

Human Rights Alert (NGO)

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HRC UPR Submission - 29th session

Incompetence and/or corruption of the courts and the legal profession, and discrimination by law enforcement in Israel

Executive Summary

The Human Rights Alert [HRA-NGO] submission documents incompetence and/or corruption of the courts, the legal profession and law enforcement. Detailed evidence is provided of lack of integrity in e-government systems, their development, implementation, and operation. Such approach generates unique insights into underlying processes, related to remarkable deterioration in integrity of the justice system over the past two decades. Case studies are provided, documenting production of patently invalid, or vague and ambiguous judicial and legal electronic records (“Drafts”), and the use of such records for unlawful deprivation of rights and discrimination in law enforcement. Such evolution of the justice system resulted from a top-to-bottom process, led by senior law and justice figures with acquiescence or collusion by informatics experts, for which Israel is world-renowned. The general failure to hold judges and attorneys in State service accountable for deceit and breach of trust undermines the Rule of Law. Resulting conditions - a post-truth justice system - have led to unprecedented government corruption, and with it – unprecedented whistle-blowing, social protest, and pronouncements by legal scholars and political figures - all against the justice system itself. Repression of social protest and persecution of whistle-blowers produce some of the clearest evidence of abuse. Prevailing conditions have major implications relative to the nature of the regime, will be difficult to address, and may require a Truth and Reconciliation Commission on the justice system itself.

A. HRA-NGO

Three HRA submissions, have so far been incorporated into UN HRC UPR reports, with the following notes:

1. United States (2010) - “Corruption of the courts and the legal profession and discrimination by law enforcement in California”;
2. State of Israel (2013) - “Lack of integrity in the electronic records of the supreme court, the district courts and the detainees courts in Israel”, and
3. United States (2015) - “HRA NGO recommended restoring the integrity of the IT systems of the courts, under accountability to the Congress, with the goal of making such systems as transparent as possible to the public at large.”

These three HRA submissions may be the first ever Human Rights reports, which focus on analysis of e-government and its effects on Human Rights.

A textbook on "Machine Learning" found Dr Zernik's application of data-mining to Human Rights research among "Notable uses", and summarized it as follows:

Data mining of government records - particularly records of the justice system (i.e., courts, prisons) - enables the discovery of systemic human rights violations in

connection to generation and publication of invalid or fraudulent legal records by various government agencies.

Mr Moshe Halevi, a computer and IT professional with special expertise in Net-HaMishpat (case management system of the courts) assisted in producing instant submission.

Other Israeli computer and legal experts have been consulted over the past several years.

Note: Instant Submission is filed in Word format, as instructed. For security and fidelity in transmission, an electronically signed PDF file is also be submitted.

B. Allegations

Conditions, now prevailing in the courts and other national law and justice agencies in Israel amount to violation of:

1. The *Universal Declaration of Human Rights* - any rights, where integrity of the courts and the justice system is a prerequisite, particularly, fair and public hearing (Article 10), liberty (Article 3), equality before the law (Article 7), not to subjected to arbitrary arrest or detention (Article 9).
2. The *International Covenant on Civil and Political Rights* [ICCPR] (1966) – particularly the right for due process, specifically regarding the prosecution of whistle-blowers, social protest activists, and non-Jewish minorities, as well as conduct of the Debtors' Courts.
3. The *Hague Apostille Convention* (1961) – the courts in collusion with the Ministry of Foreign affair have established procedures for deceitful Apostille certification of Israeli judicial records.
4. The law of the State of Israel itself – the courts and other law and justice agencies deliberately disregard the *Basic Law–Human Dignity and Liberty* (purported foundation of the “Constitutional Revolution”), *Criminal Court Procedure*, *Civil Court Procedure*, *Regulations of the Courts-Office of the Clerk*, *Regulations of the Courts-Inspection of Court Files*, *Prisons Act* and *Regulations of the Prisons*, *Freedom of Information Act*, *Electronic Signature Act*.

The justice system itself is central to such conduct. False pretenses of the Rule of Law are created through the production of a multitude of patently invalid, or vague and ambiguous judicial and legal records, which the judges themselves consider merely “Drafts”, and for which they don't hold themselves accountable. In fact, the courts and other law and justice agencies operate in an arbitrary and capricious manner. Judges and attorneys in the State service are placed above the law, unaccountable even when their conduct amounts to patent deceit and breach of trust.

