

**EXAMINING THE ELECTORAL ACT, 2022 AND THE PLACE OF SECURITY AGENCIES\***

**Abstract**

*The right of every eligible citizen in Nigeria to vote remains crucial to the achievement of sustainable development goals. However, from the onset of the present Fourth Republic, elections have not reflected the opinions of the voters. This problem generally reflects as a result of bad leadership, as many scholars have viewed that Nigeria's inability to conduct free and fair elections is the cause of bad leadership crisis. This research focuses on the new Electoral Act, 2022 and the role of security agencies in ensuring free and fair elections. The paper explores the legal framework for the involvement of security agencies in the electoral process, the various agencies involved and their specific roles and responsibilities. It also analyses the potential benefits and challenges of involving security agents in the electoral process, including the risk of abuse of power and human rights violations. The paper concludes by offering recommendations on how to enhance the effectiveness of security agents in ensuring credible, transparent, and peaceful electoral process in Nigeria while safeguarding the rights of the citizens.*

**Keywords: Examine, Election, Electoral Act, Security Agencies.**

**1. Introduction**

It is a fact that the integrity of any election can be determined by the security situation at any given time as the electorate go about electing their leaders without let or hindrance. The intrinsic relationship between the successful conduct of free, fair, credible and acceptable elections and the institutionalisation and consolidation of democracy in a nation is widely acknowledged. This arises from the notion that in a democracy, the role of the people is to produce a government, and elections are the institutional frameworks or arrangements for arriving at political decisions in which individuals acquire the power to decide by means of competitive struggle for the people's votes. Elections are thus often perceived as a procedure for regulatory competition for political power through competition for votes. Therefore, elections are the fundamental building blocks of democracy.

On 25<sup>th</sup> February, 2022, President Muhammadu Buhari signed the Electoral Act Amendment Bill into Law, after months of withholding assent. The Act repealed the Electoral Act 2010<sup>1</sup>, and is intended to bring innovations to the regulation of Federal, State and Area Council Elections in Nigeria. As Nigeria approaches its 2023 general elections, the enactment of this Law has come at the right time.

**1. Breaking down of the Electoral Act, 2022.**

The explanatory Memorandum of the Act is very apt and tells us the relevance of its introduction it reads;

This Act repeals the Electoral Act No. 6, 2010 and enacts the Electoral Act 2022 to regulate the conduct of the Federal, State and Area Council elections, to make provisions for the restriction of qualification for elective office to relevant provisions of the Constitution of the Federal Republic of Nigeria 1999, use of card readers and other technology devices in elections and political party primaries, to provide a timeline for the submission of list of candidates, criteria for substitution of candidate, limit of campaign expenses, and address the omission of names of candidate or logo of political parties.

The Electoral Act 2022 has 153 Sections which are divided into IX parts. Each part has subject matter dealing extensively on it. The parts are as follows:

Part I – Establishment and Functions of the Independent National Electoral Commission

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\* **NJOKU Chinonso P PhD** (Sec.& Strat.), LLM, B.L, LL. B, Security and Strategic Studies; Institute of Governance and Security Studies, Nasarawa State University, Keffi, Nasarawa State, Nigeria and

\*\* **NWANGENEH Raleke I LLM, BL**, Lecturer II, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria.

<sup>1</sup>No. 6 of 2010.

Part II – Staff of the Commission.

Part III – National Register of Voters and Voters Registration.

Part IV – Procedure at Election.

Part V – Political Parties.

Part VI – Procedure for Election to Area Council.

Part VII – Electoral Offences.

Part VIII – Determination of Election Petitions arising from Election.

Part IX – Miscellaneous Provisions.

## **2. Key Provisions/Innovations in the Electoral Act, 2022.**

### **1. Establishment of the Independent National Electoral Commission Fund.**

The Act establishes the Independent National Electoral Commission Electoral Fund.<sup>2</sup> Payments from Federal Government for the performance of its functions under the Act, interest from investments made from the fund and aids, grants or any other accruals to the Commission in order to perform its functions shall be paid into the fund. This money shall be used to defray the cost of administration of the Commission, reimburse members of any committee set up by the Commission, pay salaries, fees, allowances, pensions and generally all the functions under the Act. By this section, the Commission<sup>3</sup> is now financially autonomous. And all funds needed for the election shall be made available to INEC at least **one year** before the election.

