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State Capture and the Independence of the Independent National Electoral Commission: A Contextual Exposition

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ABSTRACT

The Independent National Electoral Commission (INEC) is constitutionally designed as Nigeria's impartial umpire of democratic contestation, yet the very mechanisms meant to secure its independence (presidential appointment of its leadership, executive and legislative control of its budget, and legislative discretion over its enabling law) is also the mechanisms through which incumbent political elites have periodically sought to shape its conduct. This paper offers a contextual exposition of Nigeria's electoral governance through the lens of political, or incumbent, state capture: the systematic redirection of a nominally independent institution's rules, personnel and resources to serve the governing party rather than the public good, achieved predominantly through the lawful but self-interested exercise of constitutional powers rather than through illicit payment. The paper explicitly defends this adaptation of a concept that originated in the study of private economic actors in post-Soviet economies, and distinguishes it from the adjacent notions of incumbent advantage, executive aggrandisement and weak institutional insulation. Adopting a qualitative, doctrinal and documentary methodology, it examines four sites at which capture risk concentrates: the appointment and removal of INEC's leadership, including the 2023 Resident Electoral Commissioner controversy and the 2025 transition from Mahmood Yakubu to Joash Amupitan; the Commission's financial dependence on annual appropriation; the legislative politics of electoral law-making, culminating in the National Assembly's 2026 retention of INEC's discretion over electronic result transmission; and the judicial interpretation of that discretion in the 2023 presidential election petitions. The paper finds that INEC's de jure independence is persistently undercut by de facto dependence at each of these sites. It concludes with four reforms, each assessed for its legal route, institutional mechanism and comparative precedent: direct first-line-charge funding, a panel-based appointment mechanism, mandatory real-time result transmission, and time-bound legislative review of observer recommendations.

KEYWORDS: State Capture • Political Capture • Electoral Management Bodies • INEC • Electoral Integrity • Nigeria

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INTRODUCTION

Since its establishment in 1998 and its entrenchment under section 153 of the 1999 Constitution, the Independent National Electoral Commission (INEC) has occupied a peculiar constitutional position: it is formally independent of the executive, legislature and judiciary, yet each of those three arms retains a lever (appointment, appropriation or interpretation) capable of shaping its conduct. This design is not unique to Nigeria; electoral management bodies everywhere sit at the intersection of constitutional guarantee and political interest. What distinguishes the Nigerian case, and what this paper sets out to examine, is the frequency and visibility with which that intersection has become a site of contest, from the appointment of Resident Electoral Commissioners with open partisan affiliations, to the National Assembly's repeated refusal to mandate real-time electronic transmission of results, to the courts' 2023 characterisation of that transmission as merely optional.

This paper uses the concept of State capture, ordinarily applied to the subversion of regulatory and judicial institutions by private economic elites, as an analytical lens for understanding these episodes. It argues that capture in the Nigerian electoral context operates less through the illicit payments characteristic of the concept's original post-Soviet usage than through the lawful but self-interested exercise of constitutionally granted powers of appointment, funding and legislation by successive ruling parties. Since that argument moves the concept some distance from its origin, the paper does not assume it but defends it explicitly, situating its usage within the established literature on political, partisan or incumbent capture and specifying the conditions under which lawful conduct nonetheless amounts to capture rather than mere incumbent advantage.

The paper moves from the problem statement to the study's objectives, research questions, significance, and scope; then presents its conceptual clarification and theoretical framework (including a defence of the capture frame against the charge of concept-stretching); reviews the empirical literature; and states its methodology. It then examines, in turn, INEC's legal and institutional architecture, the politics of appointment and removal, the politics of financing, the legislative contest over electoral technology, and the judicial interpretation of INEC's obligations, before offering an overall assessment, a statement of limitations, and recommendations accompanied by an assessment of their legal and practical feasibility.

Statement of the Problem

Nigeria's 1999 Constitution formally guarantees INEC's independence. Its members may not be removed except by the President acting on an address supported by two-thirds of the Senate; the remuneration of its members is charged upon the Consolidated Revenue Fund and sums standing to its credit must be paid to it directly; and its regulations and guidelines are its own to issue. In practice, however, each of these guarantees has proved contestable. The President alone nominates the Commission's Chairman, National Commissioners and Resident Electoral Commissioners, and that power has repeatedly been exercised in ways that invite allegations of partisan capture.

In November 2023, the Premium Times (2023) documented the nomination and Senate confirmation of Resident Electoral Commissioners with reported ties to the ruling All Progressives Congress, notwithstanding the Third Schedule's requirement of non-partisanship; in September 2025, the Socio-Economic Rights and Accountability Project (2025) publicly challenged the opacity of the process by which INEC's next Chairman would be selected. The Commission's constitutional funding provisions have not insulated it from the ordinary appropriation process, a gap incoming Chairman Joash Amupitan himself identified in 2026 when he called for direct federation-account funding to secure genuine autonomy (Vanguard, 2026). And the National Assembly, in both the Electoral Act 2022 and the Electoral Bill 2026, has retained for INEC discretion over electronic result transmission that the courts, in the 2023 presidential election petitions, confirmed was not a mandatory legal obligation, a discretion opposition parties have characterised as a standing invitation to manipulation.

