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## “AND YOUR CAMP SHALL BE HOLY” – THE CASE OF THE TAKANA FORUM\*

### 1. The Need for the Forum

**S**exual harassment is rampant throughout the world. In Israel, the number of those who are physically harassed comes to nearly 10% of all women above the age of 21 (according to a report by the Commission for the Advancement of Women in the Prime Minister’s office), and when taking into account those who are verbally harassed in public spaces, the number reaches some 17% of all women (according to an estimate of the Central Bureau of Statistics). This is not a new phenomenon, but there has been a rise in public consciousness in the past decades in the wake of several incidents in which those accused were prominent public figures, including the President of Israel, senior officers in the army, members of Knesset, famous artists, and also—tragically and embarrassingly—eminent rabbis. As a result, sexual harassment, as well as more serious offenses of a sexual nature, have intensively preoccupied Israeli society in recent years.

In 1998 an innovative law that attracted wide public attention was passed in Israel. The Jerusalem District Court described the legislative intent as follows: "The law for the prevention of sexual harassment seeks to change patterns of behavior rampant throughout society, the military, and the workplace, and to guarantee a safe and secure work environment that safeguards human character and human dignity... The law for the prevention of sexual harassment mandates the public to act in accordance with a new norm. Its objective is to prevent individuals in a professional relationship from relating sexually to others, as such behavior adversely impacts the security, dignity, and privacy of human beings (7654/03, Dr. Amikam Kasir vs. the State of Israel).

\* This essay was translated from the Hebrew by Ilana Kurshan.

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Sexual harassment (a term that will apply for our purposes to all offenses of a sexual nature) is a reality in all sectors of Israeli society, including, of course, the religious community. This article will focus on a particular kind of sexual harassment in the religious sector: sexual harassment committed by those in a position of religious authority and power—rabbis, educators, and others who occupy formal roles in institutions, communities, and public contexts. This list also includes individuals invested with authority on account of their charisma, even if they do not occupy any formal role. If the offenders are figures of religious authority and power, the offense also takes on a unique element of severity.

The vast majority of victims of sexual harassment in the world famously elect not to file charges. Experts in the field agree that the Israeli sexual harassment law is among the most progressive in the world, yet only a minority of women summon the courage to file a complaint. Each year the various organizations that offer assistance to victims of sexual assault receive some 12,000 calls about sexual harassment, but only 20% of those who appeal to these centers for assistance ultimately decide to file charges.

The reasons for the low incidence of reporting are clear: due to the nature of sexual harassment, which generally takes place away from the public eye, the testimonies of the complainants and of the alleged perpetrators are pitted against one another, one person's word against another's. Thus, a common line of defense adopted by those accused of harassment involves scrutinizing the character of the complainants, defaming them, and prying into the history of their sexual behavior. Many of those who file charges of sexual harassment report that the judicial process subjects them to a sort of "second rape," one trauma in the wake of another, this time causing even greater psychological damage. Moreover, the requirement of proof beyond reasonable doubt in criminal law is likely to result in the acquittal of the defendants when there is no additional evidence beyond the testimony of the complainant or the defendant. The failure to convict in a case that receives public exposure is likely to cause many other victims to remain silent.

Members of the religious community who are victims of sexual harassment experience the hardships enumerated above, as well as hardships unique to the social, cultural, and religious characteristics of this sector of society. A public discussion about sexual matters, even if not really taboo, is particularly difficult in the religious community. Religious complainants who are asked to speak about intimate details of a sexual nature in a public venue experience a singular kind of distress. The religious community's prevalent instinct is to assume that "there is no smoke without fire,"

and that indecent things do not happen to decent people. In the religious community there is often implicit censure of the complainants, as if they have contributed to the embarrassing incident and perhaps even initiated it. The rumor mill at times hurts the complainants to such an extent that they find themselves humiliated in ever-widening social circles. The future consequences of filing a charge—even if it is successful—may be very harsh: it may be hard for single people to find matches, as a pall of implicit illegitimacy is cast over their families.

