



**International Commission of Jurists
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Rule of Law Programme**

**Pakistan: General Pervez Musharraf's Treason Trial
Question and Answer**

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Pakistan: General Musharraf's Treason Trial Questions and Answers

1. Who is Pervez Musharraf?

Pervez Musharraf is Pakistan's former President and Chief of Army Staff. He came to power in 1999 after leading a military coup d'état that overthrew the elected government of Prime Minister Nawaz Sharif.

Following the overthrow, General Musharraf suspended the constitution, imposed a state of emergency, and promulgated a Provisional Constitutional Order (PCO). In 2000, General Musharraf ordered all judges to take a fresh oath under the PCO or be dismissed¹. He appointed himself as President in 2001.

General Musharraf's rule coincided with the United States' "Global War on Terror" and invasion of neighboring Afghanistan by a US-led international coalition. During this time Pakistan witnessed a tremendous increase in the number of cases of enforced disappearances, extrajudicial executions, and other serious human rights violations in the context of large-scale and ongoing insurgencies in the western province of Balochistan and in the northwestern territories of Khyber Pakhtunkhwa and the Federally Administered Tribal Areas.

2. What is the basis of the charges of treason against General Musharraf?

The charges against General Musharraf stem from the suspension of the Constitution of Pakistan, 1973, and dismissal of judges in 2007. He does not face any charges relating to his assumption of authority through a military coup in 1999. His trial is being held in a special court constituted for the case.

On 3 November 2007, General Musharraf imposed a state of emergency in Pakistan to counter the increasing assertion of judicial independence by the superior judiciary, particularly the then Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry. The Constitution was suspended and rule without judicial oversight was put in place. General Musharraf demanded that judges of the high courts and

¹ Oath of Office (Judges) Order, 2000.

Supreme Court swear a new oath to uphold the (second) PCO. Those judges who refused were deposed.

The Supreme Court, with Chief Justice Iftikhar Muhammad Chaudhry at its helm, defied General Musharraf, immediately passing an order declaring the PCO unconstitutional and prohibiting judges, military and government officials, from taking any action pursuant to it. General Musharraf responded by dismissing Chief Justice Chaudhry and other judges of the superior courts, placing them under house arrest.

Yielding to international and domestic pressure, Pervez Musharraf resigned from his position as Chief of Army Staff on 28 November 2007 and lifted the state of emergency on 15 December 2007. Elections were held on 18 February 2008. On 18 August 2008, General Musharraf stepped down as President of Pakistan, and went into self-imposed exile in Dubai and London in November 2008. He returned to Pakistan in March 2013 to take part in electoral politics.

2. Why is this trial significant?

Pakistan has been ruled by the military for almost half of its existence as an independent country. There have at least been three military takeovers since its creation in 1947.

This is the first time a former head of the armed forces is being tried for treason, subversion of the constitution, or any offenses related to a military takeover or actions taken following the takeover while head of state.

4. What provisions of the law is General Musharraf being tried under?

Pervez Musharraf is being tried under Article 6 of the Pakistani Constitution, 1973, and the High Treason (Punishment) Act, 1973.

Article 6 of the Constitution states that any person who abrogates or subverts or suspends or holds in abeyance, or attempts or conspires to abrogate or subvert or suspend or hold in abeyance, the Constitution by use of force or show of force or by any other unconstitutional means shall be guilty of high treason.

The High Treason (Punishment) Act 1973 establishes the penalties for individuals found guilty of high treason or acts of abrogation or subversion of the constitution. It also states that a court may only take

jurisdiction of trials of the offence of high treason upon receipt of a written complaint by a person authorized by the Federal Government.

