

Integrity, or Lack Thereof, of the Electronic Record Systems of the Courts of the State of Israel

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Abstract— The Human Rights Alert (NGO) submission for the Universal Periodic Review of Human Rights in the State of Israel, filed in May 2012, is probably a first – being narrowly focused on analysis of integrity, or lack thereof, of the electronic record systems of the courts of the State of Israel, and being primarily based on data mining of this unique target area. **Supreme Court:** On or about March 2002, integrity of the electronic records was seriously compromised. Numerous fraudulent decision records were discovered. **District Courts:** The publicly accessible records were found invalid, primarily for failure to display visible, reliable digital signatures of judges and authentication records by clerks. **Detainees Courts:** The insecure, unsigned decisions of the detainees courts, often created long time after the dates of the hearings, could not possibly be considered valid legal records. The detainees ID numbers show suspicious discontinuities and failure to correlate with time of issuance, which should raise concerns regarding establishment of “black hole” prisons and “field courts”. This study is a call for action by computing experts in general, and data mining experts in particular, in the safeguard of Human Rights and integrity of governments in the Digital Era.

Keywords—e-courts; e-government; information systems; validation; electronic signatures; certification; authentication, State of Israel.

I. INTRODUCTION

The courts worldwide, including Israel, have been implementing in recent years electronic information systems for efficient management of court cases and public access to court records. Reports of the United Nations on Strengthening Judicial Integrity encourage this transition. Indeed, there is no doubt that such systems could improve the management of valid court records and transparency of the judicial processes. [1,2]

Court procedures, and in particular, the maintenance of valid court records, have evolved over centuries (in the case of the State of Israel – thousands of years, since the law of the State of Israel is in part based on Jewish Law) and are at the core of Fair Hearings.

The transition to electronic case management and public access systems, in any court, amounts to a sea change in these procedures. However, previous studies have shown that the transition to electronic record systems in the courts and prisons is not risk-free. [3-6]

This paper summarizes the results of a study of the electronic records systems of the courts of the State of Israel, which has been recently submitted for the January 2013 Universal Periodic Review of Human Rights in the State of

Israel by the Human Rights Council of the United Nations (see Online Appendix 1). The information systems of the Supreme Court, the district courts, and the detainees’ courts were examined, as well as records, pertaining to the implementation and enforcement of the *Electronic Signature Act* (2001).

The study presents the application of data mining techniques to a unique target area, and the ability of data mining techniques to analyze the integrity and validity, or lack thereof, of the systems, even under conditions, where the courts deny access to critical records, in apparent violation of the law.

II. THE LEGAL FOUNDATION FOR THE ADMINISTRATION OF THE OFFICE OF THE CLERK

While the primary responsibility of the judicial arm is in adjudication, the primary responsibility of the ministerial arm (clerks) is in the maintenance of honest court records, service and notice of judicial records, guaranteeing public access, and certification of judicial records. The authority, duties and responsibilities of the clerks and or registrars in the State of Israel were defined in a series of laws and respective regulations. The regulations, which were promulgated in 2003-5, during the period of implementation of the current electronic record systems of the courts are of particular interest. The laws and regulations are at times inconsistent in their basic terms and leave considerable amount of ambiguity in defining the procedures of the Office of the Clerk and the duties and responsibilities of the Chief Clerk and/or Registrar. On such legal background, it is also clear, that in developing and implementing the electronic record systems of the courts, the first step, e.g., defining the specifications of the electronic record systems, was particularly sensitive. Either the authorities, duties and responsibilities of the Chief Clerk and/or Registrar, and the respective procedures were to be unequivocally and unambiguously defined, or else an invalid electronic records system would be developed and implemented.

III. METHODS

The study was narrowly focused on analysis of integrity of the electronic record systems in the national courts (Supreme Court, district courts, detainees’ courts). The study was not based on legal analysis of these records, or challenges to the rationale of the adjudication, except for the laws pertaining to the maintenance of court records. Instead, irregularities in date, signature, certification, and registration

procedures were examined through data mining methods, executed on the online public records of the courts.

Initially, integrity of the basic components of the systems was examined: indices of all cases, calendars, dockets (lists of records in a given file), indices of decisions, and compliance of these components with the *Regulations of the Courts*, pertaining to the maintenance of court records, and consistency of data among these components (e.g., the date a record was filed, as listed in the docket, and as indicated in the body of the record itself, see Online Appendix for links to data).