This is all intensified if the complaint concerns the behavior of a religious leader. On account of his stature, a religious leader is much more likely to be presumed innocent. He benefits from the backing and the support networks of those who depend on him in various ways: from a spiritual-religious perspective (his students), from an educational-ideological perspective (those who espouse the pedagogical philosophy with which he identifies), from an institutional and economic perspective (those who attend the institution where he serves and those who are employed there, who may worry that their livelihoods will be impacted), from a communal perspective (the more public a figure the rabbi is), and so on. It is a sad truth that in the religious sector in Israel there is a widespread tendency to respond leniently to religious leaders who transgress, with only limited censure. There are also notorious cases in which an entire incident was covered up under the false pretext of preventing “the public desecration of God’s name.” In general, figures of religious authority benefit from social mechanisms that make it hard to expose them and to investigate the sexual harassment charges filed against them.

It is important to emphasize that the sexual harassment of a religious individual by a figure of religious authority may well have harsher ramifications than other instances of sexual harassment. In addition to everything that is impacted in the life of the person who is harassed, whoever he or she may be, harassment in the religious sector also endangers the individual’s religious life. Such an unsettling of one’s foundations often leads to an even more profound personal crisis. Even though the potential damage caused by sexual harassment in the religious sector is greater, the chances of investigating the matter and successfully bringing sexual offenders to justice are less than would ordinarily be the case. The sexual harassment law is not sufficiently enforced in the religious community.

It is against this backdrop that organizations of religious women established the Takana Forum (see [www.takana.co.il](http://www.takana.co.il)) in 2003, described as “the forum for contending with and preventing sexual harassment by individuals of power and authority in the religious population.” The Forum has two overarching goals: the first is to contend with situations

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in which a sexual harassment complaint is levelled at a religious leader and the case is not handled by the lawful authorities. The second is to discourage sexual harassment by means of raising public consciousness about this matter in the religious community, which includes offering counselling and training services to religious institutions interested in receiving them, ensuring that the Forum's voice is heard in the Israeli media, and participating in relevant public activities.

The Forum composed "regulations for contending with and preventing sexual harassment and/or assault" (as per the Forum's website), which establish rules of conduct for those in positions of power and authority in the religious population. The goal of these rules of conduct is to deter sexual harassment without preventing people in positions of authority from fully functioning in their roles (including, for example, conducting personal conversations and dealing with sensitive topics). The regulations are also designed to protect authority figures from false accusations. The regulations were disseminated throughout religious educational institutions.

It is important to emphasize that the regulations do not permit anything that the State law forbids. Rather, the opposite is the case: the regulations are stricter than the State law in that they proscribe certain forms of behavior that the State law permits. For instance, according to the regulations it is forbidden for an authority figure to study in partnership with a lone pupil; when an authority figure travels with a pupil, the pupil must sit in the backseat and not in front next to the authority figure, etc. The regulations are intended to establish clear standards of appropriate conduct when it comes to the relationship between rabbis and students. The regulations are publicly accessible and are posted on the bulletin boards of most educational institutions, informing rabbis and students of the appropriate standards of conduct.

In addition, an "ethical code for the members of the Forum" was developed, which establishes core principles, such as "it is forbidden to defend or to cover up perversions of justice on the pretext that their exposure would lead to the desecration of God's name. On the contrary, God's name is sanctified when justice is served." The code stipulates what is expected of all Forum members who become aware of instances of sexual harassment.

The Forum is comprised of some thirty members, all of them individuals well-known in the National Religious community. They include a sizeable group of distinguished rabbis at the forefront of Religious Zionism, prominent educators, senior mental health professionals, activists in

organizations that offer assistance to women, and eminent jurists. The Forum is run by its constituent divisions, including the presidency of the Forum, the professional board, the board of directors, and the general assembly. The director of the Forum is Mrs. Yehudit Shilat. The various divisions are staffed by members of the Forum. Major institutions from all across the National Religious spectrum have joined forces with the Forum, including women's organizations, the center for Bnei Akiva yeshivot, the organization of Hesder yeshivot, major networks of schools, youth movements, charitable organizations, and others.

Although the members of the Forum include prominent halakhic decisors from the National Religious population, the Forum does not function as a halakhic decision-making body. It is not a formal rabbinic authority, interpreting and deciding upon matters of Jewish law, that is responsible for determining the legitimacy of particular forms of behavior on the part of the allegedly offending or the injured party, or the way in which the various committees deal with gathering testimony and laws of evidence, or the nature and the content of their rulings. All of the Forum's circles of activity—including the committees that adjudicate and rule in each of the cases—include both women and men who are not trained in halakhic decision-making, such as mental health professionals, jurists, and others. Whoever they may be, all the members of the Forum act out of a moral and religious consciousness which guides them in all aspects of their lives.