The problem this paper addresses is that existing accounts of INEC's independence tend to treat these episodes discretely, as separate controversies over appointments, funding or technology, rather than as related manifestations of a single underlying dynamic in which formally neutral constitutional mechanisms are used by incumbent elites to shape the conditions of electoral competition. There is, accordingly, a need for a contextual exposition that reads these episodes together through a single, explicitly defended analytical lens, capable of showing how capture risk recurs across the sites of appointment, finance, legislation and adjudication, and of grounding recommendations that address the underlying dynamic, and whose feasibility is assessed rather than assumed.

Aim and Objectives of the Study

This paper aims to provide a contextual exposition of the relationship between State capture and the independence of Nigeria's Independent National Electoral Commission. In pursuit of this aim, the study pursues the following objectives:

To clarify the concept of state capture and its political or incumbent variant, and to justify its applicability to electoral governance institutions.

To examine the constitutional and statutory framework establishing INEC's independence and the powers of appointment, finance, and legislation that qualify it.

To assess the extent to which the appointment and removal of INEC's leadership have been sites of partisan capture between 2015 and 2026.

To evaluate the consistency of INEC's financial independence with its constitutional funding guarantees.

To analyse the legislative and judicial treatment of electronic result transmission as a case study in capture and contestation.

To propose reforms and assess their legal and practical feasibility in light of comparable Nigerian and foreign institutional experience.

Research Questions

The study is guided by the following research questions:

What does State capture mean as applied to an electoral management body, how does it differ from ordinary electoral malpractice, and why is it a more apt frame than incumbent advantage or executive dominance?

How does Nigeria's constitutional and statutory framework simultaneously guarantee and qualify INEC's independence?

To what extent have appointment and removal powers over INEC's leadership been exercised in a partisan manner?

Have INEC's constitutional funding guarantees secured genuine financial independence in practice?

What does the legislative and judicial handling of electronic result transmission reveal about the balance of capture and resistance within Nigeria's electoral governance?

Which reforms could insulate INEC from capture, through what legal route, and with what prospect of success?

Significance of the Study

This paper matters to three audiences. For policymakers and legislators, it offers a diagnostic account of where INEC's independence is most exposed, together with an assessment of what each reform would legally require, directly relevant to the ongoing debate, evident in Chairman Amupitan's 2026 advocacy, over direct funding and appointment reform ahead of the 2027 general elections. For scholars of

Nigerian politics and comparative electoral governance, it extends the State capture literature, developed principally in relation to post-Soviet transition economies, post-communist party states and South Africa's Zondo Commission findings, into the comparatively underexamined domain of electoral management bodies, and connects it to the debate over the de jure and de facto independence of such bodies. For civil society organisations and citizens engaged in democratic accountability, it consolidates, within a single analytical frame, evidence otherwise scattered across litigation records, legislative debates and investigative journalism, thereby supporting more precise advocacy for institutional reform.

Scope of the Study

The study is delimited temporally to the period from INEC's establishment in 1998 to 2026, with particular emphasis on developments since the 2015 general election, after which the Commission's independence became a sustained subject of national debate under Chairman Attahiru Jega's successor. Thematically, the study focuses on four sites of potential capture: the appointment and removal of INEC's principal officers, the financing of the Commission, the legislative treatment of its enabling law, and the judicial interpretation of that law. It does not audit INEC's internal administrative conduct, its management of individual off-cycle elections, or the conduct of political parties, except where directly relevant to the capture dynamics under examination. Its evidentiary base is confined to publicly available constitutional, statutory, judicial, and documentary sources, detailed in the methodology below.

CONCEPTUAL CLARIFICATION

Two concepts anchor this paper: State capture and electoral management body independence.

State Capture and its Political Variant

State capture was first articulated by World Bank researchers studying post-Soviet transition economies, who used it to denote the efforts of firms to shape the formation of laws, rules, and regulations through illicit and non-transparent private payments to public officials (Hellman et al., 2000). Capture, in this original sense, differs from ordinary administrative corruption in its object and its systemic character: rather than bribing officials to bend existing rules in an isolated case, captors reshape the rules themselves so favourable outcomes recur without further illicit intervention.

This paper departs from that original usage in two respects. The actors it examines are political (incumbent governing parties) rather than private economic elites, and the mechanisms are predominantly lawful (the exercise of constitutional powers of appointment, funding and legislation) rather than illicit payment. That departure is not novel to this paper. A substantial subsequent literature has recognised a distinct variant of the phenomenon, variously termed incumbent, party-led, political or partisan capture, in which the state is captured not by outside economic interests but by the political actors who already control it. Grzymala-Busse (2008) theorises "incumbent State capture" as the process by which governing parties extract resources from, and build discretion into, State institutions, and shows that such capture frequently proceeds through formal legislative and appointment channels rather than covert payment.