Subsequently, a cursory survey was conducted of the pattern of judges' signatures and clerk's certification of records over the past two decades. The significance of events around 2001-2003 was identified.

Accordingly, a more detailed survey was conducted of records of that period, including data mining relative to changes in distribution of specific word combinations, related to certification over time (e.g., "Chief Clerk", "Registrar", "Shmaryahu Cohen" (the late Chief Clerk of the Supreme Court), "Boaz Okon" (former Registrar of the Supreme Court), True Copy).

Subsequently, court records that were identified as outliers in such distributions (e.g. Decision records bearing the name of the late Chief Clerk Shmaryahu Cohen, issued later than the date of his death) were individually examined. Such data mining procedures enabled the discovery of hundreds of fraudulent decision records.

Once the death of the late Chief Clerk of the Supreme Court on March 7, 2002, was identified as a key event in this context, Google searches were conducted to further elucidate the event. It turned out that he reportedly died of "sudden cardiac arrest", after toasting a retiring staff member in an office party. Additionally, Google searches discovered a complaint, filed with the Israel Police by a family member/friend two weeks after the event, alleging murder. However, the complaint failed to present any reasonable motive for such murder. Regardless, web pages were discovered with various conspiracy theories in this regard.

Based on the findings from such data mining efforts, requests were filed on the Ministry of Justice and the Administration of Courts, pursuant to the *Freedom of Information Act*, for records that would provide the legal foundation for the profound changes in certification patterns between 2001-3, the appointment records of the current chief clerks of the courts, the appointment records of the Registrars of Certifying Authorities, pursuant to the *Electronic Signature Act* (2001), secondary legislation that might have authorized the changes, etc.

Additionally, outside sources were reviewed for information regarding the history of the development and implementation of the electronic records systems of the courts: media reports, and in particular the 2010 *State Ombudsman's Report* 60b.

The analysis was also based on consultations with Israeli law and computing/cryptography experts.

IV. THE SUPREME COURT

The March 7, 2002 untimely death of Chief Clerk of the Supreme Court Shmaryahu Cohen is tightly correlated with precipitous corruption of the electronic records of the Supreme Court. Today, identity of the Supreme Court's servers is not verified, and all Supreme Court decisions are published unsigned by judges, uncertified by the clerks, and subject to "editing and phrasing changes" (Figure 1). In the transition period (2001-2003), numerous Supreme Court decisions were falsified (Figure 2).

Today, the Supreme Court refuses to comply with the law regarding service of its decisions by the Clerk and denies public access to the authentication records – the certificates of delivery, even to a party in his/her own case.

False and deliberately misleading certifications of Supreme Court decisions, recently issued by the office of the Chief Clerk were also discovered.

Effectively, the Supreme Court established a 'triple-book' record system, where the public and parties to litigation are not permitted to distinguish between valid and simulated, i.e., fraudulent decisions (see Online Appendix for further details and links to data).

V. DISTRICT COURTS

The evidence shows that implementation of *Net Ha-Mishpat*, the electronic record system of the district courts, undermined the integrity of the records of the courts, and in particular, the accountability of the Chief Clerks relative to the integrity of the records.

The 2010 *State Ombudsman's Report* 60b reviewed the development and implementation of *Net Ha-Mishpat*. [7] The report describes a system that was developed with no written specification and with no core supervision by State employees, the issuance of contracts to outside corporations with no bidding, and acceptance of the system with no independent testing of its performance by State employees. Most alarming, the Ombudsman's Report indicated that unknown number of individuals had been issued double Smart ID cards. The Ombudsman pointed out that the development and implementation of the system was conducted in violation of State law. However, the report failed to evaluate the validity of the system as a whole.

The records of the district courts, which are publicly accessible in *Net Ha-Mishpat*, cannot possibly be deemed valid legal records (Figure 3).

News media reports revealed material conflicts of interests by individuals, who were in key positions, relative to the development and implementation of *Net Ha-Mishpat*.

VI. DETAINEES' COURTS

Analysis of the detainees' ID numbers, as they appear in the online publicly accessible records, showed discontinuity in the ID numbers, and lack of correlation between the ID numbers and date of issuance (Figure 4).

The refusal of the Ministry of Justice to disclose the number and locations of such courts in response to a Freedom of Information request, combined with the invalid

Detainee Numbers should raise concerns that ‘black hole’ prisons with makeshift ‘field courts’ have been established.