The evidence shows serious deterioration in integrity of law and justice agencies over the past 2 decades through a deliberate, concerted, top-to-bottom process. The best, indisputable evidence to support such conclusions comes from analysis of development, implementation, operation and security of e-government systems, as well as legislature and its implementation, related to the transition to electronic administration of the courts.

C. Follow-up Information

Previous HRA-NGO submission was incorporated into the Professional Staff Report of the 2013 UPR of Israel with the note: “Lack of integrity in the electronic records of the supreme court, the district courts and the detainees courts in Israel”.

Israeli authorities have not responded on requests to enter a dialogue regarding the UPR in general, or any corrective measures in response to the 2013 UPR in particular.

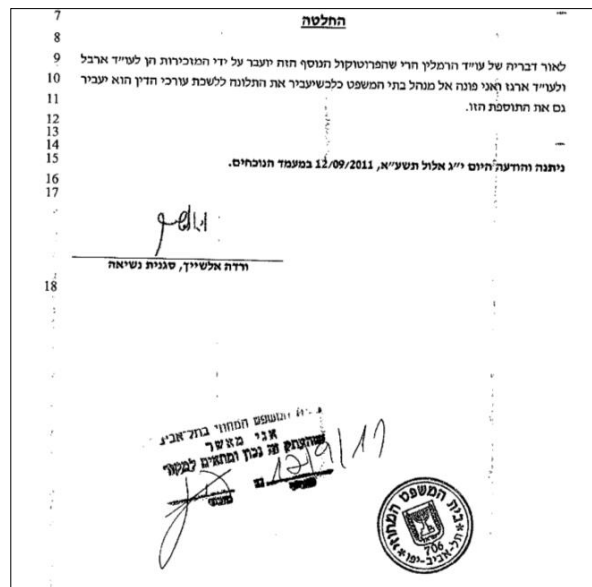
D. Evidence

1. The current Submission and its Annex:

- a) Expand evidence of lack of integrity in IT systems and judicial records of the Supreme Court and the District Courts, with new evidence from the Magistrate, Family, Small Claims, and Debtors’ Courts. Particularly important evidence is provided regarding large-scale deceit in implementation of the *Electronic Signature Act* (2001) and management of dockets, entry of judgments in Net-HaMishpat (case management system) - to the point that there is no way to distinguish between an authentic, valid and enforceable judicial record and one that is merely a “Draft”.
- b) Provide a more detailed review of changes in the legal and institutional framework, which permitted such transformation of the courts, including the *Electronic Signature Act* (2001), *Shin-Bet Act* (2002), *Regulation of the Courts–Office of the Clerk* (2004), and the establishment of a new Cyber Authority with dubious legal foundation .
- c) Provide a series of case studies, which were largely missing from the 2013 Submission. Christian, Ukrainian citizen Roman Zadorov is confined in life imprisonment in Israel, purportedly convicted of murder of a girl, with neither real evidence tying him to the crime scene, nor lawful records of Verdict, Sentencing, Arrest Decree. The case led to unprecedented, widespread, public and expert criticism of lack of integrity of the justice system. It also was the subject of a separate complaint to the UN HRC Working Group on Arbitrary Detention. Other notable cases pertain to the persecution of Tax Authority whistle-blowers Shuki Mishol and Rafi Rotem, National Pathological Institute experts Drs Maya Forman and Chen Kugel, and social protest activists Barak Cohen, Lori Shem-Tov and Moti Leybel, Joelle Ben-Simon, Daphni Leef and more.

2. Following are some notable examples, expanded in the Annex.

- a) *Bank HaPoalim v State Receiver* (1623-00) – bankruptcy, receivership – in the Tel-Aviv District Court – Judge Varda Alshech’s “Fabricated Protocols” scandal



Figures. Attorney Rafael Argaz, Judge Varda Alshech, and one of Judge Varda Alshech’s September 12, 2011 “Fabricated Protocols” scandal.

The record says:

Decision

In view of Attorney Hermlin’s statements, instant Protocol shall be forwarded by the Office of the Clerk to both Attorney Arbel and Attorney Argaz, and I am asking the Director of Administration of Courts that when he forwards the complaint to the Israel Bar Association, he forward also instant additional Protocol.

Rendered today, September 12, 2011 in the presence of the parties.