3. What are the allegations against General Musharraf?

The following charges have been brought against General Musharraf²:

- As Chief of the Army Staff, he issued a proclamation of emergency order on 3 November 2007, unconstitutionally and unlawfully holding the Constitution in abeyance.
- He promulgated a Provisional Constitution Order (No 1 of 2007), which unlawfully empowered the President, a post Musharraf held at the time, to amend the constitution. He also suspended the fundamental rights enshrined in Article 9 (security of a person); Article 10 (safeguards for arrest and detention); Article 15 (freedom of movement); Article 16 (freedom of assembly); Article 17 (freedom of association); Article 19 (freedom of speech) and Article 25 (equality of citizens) of the Constitution, subverting the constitution and thus committing the offence of high treason.
- He issued the Constitution (Second Amendment) Order 2007, through which he unconstitutionally and unlawfully amended the Constitution, thereby subverting the constitution and committing the offence of high treason.
- He promulgated the Oath of Office (Judges) Order 2007, requiring judges of the superior judiciary to take a fresh oath under the Provisional Constitutional Order, 2007, and unlawfully dismissed judges of the high courts and Supreme Court, including the Chief Justice.
- He issued the Constitution (Amendment) Order 2007, unconstitutionally and unlawfully amending Articles 175, 186-A, 198, 218, 270B and 270C of the Constitution and adding Article 270AAA to the constitution.

5. How can special courts be constituted under the law and what are their powers?

² Paraphrased from the formal charge sheet submitted to the special court.

The Criminal Law Amendment (Special Court) Act 1976 authorizes the government to constitute special courts to try certain crimes.

Under Section 4 of the Criminal Law Amendment (Special Court) Act, the Federal Government may set up a special court comprised of three judges of the high courts to try offences enumerated in section 3 of the Act. These offences include high treason, waging or attempting to wage war against Pakistan, and other serious crimes against the State.

Section 5 of the Act provides that the Federal Government shall make a complaint on behalf of the prosecution to the special court listing the accused persons, the charges against them and a list of witnesses in support of each charge.

Under a statutory regulatory order (SRO) issued in 1994, the Secretary of the Interior Division is authorized to lodge a complaint against a person accused of high treason under Article 6 of the Constitution.

Section 6 of the Criminal Law Amendment (Special Court) Act provides that for the purpose of the trial, special courts shall have the powers of a high court.

6. How was the treason case against General Musharraf initiated?

The Supreme Court of Pakistan received five petitions from 2010 to 2013 requesting the Court to initiate, or direct the Government to initiate, a high treason case against Musharraf.

The petitioners relied on a Supreme Court judgment from 2009 in which the court had declared that General Musharraf's imposition of emergency rule on 3 November 2007 was unconstitutional, and a Sindh High Court judgment from 2010, in which the court had observed that by promulgating the Provisional Constitutional Order on 3 November 2007, General Musharraf was responsible for subverting and abrogating the Constitution. The petitioners also referred to a resolution passed by the Senate of Pakistan in January 2012, which called on the Federal Government to arrest Pervez Musharraf on his arrival to Pakistan and institute a case against him for high treason under Article 6 of the Constitution.

In response to the petitions, the Supreme Court asked the Attorney General to provide it with information about steps the Government intended to take to bring those suspected for committing treason to justice.

On 26 June 2013, the Attorney General submitted before the Court the steps the Government planned to take to initiate treason proceedings against General Musharraf. The Supreme Court disposed of the petitions observing that the Federal Government should expeditiously implement the procedure outlined before the Court in relation to the treason case.

On the same day, the Prime Minister directed the Secretary of the Interior Ministry to instruct the Director of the Federal Investigation Agency (FIA) to investigate allegations of high treason under Article 6 of the Constitution against General Musharraf in relation to actions taken on 3 November 2007.

The FIA completed its investigation and submitted its report to the Government on 16 November 2013. On submission of FIA's report, the Secretary, Interior Division, lodged a complaint of high treason under Article 6 of the Constitution before the special court constituted to try the case.

7. How was the special court constituted?

According to the information available to the ICJ:

On 18 November 2013, the Secretary, Interior Division, requested the then Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry, to nominate three judges from the high courts to constitute the special court to try General Musharraf's treason case.

The Chief Justice of Pakistan forwarded the Government's request to the chief justices of each of the five provincial High Courts to nominate one judge from each court for appointment to the special court.

