

QUESTIONS & ANSWERS _____

The Kilani case: No justice for war crimes in Gaza

1. What is the Kilani case about?

On 21 July 2014, an Israeli rocket hit the Al-Salam tower, a high-rise building in Gaza City, and killed, among others, German citizen Ibrahim Kilani, his wife Taghreed and their five children between the ages of four and twelve years old.

Ibrahim Kilani was an architect who lived with his family in Beit Lahia in the Gaza strip. In summer 2014, Beit Lahia was one of the targets of the military operation “Protective Edge,” an operation during which Israeli armed forces conducted air strikes in the Gaza Strip between 8 July and 26 August 2014. In the course of these attacks, civilian infrastructure and houses were destroyed or heavily damaged, and hundreds of civilians were killed. At the beginning of the military operation, Israeli forces dropped leaflets warning of the planned air strikes in the region of Beit Lahia, asking the local residents to leave the area for their own safety. The family fled to the al-Shejaia neighborhood in the eastern Gaza Strip. However, continued air strikes in the region forced the family to flee again – this time to Gaza City. There they stayed in a high-rise building – the Al-Salam tower – in the district of Al-Sabra, which had just previously been designated as safe in the Israeli leaflets.

Two days later, on 21 July 2014, rockets hit the building. Israel stated that the actual target of the attack was a commander of the Palestinian Islamic Jihad.

2. What role did ECCHR play in the Kilani case?

Since the deaths of Kilani family members in July 2014, ECCHR has been working with its Palestinian partner organization, the Palestinian Centre for Human Rights ([PCHR](#)), to push for criminal investigations. In December 2014, both organizations submitted a criminal complaint with the German Federal Public Prosecutor (Generalbundesanwalt – GBA) on behalf of Ramsis Kilani from Germany, who lost his father and half-siblings in the strike. During subsequent years, the organizations provided the public prosecutor with additional evidence – including photos,

videos, and witness statements. During the same period, PCHR submitted a criminal complaint in Israel and filed an appeal against the military prosecutor's decision not to investigate the Kilani case.

For seven years, ECCHR and PCHR tried to achieve justice for the family on behalf of Ramsis Kilani – but to no avail: in August 2021, the GBA decided not to launch proceedings. ECCHR and PCHR published a [statement](#) on the matter.

The preliminary investigations in Israel were also discontinued, and an appeal by PCHR against this decision was rejected in summer 2019.

3. What did ECCHR hope to achieve by submitting the criminal complaint?

The primary aim of submitting the criminal complaint in Germany was to ensure an adequate legal response to the deaths of the Kilani family members, as well as the initiation of investigations into the persons responsible for the crimes. With this approach, ECCHR sought to ensure that the law was applied equally to all, regardless of the position and background of the perpetrators, and to strengthen the role of law in armed conflicts. The investigations by the Office of the Federal Public Prosecutor should have been followed by the issuing of international arrest warrants.

Generally speaking, ECCHR represented Ramsis Kilani's interests in the criminal investigations into the killing of his family. Impunity for these kinds of crimes not only reinforces the system in which the perpetrators operate, but also represents a grave injustice for survivors and relatives of the victims. Those affected are forced to live with the lack of consequences and inaction on the part of the international community in addition to the impact of the crimes themselves.

Action taken by the prosecutor in the Kilani case would have sent a message that these kinds of crimes, no matter where they are committed, will not go unpunished – they will have legal consequences.

4. What options does the international criminal justice system offer to address human rights violations in the Israel-Gaza conflict?

The adoption of the Rome Statute and establishment of the International Criminal Court (ICC) in 2002 in The Hague made it possible to prosecute certain cases of war crimes, crimes against humanity, and – since 2018 – crimes of aggression.

Palestine became a state party to the Rome Statute and the ICC in 2015. Since then, the ICC has been conducting a preliminary investigation into the situation in the Israeli-occupied territories in Palestine. In May 2018, Palestine presented the situation in Gaza to the ICC. Formal investigations have not yet been initiated, but in July 2018, the ICC established a program of "Outreach to Palestinian Victims and Affected Communities." The aim of this outreach program is to make information concerning the preliminary investigations available to the affected communities.

5. What avenues does the German legal system offer to achieve justice regarding human rights violations in the Israel-Gaza conflict?

Germany is always responsible for prosecuting crimes committed abroad if one of the perpetrators or victims is a German citizen, as is the case with Ibrahim Kilani and four of his children.

For non-German victims, the Code of Crimes against International Law (CCAIL – Völkerstrafgesetzbuch), which came into effect in 2002, allows for the prosecution of crimes against international law that were committed abroad. The CCAIL brought German criminal law into alignment with international criminal law. The principle of universal jurisdiction enshrined in the CCAIL enables Germany to prosecute so-called core international crimes regardless of the nationality of the victims or perpetrators or the country in which the crimes were committed.

Prosecutions in Germany do not present an obstacle to future investigations conducted by the chief prosecutor at the International Criminal Court. However, the ICC cannot convict a person if he or she has already been held accountable for the same act in another – national or international – court (the principle of *ne bis in idem*).

6. Why was the prosecutor obliged to open investigations in the Gaza case?

The GBA's obligation to pursue comprehensive prosecution is based on the principle of legality stipulated in the German Code of Criminal Procedure. This principle requires German prosecution authorities to investigate when there are sufficient indications that a serious crime has been committed. The principle of legality guarantees equality before the law: regardless of the position or background of a potential perpetrator, German prosecutors are obliged to pursue comprehensive investigations and – where the evidence is sufficient – to press charges.

As an expression of its duty to protect its own citizens, Germany is also obliged to prosecute crimes committed against German nationals abroad. Based on what is known as the passive personality principle, Germany must investigate in cases of crimes committed abroad if the victim is a German national, as is the case with the Kilani family. The fact that an investigation was not conducted in the Kilani case, on the grounds that this was an exceptional situation, is criticized by ECCHR and PCHR in their [statement](#).

7. Against whom was the criminal complaint directed?

The complaint was directed against members of the Israeli armed forces and the Israeli government who bear responsibility for the crimes in question. The names of these individuals are still unknown at this time.

In the German legal system, a criminal complaint in the technical sense is a complaint addressing a crime that occurred; it is not directed against individuals as such. The investigation of suspects is a task for the prosecutors. The criminal complaint submitted by ECCHR and PCHR on behalf

of Ramsis Kilani concerns the killing of family members. There are factual indications that the killings can be classified as war crimes under the German Code of Crimes against International Law.

8. Where did ECCHR get its information on this case?

The criminal complaint was based in part on investigations conducted by ECCHR and PCHR, which included, in particular, the interviewing of witnesses and the examination of photos and videos taken directly after the attack.

The complaint also relied on publicly available documents and reports, in particular the report from the United Nations Independent Commission of Inquiry on the Gaza conflict from 22 June 2015. The report documents the Kilani case, among others, and includes a critical analysis of how the Israeli legal authorities dealt with allegations of crimes committed during Operation “Protective Edge.” Further investigative reports from human rights organizations, many of which include witness testimonies, were also used in drafting the complaint.

9. Which steps must now be taken?

In order to address the systematic and widespread human rights violations in the occupied Palestinian territories, further legal interventions are necessary – against all parties involved in the conflict. There cannot be any political solution to the conflict without justice for those affected by rights violations, and a legal response to human rights crimes is indispensable for all those involved. Such a response may also, however, have a lasting effect on the prevention of crimes in other conflicts, as well as contribute to the establishment and stabilization of a democratic society based on the rule of law after the end of a regional conflict.

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