

BEFORE THE HON'BLE ELECTION COMMISSION OF PAKISTAN, ISLAMABAD

Representation No. _____/2018

In the matter of de-limitation of constituencies:

Zahid Ali s/o Muhammad Nazir Afridi
(CNIC.21202-8448216-9)
Resident of Kata Kush, Tehsil Jamrud
Khyber Agency

-----Petitioner

Representation under § 21(3) of the Election Act, 2017 r/w the Provisions of Chapter-III, Part.A of Election Rules, 2017 on behalf of Petitioner for making appropriate amendments, alterations or modification in the Preliminary List of Proposed Constituencies of FATA, Proposed NA.44, Khyber Agency-I (Tribal Area-V)

The Petitioner respectfully submits as follows:

1. The Petitioner is registered voter in Khyber Agency, Tribal Areas and enjoys high reputation in the area. He is known for his dedication and integrity in the public life. He personally hails from Jamrud Tehsil, Khyber Agency. The voter list of the petitioner is attached herewith.
2. As far as relevant and material to the titled presentations, it is submitted that Article 51 of the Constitution provides that there shall be 342 of the National Assembly, including seats reserved for women and non-Muslims. According to this Art.51, twelve seats of National Assembly have been allocated to FATA. It may be pertinent to state that 'Federally Administered Tribal Areas' as defined in Art.246 of the Constitution include, (1) Tribal Areas (F.R) adjoining Peshawar, Kohat, Bannu, Lakki Marwat, Dera Ismail Khan and Tank Districts; (2) Bajaur Agency; (3) Orakzai Agency; (4) Mohmand Agency; (5) Khyber Agency; (6) Kurram Agency; (7) North Waziristan Agency; and (8) South Waziristan Agency. Accordingly the twelve (12) seats of National Assembly allocated to FATA (Tribal Areas) in the existing constituencies are 'NA.36 (Tribal Area.1) to NA.47 (Tribal Area.12).
3. The instant representation mainly relates to the Proposed Constituency - NA.44, Khyber Agency-I (Tribal Areas-V). In the proposed set-up, Khyber Agency will have two constituencies - NA.44, Khyber Agency-I (Tribal Area-V) and NA.45, Khyber Agency-II (Tribal Areas-VI). The Petitioner who hails from Khyber

Agency is filing the titled presentation on his behalf and on behalf of the people of the existing two constituencies whereby one specific area namely 'Chora' of Tehsil Jamrud is being excluded from NA.44 in that the entire Jamrud Tehsil is part of NA.44 excluding 'Chora Section of Jamrud Tehsil'. This is going to adversely affect the general public of that area for several reasons as, *inter alia*, summarized hereinafter.

4. Art.222 of the Constitution provides that 'Parliament may by law provide for, (a) the allocation of seats in the National Assembly as required under Art.51 (3) and (4) of the Constitution, and (b) the delimitation of constituencies by the Election Commission of Pakistan. It is thus, constitutional obligation of this Hon'ble Commission to delimit the constituencies in accordance with law. Now, Section 17 of the Election Act, 2017 provides that '*Election Commission shall delimit the constituencies after every census officially published*'. Section 19 of the Election Act, 2017, *inter alia*, provides that "*Election Commission shall divide FATA into as many separate territorial constituencies as the number of seats allocated to FATA*".
5. To delimit a constituency, the broader principles have been summarized in § 20 of the Election Act, 2017 that as far as practicable, be delimited having regard to the (i) distribution of population in geographically compact areas, (ii) physical features, (iii) existing boundaries of administrative units, (iv) facilities of communication and public convenience and (v) other cognate factors to ensure homogeneity in the creation of constituencies. It has also been provided that '*as far as possible, variation in population of constituencies of Assembly shall not ordinarily exceed ten percent*'.
6. Now according to the Preliminary Report on Proposed Constituencies issued by this Hon'ble Commission, FATA has been divided into twelve territorial constituencies on the Census of 2017. The quota per seat in respect of each National Assembly seat has been determined in relation to FATA as under:

Total Population of FATA: 14,996,556
 Total NA Seats of FATA: 12
 Quota Per Seat: $14,996,556/12 = 416,380$

7. Based on the aforesaid population and seat quota with a variation of about 10% as provided in § 20 of the Election Act, 2017, Twelve constituencies of FATA drawn up as under:

