# Australian special forces soldier Ben Roberts-Smith charged with war crimes against Afghan civilians

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Australia's most decorated living soldier, Ben Roberts-Smith, was arrested on Monday and charged with five war crimes. Roberts-Smith has previously been hailed as a "war hero" by Australian governments, the military command, the press and some of the country's wealthiest billionaires.

All of the charges relate to Roberts-Smith's deployments to Afghanistan as a member of the Special Air Service Regiment (SAS). The SAS served as shock troops in a predatory US-led neo-colonial occupation that had the character of a war against the entire Afghan population.

Roberts-Smith has been charged with one count of murder as a war crime, one count of jointly committing murder as a war crime and three counts of aiding, abetting, counselling or procuring murder as a war crime. According to the Australian Federal Police (AFP), which leveled the charges, the counts relate to two incidents in April 2009, one in September 2012 and two the following month.

Perhaps the most striking element is the enormous gap between the alleged incidents and the laying of charges. That is all the more notable given that allegations against Roberts-Smith have been in the public domain for years.

Some of those allegations were previously heard in court. In 2018, Roberts-Smith commenced defamation proceedings against Nine Entertainment, over articles they had published that year and in 2017, accusing him of war crimes including murder. In 2023, Roberts-Smith's case was dismissed, with the judge finding in favour of Nine on the basis that their reporting was true.

Last year, the Federal Court dismissed an appeal by Roberts-Smith against that finding, and then the High Court rejected an application for a further appeal, foreclosing all further legal avenues.

Based on the dates provided by the AFP, it appears that some of the incidents for which Roberts-Smith has been criminally charged were the same as those that were heard in the civil case. That includes an allegation that Roberts-Smith machine-gunned an Afghan prisoner to death and that he kicked another Afghan man off a cliff before directing an SAS soldier to execute him.

The defamation proceedings were based upon the civil standard of a balance of probabilities.

The criminal case against Roberts-Smith has to establish the charges against him to the higher standard of "beyond reasonable doubt." Notwithstanding the earlier civil rulings, Roberts-Smith is legally entitled to the presumption of innocence in the criminal trial, which will likely span years.

The AFP, in announcing the charging of Roberts-Smith, stated that the criminal investigation that led to them had only been launched in 2021, i.e. at least three years after allegations against the SAS soldier were first published in national newspapers.

The commencement of that investigation coincided with the US withdrawal from Afghanistan and the return of the Taliban in 2021. That has been invoked by the AFP to justify not having conducted any investigations on the ground in Afghanistan.

A substantial factor in Roberts-Smith's defeat in the civil cases he had launched was that numbers of former SAS soldiers testified against him. It appears likely that such testimony will also be central to the criminal case.

That raises the obvious question as to why charges were not brought earlier, and whether they would have been brought at all but for Roberts-Smith himself initiating civil cases and then suffering defeat in them.

The only other SAS soldier to be charged with war crimes, Oliver Schulz, was similarly only charged under conditions where the authorities had little choice, with the Australian Broadcasting Corporation (ABC) already having broadcast footage allegedly showing him shooting a prone and defenceless Afghan youth in the head. Despite the trial commencing in August 2025, the final evidence is not expected to be heard until 2027, with the finding well beyond that. Schulz was charged in 2023.

Whatever the answer to those questions, and whether or not Roberts-Smith is ultimately convicted, what is not in doubt is that Australian SAS troops were involved in systematic war crimes, which flowed directly from the predatory nature of the war and the missions they were tasked with carrying out. Nor that these crimes were the subject of a vast cover-up.

The first media allegations that Australian SAS personnel had engaged in war crimes, including the murder of civilians, were aired on an episode of the ABC's "Four Corners" program in August 2011.

In 2017, the ABC published the "Afghan Files," which extensively documented alleged war crimes, the same year that Nine initiated its investigation that would be the subject of Roberts-Smith's defamation actions.

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The response of the AFP, backed by the then Coalition government and Labor opposition, was to raid the Sydney headquarters of the ABC in 2019. ABC journalist Dan Oakes was threatened with criminal prosecution over the "Afghan Files," which would have been an unprecedented attempt to criminalise journalism.