Innes (2014) distinguishes this "party state capture" from the "corporate state capture" of the Hellman et al. model, identifying the former by the governing party's colonisation of nominally autonomous regulatory, judicial and administrative bodies. Fazekas and Tóth (2016) likewise reconceptualise capture as a network phenomenon in which legally compliant decisions, individually unremarkable, cumulatively redirect institutional outputs toward a narrow group. And in the comparative democratisation literature, Levitsky and Ziblatt (2018) describe the "capture of the referees" (courts, prosecutors and electoral authorities) as a characteristic strategy by which elected incumbents tilt competition while remaining within the letter of the law, a pattern Scheppele (2018) terms "autocratic legalism".

The usage adopted here therefore belongs to this recognised sub-variant. State capture, for this paper, denotes the systematic redirection of a nominally independent State institution's rules, personnel and resources to serve the interests of the incumbent governing party rather than the public good, whether achieved through illicit means or, as is more usual in the Nigerian electoral context, through the lawful but self-interested exercise of formal institutional powers.

ELECTORAL MANAGEMENT BODY INDEPENDENCE: DE JURE AND DE FACTO

Independence, in the context of an electoral management body (EMB), denotes a commission's capacity to plan, fund and conduct elections, and to interpret its own governing rules, without direction from the government of the day or the incumbent ruling party. Comparative scholarship treats this as a matter of degree rather than an absolute condition, since even nominally independent commissions typically depend on the executive for appointment and the legislature for funding and law (López-Pintor, 2000). That work has also drawn a now-standard distinction between de jure independence, the formal insulation an EMB enjoys on paper (its constitutional status, tenure protections, and funding provisions), and de facto independence, the autonomy it actually exercises in practice (van Aaken, 2009). Empirical work has shown that the two frequently diverge, and that de facto rather than de jure independence is the stronger predictor of electoral integrity (Hartlyn et al., 2008; van Ham & Garnett, 2019).

Political capture of an EMB is, in effect, the process by which the gap between de jure and de facto independence is opened and exploited: formal guarantees remain intact while the powers that qualify them are used to shape the body's personnel, resources and rules.

INEC

INEC itself is Nigeria's constitutionally established electoral management body, empowered under section 153 and Part I of the Third Schedule to the 1999 Constitution, and the Electoral Act 2022, to organise, undertake and supervise all elections to the offices of the President, Vice-President, Governor and Deputy Governor, and to the membership of the Senate, the House of Representatives and the State Houses of Assembly.

THEORETICAL FRAMEWORK

This paper draws on two complementary bodies of theory, and defends the conceptual choice that connects them.

State capture theory and its application to Nigeria

State capture theory, which, as elaborated by Hellman et al. (2000) and subsequently applied to Nigeria by Nwozor et al. (2021), holds that transitional and hybrid democracies are especially vulnerable to capture because their formal institutions are strong enough to matter but not yet strong enough to resist concentrated elite pressure. Nwozor et al. (2021) apply this logic directly to Nigeria's democratic space, arguing that successive ruling elites have used lawful constitutional powers over appointments, revenue allocation and security architecture to entrench what they term an "elective dictatorship": a democratically elected government that nonetheless governs through captured rather than genuinely accountable institutions. Applied to INEC, this framework predicts that capture risk will concentrate precisely where the Commission's independence depends on the discretion of another branch of government: the presidential appointment power, the legislative appropriation and law-making process and, residually, judicial interpretation of ambiguous statutory language.

Why capture, and not merely executive dominance?

The central analytical choice of this work is its most exposed, and it requires explicit defence. If the powers examined are constitutional and their exercise lawful, it may be objected that what is described is not capture at all but something better named executive dominance, incumbent advantage, democratic

backsliding or simply weak institutional insulation. The objection draws force from Sartori's (1970) classic warning against "conceptual stretching": extending a concept to cases that lack its defining attributes gains coverage at the cost of meaning, until the concept distinguishes nothing. The comparative literature recommends not abandoning a concept when moving it to new cases, but identifying its core attributes, retaining them, and marking departures through an explicit subtype (Collier & Mahon, 1993; Collier & Levitsky, 1997).

In Hellman et al.'s (2000) formulation, the core attribute of capture is not bribery as such; it is influence over the formation of the rules of the game by an interested party, such that the rules themselves come to favour that party. Illicit payment was the typical means in the post-Soviet cases, where private firms had no lawful access to rule-making. Incumbent parties, by contrast, already hold lawful access to the powers of appointment, appropriation and legislation, and need no bribe to use them. Lawfulness of means therefore removes a contingent feature of the original cases while preserving the core attribute, and this is precisely the move the incumbent-capture literature makes (Grzymała-Busse, 2008; Innes, 2014). The usage here is accordingly a recognised subtype, political or incumbent capture, not a stretched version of the general concept.