Review of news media revealed numerous reports of abuse of Due Process in the detainees’ courts. In 2010 Haaretz daily reported the conduct of a simulated hearing and the issuance of simulated court order in the case of a detainee. [8] Haaretz quoted the spokesperson of the Ministry of Justice, referring to the report as “a tempest in a teapot”, and claiming that the case was only a secretarial error in data entry.

VII. COMPLIANCE WITH STATE OF ISRAEL LAWS

The evidence shows that development and implementation of the new electronic record systems of the courts should be deemed in violation of the law of the State of Israel.

A. The Israeli “Constitutional Revolution”

The State of Israel has not established a constitution to this date. In the early 1990s, the Knesset (legislature) enacted two “Basic Laws”, in effort to establish fundamental Human Rights by law. Moreover, under the tenure of Presiding Justice Aharon Barak (1995-2006), and to a lesser degree under the tenure of Presiding Justice Dorit Beinisch (2006-2012) the Supreme Court purportedly spearheaded a “Constitutional Revolution” (see also Online Appendix). [9] Various “Constitutional Rights” were purportedly construed by the Supreme Court, e.g., in *Israeli Civil Rights Association v Minister of Justice* (5917/97).

On the other hand, the current study documents precipitous corruption of the courts of the State of Israel, in particular – the Supreme Court, during the very same years that the Supreme Court’s rhetoric regarding “Constitutional Revolution” and “Constitutional Rights” reached its zenith.

B. Basic Law – Human Dignity and Liberty (1992)

The *Basic Law – Human Dignity and Liberty* (1992), together with academic papers by former Presiding Justice Aharon Barak on the subject, are often credited with launching the “Constitutional Revolution”. However, some legal experts opined that the Basic Law is vague and ambiguous. To the degree that Basic Law guarantees Human Rights, such as Due Process/Fair Hearings, Access to Justice and national tribunals for protections of rights, the current study documents that the Supreme Court disregards the Basic Law.

C. Laws and regulations pertaining to the administration of the courts

The Chief Clerk of the Supreme Court did not comply with the *Regulations of the Courts – Office of the Clerk* (2004), and provided fraudulent certification of Supreme Court decisions (Figure 5).

The Supreme Court’s refusal to duly serve and authenticate its own decisions, was also out of compliance with the Supreme Court’s decision in *Israeli Bar Association v Minister of Religious Affairs et al* (6112/02).

Additionally, the Supreme Court’s refusal to permit a party to inspect court records in his own case, was also out of compliance with the Supreme Court’s decision in *Israeli Bar Association v Minister of Justice* (5917/97).

The 2010 *State Ombudsman’s Report* 60b also documented violation of the *Regulations of the Courts – Office of the Clerk* (2004), relative to the removal of the servers of the electronic records from the offices of the Clerks of the Courts onto corporate grounds.

The fraudulent Apostille certification procedure, published online by the Administration of Courts documents violation of the *Regulations of the Courts – Office of the Clerk* (2004), since the procedure purports to permit notaries to certify court records, which the regulations authorize only the Chief Clerks to certify. Both the Administration of Courts and the Ministry of Justice refused to respond on the Freedom of Information requests, pertaining to legal foundation of the Apostille certification procedure and the identity of those, who authorized its publication.

The refusal of the Administration of Courts to produce the appointment records of the Chief Clerk of the Supreme Court and the district courts, should raise concerns regarding the lawful nature of their appointments.

Together, the use of servers, whose identity is not certified, the publication of court decisions, which are neither signed, nor certified by the clerk, and dubious accountability of those, who serve today as chief clerks of the courts, conditions were set, where integrity of the electronic records of the State of Israel should be deemed dubious at best.

With it, the study identified an abundance of falsified court records, and simulated, illegal public records (e.g. the Apostille certification procedure), that were published online by the courts and the Ministry of Justice.

D. Electronic Signature Act (2001)

The Act and the respective regulations were signed and became effective in 2001. In pertinent parts, the Act says:

Chapter 2. Validity of a Secure Electronic Signature

...

2. (a) For any law, requiring a signature on a document – such requirement may be fulfilled, in respect of any electronic message, by use of an electronic signature, provided that it is a certified electronic signature...