The whistle-blower who provided the information that formed the basis of the "Files," former military lawyer David McBride, was hounded by the authorities for years. In May 2024, McBride was convicted of various "national security" offences and imprisoned for almost six years. That conviction was supported by the current Labor government, whose then Attorney-General Mark Dreyfus authorised the proceedings and rejected calls for him to terminate them.

McBride was and remains the first and only person convicted over Australian war crimes in Afghanistan, not for having committed them, but for having played a role in courageously exposing them.

As it became increasingly clear that the revelations of war crimes would not go away, the then Coalition government initiated a limited and opaque review which concluded in 2020 with the release of the Brereton Report. It found "credible evidence" that Australian special forces had murdered 39 Afghan civilians and prisoners between 2009 and 2013, among a host of other war crimes.

The central thrust of the report, however, was to exonerate governments and the military command of any culpability or knowledge of the atrocities.

That cover-up, however, is refuted by the context. Almost all of the documented war crimes, and independent experts believe there were many more murders than 39, occurred during Australia's participation in the "troop surge" initiated by the US administration of President Barack Obama in 2009.

Under the Labor governments of Prime Ministers Kevin Rudd and Julia Gillard, the special forces were integrated into "kill or capture" raids where they were directed to assassinate Afghans based solely on a targeting list maintained by the US military. Such assassination operations themselves were criminal, and clearly created a climate in which the murder of Afghan civilians was deemed permissible.

In 2011, Roberts-Smith was awarded the Victoria Cross (VC), Australia's highest military honour, for his role in the Battle of Tizak in Afghanistan on 11 June 2010. In excruciating detail, the commendation describes a horrific scene of grenades and machine-gun fire, culminating in Roberts-Smith killing two alleged Afghan fighters at point-blank range.

It was for such exploits that Roberts-Smith was hailed by the then Labor government, subsequent administrations, the military command and the media as an exemplar of a modern "warrior." Roberts-Smith was paraded before the Queen and substantial efforts were devoted to transforming him into a prominent public figure.

That was not only a legitimisation of the neo-colonial assault on the people of Afghanistan. It was bound up with a broader militarisation, launched by the Gillard Labor government, aligning Australia with US preparations for war against China.

Fifteen years on, and completing Australia's transformation into a frontline state for such a war is the central policy of the current federal Labor government. Labor supports US wars globally, including the utterly criminal war of annihilation launched by the Trump administration against Iran.

Just days before Roberts-Smith was charged, it was revealed in the press that some 90 SAS soldiers have been dispatched to the Middle East, where they are unquestionably preparing to join ground operations by the US against Iran.

The focus on Roberts-Smith and other individual soldiers has served to cover the culpability of governments, the military and imperialism itself for war crimes. The depiction of the crimes in Afghanistan as being the result of a few "bad apples" is an attempt to revamp the image of the SAS and the military as a whole, as it is prepared for greater crimes.

The war crimes have been the subject of a years-long saga during which the government has allocated $300 million supposedly investigating them. Meanwhile, Roberts-Smith's defamation actions were bankrolled by some of the wealthiest individuals in the country. Both facts underscore the broader stakes that are at play in the case.

With many, but not all, of Roberts-Smith's backers distancing themselves from the VC recipient, it is appropriate to conclude with a point made in a previous WSWS article:

> A remarkable 2018 article from the *Australian* noted that an official investigation had been initiated into Special Forces war crimes. It featured a sympathetic picture of Roberts-Smith. The article was at one point headlined: "'Back off': SAS critics warned." It now appears under the title: "Ben Roberts-Smith: PMs warn of rushing to judgment."
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> The article stated: "The four prime ministers who oversaw Australia's involvement in the war in Afghanistan have thrown their support behind the Special Air Services Regiment, amid mounting expectations that a secretive inquiry into alleged war crimes is set to recommend charges against some ex-Diggers." The four were John Howard and Tony Abbott of the Liberal-National Coalition, and Kevin Rudd and Gillard of Labor. The article later reported:
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> "Kevin Rudd said Australians who watched the war from the 'comfort of their living rooms' were oblivious to the savagery of the Afghan conflict, while his Labor successor Julia Gillard spoke of the military's 'profound sense of service and sacrifice.'"

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