The adjacent concepts, while related, each miss something the capture frame captures. Incumbent advantage describes the ordinary, largely legitimate benefits of office (visibility, resources, record) and carries no implication that the referee of competition has been reshaped; capture specifies that the referee, not merely the playing field, is affected. Executive aggrandisement and democratic backsliding (Bermeo, 2016) describe regime-level trajectories, typically driven by the executive; capture names an institution-level mechanism, and the Nigerian pattern documented here involves the legislature and, through interpretation, the courts, not the executive alone. Weak institutional insulation describes a structural condition, vulnerability; capture describes the use of that vulnerability by an identifiable beneficiary. Insulation is the independent variable; capture is what happens when it is exploited.

To keep the concept disciplined, this paper treats an episode as evidence of capture only where three conditions are met. First, the target condition: the power is exercised over the rules, personnel or resources of the referee institution itself, not merely over an electoral outcome. Second, the systematicity condition: the effect is embedded, so that the favourable disposition recurs across cycles without fresh intervention, rather than being a one-off act. Third, the partiality condition: the exercise of power predictably benefits the incumbent party at the expense of the institution's constitutional purpose of neutral arbitration, and a less partial alternative was available and was declined. The criteria also specify what would count against the thesis: appointments acceptable to the opposition, bipartisan adoption of transparency-enhancing rules, and timely, unconditional release of funds would each be evidence of resistance to capture, and the assessment section weighs such counter-evidence explicitly.

Electoral management body models

López-Pintor (2000) distinguishes three institutional models: the independent model, in which the electoral body is a standalone institution insulated from direct executive or legislative control; the governmental model, in which elections are administered by the executive branch itself; and the mixed model, combining elements of both. Nigeria formally adopts the independent model, yet, as the empirical sections demonstrate, the mechanisms of appointment, finance and legislative discretion embedded even within that model create recurring openings for the very executive and legislative influence the model is designed to exclude. Read together with the *de jure* / *de facto* distinction set out above, the analytical expectation tested throughout this paper is that Nigeria's electoral governance exhibits a persistent gap between its formal independent-model design and its substantive operation, a gap that widens or narrows with the political incentives of the incumbent ruling party.

Review of Empirical Literature

A growing body of scholarship bears on this paper's themes. Nwozor et al. (2021) provide the most direct theoretical antecedent, applying state capture theory to Nigeria's democratic institutions generally, though without an INEC-specific focus. Comparative studies of EMB design supply the cross-national baseline: Hartlyn et al. (2008) and van Ham and Garnett (2019) find that the partisan independence of electoral bodies in practice, more than their formal design, predicts election quality. Thompson et al. (2023) offer a detailed empirical account of INEC's preparations for, and conduct of, the 2023 general elections, documenting the Commission's technological innovations, principally the Bimodal Voter Accreditation System and the INEC Result Viewing portal, and the controversies those innovations generated. The European Union Election Observation Mission's (2023) final report supplies an independent, internationally benchmarked assessment of the same election, finding significant shortcomings in transparency around result collation notwithstanding INEC's technological investments, an assessment the Nigerian government publicly rejected. Journalistic and civil society sources, including the Premium Times (2023) editorial on partisan Resident Electoral Commissioner appointments and the Socio-Economic Rights and Accountability Project's (2025) demand for transparency in the 2025 chairmanship transition, document episodes of alleged capture not yet synthesised within a single peer-reviewed account. This paper attempts that synthesis by connecting the theoretical literature to the empirical record compiled from these sources.

METHODOLOGY

This paper adopts a qualitative and documentary research design, appropriate to a study concerned with the interpretation of constitutional and statutory text and the contextual analysis of institutional conduct rather than with statistical testing of a generalisable hypothesis. Primary sources comprise the 1999 Constitution, the Electoral Act 2022, the Electoral Bill 2026, and the judgments of the Presidential Election Petition Court and the Supreme Court in the 2023 presidential election petitions. Secondary sources comprise peer-reviewed scholarship on state capture and EMB independence, institutional reporting by the European Union Election Observation Mission and domestic civil society organisations, and contemporaneous journalistic reporting on specific controversies, selected for verifiability and cross-checked across at least two independent sources wherever possible. Data were analysed thematically around the four sites of capture risk identified in the theoretical framework (appointment, finance, legislation and adjudication), with each site's evidence tested against the three conditions of target, systematicity and partiality set out above. For the recommendations, the paper adds a structured comparative step: each proposed reform is assessed for its legal route (statutory or constitutional amendment), its concrete institutional mechanism, and the record of analogous arrangements in Nigeria and comparable jurisdictions. This case-based approach does not permit statistical generalisation beyond Nigeria, a limitation revisited below.

