

Representation No. _____/2018

In the matter of de-limitation of constituencies:

1. **Sajid Hussain Turi**
Member National Assembly,
Parachinar, Upper Kurram Agency
FATA
2. **Senator Sajjad Hussain Turi**
Parachinar, Upper Kurram Agency
FATA,

(Five Pages)
17/03/18
22-3-18

-----Petitioners

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 Petitioners for making appropriate amendments, alterations or modification in the Preliminary List of Proposed Constituencies of FATA, *inter alia*, Proposed NA.46, Kurram Agency (Tribal Area-7)

The Petitioners respectfully submit as follows:

1. The Petitioners are public representative - Petitioner No.1 is incumbent Member of the National Assembly from National Assembly Constituency (NA.37, Tribal Area-II, Kurram Agency) while Petitioner No.2 is the incumbent Senator from Federally Administered Tribal Areas ('FATA'). Both enjoy high reputation and are known for their dedication and integrity in the public life. They hail from Parachinar, Kurram Agency, FATA and are being liked and supported by the people of Kurram Agency.

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 existing two Constituencies namely NA.37 (Tribal Area-II) and NA.38 (Tribal Area-III). Both these Constituencies are of 'Kurram Agency' as abovementioned. Petitioner No.1 is incumbent MNA from NA.37, however election could not be held in NA.38 due to law and order situation till date. Any way, these two constituencies of "Kurram Agency" are now going to be substituted by a Single Constituency, now proposed as NA.46, Tribal Area-VII. Thus in the proposed set-up, Kurram Agency would have one constituency - NA.46, Tribal Area.VII. The Petitioners who hail from Kurram Agency and both represent the general public and are themselves 'voters' of Kurram Agency, hence this representations on their behalf and on behalf of the people of the existing two constituencies which are being reduced to 'one' which would adversely affect the general public of that area for several reasons as, *inter alia*, summarized hereinafter.
4. In view of the foregoing, it is submitted that 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	(369,501)
3) Tribal Area-III, NA.42	-Bajaur Agency-III	(363532)
4) Tribal Area-IV, NA.43	-Mohmand Agency	(466984)
5) Tribal Area-V, NA.44	-Khyber Agency-I	(516103)
6) Tribal Area-VI, NA.45	-Khyber Agency-II	(470870)
7) Tribal Area-VII, NA.46	-Kurram Agency	(619553)
8) Tribal Area-VIII, NA.47	-Orakzai Agency	(254356)
9) Tribal Area-IX, NA.48	-North Waziristan	(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	(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 **Kurram Agency, NA.46** has been drawn up with a population of **619553** and this time the entire Kurram Agency has been proposed to be reduced to one Constituency from the existing two constituencies **NA.37** and **NA.38**. In fact, the population of Kurram Agency is more than 619553 because due to law & order situation in the area, people have not yet returned to their local areas and no census has taken place at the 'internally displaced persons' camps.

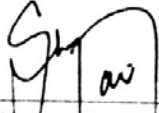
9. In any case, there have been two constituencies (NA.37 and NA.38) for Kurram Agency since 2003 on a judicial order of Peshawar High Court. This area (Kurram Agency) is basically comprised of two groups – Sunni and Shia. This is a ground reality and cannot be ignored as its past history speaks for itself. That's why even Government has set up NADRA offices, District Accounts offices, Health (DHO Office), EDO, Works and Services Offices at two different places – one at Sadda Lower Kurram Agency and the other at Parachinar, Upper Kurram Agency. There is majority Sunni community in Lower Kurram Agency while majority Shia community is in Upper Kurram Agency. Therefore, if the entire area (Kurram Agency) is proposed as 'one constituency' (NA.46), this would almost exclude one group (mainly Shia community) from having a fair representation in the affairs of election of their representatives from this area. This would amount to 'disenfranchisement' and thus unwarranted in law.


10. In this regard, a presentation has been sent to this Hon'ble Commission by the elders or Jirga members of the area, a copy whereof is appended herewith and the contents thereof are reiterated as if reproduced herein as an integral part of this representation. Similarly, a representation was forwarded to this Hon'ble Commission by the former Parliamentary Leader of FATA in the National Assembly including the Petitioners herein and Chairman of Mutahida Qabail Party. A copy thereof is also appended herewith and contents thereof reiterated as if reproduced herein and contents thereof may be read and considered as an integral part of this representation. Moreover, the earlier reservations before the instant Preliminary Report would also support that the voice of the people was that Kurram Agency must be allocated two seats for National Assemblies in view of whatever has been stated hereinabove. The MAPs of the area including other constituencies of FATA are also being filed herewith for assistance of the Hon'ble Commission in arriving at just and fair decision.

11. It is submitted that 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' it is essential to keep in view as to whether a minority group forms an effective majority is roughly proportional to its share of the population in the relevant area and as to whether there is any risk of 'ultimate dilution of one group'.

12. Without prejudice to whatever has been stated hereinabove, the constitutional right of the general public of the area, *inter alia*, under Article 17 would be affected and a considerable population of the area would be in fact deprived of "real representative" if the Proposed Constituency (NA.46) is not reviewed and re-proposed for two constituencies as already existed to ensure due participations of all voters of the area.

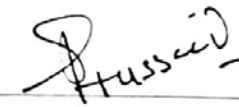
It is therefore most respectfully prayed that this Hon'ble Commission may kindly be pleased to consider and allow the titled presentation and re-proposed NA.46 for 'two constituencies' and make all appropriate adjustment, amendments, alteration and modification to the other proposed constituencies of FATA, if so necessary for the subject constituencies of Kurram Agency.


 Sajid Hussain Turi
 Member National Assembly,
 Parachinar, Upper Kurram Agency
 FATA


 Senator Sajjad Hussain Turi
 Parachinar, Upper Kurram Agency
 FATA,

Through


 Barrister Gohar Ali Khan
 Advocate Supreme Court


 Murtaza Hussain Turi
 Advocate High Court

Dated: 12-03-2018