The Protocol [minutes] was used by Judge Varda Alshech for retaliation against Attorney Rafael Argaz through the filing, in collusion with the Administration of Courts, of a semi-criminal complaint against Argaz. In dozen of places she inserted statements that he had never made in court.

Ombudsman of the Judiciary Decision (88/12/Tel-Aviv District) concluded that the Protocol records were merely “Drafts”, and Judge Alshech was in full agreement: (a) The record in the picture bears only Judge’s invalid “graphic signature”. The record was never duly electronically signed.

(b) The certification “True Copy of the Original” and the Seal of the Court were affixed by an unauthorized, incompetent person – the Judge’s secretary.

Ombudsman of the Judiciary notes in his decision that the production of “Drafts” is a widespread practice by the judges. The water-mark “Draft”, which had previously appeared on all such Net-HaMishpat records, had been removed in some of the courts. The judges claimed that it “interferes with work flow”.

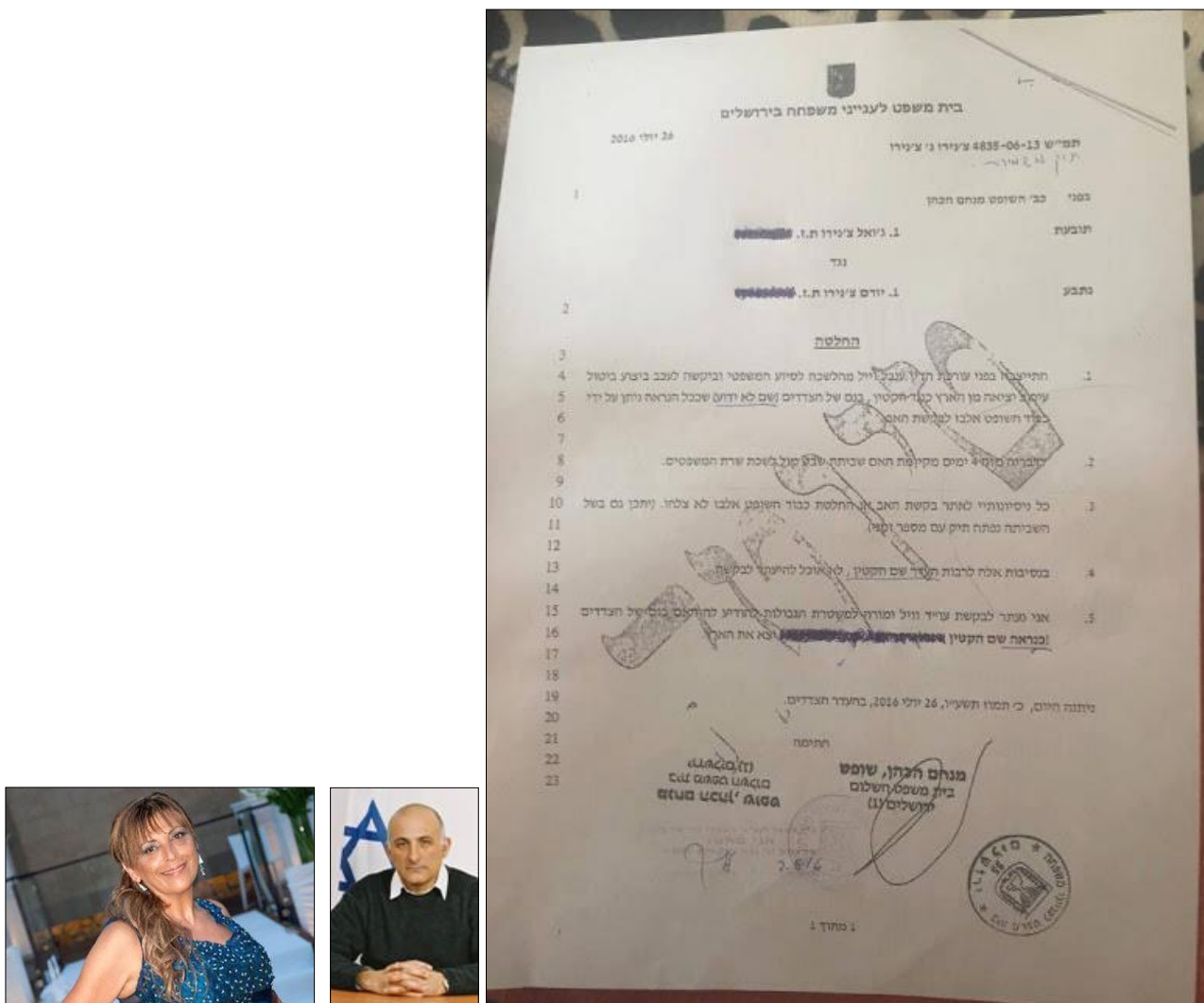
Ombudsman of the Judiciary concludes that in Net-HaMishpat there is no way for parties and the public to distinguish between authentic, valid and enforceable court records and “Drafts”. Ombudsman of the Judiciary decision also quotes Judge Alshech’s claim in her own defense – that the Supreme Court routinely engages in similar conduct...