## **2. How the Forum is Run**

The Forum's primary activity on an ongoing basis consists of contending with complaints about acts of sexual harassment allegedly committed by figures of authority and power in the religious sector. The Forum has developed a clearly-defined procedure for responding to victims' complaints, which will be detailed below. However, not every report of sexual harassment by a figure of authority or power falls under the Forum's auspices. If the law requires that the alleged incident be reported to the national authorities—as with, for instance, sexual abuse of a minor—the Forum immediately forwards the report to the authorities and withdraws its involvement. Furthermore, if a crime may be involved, (even if there is no obligation to report it), the Forum urges the complainants to file a criminal complaint. Indeed a fundamental principle of the Forum is that complainants should always be encouraged to report the incident to the police, which has the resources, the experience, and the authority to best investigate these charges.

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Only when it is clear to the Forum that the complainants are unwilling to press criminal charges and there is concern that the complaint would not be investigated anywhere else, the Takana Forum gets involved to handle the complaint (and this too happens only after the Forum reports the complaint to the office of the Attorney General and receives a green light to proceed with the case). In addition, if the incident does not seem to be criminal in nature but apparently violates the guidelines for proper conduct outlined in the regulations, then the Forum will likely take on the matter.

Over the years the Forum has dealt with scores of complaints, which fell into two categories: suspected criminal offenses in which the complainants refused to go to the authorities, and behavior that is not illegal but is contrary to the Forum's regulations, which are more stringent than the law. Those complaints that the Forum refrains from handling also fall into two categories: cases in which the Forum managed to persuade the complainants to appeal to the State authorities and go through the official channels, and cases in which the Forum concluded that the complaint was not a criminal act nor a violation of the Forum's regulations.

Upon receipt of a complaint, it is relayed to the Forum's professional board, which determines whether it is appropriate for the Forum to handle. If the answer is affirmative, the professional board then establishes a committee of Forum members to investigate the complaint. The committee is generally comprised of four individuals – two men and two women: a rabbi, an educator, a therapist, and a jurist. This committee summons the complainant and other witness to testify. The committee also summons the defendant to respond to the allegations. This is followed by a hearing. Then a decision is reached as to whether the defendant indeed committed an act of sexual harassment. It is important to note that the committees do not purport to replicate the work of the court. For instance, in an attempt to reach a consensus, the committee is comprised of an even number of members, unlike the common practice where there is a judicial panel. Likewise, the committee's ruling is not arrived at based solely on legal criteria, and thus the Forum draws on the multiplicity of professional perspectives of the diverse group of individuals who comprise the committee.

If the committee concludes that the complaint has been substantiated, it can impose various sanctions—such as specific limitations on how he may conduct himself in his interactions with the public, to very severe sanctions such as mandating that he quit his job and prohibiting him from taken on a public pedagogical role in the future. The Takana Forum does not have enforcement powers like the State, but its public and

religious influence considerably increases the likelihood that the defendant will opt to comply. In addition the Takana Forum may inform various parties, such as the defendant's employers, of his actions, and to request that they uphold the sanctions. For the most part the Forum is highly successful in enforcing the committees' decisions, whether on account of the compliance of the defendants or on account of the cooperation of the institutions and organizations who employ them.

### **3. The Forum and the Laws of the State of Israel**

The Takana Forum is a private organization, and not an organ of the State. Yet the Forum presumes to impose sanctions on individuals, even in criminal cases. Is this permissible?

Theoretically criminal law (as opposed to civil law) deals with the relationships between the individual and the public. Thus it does not fall under the jurisdiction of private bodies, but rather under the public jurisdiction of the State, which relies on its various organs: the State Prosecution and the Attorney General, who also functions as the public prosecutor. The coercive and mandatory nature of criminal law reinforces the sense that there is no place for privatization of norms and standards.

Furthermore the sanctions imposed on one who violates criminal law impact on the rights of the individual who is convicted. Imposing a fine involves appropriating a person's property; defaming an individual tarnishes his reputation; firing a person affect his to freedom of occupation, etc. Criminal law is a societal tool with potentially harsh consequences for the individual.