Following nominations from the provincial high court chief justices, the Registrar of the Supreme Court provided the names of the five nominees to the Government, for its selection of three judges.

The Federal Government appointed the three most senior judges out of the five put forward to constitute the special court.³

The three judges selected to sit on the special court trying Pervez Musharraf are Justice Faisal Arab of the Sindh High Court, Justice Syeda Tahira Safdar of the Balochistan High Court and Justice Muhammad Yawar Ali of the Lahore High Court. The most senior of the three judges, Justice Faisal Arab, was appointed as President of the special court.

8. If convicted, what sentence could General Musharraf receive?

Under the High Treason (Punishment) Act 1973, a person convicted of high treason may only be sentenced with either life imprisonment or the death penalty.

9. Can the conviction and sentence be appealed?

Section 12 (3) of the Criminal Law amendment (Special Court) Act provides that both the defense and prosecution may appeal the judgment and sentence of the special court to the Supreme Court.

10. How have the treason proceedings against General Musharraf unfolded before the special court?

Pervez Musharraf was summoned before the special court for the treason case on 24 December 2013. He was exempted from the hearing after the court considered claims from his lawyers that his life was under threat and explosives had been found *en route* to the court.

General Musharraf did not present himself in court for the next hearing on 1 January 2014, citing grounds of security, after explosives were found near his house.

On 2 January 2014, General Musharraf reported heart pains on his way to court and was taken to the Armed Forces Institute of Cardiology (AFIC) for treatment. Citing health reasons, his lawyers requested that he be exempted from attending the next hearing on 6 January 2014.

³ *Federal Government of Islamic Republic of Pakistan v. General (r) Pervez Musharraf*, Complaint No. 1 of 2013, Special Court, p. 14, para. 21.

On 9 January 2014, following examination of medical reports, the special court ordered Pervez Musharraf to appear before it on 16 January 2014 for his indictment hearing.

General Musharraf once again did not appear before the special court on 16 January, and his lawyers submitted a letter to the court from a US-based doctor who had previously treated General Musharraf, reportedly stating that he should be transferred to the Paris Regional Medical Center in Texas, U.S.A., for further treatment. The court ordered that a special medical board be constituted, comprised of senior doctors of the Armed Forces Institute of Cardiology, to ascertain General Musharraf's health condition and submit its report before 24 January 2014.

The report submitted in court by the medical board reportedly concluded that Pervez Musharraf should get an angiography as soon as possible and that a heart attack in his condition could be life threatening.

On 31 January 2014, the special court refused Pervez Musharraf's request that it lift the international travel ban on him (imposed by the Government on 30 March 2013), so as to permit him to go abroad for treatment, and issued a bailable warrant for his arrest, with bail fixed at 2.5 million Pakistani Rupees (25,000 US Dollars). Pervez Musharraf was served with the arrest warrant on 3 February 2014 at the Armed Forces Institute of Cardiology and was summoned to appear before the special court on 7 February 2014.

On 7 February 2014, the special court once again exempted General Musharraf from appearing in court after his lawyers argued that he will appear in court only after the special court decides General Musharraf's challenge to the court's constitution and jurisdiction.

On 18 February 2014, General Musharraf appeared before the special court for the first time, but was not indicted. Under Article 6(a) of the Criminal Law Amendment (Special Court) Act, a person is considered indicted after formal charges are read out and explained to the accused in court, and the accused pleads guilty or non guilty.

On 21 February 2014, the special court dismissed the defense plea that General Musharraf should be tried by a military court. The court held that under Pakistani law, only the special court has jurisdiction to try high treason. The court summoned General Musharraf to appear before it on 11 March 2014 for an indictment hearing. General

Musharraf's lawyers have challenged the special court's decision in the Supreme Court.

On 5 March 2014, the court once again postponed the hearing of the case till 7 March 2014 after General Musharraf's lawyers sought a change in venue for the proceedings, claiming they had received death threats, allegedly from Tehreek-e-Taliban. The court assured General Musharraf's defense team that the premises of the special court were secure and a change of venue was not required.