### **2. National Register of Voters and Voters' Registration: Provision for Central Electronic Voter Data base.**

Register of Voters are now to be kept in electronic format in addition to being kept in manual / hardcopy format. By this provision,<sup>4</sup> there would be transparency and effective record keeping which could ultimately curb illegal voting by non-registered voters.

### **3. Notice of Election: Extension of Time Frame for Publication of Election Notice.**

This provides that the Commission shall not later than Three Hundred and Sixty days (360 days) before the day appointed for holding of an Election under this Act, publish a notice in each State of the Federation and the FCT stating the date of the election and appointing the place at which nomination papers are to be delivered.<sup>5</sup> In the repealed Act, this time frame was Ninety days (90 days) before the date of election. This extension is to give the Commission more time to prepare for the election and give political parties enough time and less excuse, to pick their candidates.

### **4. Submission of list of Candidates and their Affidavits by Political Parties.**

The Act provides for the submission of the list of candidates a political party intends to sponsor in the general elections, not later than One Hundred and Eighty days (180 days) before the date appointed for a general election under the Act.<sup>6</sup> This is a deviation from the repealed Act that provided for a time frame of Sixty days (60 days). This amendment gives political parties enough time to conduct their primaries early enough to meet up with submission of their list of candidates at least 180 days before the general elections.

### **5. Persons Entitled to Seek Judicial Review of False Information.**

From the wordings of this provision, an aspirant who participated in the primaries of his political party, who has reasonable grounds to believe that any information given by his political party's candidate in the affidavit or any document submitted by that candidate in relation to his constitutional requirements to contest the election is false, may file a suit at the Federal High Court against that candidate seeking

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<sup>2</sup> Electoral Act, 2022, Section 3.

<sup>3</sup> The Independent National Electoral Commission, which will hereinafter be referred to as INEC.

<sup>4</sup> Electoral Act, 2022, Section 9.

<sup>5</sup> Electoral Act, 2022, Section 28.

<sup>6</sup> Electoral Act, 2022, Section 29, subsection (1).

a declaration that the information contained in the affidavit is false.<sup>7</sup> This provision has put an end to Court cases by “aggrieved groups” and all other parties that did not directly engage in the primaries.

6. Death of Electoral Candidate.

This provides that if after the time for the delivery of nomination papers and before commencement of the Poll, a nominated candidate dies, the poll shall be suspended and another date for the election set within Fourteen (14 days).<sup>8</sup> If the nominated candidate died after the election, the election shall be suspended for a period not exceeding 21 days. However, this provision does not apply to Presidential or Gubernatorial or FCT council elections, the running mates in this instance, would take over and they shall nominate a new running mate.

7. The Position of Section 47 Subsection (2) and (3), and Section 50 Subsection (2), on Electronic Voting and Transmission of Results.

The provision simply states that for voting, the Presiding Officer shall make use of a smart card reader or any other technological device that maybe prescribed by the commission;<sup>9</sup> and where such device for accreditation of voters, fails to function and a fresh device is not deployed, the election in that unit shall be cancelled and another election shall be scheduled within 24 hours if the Commission is satisfied that the result in the election in that polling unit will substantially affect the final result of the whole election and declaration of a winner in the constituency concerned.<sup>10</sup> In this instant case, one can foresee a situation where a polling unit is cancelled during a gubernatorial or presidential election but not a state house or federal house election. Due to the fact that in such elections, the phrase, “the whole is greater than the sum of its parts” applies.

Furthermore, this also means that the use of the controversial incident forms, in situations where the smart card reader is defective, no longer applies. It may be recalled that Atiku ABUBAKAR, the Presidential flag bearer of the Peoples’ Democratic Party in 2019 Elections, flayed the INEC over what he called the “worst election in 30 years” a big part of his gross is the use of incident forms that have been said to encourage rigging. While INEC abolished the use of incident forms, now they have the law on their side;<sup>11</sup> additionally, the act gives the Commission the legal backing for electronic transmission of results and power to maintain a data base of elections that is public record.