Regardless of the documentation in this case of routine production of invalid, misleading electronic judicial records, the judiciary, the Israel Bar Association and/or the Ministry of Justice have never initiated corrective actions. In response on FOIA request, the Administration of Courts stated that corrective actions had not been implemented, since the Ombudsman’s decision was merely a “recommendation”.

Judge Alshech, since retired, presided in some of the largest corporate restructuring, bankruptcy, and public debt “haircut” cases. She also served as Chairwoman of the Judges’ Association. She was never held accountable for Deceit and Breach of Trust.

[see also Case Study: *Bank HaPoalim v State Receiver* (1623-00) in the Tel-Aviv District Court; Invalid implementation of e-signatures in Net-HaMishpat]

b) *Chenero v Chenero* (4835-06-13) – child custody - in the Jerusalem Family Court - invalid, deceitful Judge Menahem HaCohen “Decision” record



Figures. Joelle Ben-Simon, Judge Menahem HaCohen, and his July 26, 2016 “Decision”.

Ben-Simon protested against corruption of the Family Courts in front of Justice Minister Ayelet Shaked's office, claiming that in the course of divorce proceedings judges and others robbed her of her possessions and were going to let the father take her minor child out of Israel. Consequently, she was confined in compulsory psychiatric hospitalization. The medical records indicate that the hospitalization was "coordinated" by Attorney Yaek Kutik, senior Ministry of Justice officer.

During her hospitalization Judge Menham HaCohen purportedly conducted a hearing in her case and issued the July 26, 2016 "Decision", which was served on Ben-Simon by the Court, and which says:

Attorney Inbal Weil of the Legal Aid Bureau appeared before me... all my efforts to locate the father's request, or the Hon Judge Elbaz Decision failed...

Attorney Inbal Weil appeared in Court with neither Ben-Simon's knowledge, nor her consent, apparently in attempt to investigate Ben-Simon's claims.

The record is a printout from Net-HaMishpat, the diagonal water-mark on the record says "Draft". Ombudsman of the Judiciary Decision in the Judge Varda Alshech "Fabricated Protocols" scandal explicitly states that such records are not electronically signed, must not be printed out, must not be certified, and must not be served on the parties.

Judge Menahem HaCohen's personal stamp and "wet" hand-signature were affixed on a printout, and then it was scanned back into Net-HaMishpat. "True Copy of the Original" certification, and Seal of the Court were added by an unidentified person.

During a visit to the Office of the Clerk, which this writer witnessed, Ben-Simon attempted to inspect her own court files. Staff member Esti again printed out the "Decision", and again certified it. Senior staff member Maya then demanded the record back and explained that the record was merely a "draft", which must not be printed out. Maya provided a printout of the Case Calendar, where the July 26, 2016 purported hearing fails to appear, but refused to print out decisions or dockets from Ben-Simon court files, stating they were merely "Drafts".

Given the number of judges and others involved, and number of transactions, the case should be deemed organized crime in the Jerusalem Family Court.

[see also Case Study: In re: Joelle Ben-Simon]

c) *State of Israel v Roman Zadorov* (502-07) – criminal, murder trial - in the Nazareth

