

**BEFORE THE HONORABLE ELECTION COMMISSION OF
PAKISTAN**

MEMORANDUM OF REPRESENTATION/OBJECTIONS

**RELATING TO DRAFT PROPOSALS FOR DELIMITATION OF
CONSTITUENCIES NO. NA-15 (PK-36 & PK-37) AND NA-16 (PK-38
& PK-39) OF DISTRICT ABBOTTABAD UNDER THE ELECTIONS ACT
2017 READ WITH ELECTIONS RULES, 2017.**

Respectfully *Sheweth*:-

1. That under section 17 of the Elections Act, 2017, the Election Commission of Pakistan (ECP) has been empowered to delimit territorial constituencies for elections to the National and Provincial Assemblies in accordance with the provisions of Constitution, the Act *ibid* and the rules made thereunder in terms of officially published census.
2. That the principles of delimitation have been enacted in section 20 of the Act *ibid* which have been reiterated in Chapter-3 of the Election Rules, 2017.
3. That under rule 9 of the rules *ibid*, the ECP constituted Delimitation Committees vide Office Order dated 15th January 2018 for delimitation of the constituencies, which carried out the delimitation and reportedly considered different proposals referred to them by ECP in terms of section 21(1) of the Act *ibid*.

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4. That the ECP, based upon the draft proposals of Delimitation Committees, invited representation/objections to the draft proposal vide Notification dated 5th March, 2018.
5. That the Petitioner is a registered voter in NA-15.
6. That the proposed delimitation of constituencies NA-15 Abbottabad (I) and NA-16 Abbottabad (II) is not only against the facts but is also violation of the Constitution, Act and Rules *ibid* relating to principles of delimitation and rights of the voters.
7. That the grounds of the representation/objections to the draft proposal of delimitation of constituencies as notified by the ECP on 5th March, 2018 are given below:-

GROUND

- 1) That vide Para-2 of the notification *ibid*, it has been notified that prime objective of the notification was to provide practical information to all the stakeholders to, *inter alia*, make the process accessible to all the stakeholders; however, the core item wise practical information as envisaged in section 20 of Act *ibid* has neither been shared nor made accessible to ensure homogeneity in the creation of constituencies.
- 2) That although the constitution of the Delimitation Committees under rule 9 of the rules *ibid*, at least three officers of the ECP and the convener thereof, being public office holders were the members of

the said Committees, yet, neither the composition of the Committees, nor the TORs thereof were made accessible for the information of stakeholders to inspire their confidence about the transparency of the process.

- 3) That vide Para. 6 of the Notification *ibid*, it is evident that one of the cardinal principles of delimitation, i.e., physical features of the constituency, vide section 20 of the Act *ibid*, had been over looked even in the Notification itself, what to speak of application of the said principle.
- 4) That although vide Para. 6 of the Notification *ibid*, it has been provided that the constituencies within the district shall be equal among themselves in population, yet, no such equality of population could be achieved in delimiting the subject constituencies in District Abbottabad.
- 5) That vide Paras. 7-16 of the Notification *ibid*, the share-quota of a seat for National Assembly has been worked out on the basis of population; however, the permissible limits of variation in population of constituencies was not to exceed 10% but it has been violated because: -

- i. In case of KPK, quota per seat has been worked out as 782,651 for which the permissible limit of 10 % was 78,265

whereas NA-15 has been delimited for the population of 649, 410 without describing the reasons of exceeding 10% limits prescribed in section 20 of the Act *ibid*, to the extent of 17.02 % by decreasing the size of the Constituency-NA-15 to the extent of 133,207 despite the facts of availability of geographically compact areas, i.e., Patwar Circles of Kakul, Gojri, Mirpur, Nawansher Town Committee, Nawansher Shamali and Nawansher Janubi. The proposed constituency has in fact resulted into grave hardships for the public at large as the alleged merger of the areas are at distance from each other and more over the people of two different vicinities have been constrained to approach the single NA without keeping in mind the rules and settled norms on the subject.