The Legal and Institutional Framework of INEC's Independence

INEC traces its lineage through a succession of electoral bodies: the Federal Electoral Commission of the First and Second Republics, the National Electoral Commission of the late-1980s transition programme, and the National Electoral Commission of Nigeria of the mid-1990s, before its establishment in 1998 and constitutional entrenchment under section 153 and Part I of the Third Schedule to the 1999 Constitution. That entrenchment was designed to place INEC beyond the reach of ordinary politics. Its members serve fixed terms and may be removed only by the President acting on an address supported by two-thirds of the Senate. The remuneration of its members is charged upon the Consolidated Revenue Fund under section 84, and, following the Constitution (First Alteration) Act 2010, section 81(3) requires that sums standing to its credit be paid to it directly. The Electoral Act 2022 adds a statutory timing guarantee, requiring that funds for a general election be released to the Commission not later than one year before that election. The Third Schedule further requires that Commissioners, including state-level

Resident Electoral Commissioners, be non-partisan, a requirement intended to guarantee neutrality between contesting parties.

Each of these guarantees, however, is qualified by a corresponding grant of power to another branch of government. The President alone nominates the Chairman, National Commissioners and

Resident Electoral Commissioners, subject to Senate confirmation and, for the Chairman and National Commissioners, consultation with the Council of State; no alternative nominating body, comparable to the National Judicial Council's role in judicial appointments, dilutes presidential discretion. The direct-payment guarantee governs how appropriated funds reach INEC, not how much is appropriated or when: the Commission must still submit annual estimates for legislative appropriation, and has repeatedly reported delayed or partial release of approved funds. And the Commission's own guidelines, including those governing electronic transmission of results, operate within statutory boundaries set by the National Assembly, a body whose composition reflects the outcomes INEC itself administers. It is this structural interdependence, formal independence resting on mechanisms controlled by the very actors the Commission adjudicates between, that creates the recurring capture risk examined below.

Appointment and Removal: The Executive Capture Nexus

The clearest site of capture risk lies in the appointment power itself, because the President nominates INEC's Chairman, National Commissioners, and Resident Electoral Commissioners, an incumbent seeking re-election, or a party seeking a favourable succession, has a direct interest in the identity of the officials who will administer that very election. This risk moved from theoretical to actual in November 2023, when a Premium Times (2023) editorial documented the appointment of Resident Electoral Commissioners in at least four states, Akwa Ibom, Edo, Lagos and Rivers, with reported affiliations to the ruling All Progressives Congress, in apparent tension with the Third Schedule's requirement of non-partisanship, and noted that the Senate had confirmed these appointments despite having previously rejected a comparably partisan nominee. The controversy illustrates a structural point: because Senate confirmation is itself subject to party discipline, and the Senate is typically controlled by the same party as the presidency, confirmation functions as a weak check on partisan appointment. Measured against the framework's criteria, the episode satisfies the target condition (the referee's personnel) and the partiality condition (a non-partisan alternative was available and not chosen).

The 2025 transition from Chairman Mahmood Yakubu, whose second five-year term ended in 2025 after a decade in office, to his successor, Professor Joash Amupitan, brought the appointment question back into prominence. In September 2025, the Socio-Economic Rights and Accountability Project (2025) publicly demanded that President Tinubu disclose the details of the selection process for the incoming Chairman, warning that an opaque process conducted without visible public criteria risked repeating the pattern documented in 2023, and noting the constitutional requirement of consultation with the Council of State. President Tinubu's nomination of Amupitan was approved unanimously by the National Council of State on 9 October 2025 and subsequently confirmed by the Senate (State House, 2025). Whatever its outcome, the process proceeded largely outside public view. Even a transition producing a nominee widely regarded as credible therefore did little to establish the transparent, rules-based selection process that would insulate future appointments from the appearance, if not the substance, of capture; this is the systematicity condition in operation, since the discretion survives each appointment intact.

The removal power exhibits a mirror-image problem. Because removal likewise requires presidential initiative and a supermajority Senate vote, no INEC Chairman has been removed under this provision regardless of performance controversy. The Commission's leadership is thus secure against removal by any actor other than the President who appointed them, a security that protects independence from external pressure only for so long as the appointee retains presidential favour.

Financial Capture: The Budget as Instrument of Leverage

A second site of capture risk lies in INEC's financing. The direct-payment guarantee in section 81(3) was intended to prevent the executive from withholding funds already appropriated, yet it leaves the size and timing of appropriation within ordinary budgetary politics, and INEC has repeatedly reported that approved funds arrive late or in instalments that constrain election preparedness. Reporting on preparations for the 2027 elections indicates that INEC projected a budget of approximately ₦873.78 billion for the cycle, alongside a ₦171 billion request for 2026 alone, with full release of approved allocations still outstanding months before the cycle intensifies, a pattern successive Chairmen have cited as constraining voter education, logistics and technology deployment.

The clearest institutional response to this problem has come from within INEC itself. In July 2026, Chairman Amupitan publicly argued that the Commission cannot be truly independent without financial autonomy, contending that passage through the ordinary budgetary process undermines both INEC's operational independence and public confidence in its neutrality, and calling explicitly for direct funding from the federation account rather than through annual National Assembly appropriation (Vanguard, 2026). That this call came from the Commission's own Chairman, rather than only from external critics, is significant: it suggests that the gap between INEC's constitutional funding guarantees and its practical financial autonomy is recognised as a live governance problem even by officials with every institutional incentive to describe the Commission's independence in the most favourable terms available.