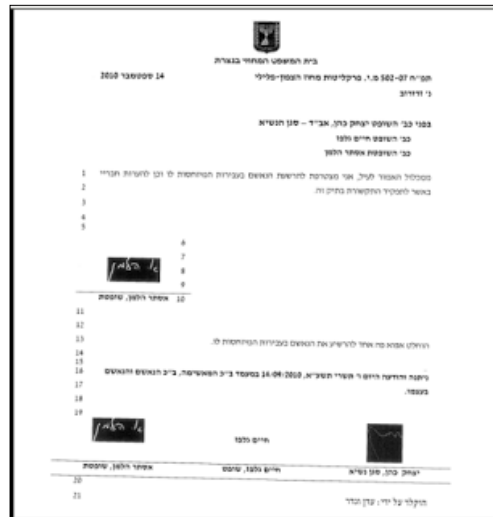
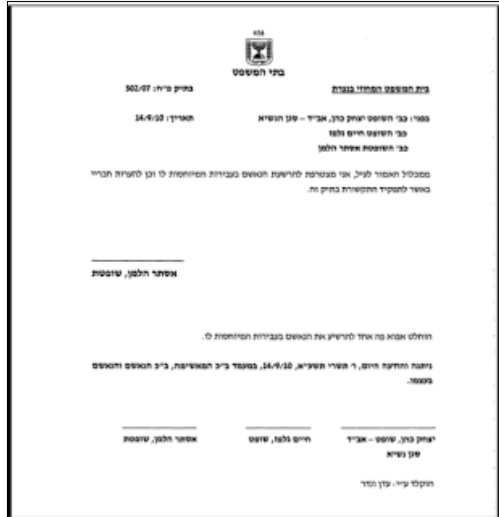


District Court – invalid, deceitful "Verdict" records

(a)



(b)



(c)

Figures. (a) The Jew Mendel Beilis was falsely prosecuted and falsely convicted of the murder of a boy in the Ukraine a century ago. The Christian, Ukrainian Roman Zadorov was prosecuted and purportedly convicted in the 2006 murder of a girl in Israel.

Law professor Boaz Sangero wrote:

Conviction with no real evidence.

Law professor Mordechai Kremnitzer wrote:

Conduct of the State Prosecution in the Zadorov case is scary, it is not conduct of Prosecution, which is seeking the truth... Adding to that the Supreme Court' stance and the Attorney General's conduct in recent years, one is left with a justice system, which is primarily defending itself.

(b) The judicial panel included Judge Yitzhak Cohen (since convicted of sex crimes), Judge Esther Hellman, and Haim Galpaz.

The latter was a retired judge. Administration of Court failed to duly answer on FOIA request regarding his lawful appointment as Emeritus Judge during the relevant period, for which he fails to show a Judge's Calendar.

(c) Net-HaMishpat printouts of the September 14, 2010 "Verdict", which appears neither in the "Judgments Docket", nor in the "Decisions Docket".

The records in part say:

It was therefore unanimously decided to convict the Defendant of the crimes of which he was charged.

Rendered and noticed today, September 14, 2010, in the presence of Counsel for the Prosecution, Counsel for the Defense, and the Defendant.

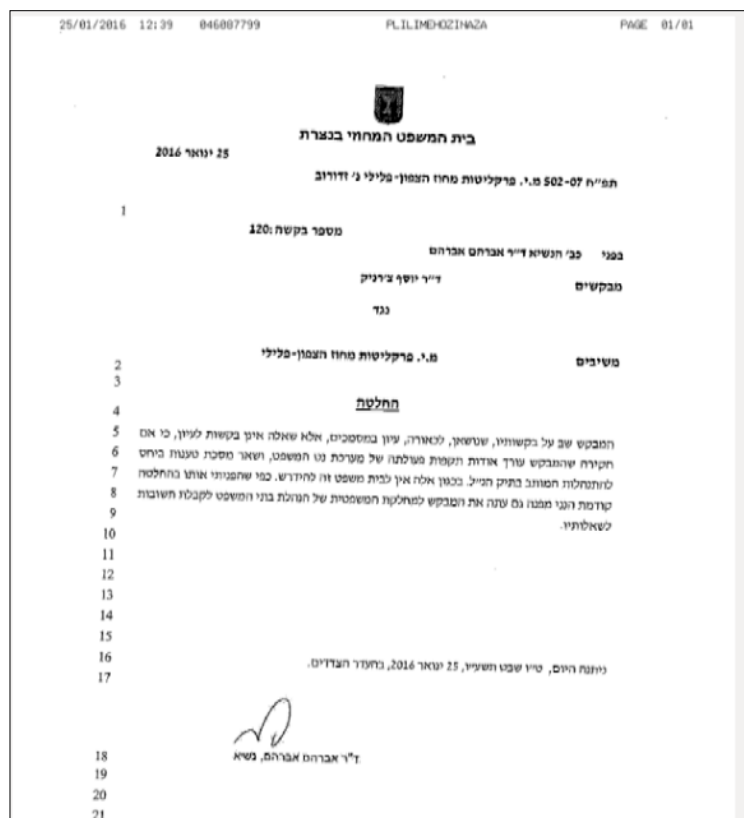
Left – October 2010 printout, which was filed with the Notice of Appeal, as discovered during inspection of the paper court file *Zadorov v State of Israel* (7939/10) in the Supreme Court. The record is neither signed, nor certified, in disregard of the law. The record fails to bear even the invalid “graphic signatures” of the judges.