The State of Israel has exclusive jurisdiction over criminal law and its enforcement. This is out of concern that the privatization of justice—handing over judicial power to an organization, institution, social group, or the like—is liable, on the one hand, to enable the accused to evade the full consequences of his actions should he receive an overly lenient sentence, thus contravening the public interest at large; or, on the other hand, to result in an overly harsh sentence. Obviously the State cannot permit a religious group to establish a private court that would sentence a Sabbath violator to death by stoning, or cut off the hand of a thief.

We can thus understand the Israeli Penal Code's prohibition on establishing private courts to administer criminal justice. Article 269 of the Penal Code provides that "a person may not play a role in the judicial proceeding once a suspicion of criminal activity arises, unless he notifies the Attorney General or his representative." The term "judicial proceeding" is defined in article 268 as a process that leads to one of the

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following: removing an individual from an organization in which he is a member; denying one of his human rights in that organization; publicly defaming him; and—and this is most relevant for our purposes—any other sanction that involves censure.” Anyone who violates this provision and participates in a judicial proceeding under these circumstances risks a year of imprisonment. Consequently private courts, such as that of the bar association or of a university, are not authorized to impose sanctions on an individual if there is any suspicion of criminal activity. This is how the State seeks to ensure that its doctrine of criminal justice will be implemented.

That said, there are exceptions to the national court system’s exclusive jurisdiction over criminal matters. The law permits the Attorney General to allow for exceptions at his own discretion. This is the background to the Forum’s 2006 appeal to the Attorney General at the time (today a Supreme Court justice), Meni Mazuz, Esq., with a request for permission to conduct a judicial proceeding, as per the usage of this term in the Penal Code, against individuals of authority and power in the religious community who are accused of sexual harassment. In this appeal the Forum also detailed a specific incident in which a complaint was filed with the Forum, without revealing the identity of those involved. The request for confidentiality came from the complainants, who feared public exposure, and the Forum respected their wishes.

The Attorney General and his staff met to consider this request. In attendance were the State Attorney and his staff, as well as senior representatives of the Israeli police force. They deliberated for some time, and with good reason: this was not a trivial decision, as will be explained below. In any case, following various in-house consultations, the Attorney General authorized the Forum. He refrained from stipulating at the outset which complaints the Forum was authorized to handle. Instead he ruled that in every incident in which there arises a “suspicion of criminal activity” during a specific proceeding conducted by the Forum, the Forum is obligated to notify the Attorney General of the matter, so that he may decide, in each case, whether to authorize the Forum to handle the incident based on the circumstances. “This will involve also giving credence, among other considerations, to the contribution of the Forum in the struggle to uncover and contend with incidents of sexual harassment of all sorts.”

As for the specific case that had been brought before him, the Attorney General wrote to the Forum that he had decided “not to order the termination of the proceedings they were conducting. This is in light of the nature of the proceeding, the nature of the Forum handling the



matter, and the sense that there would be no point of dealing with the matter in a criminal investigation, primarily in light of the complainant's adamant refusal to file charges with the police or to cooperate with a police investigation." (From a letter from Raz Nazari, Esq., Deputy Attorney General, to Professor Yedidia Stern, member of the Forum, on July 6, 2006.)

The authorization granted by the Attorney General for the operation of the Forum breaks the State's monopoly on criminal law twice over: first, on the level of content, the Forum establishes more stringent norms in the field of sexual harassment; and second, on the institutional level, the Forum conducts judicial proceedings independent of the State judicial system. The State remains the ultimate authority, since the Forum must obtain the Attorney General's authorization in order to continue with a proceeding. However, in approving of the Takana Forum, the Attorney General has authorized a body of private citizens to operate in a judicial capacity, at times impairing the human rights of other citizens who belong to their community, in accordance with the prevailing norms of justice in that community.

#### **4. The Challenges in Running the Forum**

The operation of the Forum parallels the operation of all the various entities that administer criminal justice: It investigates (parallel to the police), it puts individuals on trial (parallel the prosecution) and it imposes sanctions (parallel to the court). But in fulfilling all these roles it runs into several challenges which will be detailed below. Both in the religious sector and in the general public, some citizens maintain that the aggregate weight of all of these challenges undermines the legitimacy of the Forum, which should therefore be abolished. Others maintain that these concerns are not to be taken lightly, but there are ways to confront them by making changes in the way the Forum is run. Yet it seems to me that most of the Israeli public, both religious and secular, supports the operation of the Forum in spite of the many challenges.