8. Over Voting: Revision of the Definition of Over Voting.

The Act provides that where the number of votes cast at an election in any polling unit, exceeds the number of accredited voters in that polling unit, the presiding officer shall cancel the result of that election in that polling unit.<sup>12</sup> This differs from the repealed Act in the use of the word accredited. It used to be the number of registered voters, but the amended act changed it to accredited votes. The difference here is that even if there are 1000 registered voters in a polling unit and only 50 are accredited in that unit, if the number of voters exceeds the total number accredited, then that is more than the accredited voters. Hence over voting has taken place in that unit; despite the fact the number of voters has not exceeded the number of registered voters.

9. Visually Impaired and Incapacitated Voters.

Under the act,<sup>13</sup> the Commission is mandated to take reasonable steps to ensure that persons living with disabilities are assisted at the polling place by the provision of suitable means of communication or off-site voting where necessary.

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<sup>7</sup>Electoral Act, 2022, Section 29, subsection (5).

<sup>8</sup> Electoral Act, 2022, Section 34, subsection (1).

<sup>9</sup> Electoral Act, 2022, Section 47, subsection (2).

<sup>10</sup> Electoral Act, 2022, Section 47, subsection (3).

<sup>11</sup> Electoral Act Section 50, subsection (2).

<sup>12</sup>Electoral Act Section 51.

<sup>13</sup> Electoral Act Section 54.

#### 10. Decision of Returning Officer on Ballot Paper

From the provisions of the act, the decision of the Returning Officer shall be final on any question arising from or relating to unmarked ballot paper, rejected ballot paper, declaration of scores of candidates and the return of a candidate.<sup>14</sup> It may be recalled that on 23rd February, 2019, Professor Innocent Ibeabuchi, INEC returning Officer declared Rochas Okorochoa, as Senator – elect, under “duress.” Following this, INEC’s spokesperson Festus Okoye, conveyed the commission’s decision to refrain from issuing a certificate of return to Okorochoa. As we all know, Justice Okon Abang of the Federal High Court, thought otherwise and held that INEC had no authority under the Electoral Act, 2010, to withhold the Certificate of Return to a candidate that has been returned as the winner of an election. Now, due to the amended Act, this affords INEC an argument in refusing to declare a person the winner, subject to the election tribunal’s right to review the decision of the returning officer. However, from the proviso of said section of the act,<sup>15</sup> this review must be done within 7 days of declaration of result.

#### 11. Nomination of Candidates by Parties: Political Appointee Not Eligible as a Voting Delegate or Aspirant.

As provided under the act, no political appointee at any level shall be a voting delegate or be voted for the purpose of the nomination of candidates for any election.<sup>16</sup> This section has been controversial and was at the forefront of many political discussions for weeks after the passing of the Electoral bill. This provision simply means that before a political appointee can run for any office or vote as a delegate in a political party’s congress for the purpose of nominating a candidate for an election, they must quit from the office they occupy. The *raison d’etre* (*raysondetra*) is quite obvious; to prevent political office holders from using their influence in contesting for elections and also prevents them from staying in power for too long giving room for fresh candidates.

#### 12. Limitation on Political Broadcast and Campaign by Political Parties: Extension of Time Frame for Campaigns by Political Parties.

The Act provides under that the period of campaigning in public by every political party, shall commence One Hundred and Fifty days (150 days), before polling day and end 24 hours prior to that day.<sup>17</sup> The repealed Act provided for a period of Ninety days (90 days), before elections and 24 hours prior to. This gives Political parties enough time to reach all parts of the Country with their manifesto or lack of thereof.

#### 13. Unauthorized Printing of Ballot Papers, Printing of Surplus Ballot Papers/Manufacturing of Ballot boxes.

The Act provides for punishment for persons who prints ballot papers without authority, persons who are authorized to print and prints more than the required number of papers and for persons who manufacture, construct or import ballot boxes without the necessary authorization and places a fine of Fifty Million Naira (N50, 000,000.00) or imprisonment for not less than Ten (10) years) or both.<sup>18</sup>

#### 14. Improper use of Voters Card

The Act provides for punishment for persons who give their voters card to unauthorized persons during elections, receiving of voter’s card where not an INEC official, having more than one voters card, buys, sells and deals with voters card and fixes the punishment upon conviction to a fine of One Million Naira [N1, 000,000.00] or Twelve (12) months imprisonment or both.<sup>19</sup>

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<sup>14</sup> Electoral Act Section 65.