3. An electronic message, signed with a secure electronic signature is admissible in any legal procedure...

4. A certified electronic signature is presumed to be a secure electronic signature.

Pursuant to the Act, a Registrar of Certification Authorities (qualified as a district judge) was to be appointed in the Ministry of Justice. Discontinuities in certification authorities of the Supreme Court in late 2001-2, which ended with no certification at all, followed closely, and were possibly related to the signing of the Act and regulations. Several individuals purportedly served in the

position of Registrar over the past decade, Guidelines and Standards were published, and enforcement was conducted. In 2009, Director of newly minted “Law, Technology, and Information Authority” was appointed, as part of reorganization in the Ministry of Justice. It appears that since then the position of Registrar ceased to exist (see additional details in the Online Appendix).

Requests, pursuant to the *Freedom of Information Act* (1988), pertaining to the implementation of the *Electronic Signature Act* and appointment records of the Registrars of Certifying Authorities of the past decade, were not answered by the Ministry of Justice and the Administration of Court, or answered in a manner that should be deemed false and deliberately misleading.

Combined, the evidence shows that the Ministry of Justice has deliberately undermined the implementation of *Electronic Signature Act* (2001) over the past decade.

E. *Freedom of Information Act* (1988)

Both the Administration of Courts and the Ministry of Justice refused to answer, or provided invalid, or false and deliberately misleading responses on Freedom of Information requests, pertaining to integrity of the electronic records of the courts, e.g., legal records, which would provide the foundation for the changes in certification practices in the Supreme Court, or the Apostille certification procedures, appointment records of the chief clerks of the courts, appointment records of Registrar of Certifying Authorities, the identities of any Certifying Authorities that may have been assigned to the courts, names of individuals, who hold the ultimate administrative authority for the servers of the courts, the names and locations of the detainees’ courts, etc (see Online Appendix for complete log of Freedom of Information requests and responses).

VIII. COMPLIANCE WITH RELEVANT TREATIES AND CONVENTIONS

The *Hague Convention* (1961), to which the State of Israel is a party, established an Apostille certification procedure, in order to validate legal public records, which are taken from the courts of one nation to another. The Apostille certification procedure, which was published online by the Administration of Courts, unsigned, undated, and with no reference to any legal foundation, is opined as a deliberate effort to undermine the integrity of Apostilles, originating in the courts of the State of Israel (Figure 5).

IX. CONCLUSIONS AND RECOMMENDATIONS

The results of the current study show that senior members of the judiciary and the legal profession exploited the transition to new electronic record systems in the courts of the State of Israel over the past decade to undermine the integrity of the justice system. It appears that updates in the electronic records systems and the passage of the *Electronic Signature Act* made it necessary to decide between the development of systems, based on valid, lawful

specifications and lawful digital signatures, or systems based on no specifications and no digital signatures at all.

The results show that effectively, decision was made around 2002 in favor of the latter option. The most obvious trait of the systems now in place, is that among thousands of electronic public legal records, which were examined as part of the current study, not a single digitally signed record was discovered.

Furthermore, the findings suggest that such decision required the neutralization of the main watchdogs, relative to integrity of legal records: the chief clerks of the Supreme Court and the district courts, and the Registrar of Certifying Authorities.

It was also necessary to devise ways to circumvent the valid certification procedures, still in existence in paper form, as documented in the fraudulent certifications by the office of the Chief Clerk of the Supreme Court (see Online Appendix for figures and data), and the fraudulent Apostille certification procedure (Figure 5).

Finally, although the online publication of court records could have increased public access and transparency of the courts, ways were devised, whereby the online public access system would not permit the public to distinguish between valid and void court records. Separate data bases were concealed in the case management system of the courts, where public access is denied. Therefore, the perception of public access was created, while in fact public access and transparency of the courts were undermined. [10]

The outcome, best documented in the Supreme Court and the Detainees’ Courts, was the enabling of the publication of simulated court decisions and conduct of simulate court proceedings.

The resulting conditions are likely to lead to deterioration in the Human Rights of the People of the State of Israel, albeit, some years may pass before the full impact is manifested. Furthermore, the failure to uphold the *Electronic Signature Act* has ramifications far beyond the justice system. It is likely to place Israeli financial markets at high-risk of instability.

Therefore, the implementation of invalid electronic record systems in the courts holds serious implications relative to Human Rights and banking regulation in the State of Israel. (see Online Appendix for further details).