A sizeable group of non-religious jurists, including some of the most senior in Israel, understand the importance of the Forum and strongly support it. As noted, the Attorney General too, in conjunction with the State Prosecution and the police, investigated the way in which the Forum conducts its activities and decided to authorize the Forum's operation, while helping to shape the way it is run so as to minimize these concerns.

Here is a breakdown of the challenges:

#### 4.1 The Rule of Law

A study conducted by the Israel Democracy Institute entitled “Religious? National!” (Tamar Herman et al., 2014) revealed that the National Religious public’s trust in the Knesset (39%), the Supreme Court (43%), and the government (42%) is lower than the secular public’s trust in these same institutions (58%, 72%, 59%, respectively). About half of the National Religious population maintains that religious members of Knesset ought to be subject to rabbinic authority when it comes to political matters, and nearly 40% maintain that soldiers in the IDF should refuse to obey military orders to evacuate settlements in Judea and Samaria. It is worth adding that the vast majority of National Religious halakhic decisors in Israel refer to the Jewish and democratic State’s courts as “gentile courts” (*arkhaot shel goyim*), with all the halakhic significance that designation entails.

The picture that emerges, which is very familiar to Israelis, is one of a complicated tension between the political and legal authority of the State, particularly in matters of religion and State and foreign policy and security, and the views prevalent among large sections of the National Religious population. Given this, we could imagine that the State might have difficulty recognizing the quasi-judicial activity of a religious Forum that operates extra-legally on behalf of the religious community. Recognition of a Forum that is run, in part, by rabbis who condition their cooperation with the State on other important issues, is no simple matter.

That said, as explained above, the Takana Forum officially accepted upon itself—in its official documentation and in many public declarations—its full subordination to the law and to the guidelines stipulated by the Attorney General. Those who serve on the Forum include senior jurists for whom a strict adherence to the rule of law is a given. Obviously, had the Attorney General decided not to recognize the Forum, it would have desisted immediately from its quasi-legal activities.

#### 4.2 Communal Authority

The members of the Forum are not elected by the community. It is an entirely private group that invites organizations and individuals to join it at its own discretion. Given that, we must inquire about the Forum’s right to claim to be the voice of the National Religious community. Through what process of accreditation or representative election does the Forum derive its authority?

The clear response to this objection, it seems, emerges when we examine the composition of the members of the Forum. This is a group

unlike any other in the public life of the religious community in Israel. Joining each other at the table are leading rabbis from all across the Orthodox ideological spectrum: liberal modern Orthodox, classical National Religious, Zionist-ultra-Orthodox. The very act of bringing together all of these individuals is in itself an extraordinary accomplishment. Then there are the women's organizations, which also represent a wide range of individuals; the mental health professionals, some of whom represent the leading organizations in the field; the jurists, some of them quite senior, who represent a variety of worldviews, etc. The organizational chart of the participants in the Forum is also very impressive.

Perhaps not a single group that plays a significant public and ideological role in the National Religious community is unrepresented. Even in the absence of any formal process that guarantees representation, there is little doubt that this representation is achieved very successfully. The empirical evidence lies in the fact that the Forum's decisions, once received, are implemented by the vast majority of the members of the community.

### **4.3 Investigating the Truth**

In every legal ruling, there is concern about arriving at the wrong verdict, which would convict the innocent or acquit the guilty. But here the concern is even greater, because unlike jurists in a courtroom, those who serve on the Takana Forum committees are not individuals who engage full-time in this work, and many are not even legally trained. Moreover, the proceedings are not conducted based on clearly-defined rules of evidence. The Forum's committees do not have investigative techniques like those employed by the police, and they lack the authority and the capabilities that the law enforcement system employs as a matter of course.

Likewise the Forum does not permit lawyers—"officers of the court"—to appear before the committees, such that the opposing sides are not represented by professionals. The Forum is currently considering the possibility of changing this practice so as to allow for professional representation at its hearings. In any case, the primary tools that legal systems afford to their judges are not afforded to the committees that deliberate the fate of those accused of sexual harassment. There is therefore a justifiable concern that the committee's verdicts are even more prone to error.