<sup>15</sup> Ibid.

<sup>16</sup> Electoral Act Section 84, subsection (12).

<sup>17</sup> Electoral Act Section 94.

<sup>18</sup> Electoral Act Section 115, subsection (2) (a-d).

<sup>19</sup> Electoral Act Section 117, subsection (a-d).

15. Improper Use of Vehicles

The section prohibits for improper use of vehicle except for persons authorized to use it and fixes the punishment for wrong usage to a fine of Five Hundred Thousand Naira [N500, 000.00] or imprisonment for Six (6) months or both.<sup>20</sup>

16. Impersonation of Voters when not Qualified.

The section fixes punishment of Five Hundred Thousand Naira [N500, 000], imprisonment for a term of Twelve (12) months or both for persons who engage in acts of impersonation of voters during elections.<sup>21</sup>

17. Dereliction of Duty.

The section provides for punishment for INEC officers and polling Agents who commit offences relating to election malpractice and fixes a punishment upon conviction to a fine of Five Hundred Thousand Naira [N500, 000.00], imprisonment for Twelve Months (12 months) or both,<sup>22</sup> while the punishment for announcing a false result and issuance of false certificate of return upon conviction is fixed for a term of (36) months.<sup>23</sup>

18. Bribery and Conspiracy

The section provides for punishment of persons involved in bribery and conspiracy both the giver and the taker are both guilty of offences and upon conviction to a fine of Five Hundred Thousand Naira [N500,000.00] or Twelve(12)months imprisonment or both.<sup>24</sup>

19. Requirements for Secret Voting

The section provides that the election shall be done by secret voting and any interference by any person constitutes an offence and upon conviction is liable to a fine of One Hundred Thousand Naira [N100, 000.00] or imprisonment for a term of Three (3) months or both.<sup>25</sup>

20. Wrongful Voting and False Statements.

This section prohibits persons from voting at an election or inducing or procuring persons to do same, knowing that such persons are ineligible to vote.<sup>26</sup> The same section also states that any person who publishes any statement of withdrawal of candidate knowing such to be false,<sup>27</sup> or publish any statement that tends to attack the character or conduct of a candidate for the purpose of prejudicing his chance at the election or to procure the election of another candidate, without reasonable grounds for belief by the person publishing it that the statement is true,<sup>28</sup> commits an offence liable on conviction to fine of One Hundred Thousand Naira [N100,000.00] or a term of Six (6) months or both.

21. Voting by Unregistered Person.

The section provides for punishment for persons who votes in a constituency where he/she is not registered and usage of a voter's card issued to another person.<sup>29</sup>The punishment is fixed at a fine of One Hundred Thousand Naira [N100, 000.00] or imprisonment for a term of Six (6) months or both.

22. Disorderly Conduct at Election

The section provides for punishment of Five Hundred Thousand Naira [N500, 000.00], imprisonment for Twelve (12) months or both for persons who act in disorderly manner at elections.<sup>30</sup>

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<sup>20</sup>Electoral Act Section 118, subsection (1) (2).

<sup>21</sup> Electoral Act Section 119, subsection (1) (a-f).

<sup>22</sup>Electoral Act Section 120, subsection (1) (2).

<sup>23</sup>Ibid; subsection (3) (4).

<sup>24</sup>Electoral Act Section 121.

<sup>25</sup> Electoral Act Section 122.

<sup>26</sup>Electoral Act Section 123, subsection (a).

<sup>27</sup>Ibid, subsection (b).

<sup>28</sup>Electoral Act Section 123; subsection (c).

<sup>29</sup> Electoral Act Section 124.

<sup>30</sup>Electoral Act Section 125.