The findings should also require reassessment of any faith and credit, which may be given to legal public records originating in the courts of the State of Israel by other nations, including, but not limited to those, who are parties to the *Hague Convention* (1961).

The findings hold serious implications relative to Human Rights and banking regulation in the State of Israel.

The Human Rights Alert submission recommends:

1. The electronic records systems of the courts should be examined and repaired by Israeli computing and legal experts, under accountability to the legislature.

2. A Truth and Reconciliation Commission should be established to examine the conduct of members of the judiciary and the legal profession, who were involved in undermining the integrity of the electronic record systems;

3. No court of any nation should be permitted to develop and implement its own electronic record systems, since such systems effectively amount to establishment of new regulation of the courts. Typically, the authority to establish such regulations is reserved for one of the other two branches of government.

The results of the current study are not unique to the State of Israel. The Human Rights Alert submission for the 2010 Universal Periodic Review of Human Rights in the United States was in part based on analysis of the lack of integrity in the electronic record systems of the California courts and prisons. The submission was reviewed by the United Nations professional staff and incorporated into the official report with a note referring to “corruption of the courts and the legal profession in California”. [11] An accompanying paper describes the fraud inherent in the electronic record systems of the courts of the United States, which were implemented a decade earlier than the systems described in this study. Preliminary inspection suggests that similar faults also exist in the electronic record systems, which have been recently implemented in other “Western Democracies”.

Finally, this study is a call for action by computing experts in general, and data mining experts in particular, in the safeguard of Human Rights and integrity of governments in the Digital Era.

ACKNOWLEDGMENT

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ONLINE APPENDIX

[1] The online appendix includes further details, links to the original data, and enlarged and additional figures: Human Right Alert (NOG), 2013 State of Israel UPR Appendix to Submission: “Integrity, or lack thereof, in the electronic record

systems of the courts of the State of Israel” <http://www.scribd.com/doc/82927700/>

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<p>ELYON1: Ben Gavriel v Chief of Staff (1595/00)</p>	<p>ELYON2: Sayeg v Agricultural Insurance (100/03)</p>
<p style="text-align: center;">העתק מתאים למקור שמריהו כהן - מזכיר ראשי אמ/W01 - 00015950</p>	<p style="text-align: center;">03001000_K01.doc העותק כפוף לשינויי עריכה וניסוח. www.court.gov.il אתר אינטרנט; 02-6750444 טל</p>
<p>True copy of the original Shmaryahu Cohen – Clerk of the Court W01 – 00015950/ אמ</p>	<p>Version subject to editing and phrasing changes. 03001000_K01.doc Information Center Tel: 02-06750444; Online: www.court.gov.il</p>

Figure 1. Changes in the Supreme Court’s Chief Clerk’s Certification of Electronic Decision Records of the Supreme Court of the State of Israel Between 2001-2003

(a) Until early 2002, all electronic decisions of the Supreme Court carried certification by the late Chief Clerk Shmaryahu Cohen. (b) Since 2003, none of the electronic decision records carries any certification, or any reference to the Office of the Clerk. Instead they carry a disclaimer “subject to editing and phrasing changes”, and reference to an “Information Center”, which has no foundation in the law. The Administration of Courts refuses to disclose, in response to Freedom of Information request, the legal foundation for such profound change in the records of the Supreme Court in 2001-2003.

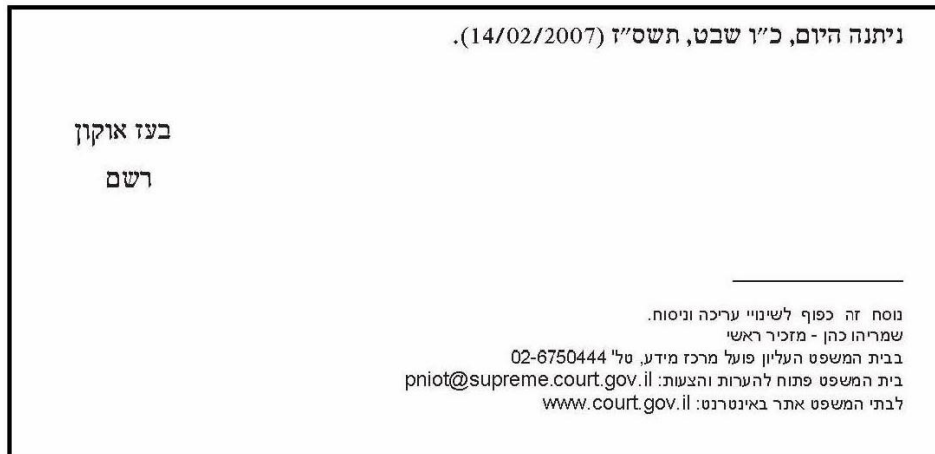


Figure 2. Fraud in Electronic Decision Record of the Supreme Court of the State of Israel.