These are very weighty objections that cannot be dismissed with the wave of a hand. From my experience I can attest that the Forum's committees are aware of these limitations and that they try, to the best of their

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ability, to be extremely cautious when it comes to guarding against error in judicial proceedings. They are aided by the fact that in the majority of cases the offenders and the complainants view the committee not just as a “courtroom”; as members of the religious community, they ascribe singular importance to the proceeding and to the committee that deals with their affairs, which is based on the Forum’s public credibility. The absence of investigative techniques and professional experience is made up for, at least partially, by the committee’s religious leadership authority in the eyes of the disputants. Thus, the percentage of cases in which the offender admitted to the charge leveled against him in the context of the Forum’s hearings is much higher than the percentage of admissions of guilt in sexual harassment cases in court. Of course this does not address the real challenge, which still stands.

### 4.4 Miscarriage of Justice

There is also the concern that there may be a deliberate miscarriage of justice on the part of the individuals conducting the proceedings. This concern is twofold. On the one hand, given that the Forum is intra-communal, it is possible that the members of the committee may commit an act of malice against the accused, whom they may dislike on account of personal circumstances, professional competition, disagreement over ideological matters, etc. On the other hand, the intra-communal Forum may act out of an interest in protecting rabbis who are accused of harassment, and out of a tendency to “close ranks,” such that a valid complaint may be inappropriately dismissed.

There is no perfect response to this concern, but there is an adequate one: The Forum’s committees are not homogeneous, but they are diverse, such that a deliberate miscarriage of justice is unlikely to take place on account of inappropriate interests or personal preferences. As explained above, every committee includes not just a rabbi, but also a mental health professional, and a jurist. It is worth noting that in one specific case in which such claims were raised, the forum broke from its standard practice and significantly increased the number of members on the committee, thereby silencing the gossip-mongers.

### 4.5 Absence of Supervision

The Forum’s hearings are not conducted in public, and its decisions are not publicized. This way of operating, which is different from courtroom procedure, is necessary under the circumstances, given that opening the Forum’s hearings would defeat the primary purpose of the complainants

who appeal to the Forum, namely the protection of their privacy. But this comes at an inevitable cost: the activities of the Forum are not subject to public or professional review. Moreover, unlike judicial or administrative proceedings, the Forum's decisions are final and not subject to appeal either by the complainant or by the accused. The lack of transparency and the absence of any right of appeal may be seen as fertile ground for arbitrary or mistaken conduct.

In response to these serious arguments, it is worth giving the following two matters their proper due:

First the general assembly of the Takana Forum, which includes thirty men and women, receives a regular report on all the cases dealt with by the various committees, in which all parties remain anonymous. In this context the committees raise various dilemmas that came up in their deliberations, and they conduct a brainstorming session intended to come up with appropriate resolutions. In addition the Forum administratively directs many inquiries—on principle and on specific cases—to leading jurists and other experts outside the Forum.

Second and most important, the members of the Takana Forum do not enjoy any form of immunity, which is naturally afforded to the State's judges and law enforcement officers. They are not protected from being personally sued by the accused for defamation or threats of extortion. Anyone who serves on one of the Forum's committees does so at real personal risk: if (s)he is personally sued on account of his or her role, (s)he will be in a difficult position without the cooperation of the complainant, who is likely to be anxious to protect his or her privacy. This matter underscores the high level of responsibility that the members of the Forum take upon themselves, which is all without any financial reward. This responsibility, and the personal exposure that looms over the participants, are the best guarantees that they will conduct themselves with the utmost propriety.

#### **4.6 Interference with Police Proceedings**

The activity of the Forum might complicate police proceedings. For instance, the Forum may be unaware of that the police is simultaneously conducting a confidential investigation of the defendant. Summoning the suspect to a Forum hearing is liable to apprise him—against the best interests of the investigation—that his actions have been made public. This in turn would allow the defendant to destroy or conceal evidence, to put pressure on other potential complainants, and to engage in other defensive measures.

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As a partial response, the Forum coordinates its work with the Attorney General's office. Every complaint that reaches the Forum is reported anonymously to the Attorney General's office, which determines whether there is a chance that charges have been filed with the police, and whether the defendant is already the subject of a police investigation on account of this incident or other related incidents. Only if the Attorney General's office is satisfied that there is no such possibility does he authorize the Forum to handle the claim.

### 4.7 Confidentiality

The Takana committees operate with full discretion when it comes not just to the identity of the victim, but also, by necessity, to the identity of the perpetrator. This is required because publicizing the name of the perpetrator generally leads to the exposure of the victim – whether by a deliberate act on the part of the perpetrator, perhaps even an act of retaliation, or whether by the community merely putting two and two together. However, preserving confidentiality when it comes to the identity of the perpetrator diminishes the educational and the deterrent message of a public proceeding. Likewise, if the general public is not privy to these matters, then individuals are not protected against further offenses by the same individual.