### 23. Offences on Election Day

The section provides for punishment of a fine of One Hundred Thousand Naira [100,000] or 6 months imprisonment for the under-listed offences committed on election day;<sup>31</sup>

- a) Canvassing of votes.
- b) Soliciting for vote of any voter.
- c) Persuade any voter not to vote for a particular candidate.
- d) Persuade any voter not to vote at the election.
- e) Shout slogans concerning election.
- f) Be in possession of any offensive weapon or wear any dress or facial or other decoration which in any event is calculated to intimidate voters.
- g) Exhibit, wear or tender any notice, symbol, photograph or party card referring to the election.
- h) Use any vehicle bearing the colour or symbol of a political party.
- i) Loiter without lawful excuse after voting or after being refused to vote.
- j) Snatch or destroy any election material.
- k) Blare siren.
- l) Threatening of Person

This section provides for punishment of a fine of One Million Naira [N1,000,000.00] or imprisonment for a term of Three (3) years for the offence relating to threatening of a person by usage of force, violence or restraint.<sup>32</sup>

### 25. Secrecy of Ballot.

This section under the act provides that no person who has voted in any election, shall in any legal proceedings arising out of the election, be obligated to say whom he or she voted for.<sup>33</sup>

### 26. Place of Trial of Offence

This Section provides that the place of trial of offences shall be the Magistrate Court or High Court of a State in which the offence occurred.<sup>34</sup>

## **4. The Role of Security Agencies.**

Security agencies in Nigeria play an important role in ensuring the conduct of free and credible election. Safety, security of persons and properties is important for the conduct of free and fair elections. Therefore, security agencies in various countries strive to ensure security at various stages of the electoral process when conflict is endemic, especially in new democracies. In Nigeria, such critical and violence prone stages include delimitation of constituencies, voter registration, party primaries and nominations, campaigns and rallies, display of voters register, polling, counting of voters, declaration of results, Court /Tribunal proceedings.

The under-listed are the Security Agencies in Nigeria who assist in various ways towards the conduct of credible elections;

- a) Armed forces: Army, Navy, Air force.
- b) Intelligence and Law Enforcement Agencies: This comprises the Nigeria Police Force, State Security Services (DSS), Defense Intelligence Agency, Nigerian Intelligence Agency, Nigerian Prison Services, National Drug Law Enforcement Agency (NDLEA), Economic and Financial Crime Commission (EFCC), Independent Corrupt Practices Commission (ICPC), Nigerian Security and Civil Defense Corps (NSCDC).

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<sup>31</sup>Electoral Act Section 126, subsection 1.

<sup>32</sup> Electoral Act Section 128.

<sup>33</sup> Electoral Act Section 143.

<sup>34</sup> Electoral Act Section 145.

- c) Para-police regulatory agencies: Federal Road Safety Corp (FRSC), Nigeria Custom Service, Nigeria Immigration Service (NIS), National Agency for Food and Drug Administration (NAFDAC).

The Nigerian Police for instance under the Police Act,<sup>35</sup>, relays the function of the Police as follows;

The Police shall be employed for the preservation and detection of crime, the apprehension of offenders, the preservation of Law and order; the protection of life and property and due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or without Nigerian as may be required by them by, or under the authority of, this or any Act.<sup>36</sup>

The Uwais Report on Electoral Reform<sup>37</sup> has highlighted some of the responsibilities of the Nigeria Police Force in elections or electoral processes, being the nation's primary civil force. These include:

- a) Guaranteeing peace and safety throughout election process.
- b) Restoring peace and safety after disorder that may be engendered by delimitation of constituencies.
- c) Safeguarding the security of personnel, materials and values for voter registration.
- d) Safeguarding the security of life and properties of citizens during voter registration, political campaign and voting.
- e) Ensuring the safety of electoral officers before, during and after elections.
- f) Providing security for politicians during campaign.
- g) Ensuring and preserving a free, fair and safe atmosphere for election campaign by all parties and politicians, without discrimination.
- h) Maintaining peaceful conditions, law and order around the polling units and collation, or counting centres.
- i) Ensuring the security of sensitive election materials at voting and collating or counting centers and during transportation. The police have the responsibility of ensuring that election materials are not hijacked, destroyed, or fraudulently altered by any group or person.
- j) Ensuring that politicians do not intimidate, corruptly induce or manipulate the electorate at voter registration and polling centers, and
- k) Maintaining security around the election petition tribunals.