The Decision, in *Judith Franco Sidi et al v Authority pursuant to the Persons Disabled by Nazi Persecutions Act (1582/02)* in the Supreme Court in part says:

Issued this date, February 14, 2007

Boaz Okon
Registrar

_____ This version is subject to editing and phrasing changes.

Shmaryahu Cohen – Chief Clerk

In the Supreme Court an information center is operated, Tel: 02-6750444

The Court is open to comments and suggestions: pniot@supreme.court.gov.il

The courts' web site: www.court.gov.il

By February 2007, Boaz Okon was no longer Registrar of the Supreme Court, and Shmaryahu Cohen was dead for about five years. Numerous other records of the same nature were discovered.



Figure 3. Invalid Electronic “Post-it” Decision Record of the Jerusalem District Court

The record belongs to the file of *State of Israel v Awisat et al* (9739-01-11) in the Jerusalem District Court. The background document, is a motion, titled: “Request by Joint Stipulation for Continuation of Hearing Date.” The Motion record is graphically signed by the attorney who filed the motion in the lower left corner. The small framed image, superimposed on the Motion records in the upper right corner, is a “Post-it Decision”. The yellow heading states:

January 25, 2011

Judge Amnon Cohen, Decision

The framed text below the yellow heading states:

The Request is denied. Moreover, it was filed out of compliance with the Guidelines of the Presiding Judge.

The decision is neither visibly signed by Judge Cohen, nor certified by the Clerk of the Court, and it fails to bear the seal of the Court. No visible electronic signatures, pursuant to the *Electronic Signature Act* (2001) were implemented in the electronic records systems of the courts of the State of Israel. The Administration of Courts refuses to produced the appointment records of the Chief Clerks of the district courts, or to disclose, who holds the ultimate administrative authority over the electronic records of the district courts.

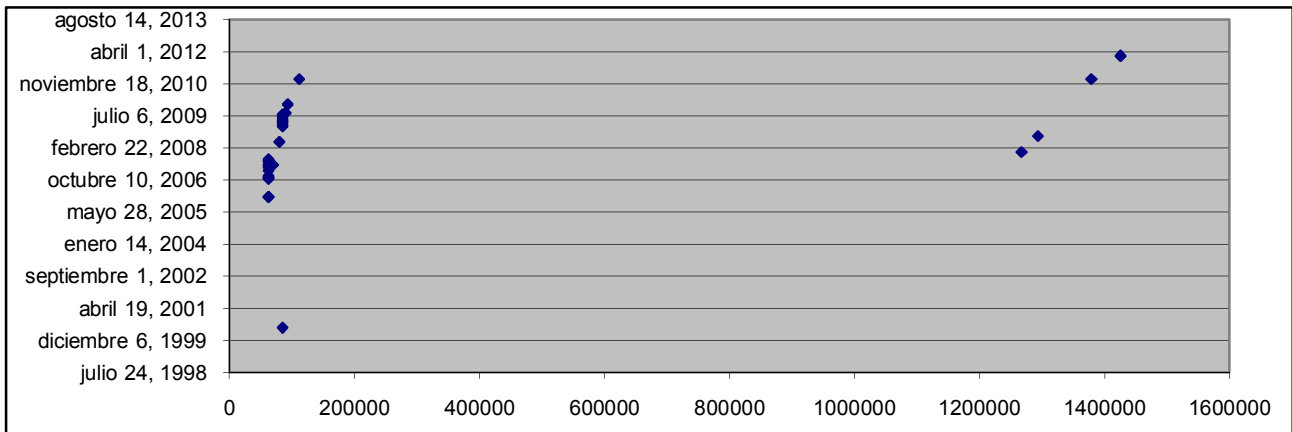


Figure 4. Lack of Integrity in Detainees' ID Numbers, in Records of the Detainees Courts of the State of Israel

The lack of correlation between dates of issuance of the decisions, and Detainee Numbers, and the apparent discontinuity in Detainees' ID numbers, should be deemed a fundamental failure of integrity of the Detainees Courts electronic record system. (See the raw data at Table 3 in the online appendix). Only a selection of the Detainees Courts records is published online, as insecure Word files, most of which were created a long time after the fact (at times – years). The Ministry of Justice refuses to disclose, how many Detainees Courts are operating in the State of Israel, their names and locations, and the names of the Chief Clerks of the detainees courts, if any exist. Combined, the findings should raise concern that “black hole” prisons and makeshift “field courts” have been established in the State of Israel.