Legislative Capture: Electoral Law-Making as a Site of Contest

The third site is the National Assembly's control over INEC's enabling legislation, most visibly concentrated in the politics of electronic result transmission. The Electoral Act 2022 made the Bimodal Voter Accreditation System the mandatory technology for voter accreditation and provided the legal basis for the INEC Result Viewing portal as a mechanism for the public display of polling-unit results, innovations widely credited with improving the transparency of the 2023 general elections relative to earlier cycles. Yet the Act, as subsequently interpreted, left INEC considerable discretion over whether results would be transmitted electronically to the portal in real time, a discretion that assumed acute significance during the 2023 presidential election when the portal experienced widely reported delays and inconsistencies during collation.

Rather than resolving that ambiguity by mandating real-time transmission, the National Assembly's subsequent legislative activity moved in the opposite direction. In passing the Electoral Bill 2026, the Senate, after extensive debate, rejected a proposal requiring real-time electronic upload of results to the Result Viewing portal, retaining instead the 2022 Act's approach of permitting transmission after votes are counted and announced at polling units (Guardian, 2026). The Senate President defended the provision as consistent with existing law, while the opposition characterised it as a deliberate weakening of transparency ahead of 2027. Because the Assembly that made this choice is composed of legislators elected under the very rules it was revising, the episode illustrates the capture dynamic in direct form: incumbents with a stake in electoral outcomes retaining discretion over the mechanism that would most constrain their own future conduct, with a more transparent alternative expressly considered and declined.

Judicial Interpretation and the Politics of Ambiguity

The fourth site lies not in deliberate judicial partisanship but in the consequences of interpreting ambiguous statutory language in a manner that expands administrative discretion. In its September 2023 judgment dismissing the petitions of Atiku Abubakar and Peter Obi against the declared victory of Bola Tinubu, the Presidential Election Petition Court held that the Electoral Act 2022 contained no provision making electronic transmission of results mandatory, and that the Bimodal Voter Accreditation System, while mandatory for voter accreditation, carried no attendant obligation to transmit polling-unit results electronically (Channels Television, 2023). The court characterised the INEC Result Viewing portal as a mechanism for displaying results rather than for their official collation, distinguishing it from the collation

process on which the legal validity of the declared result depended. The Supreme Court subsequently affirmed the dismissal of the petitioners' appeals.

This interpretation was legally defensible on the text of the 2022 Act, yet its practical effect was to ratify precisely the discretion that had generated the greatest controversy during the election, and to remove the strongest available legal lever by which future petitioners might compel real-time transparency. The courts' role here should be stated carefully: the target and partiality conditions are not met by the judiciary itself, which applied the statute as drafted. The point is rather that rule-adjudication completed a sequence begun at the rule-making stage, converting a legislative ambiguity into settled law. Capture risk in electoral governance can thus operate through the accumulation of formally correct legal interpretations that, taken together, preserve maximal discretion over the mechanisms most capable of constraining incumbent advantage. The European Union Election Observation Mission's (2023) final report reached a broadly consonant conclusion from an independent vantage point, finding significant shortcomings in the transparency of result collation notwithstanding INEC's technological investment, an assessment the Nigerian government publicly rejected.

ASSESSMENT: HAS INEC BEEN CAPTURED?

The evidence assembled here does not support the conclusion that INEC has been comprehensively captured in the manner associated with South Africa's Zondo Commission findings on state-owned enterprises, where a coordinated network of private and political actors directed institutional decision-making for sustained private gain. Nigeria's case is more diffuse and structural. Capture risk recurs across appointment, finance, legislation and adjudication without a single coordinating actor, enabled less by illicit payment than by the lawful exercise of constitutionally granted discretion by whichever party controls the presidency and the National Assembly at a given moment. This is, in one sense, less alarming than outright capture, since independence fluctuates with political incentives rather than being permanently compromised. In another sense, it is more troubling, since the risk is built into the Commission's design and will recur under any incumbent unless the underlying dependencies are addressed.

Weighed against the three conditions set out in the theoretical framework, the pattern is one of de jure independence persistently undercut by de facto dependence. The counter-evidence deserves full weight. INEC's technological reforms under the Electoral Act 2022, and the genuine improvements in transparency they produced relative to earlier cycles, show that the Commission retains meaningful capacity to act against incumbent preference; and the 2025 appointment of a Chairman widely regarded as credible shows that the appointment power is not invariably exercised partially. Yet the 2023 Resident Electoral Commissioner controversy, the persistence of appropriation-dependent funding, the National Assembly's 2026 retention of transmission discretion when a more transparent alternative was before it, and the judicial settlement of that discretion together indicate that, at each critical juncture where independence has been tested against incumbent political interest, the structural balance has tilted toward the latter. The appropriate characterisation is therefore not "a captured INEC" but a Commission subject to recurrent, structurally enabled political capture risk.

