the 2019 Scottish reforms create a strong presumption that a child's evidence is taken in advance of trial through recorded statements and commissioner-led questioning, especially in serious offences. This reduces the need for children to appear in court at all. Nigeria should consider introducing a pre-recorded evidence system for child witnesses, particularly in sexual offences, violence, and trafficking cases, to reduce trauma and improve reliability of evidence.

5. Conclusion and Recommendations

In conclusion, the law on child witnessing in Nigeria reflects a long-standing effort to balance the need to receive evidence from children with the requirement to ensure fair trial protections for accused persons. Under the Evidence Act 2011, Nigerian law adopts a capacity-based approach, allowing a child to testify if he or she understands questions and can give rational answers, and permitting unsworn testimony where the child understands the duty to tell the truth. However, the system remains largely cautious, particularly through the requirement of corroboration for unsworn child evidence in criminal proceedings, which reflects judicial concern about reliability.

While this framework ensures that children are not automatically excluded from the justice process, it is still largely rooted in traditional courtroom practice and does not provide a fully developed procedural system for protecting child witnesses during testimony outside the court room. Unlike more progressive jurisdictions, Nigeria has yet to comprehensively integrate modern special measures such as pre-recorded evidence, structured intermediary assistance, or strong statutory privacy protections for child witnesses.

As a result, child witnesses in Nigeria may still be exposed to the stress and intimidation of courtroom proceedings, which can affect both their welfare and the quality of their evidence. This highlights the need for reform that goes beyond questions of competency and addresses how children actually experience the justice process.

Therefore, while Nigerian law provides a foundational framework for admitting child testimony, there remains a clear need for a more structured, child-centred evidential regime that strengthens protection, enhances reliability of evidence, and aligns the justice system with contemporary best practices in vulnerable witness management.

In sum, it is recommended that Nigeria should improve its approach by adopting a more holistic framework that combines competency rules with structured special measures, intermediary use, guaranteed support persons, and enforceable privacy protections, thereby achieving a better balance between fair trial rights and child protection. It is further recommended that the measures be extended to civil proceedings where the child is a witness and the law should ensure the safe, comfortable, and non-stressful attendance of child witnesses in court. This includes not only procedural safeguards such as special measures, but also practical arrangements that reduce exposure to distressing environments.