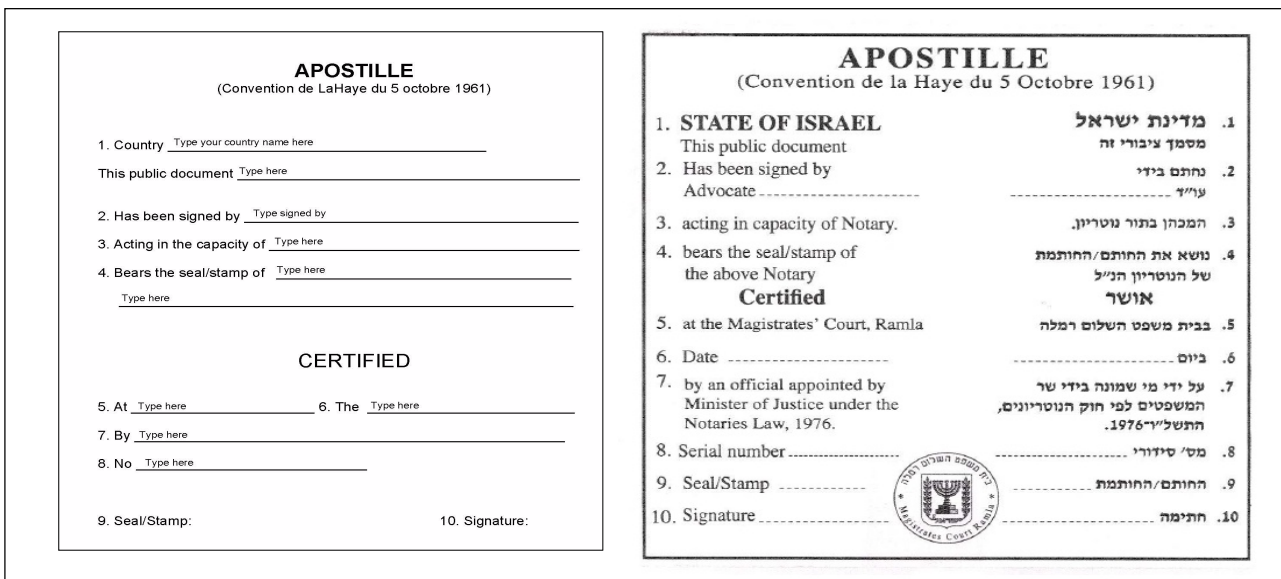


Figure 5. Fraud in Apostille Certification Procedure, Pursuant to the *Hague Apostille Convention* (1961), Published Online by the “Judicial Authority”

Left: True apostille form, as authorized by the *Hague Apostille Convention* (1961); Right: A sample apostille form, published on the web site of the “Judicial Authority” of the State of Israel, falsely represented as the true apostille form, as authorized by the Convention. The form, published by the “Judicial Authority”, purports that an “Advocate”, acting as a Notary, is permitted to certify court decisions, which the *Regulations of the Courts – Office of the Clerk* (2004) authorize only the Chief Clerks to certify. Furthermore, the latter form permits a member of the staff of the office of the clerk, to sign the apostille form, as certification of the signature of the Notary, with the Seal of the Court, in a manner that appears as a valid certification by a chief clerk of the attached court decision. In fact, the arrangement, published online, specifically states that in executing the apostille, the office of the clerk certified ONLY the signature of the notary, but not the attached court record. The arrangement is opined as fraud on the People of the State of Israel, and also on the People and the courts of all other nations, who are parties to the Convention. It is part of a pattern of false certifications of records of the courts of the State of Israel. Both the Administration of Courts and the Ministry of Justice refuse to disclose, who authorized this procedure, and who and when authorized its online publication. The Chief Clerk of the Supreme Court refused to provide apostille certification of judicial records of the Supreme Court.