- ii. That the prescribed quota per seat for Provincial Assembly in KPK has been 308,317 whereas PK-39 has been delimited for population of 361,967 by exceeding 10 % limits of 30,831, as the size of this Constituency has been increased to the extent of 17.4%, i.e., 53,650 more than the prescribed quota for a seat in KPK whereby the adjacent Constituencies No. PK-36, PK-37 and PK-38 in district Abbottabad have irrationally been decreased in size as compared to PK-39 because no reasons has been given in

Notification *ibid*, with specific reference to the principles/ factors given in section-20 *ibid*, hence, the formula of uniformity for the delimitation process has not been carried out or complied with which if allowed to stand would ordeal the grievances of the public at large.

- 6) That vide Para-19 of the Notification, the Delimitation Committees took into account various measures and steps stipulated in rule 10 *ibid*; however, the Notification is silent about the utilization of duly authenticated maps of the Pakistan Bureau of Statistic envisaged in rule 10 *ibid*.
- 7) That duly formulated and notified guidelines for the Delimitation Committees as provided in rule 9, 10 and 11 of the rules *ibid*, neither find any mention in the Notification *ibid*, nor appear to have been notified for the information of all the stakeholders to inspire confidence in the working of the Delimitation Committees performing function relating to a public office, nor the Delimitation Committees appear to have acted under duly notified guidelines of the ECP for the performance of the subject core function to delimit the constituencies to ensure that the election is conducted honestly, justly, fairly and in accordance with law in Pakistan. Perhaps Delimitation Committees performed the said function as secret and sensitive under verbal or confidential guidelines, over and above the scope of the Act and rules *ibid*, because conceivably for delimitation of the Constituencies either

there was paucity of integrity or it was a secret and sensitive matter posing a threat to National Security due which neither said Committees nor Guidelines therefor were notified/made accessible to anyone including the parliamentarians. The secrecy maintained in the delimitation process establishes deeply embodied malafide to the complete disadvantage of the candidates / voters and the principles of compactness homogeneity.

8) That vide Para. 20 of the Notification *ibid*, different proposals were referred to Delimitation Committees by ECP but the Notification is silent about the fate of the said proposals as to whether or not the proposers were informed thereabout because the petitioner also made certain proposals on 23-02-2018 but has never been informed about the disposal thereof nor been invited to plead them as the previous delimitation were in place since 1977 and in order to change the same (present case 70% area has been changed) should have been done in a transparent and confidence inspiring manner.

9) That vide Paras. 21-22 of the Notification *ibid*, the Delimitation Committees reportedly recorded brief reasons/justifications in different cases where exception/variations were made in KPK; however, the said reasons/justifications are not only confined to only an explanation of mathematical principle of calculating fractions but it is also totally deficient of all the justifications made by the Delimitation



Committee while delimiting the subject Constituencies because, in terms of rule-10:-

- i.** It failed to point out the Northern end of the District which was the focal point for proceeding further clock wise.
- ii.** NA-15 has irrationality been delimited by ignoring physical features of mountainous and highly inconvenient terrain long geographical distances, huge cultural disconnect between one end and the other including but not limited to different local languages as well.
- iii.** In NA-15 all the cognate factors of homogeneity had altogether been ignored by jumbling up the constituents of diverse origin into a single Constituency to be represented by a Member not belonging to homogeneous constituency, e.g., what to speak of homogeneity of people belonging to Dalaola and Lora having different layers, cultural etc.
- iv.** The facility of communication of Dalola to Phallah for the constituents and the Member are not at all feasible, realistic, possible and rational as travelling from one end to the other would take more than 10 to 12 hours by road.
- v.** Since the focal point of the District is Abbottabad; therefore, all the public conveniences rest and depend on all the linkages for all the people of the District with Abbottabad;

thus, diverting of NA-15 to mountainous terrain by separating from both the cities and cantonments of Abbottabad and Havelian and by including the State infrastructure including schools, collages, hospitals, universities, municipals committees, NADRA office, sports office etc. of two cities i.e. Havelian and Abbotabad into NA-16 whereas all the rural area with little or no stab infrastructure of two cities in NA-15 is highly pre-judicial, discriminatory, unfair, marginalizing, un-just and contrary to the spirit of the Constitution and principles of the policy enshrined therein and completely violative to the principles of Homogeneity and compactness and to the complete inconvenience of the voters / constituents .