Limitations of the Study

This paper has three limitations. First, as a qualitative and documentary study, it does not draw on interviews with INEC officials, legislators or party officials, and its account of motive behind specific appointments and legislative decisions is therefore necessarily inferential; the partiality condition is assessed from the availability and rejection of less partial alternatives, not from direct evidence of intent. Second, its treatment of the most recent developments, the 2025 chairmanship transition and the Electoral Bill 2026, draws substantially on journalistic and institutional reporting rather than peer-reviewed scholarship, which has not yet assessed these episodes with the benefit of hindsight; conclusions regarding them should be read as provisional. Third, the paper's single-country focus, while justified by

the depth of contextual analysis it enables, limits the extent to which its findings can be generalised to electoral management bodies in other transitional democracies without further comparative research.

Recommendations

This work recommends four reforms aimed at strengthening INEC's institutional independence, funding, appointments, and operational effectiveness, while recognising the legal and political constraints involved. Each is set out below with its concrete mechanism, the legal route it requires, and the record of analogous arrangements, because a recommendation that ignores its own legal and political cost is an aspiration rather than a proposal. Two distinctions structure the discussion. The first is between reforms achievable by ordinary statute, which requires a simple majority of both chambers and presidential assent, and those requiring constitutional alteration under section 9(2), which requires a two-thirds majority in each chamber and approval by resolution of at least two-thirds of the State Houses of Assembly. The second is between securing the route by which resources or appointees reach INEC and securing their adequacy or quality, since Nigerian experience shows that the first does not guarantee the second.

Reform	Legal Route	Nearest Comparator	Main Obstacle
Formula-based first-line funding	Statute now (Electoral Act amendment); constitutional entrenchment later	Federal judiciary via NJC; UBEC's statutory 2% of the Consolidated Revenue Fund	Adequacy still set politically unless the amount is fixed by formula
Panel-based appointment	Constitutional (ss. 154 and Third Schedule); transparency steps by statute or convention in the interim	South Africa's Electoral Commission Act 1996; Uwais Committee (2008)	Presidency and Senate majority lose discretion
Mandatory real-time result transmission	Statute	Kenya's electronic transmission regime since 2017	Senate rejected it in 2026
Time-bound review of observer recommendations	Statute	None directly; low-cost procedural reform	Weak enforcement

1. Formula-based, first-line-charge funding

Chairman Amupitan's proposal of direct federation-account funding, taken literally, faces a high legal bar. Section 162 of the Constitution distributes the Federation Account among the federal, state and local government tiers only; adding INEC as a direct beneficiary would require constitutional alteration under section 9(2), including the approval of State Houses of Assembly whose own share would be reduced. A more feasible route lies in making INEC's election budget a first-line charge on the Consolidated Revenue Fund whose amount is determined by a statutory formula rather than annual negotiation.

The experience of the federal judiciary is instructive here, and cautionary. Judicial funding has enjoyed first-line-charge status, paid directly to the National Judicial Council under section 81(3), since 2010. That arrangement has largely ended executive withholding of appropriated funds, but it has not secured adequacy: the amount remains fixed through the appropriation process, and the judiciary's allocation stagnated at roughly ₦ 110 billion for several consecutive years before later increases, despite inflation and rising caseloads. The state tier is more cautionary still. The Fourth Alteration of 2018 granted financial autonomy to State Houses of Assembly and state judiciaries, yet widespread non-compliance by governors provoked the 2021 strike by judiciary staff; Executive Order 10 of 2020, issued to enforce autonomy, was struck down by the Supreme Court in 2022 as beyond presidential power, even as the Court affirmed the states' underlying obligation. A similar implementation gap followed the Supreme Court's July 2024 judgment requiring direct payment of federation-account allocations to local governments. The lesson is that a guarantee of route without a guarantee of amount, and without an enforcement mechanism, changes less than its framers intend.

The recommendation is therefore more specific than "financial autonomy". First, the Electoral Act should be amended to fix INEC's annual and election-cycle funding by formula, for example as a set percentage of the Consolidated Revenue Fund phased across the four-year cycle. Statutory formula

funding from the Consolidated Revenue Fund has clear Nigerian precedent: the Universal Basic Education Act 2004 guarantees the Universal Basic Education Commission a block grant of not less than 2 per cent of the Fund. This step requires only an ordinary majority. Second, the Act's existing one-year-before-election release requirement should be given teeth, by conferring on INEC express standing to seek an order compelling release and by requiring the Minister of Finance to report any shortfall to the National Assembly within a fixed period. Third, autonomy should be paired with accountability, through mandatory publication of INEC's audited accounts and election-expenditure reports, so that financial independence does not become fiscal opacity. Constitutional entrenchment of the formula can follow in a later alteration cycle. South Africa's Electoral Commission, which is funded through ordinary parliamentary appropriation yet widely regarded as credible, is a reminder that funding autonomy is neither strictly necessary nor sufficient for independence; it matters most where, as in Nigeria, appropriation has been used as leverage.