Right – December 2015 printout from the Office of the Clerk of the Nazareth District Court fails to show even the invalid “graphic signature” of Haim Galpaz, and shows perverted, negative images of “graphic signatures” of Judge Yitzhak Cohen and Esther Hellman.

Ombudsman of the Judiciary Decision (88/12/Tel-Aviv District) details the technical production of signed judicial records in Net-HaMishpat. It is therefore clear that such records are incomplete and have never been electronically signed. That fact is also obvious from the differences between the two printouts shown here.

Attorney Avigdor Feldman, Roman Zadorov’s *pro bono* counsel in the appeal, wrote, while the appeal was still pending before the Supreme Court, that Zadorov’s judgment records were lost “in the wailing wind across the Jezreel Valley” (which the Nazareth District Court overlooks).

The confinement of Roman Zadorov in Israel should be deemed arbitrary detention.



Figures. Nazareth District Court Presiding Judge Avraham Avraham and his January 25, 2016 Decision on repeat requests to inspect lawfully made judgment records and their electronic signature data:

The Requester repeats his requests, subject of which, purportedly, is inspection of court records. However, these are not requests to inspect, but an investigation, which the Requester is conducting, pertaining to validity of Net-HaMishpat system and various claims regarding conduct of the judicial panel in this case. In such matters this court shall not engage...

E. Conclusions

The evidence indicates systemic violations of Human Rights, treaties and conventions as well as State law by Israeli justice agencies, holding serious implications relative to all aspects of Civil Society in Israel:

1. The validity and integrity of any legal and judicial records of Israel should be deemed dubious at best. The Israeli courts can no longer be deemed competent Courts of Record. Israel should be deemed in violation of all Human Rights, where competent courts are a prerequisite. Israel should be deemed in violation of the *International Covenant on Civil and Political Rights* and the *Hague Apostille Convention*.
2. Conditions, which have emerged in the Israeli courts should be deemed a constitutional crisis in a nation with no constitution. The purported “Constitutional Revolution” should be deemed a public relations charade by the same actors, who were central to undermining integrity of the courts.
3. Concentration of power in legal, security, and capital groups is likely to frustrate any corrective efforts. Conditions in Israel amount to loss of social contract. Correction would require long-term, fundamental public education and massive exertion of public will and determination.

F. Recommendations

Major efforts should focus on restoring integrity of the courts and the legal profession:

1. Israeli informatics and legal experts, operating under direct public accountability, should assume a central role in repairing e-government systems in all branches of government, first and foremost in the courts and prisons. Lawful implementation of e-signatures on electronic government records in general and judicial records in particular is essential. The courts must not be permitted to develop and implement their own IT systems (Separation of Powers), and their IT systems should be as transparent as possible (Publicity of the Law). Informatics experts should assume a central role in the safeguard of Civil Society and Human Rights in our era. Human Rights and internet activists must vigorously monitor such systems on an ongoing basis. Israel provide a unique example of the risks, inherent in unlawful implementation of e-government systems.
2. *Deceit* and *Breach of Trust* should be vigorously enforced on extra-judicial conduct by judges, such as falsification of court records, as well as on conduct of attorneys in State service, particularly prosecutors. Major reform in Administration of Courts and Offices of the Clerks is a prerequisite for restoring integrity of the courts. Truth and Reconciliation Commission may be eventually required, regarding current conduct of the courts and the legal profession.
3. Chairmanship of the Central Election Committee by Supreme Court justices was mired in incompetence or worse. The Committee needs to be fundamentally reformed. Until its integrity is restored, administration of the general elections should avoid the use of existing IT systems. Invitation of international observers is desirable.

Note: The HRA submission pertains only to the State of Israel within the 1967 borders.

Online Annex with references: <https://www.scribd.com/document/351709301/>

Tel-Aviv, July 29, 2017

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