1) Tribal Area-I, NA.40	-Bajaur Agency-I	(Population, 360651)
2) Tribal Area-II, NA.41	-Bajaur Agency-II	(Population, 369,501)
3) Tribal Area-III, NA.42	-Bajaur Agency-III	(Population, 363532)

4) Tribal Area-IV, NA.43	-Mohmand Agency	(Population, 466984)
5) Tribal Area-V, NA.44	-Khyber Agency-I	(Population, 516103)
6) Tribal Area-VI, NA.45	-Khyber Agency-II	(Population, 470870)
7) Tribal Area-VII, NA.46	-Kurram Agency	(Population, 619553)
8) Tribal Area-VIII, NA.47	-Orakzai Agency	(Population, 254356)
9) Tribal Area-IX, NA.48	-North Waziristan	(Population, 543254)
10) Tribal Area-X, NA.49	-South Waziristan Agency-I	(321077)
11) Tribal Area-XI, NA.50	-South Waziristan Agency-II	(352988)
12) Tribal Area-XII, NA.51	-F.R Tribal Areas	(Population, 357687)

8. It is very pertinent to add that for the purpose of delimitation of constituencies in FATA, it has been specifically provided in § 20 of the Election Act, 2017 that "For the purpose of delimiting constituencies for the general seats of the National Assembly for the Tribal Areas two or more separate areas may be grouped into one constituency". But while doing so, the permissible variations should be kept upto 10% of the allocated population or quota per seat as provided in § 20. It is evident from the bare reading of the above proposed constituencies that proposed constituency of Khyber Agency-I, NA.44 has been drawn up with a population of 516,103.
9. As far as relevant to the controversy herein, in the proposed 'constituency' for Khyber Agency-I, NA.44, the entire population of Tehsil Jamrud has been included except the "Chora Section of this Tehsil (Jamrud)". With the aforesaid areas -Chora Section (Janda Khel), the total population of 'Khyber Agency-I (NA.44) is 516,103. The population of the area cannot be the sole criteria for delimitation of the constituency. The area may be kept compact but people too are not to be kept apart especially in this case when the entire population of this Section is interlinked and is basically administered by the same Jamrud Tehsil. Therefore, when these people have to count for every thing on Jamrud Tehsil - they be allowed to remain in that Tehsil (Jamrud) for the purpose of de-limitation too.
10. It is submitted on behalf of the Petitioner that NA-44 (Khyber Agency-I) as suggested by the Petitioner (i.e. that Chora Section (Janda Khel) of Jamrud Tehsil be included in NA.44) shall be finalized by the Hon'ble Commission as this 'suggested' constituency is better than the 'proposed' constituency. In the suggested constituency, the Petitioner is suggesting the "inclusion of Chora Section of Jamrud Tehsil in NA.44 and its exclusion from NA.45 (Khyber Agency-II)". In fact, as

stated earlier, the people of this area (Chora Section) have always been part of what is now being proposed as NA.44.

11. It is settled law and international practice in delimitation of the constituencies that 'totality of circumstances' to be taken into account also known or called as 'redistricting standard'. Accordingly, in view of the 'totality of circumstances' standard, the best presentation is what has been suggested hereinabove. It may be added that, *inter alia*, it is the constitutional right of the general public of the area under Article.17 to have "real representatives". In case, the 'proposed constituencies' are not reviewed, altered and modified as suggested, the rights and interests of the people of the area would be adversely affected and prejudiced. It is submitted that in fact 'people of the area' are being kept apart with the constituency as 'proposed' therefore 'suggestion' as made herein may kindly be considered favorably for the larger interest of the people of the area and thereby 'Chora Section (Janda Khel) be included in NA.44, Khyber Agency-I.
12. Hence, this presentation before the Hon'ble Commission of Pakistan for directions as suggested hereinabove. The Petitioner craves leave of the Hon'ble Commission to take additional grounds or make further suggestions during oral arguments of the titled presentations including but not limited to the presentation of suggested map emphasizing the need for modifications in the 'proposed' constituencies in light of the Petitioner' suggestions.

It is therefore most respectfully prayed that the Hon'ble Commission may kindly be pleased to consider and allow the titled presentation and finalize, *inter alia*, NA.44 Khyber Agency-I (Tribal Areas-V) by including Chora Section (Janda Khel) therein. This Hon'ble Commission may further be pleased to make all appropriate adjustment, amendment, alteration and modification in the interest of justice.

ZAHID ALI
Petitioner

Through



Barrister Gohar Ali Khan, ASC

Dated: 02-04-2018