2. A panel-based appointment mechanism

A “depoliticised appointment mechanism” needs a concrete design. The proposal here is a standing nominating panel for the Chairman, National Commissioners and Resident Electoral Commissioners, chaired by a nominee of the National Judicial Council and including representatives of the Nigerian Bar Association, the National Human Rights Commission, accredited domestic election-observer organisations, and one nominee each of the Senate majority and minority leaders. The panel would advertise vacancies, publish eligibility criteria including verified non-partisanship, interview shortlisted candidates in public, and forward a ranked list of three candidates per vacancy. The President would be bound to nominate from that list, and Senate confirmation would require a two-thirds majority, so that no appointment could proceed without some cross-party support.

The design is not novel in Nigeria. The Electoral Reform Committee chaired by Justice Muhammadu Uwais recommended in 2008 that the National Judicial Council advertise INEC positions, shortlist candidates, and forward them for selection and Senate confirmation; the federal government's White Paper rejected that element, retaining unilateral presidential nomination. The strongest foreign comparator is South Africa, where the Electoral Commission Act 1996 requires a panel chaired by the Chief Justice, and including representatives of the Human Rights Commission, the Commission on Gender Equality and the Public Protector, to recommend candidates to a National Assembly committee before presidential appointment. The South African commission has retained broad cross-party legitimacy across successive elections. Kenya's selection-panel model for its Independent Electoral and Boundaries Commission shows the limits: a panel with public interviews did not prevent the Supreme Court's 2017 annulment of the presidential election or the public split among commissioners in 2022, indicating that panel selection is necessary but not sufficient. India's experience shows a further risk: after its Supreme Court in 2023 directed that election commissioners be selected by a committee including the Chief Justice, Parliament legislated later that year to replace the Chief Justice with a government minister, demonstrating that mechanisms created by judgment or ordinary statute can be reversed by the incumbents they constrain.

The feasibility implication is direct. Because sections 154 and the Third Schedule vest the nomination power in the President, a statute purporting to bind that power would likely be held inconsistent with the Constitution and void to that extent under section 1(3). A binding panel therefore requires constitutional alteration, and the Indian case suggests that entrenchment is desirable in any event. In the interim, the non-binding elements (public advertisement, published criteria, disclosure of the candidates considered, and public Senate screening) can be adopted by statute or by presidential convention without constitutional change, and would answer the specific transparency deficit SERAP identified in 2025.

3. Mandatory real-time result transmission

This is the most legally straightforward reform, requiring only an amendment to the Electoral Act, and the most politically difficult, since the Senate rejected it in 2026. The mechanism should be specific: polling-unit result sheets must be uploaded to the INEC Result Viewing portal from the polling unit

immediately after announcement; where network coverage fails, the device must capture and time-stamp the image offline and upload it within a fixed period; and any material discrepancy between the uploaded sheet and the collated figure must trigger mandatory review before declaration. Kenya offers a working comparator. Its electoral law has required electronic transmission of polling-station result forms since 2017, and the public posting of those forms in 2022 enabled media houses, parties and observers to run parallel tallies, narrowing the space for disputed collation. The technical infrastructure already exists in Nigeria; the obstacle is incentive, and the realistic path lies in sustained civil-society and observer pressure within the next amendment cycle.

4. Time-bound review of observer recommendations

Finally, the Electoral Act should require INEC to publish, within six months of each general election, a formal response to every recommendation made by accredited domestic and international observation missions, stating whether it accepts, rejects, or requires legislative action on each, and require the relevant National Assembly committees to report on the legislative items within a fixed period. This reform is low-cost and statutory. It cannot compel adoption, but it converts indefinite deferral into a visible, recorded decision, raising the political cost of inaction.

CONCLUSION

This paper has offered a contextual exposition of the relationship between state capture and the independence of Nigeria's Independent National Electoral Commission, across the sites of appointment, finance, legislation and adjudication. It has argued that the lawful but self-interested use of constitutional powers by incumbents is properly understood as political capture, a recognised subtype of the concept rather than a stretching of it, provided the target, systematicity, and partiality conditions are met. On that basis, INEC's independence is not a fixed condition secured once by constitutional text in 1999, but a continually renegotiated one, tested afresh at every appointment cycle, every budget cycle and every legislative revision of the Electoral Act. The Commission's genuine achievements, most visibly its technological modernisation under the 2022 Act, show that capture is neither total nor inevitable. But the recurring pattern documented here (partisan appointment controversy, appropriation-dependent financing notwithstanding constitutional funding guarantees, legislative retention of transmission discretion despite the 2023 controversy, and judicial settlement of that discretion) shows that the risk is structural rather than incidental. It will persist into the 2027 election cycle and beyond unless addressed at the level of institutional design, through reforms whose legal routes, as the preceding section shows, are demanding but available.

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