Going further, the State Security Service Establishment Act,<sup>38</sup>is reproduced hereunder; The State Security Service shall be charged with responsibility for—

- a) the prevention and detection within Nigeria of any crime against the internal security of Nigeria;
- b) the protection and preservation of all non-military classified matters concerning the internal security of Nigeria; and
- c) such other responsibilities affecting internal security within Nigeria as the National Assembly or the President, as the case may be, may deem necessary”

The Functions of the Service is relayed in Section 2[1][i] of the Instrument which reads as follows; The State Security Service shall in pursuance of its objectives set out in Section1 of this Instrument, perform the following functions:

- (i) Prevention, detection and investigation of
  - (a) threat of espionage.
  - (b) threat of subversion.
  - (c) threat of sabotage.
  - (d) economic crimes of national security dimension (e)terrorist activities.
  - (f) separatist agitations and inter-group conflicts.
  - (g) threats to law and order.

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<sup>35</sup>Cap P19 Laws of the Federation of Nigeria 2004 (as Amended)

<sup>36</sup> Section 4 of the Act.

<sup>37</sup>The Honourable Justice Muhammadu Lawal Uwais, GCON, Former Chief Justice of Nigeria, Report of the Electoral Reform Committee (Vol 1), December, 2008.

<sup>38</sup>As provided for under the National Security Agencies Act Cap N74 Laws of the Federation of Nigeria 2004.

Section 1 of the instrument No SSS1 reads ‘Without prejudice to the generality of the provisions relating to the general duties of the State Security Service set out in Section 2-(3) of the Decree, the objective of the State Security Service shall be the protection and preservation of Nigeria’s internal security and economy against acts of subversion, sabotage and other threats to the stability of Nigeria.’

Flowing from the above, the following can be enumerated as the roles of Security Agencies particularly the police and DSS during elections;

- i. Safeguarding the security of lives and property of citizens during campaign, voting and after voting.
- ii. Ensuring the safety of electoral officials before during and after elections.
- iii. Providing security for key politicians during campaigns.
- iv. Ensuring and preserving a free, fair and safe atmosphere for election campaign by all parties and politicians without discrimination.
- v. Monitoring the activities of print and electronic media.
- vi. Identifying political party thugs so as to frustrate their activities.
- vii. Maintaining peaceful conditions, law and order around polling and counting centres.
- viii. Ensuring the security of sensitive election materials at voting and counting centers and during transportation.
- ix. Sustaining interactive sessions with the political class with a view to resolving inter and intra party disputes etc.

It can be seen that Security agencies particularly the Nigerian police and the State Security Service have a great role to play in the securing of elections as where violence occurs, it will definitely affect the internal security of Nigeria as the breakdown of Law and order will be the order of the day.

## 5. Conclusion and Recommendations.

The important role of the security agencies in midwifing true democracy cannot be overemphasized. The passage of the Electoral Act 2022 has therefore armed the Security Agencies the requisite arsenal in performing their constitutional mandate without any fear or favor. Despite this, there are still recurring incidences where these same security agents contribute in truncating the efforts of Nigerians in making their own choices whom they wish to lead them and to let the result of the polls reflect the wishes of the voters.<sup>39</sup> It is of the view that the security structure in the Nigerian state has been perceived to deviate from its traditional role during elections to outright partisanship in obedience to the powers that be at different administrations.<sup>40</sup> However, it is against this established discourse the recommendations are made:

- 1) The Service should conduct trainings for all personnel that would be deployed in the 2023 election. This can be achieved through further training of personnel by the training department and strong liaison with the Service Command.
- 2) The Commission<sup>41</sup> should from time to time educate the citizenry on the roles of Security Agencies, not just in election years. This can be achieved through radio jingles, TV adverts and other print media deployed by INEC to achieve this goal.
- 3) Again, the Service should increase its collaboration with INEC in respect of voter education on the roles of Security Agencies towards a hitch free election. Independence of the security agencies must be highly stressed out. In this regard, it would not be such a bad idea to increase the autonomy of these agencies in performing their constitutional duties without inducement from candidates or their political parties; and even from the incumbent government.

<sup>39</sup>OE Mediyanose, ‘Role of Security in Credible Elections and Sustenance of Democracy in Nigeria’ *Journal of Public Administration, Finance and Law*; <<https://www.jopafl.com/uploads/issue13/>> accessed on 13<sup>th</sup> March, 2023.

<sup>40</sup>NK Emegha, ‘Security Agents and Election Monitoring in Nigeria: Engaging International Best Practices,’ *South East Political Review (SEPSR)* Vol 5, No. 1, 2020.

<sup>41</sup>Independent National Electoral Commission (INEC).