- vi.** The District Abbottabad historically had two constituencies namely NA-17 and NA-18 reasonably and justly divided into two homogeneous areas-populations by keeping in view all the geographical, physical, administrative, and all other cognate factors resulting into peaceful and homogeneous development of the District without any adverse effects on the people of the District since 1977 but this proposed delimitation if allowed to stand will adversely affect the same to the complete detriment of the voters.

vii. The sizes of previously delimited NA-17 and NA-18 as per census 2017 are 733,789 and 599,123, respectively, which could have very conveniently, with zero disturbance for the entire District, been delimited by excluding Patwar Circle Salhad (36,018) and Patwar Circle Banda Qazi (30,604) from the said in NA-17 and including the said Patwar Circles into the said NA-18 to give them the size of 665,745 (previous NA-18 and proposed NA-16) as was done while delimiting District Mansehra where Patwar Circles Behali and Potha were excluded from previous NA-20 (Mansehra-I) and included in previous NA-21 (Mansehra-II) to proposed NA-13 (Mansehra-I) to NA-14 (Mansehra-II).

ALTERNATELY IT IS SUBMITTED THAT;

Previously delimited NA-17 and NA-18 may continue as such by excluding any of the Patwar Circles from bifurcation line from one end to the other from previously delimited NA-17 to include any of the said Patwar Circles in the previous NA-18, so that the sizes of both proposed NA-15 and NA-16 may be balanced/adjusted equally as per the share/quota of the constituencies in the District Abbottabad and the province of KPK.

viii. The Delimitation Committee failed to comply with the principles of delimitation incorporated in the Act and Rules *ibid* while delimitating the Constituencies No. PK 36, PK 37, PK 38 and PK 39 for the Provincial Assembly of the KPK in District Abbottabad because:-

- a) it failed to point out the Northern end of the District which was the focal point for proceeding further clock wise as:-
- a. The delimitation has not been made clockwise from northern end of the district.
 - b. PK 38 has been delimited from north-western end of the district towards close to north- eastern side of the district by ignoring the principles of equal zig-zag distribution of the district from north to south.
 - c. PK 39 has been delimited from eastern side of the district much below northern ends of the district to such an extent that it has been locked in the center of the district by ignoring the principles of the delimitation.
 - d. PK 37 has been delimited from eastern side instead of northern ends of the district by ending it up towards the south-western side of the district instead of the delimiting it in zig- zag manner from north to south.

- e. PK 36 has been delimited from north to south towards complete eastern side of the district in such an artistic fashion that all the constituents of the proposed constituency PK-36 have not only been locked into the mountainous terrain but also ignored all principles of justice and fair play.
- b) In these constituencies all the cognate factors of homogeneity had altogether been ignored by jumbling up the constituents of diverse origin into a single Constituency to be represented by a Member not belonging to homogeneous constituency, e.g., what to speak of homogeneity of people belonging to Dalaola and Lora.
- c) The facility of communication of Dalola to Phallah for the constituents and the Member are not at all feasible, realistic, possible and rational.
- d) Since the focal point of the District is Abbottabad; therefore, all the public conveniences rest and depend on all the linkages for all the people of the District with Abbottabad; thus, diverting of PK-36 & 37 to mountainous terrain by separating from both the cities and cantonments of Abbottabad and Havelian is highly pre-judicial, discriminate,


Gallies Cantonment mentioned in the Census separately are not mentioned in the Map.

- ii. Qasba and Urban Area Abbottabad have been shown two separate entities whereas these are part of one entity of Abbottabad Municipality.
- iii. Rahi is a Patwar circle as mentioned in the Census but has not been shown as Patwar Circle in the Map.

11) Although the Delimitation Committees were kept confidential, yet, it is not conceivable as to why their work was made public prior to submission of their report as it was reported in the Daily Mohasib, Abbottabad, on 28th February, 2018 that Qanoongo Halqa of *Lora* (previously part of NA-18) would be included in Qanoongo Halqa of Bakot (previously part of NA-17) thus making both said Halqas as part of proposed NA-15.