This is a very significant challenge that the Forum's committees seek to address by means of the sanctions that they impose. For instance, one sanction commonly employed is to prohibit the perpetrator to return to work or to put himself in a situation that may allow him to repeat his offensive behavior. The Forum also checks that its provisions are followed and occasionally it has interfered, even some time later, to ensure that the offender does not return to a position in which he can cause harm to others.

### 5. The Forum – Interim Summary

In light of the challenges outlined above, why did the Attorney General authorize judicial proceedings by those who are not legally judges but are rather self-appointed representatives of the social-religious sector? And furthermore, how can the members of the Forum presume take upon themselves the responsibility to cause significant harm to another individual—affecting his livelihood, his reputation, his self-image, and at times also having broader repercussions for his family, his disciples, and others?

There are situations in which an extremely dangerous man walks among us under the guise of a man of God, and there is no legal recourse to save the prey from the predator. The power dynamic between the

perpetrator—a mature and charismatic adult with religious authority, and the victims—who are often young and naïve, fearing both God and man, makes it difficult for the victims to defend themselves during the act itself and to file a complaint after the fact. Given that this is the case, anyone who has the ability to help rescue the victims has the weighty responsibility to do so, as per the Bible’s injunction “Do not stand idle when your neighbor’s blood is at stake” (Leviticus 19:16). The blood of those who have already been hurt, and the blood of those who are likely to be hurt in the future, cries out from the earth.

As the last decade has demonstrated, the National Religious community in Israel has the ability to contend with harassment even in cases where the State is unable to come to the victims’ aid, thanks to a diverse group of communal leaders—both men and women.

But the community can take on this role only after it is clearly determined that its private involvement will not in any way lead to the suppression of complaints that would otherwise be brought to the police’s attention. It is thus incumbent upon every member of the Forum, as per the Forum’s code of ethics, “to refrain from all acts of commission or omission that would lead to the suppression of a complaint.” Moreover the Forum is obligated to cooperate fully with the authorities, to the best of its ability. This obligation is articulated on the Forum’s website in the following explicit terms: The Forum “is at the disposal of victims only in cases when they do not wish or are unable, for their own personal reasons, to file a charge with the police, yet they nonetheless wish for justice to be served and for the perpetrator who took advantage of his position to be removed from any situation in which he is able to engage in further acts of abuse so as to prevent others from getting harmed and so as to safeguard the sacred values on which a religious community seeks to base its life.”

As for the concern that the approval by the State of the Forum’s activities infringes upon the authority of the State and its rule of law, the response is to be found in Takana’s code of ethics and in its regulations, which emphasize that the activity of the Forum is not intended to interfere with State laws, and its decisions should not be interpreted in any way that contradicts the law or the rulings of the Israeli courts.

The consequence is that to the extent that any Israeli citizen who sexually harasses a subordinate or any other individual is “threatened” only after a complaint is filed with the police, and only by Israeli law, an authority figure from the National Religious sector is also “threatened” by the regulations of Takana, whose standards are higher than those established by the law, and whose punishment is not dependent on whether the matter was brought to the authorities’ attention. It thus emerges that

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the very fact of an individual's belonging to this social sector imposes upon him, unwillingly and unknowingly, these singular rules of conduct. One can object to this reality, or one can celebrate it. As one who has been there from the Forum's inception until now, and as one who participated in the decision-making during some very dramatic and foundational cases, I feel that it is a privilege to be part of this important group of those who are literally engaging in Tikkun Olam, the repair of the world.

It seems fitting to conclude with a quote from an article by one of the most senior jurists in Israel, Professor Nili Cohen, who is also the President of the Israel Academy of Sciences and Humanities, and who writes as follows: "The recognition of an arrangement such as that suggested by the Takana Forum is an expression of cultural pluralism. The monolithic national system cannot respond to human complexity. The arrangement offered by the Takana Forum is tailor-made to fit the personal preferences of its members. It gives expression to the diversity of religions, cultures, and faiths. A person who seeks to join a particular community ought to accept its rules." She goes on to say: "A Forum such as the Takana Forum is legitimate, and it constitutes the State's recognition of communal rights and multi-culturalism." [From "Prisoners, Communities, and Natural Authority" in *Law and Business* 14 (2012), 595-637.]