

# Charges dropped against Australian soldiers over Afghan civilian killings

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An Australian military court has dropped manslaughter charges against two soldiers involved in the killing of five Afghan children during a raid in the southern province of Uruzgan in early 2009. The decision, issued last Friday, has far-reaching implications, with Australian forces effectively given a green light to kill civilians.

Judge Advocate Brigadier Ian Westwood agreed with the defence counsel that the charges ought to be thrown out because they “did not disclose service offences.” Westwood said there was no specific wording in the Defence Force Discipline Act indicating that the soldiers had a duty of care for non-combatants. As a result, he concluded, they could not be prosecuted for manslaughter. The judge added that troops were compelled on “pain of penalty” to carry out attacks on the enemy, and they could not simply choose not to participate in military operations.

The decision affects two of the three accused soldiers—identified only as reservists, Sergeant J and Lance Corporal D—with the third, reportedly the unit commander, being brought to trial separately. It remains unclear what the decision means for his case. Military prosecutors can still lay charges other than manslaughter against the two lower ranked men, though this is unlikely.

In the early morning of February 12, 2009, members of the Sydney-based 1st Commando Regiment, which is made up of both regular and reserve soldiers, forced their way into a residential compound in the Uruzgan village of Sur Murghab. It was later reported that the troops were deployed, on the basis of a bogus tip-off, to kill or capture an alleged Taliban guerrilla leader. Instead, they raided the homes of two families headed by Zahir and Amrullah Khan.

After allegedly coming under fire from one of the

rooms, the Australians shot into the houses and lobbed grenades. Amrullah Khan was killed, together with two boys aged 10 and 11, and Khan’s teenager sister Zakera. Another two-year-old girl and one-year-old boy also died of their wounds.

The incident is typical of the bloody operations carried out on a daily basis in Afghanistan by the forces involved in the neo-colonial occupation. Under the pretext of fighting “terrorism”, the US-led coalition is seeking to suppress resistance to an invasion that has sought to establish US hegemony over the strategically-located country and the entire resource-rich Central Asian region.

The killings would no doubt have been covered up in the same way as countless similar incidents, except SBS Television’s current affairs program “Dateline” probed the circumstances and broadcast interviews with the surviving family members. This forced an investigation by the Australian Defence Force, after which the director of military prosecutions, Brigadier Lyn McDade, decided to press charges.

The prosecution of the three soldiers may have been aimed at pre-empting international proceedings. Last September, the International Criminal Court revealed that it had been examining the case, but would cease investigations as it had jurisdiction only if charges were not laid by the relevant country.

Prosecution counsel Lieutenant Colonel Tom Berkley told the pre-trial hearing in Sydney that there was evidence the accused soldiers “did know civilians were there” (in the house) at the time of the operation. By opening fire and attacking with grenades, Berkley continued, the men “created danger to the civilians and gave rise to a duty of care to them at common law.” The

military prosecutor admitted that there no precedents concerning a duty of care on the battlefield: “This case we are currently involved in is apparently the first case of its type in our history.”

This merely pointed to the impunity with which Australian troops have been able to operate for decades in various imperialist operations. As the *World Socialist Web Site* previously noted: “The prosecutions are the first against any member of the Australian armed forces in the nine years that it has been deployed in the neo-colonial occupations of Afghanistan and Iraq. None was prosecuted at all during the entire 10-year deployment of Australian troops in the Vietnam War from 1962 to 1972.” (See: “Australian soldiers charged over civilian killings in Afghanistan”)

The defence argued that the absence of specific “duty of care” provisions in the military legislation meant that the troops could not be prosecuted on this basis. In an extraordinary justification for the killing of civilians, defence counsel Major David McLure argued that the War Crimes Act assumed as lawful the “proportionate death or injury of non-combatants when death or injury is proportionate to direct or concrete military advantage.”

The military judge’s decision to dismiss the charges on the basis that the accused soldiers had no duty of care toward civilians has established an ominous precedent. The killing of civilians on the battlefield—and in Afghanistan the colonial character of the war has made virtually the entire country into an effective battlefield—has been issued with a pseudo-legal sanction.

The Labor government of Prime Minister Julia Gillard, which is fully committed to the war in Afghanistan and declared last year that Australian forces would be fighting there until the end of decade, was hostile to the prosecution of the three soldiers from the beginning. The bringing of charges provoked a semi-mutinous response in the armed forces. Brigadier McDade and Gillard herself were furiously denounced by retired and serving military personnel, with right-wing media commentators widely broadcasting their comments. Opposition leader Tony Abbott claimed that the soldiers had been “stabbed in the back by their own government” and “thrown to the wolves”. (See: “Charging of Australian soldiers for Afghan crimes provokes frenzied reaction”).

In response to the campaign against the prosecution, Gillard instructed the Defence Department to allocate millions of dollars to defend the soldiers and meet all their legal fees. The defence case verdict that soldiers cannot be held to account for the killing of civilians, or so-called “collateral damage”, is the position of not only the military, but the Labor government and the entire political establishment.

The resources spent defending the two commandos, the *Canberra Times* noted, were many multiple times higher than the money that was paid to the victims of the Afghan children killed—the “going rate” paid out to the families of civilians killed by Australian troops in Afghanistan is a mere \$1,200 per death.

The media has reported that those in the upper ranks of the military are determined to prevent the director of military prosecutions, Brigadier McDade, from being given another five-year term in July. Retired Brigadier Phillip McNamara told the *Canberra Times*: “I don’t hold her in high regard, because of her original decision [to lay charges], and certainly if I was minister for defence, she certainly wouldn’t have another term.”

Of the decision to throw out the charges, McNamara added: “The whole army is rejoicing... The whole army was watching this with great interest because it was questioning how we do operations, and those questions should never have been asked.”

The criminal war in Afghanistan meanwhile drags on, with the 24th Australian fatality registered on Monday. Sergeant Brett Wood was killed and two other soldiers wounded by a roadside bomb.



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