It is, therefore, requested:

- a) That the Petitioner may be provided attested copies of the following:
 - i. The Order of the subject Delimitation Committee describing the composition and ToRs thereof;
 - ii. The notified Guidelines provided by the ECP to the Delimitation Committees;
 - iii. The Report of the Delimitation Committee on Form-5;

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- iv. The map provided by the Pakistan Bureau of Statistics as used by the Delimitation Committee;
 - v. The result of the Census published by the Pakistan Bureau of Statistics;
 - vi. The findings of the ECP recorded on the Report of the Delimitation Committee;
 - vii. The consideration upon the proposal on limitation of NA-17 of previous NA 15/16 present as submitted by the present applicant to the ECP on 23.02.2018 referred in Para No.8 above along with consideration on the proposal received from others on the same subject.
- b)** That the draft proposal of Delimitation Committee should not be finalized contrary to the facts detailed above;
- c)** that all the provisions of the Constitution, the Act and Rules ibid must be complied with;
- d)** that all the discrepancies detailed above should be addressed to redress the grievances of the voters before finalizing the draft proposal;
- e)** That the delimitation exercise is to be carried out in order to ensure fair, just and proportional representation of the people in the election. Basic object of delimitation is to secure so far as practicable equal

representation for equal segments of the population in legislative

bodies but the proposed delimitation does not take into account

representation for equal segments of the population in legislative bodies but the proposed delimitation where the state infrastructure and urban population of two distinct cities i.e. Havelaia and Abbottabad having been merged in one proposed constituency NA-16 (New) while the rural population of the same having little or no infrastructure being merged into NA-15 (Current) will totally infringe the prestige, honor, reputation of the public at large and will also disturb the geographical compactness.

- f)** That merging of two cities afore referred is also totally against the principles of homogeneity of the constituency.
- g)** That the ECP is under an obligation to keep in mind the principles of Uniformity of the Population while making / delimitation of constituencies which has been badly ignored in the proposed delimitation of proposed NA-15 (previous) & 16 (Current).
- h)** That by merging the two cities above, the settled principles of law while doing delimitation, the principle of territorial unity has been badly affected which if allowed, will cause a grave miscarriage of justice to the people of the constituencies.
- i)** That the afore referred while claiming to be done by inviting objections of the public at large has actually been proposed in a secretive manner completely shrouded in Mistry.

- j) That the same is not only violative of the rule of law and of the judgments of the Honorable Superior Courts, but is also violative of the principles of the transparency, fairness and natural justice.
- k) That the cardinal principles of delimitation envisaged in section 20 ibid must be adhered to in letter and spirit and all exceptions thereto must be justified, documented and copies provided to the Petitioner;
- l) That the variations in the subject constituencies may be reduced to bare minimum level to ensure the continuity of existing constituencies of the National Assembly as detailed above and by delimiting the Provincial Constituencies as stated in the grounds given above and proposed map attached herewith.
- m) That the applicant seeks to submit a counter proposal which is encompassed in the rules as per law and the Constitution and the principles of compactness, territorial homogeneity, uniformity of population, territorial unity and cultural homogeneity and also seeks the indulgence of Honorable ECP on the same so that any proposed delimitation can be done keeping in view the proposal of the applicant based on law as well.

PRAYER:

It is therefore, respectfully prayed that the representation / objections stated hereto forth the draft proposal of delimitation Committee in respect of National and Provincial Assemblies for the forth coming

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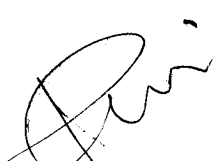
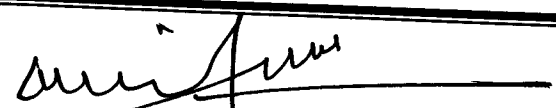



elections may very graciously be modified and the proposed constituencies as per submissions of the petitioner and highlighted in the attached maps may be sanctified and the same notified accordingly.

It is further prayed that any other relief deemed appropriate may also be given to ensure compliance of the principles of delimitation so that the election is conducted honestly, justly, fairly and in accordance with law in Pakistan in order to enable the voters of District Abbottabad to exercise their right to vote to express their will for the preservation of democracy achieved by the un-remitting struggle of the people against oppression and tyranny.

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PETITIONER

Through

 MALIK JAVID IQBAL WAINS Advocate Supreme Court of Pakistan	 SARDAR MUHAMMAD LATIF KHAN KHOSA Sr. Advocate Supreme Court of Pakistan
 SYEDA NAZGUL SHAH AHC, Islamabad.	 SYED IQBAL HUSSAIN SHAH GILLANI Advocate Supreme Court of Pakistan
	 SARDAR SHAHBAZ ALI KHAN KHOSA AHC, Islamabad.

1) Memorandum

Maps marked on the basis of suggestions made in the representation.