On 7 March 2014, the special court rejected an application filed by General Musharraf's lawyers challenging the appointment of judges and constitution of the special court.

On 10 March 2014, the interior ministry, in a reportedly secret communication that was leaked to the media, stated that General Musharraf was at high risk of being assassinated, most likely while *en route* from the Armed Forces Institute of Cardiology to the special court. The communication stated the Taliban or Al-Qaeda may have sympathizers in Pervez Musharraf's security team who could carry out the assassination.

On 11 March 2014, the special court excused General Musharraf from appearing in court and rescheduled his indictment hearing to 14 March 2014 after his lawyers cited security threats.

On 14 March 2014, General Musharraf's lawyers once again submitted a request seeking his exemption from the hearing due to security risks. The defense claimed it would take six to eight weeks to screen General Musharraf's security personnel and he would only appear in court after they are cleared.

The special court agreed to postpone the indictment hearing, but issued a non-bailable arrest warrant for General Musharraf, which was to be implemented if he failed to appear in court for indictment on 31 March 2014.

On 27 March 2014, it was erroneously reported that the President of the special court, Justice Faisal Arab had recused from the bench. In a written statement made later in the day, Justice Arab denied reports of his recusal and clarified that he had only walked out of the proceedings as a result of General Musharraf's lawyers' undue behavior.

On 30 March 2014, it was reported that General Musharraf had been admitted to the intensive care unit of the Armed Forces Institute of Cardiology, following further deterioration of his health. It was also reported that his mother, who lives in Sharjah, United Arab Emirates, had been hospitalized and was in critical condition.

On 31 March 2014, the special court formally indicted Pervez Musharraf. He appeared before the special court for the second time, and a charge-sheet comprising five charges was read out to him. General Musharraf pleaded not guilty to all charges.

General Musharraf's legal team boycotted the hearing, claiming that because Justice Faisal Arab's had previously rescued himself, the court had no legal standing. Farogh Nasim was appointed General Musharraf's lawyer for the day's proceedings.

11. On what grounds has General Musharraf challenged the treason trial?

General Musharraf has challenged the treason proceedings against him on the following grounds:

First, the special court was unlawfully constituted, as the Prime Minister did not seek the advice of the Cabinet before initiating the case.

Second, the judges of the special court were biased against General Musharraf and could not guarantee a fair trial.

Third, former Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry, and the Prime Minister of Pakistan, Nawaz Sharif, were biased against Pervez Musharraf and the case had been instituted in bad faith.

Fourth, Prime Minister Nawaz Sharif should not have requested that the Chief Justice of Pakistan, who was hostile to Pervez Musharraf, nominate judges for the special court, as the law did not envision the Chief Justice's role in the appointment of judges.

Fifth, Pervez Musharraf was being singled out for the treason proceedings even though other persons were involved in the decision to impose emergency rule on 3 November 2007.

On 7 March 2014, the special court dismissed the accused's application, finding no merit in any of the grounds challenging the treason proceedings. Earlier, on 23 December 2013, the Islamabad High Court had also rejected Pervez Musharraf's objections to the constitution of the special court and appointment of judges.

12. Are any other cases pending against Pervez Musharraf?

Complaints have been filed against Pervez Musharraf in relation to the following:

- The assassination of former Prime Minister Benazir Bhutto in 2007;
- The unlawful killing of Baloch nationalist leader, Akbar Bugti, in August 2006;
- The unlawful killing of cleric Ghazi Abdul Rashid during the Lal Masjid (Red Mosque) operation in July 2007;
- The unlawful confinement of judges after imposition of emergency rule in 2007.

He has been granted bail in all four cases.

13. Have proceedings been initiated in other cases of human rights violations committed during General Musharraf's regime?

During General Musharraf's time as the head of the state and the military, Pakistani security agencies committed widespread human rights violations, including torture and enforced disappearance of hundreds, if not thousands, of political opponents, suspected members of nationalist and separatist groups, journalists, and human rights defenders.

The involvement of the security agencies in these gross human rights violations is well-documented; however, to date no government or military officer, has been brought to justice for these widespread human right violations.