

Israel's Responsibility for Eliminating the Discrimination against Ultra-Orthodox Jewish Women in the Right to Equal Participation in Public and Political Life in Israel

Submission to the Committee on the Elimination of Discrimination against Women (CEDAW)

State under Review: Israel

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Submitted by:

"Nivcharot" (NGO) - Ultra-Orthodox Women for Voice, Equality and Representation.

"Nivcharot" was established in 2012 (and is a registered NGO since 2015), in order to promote feminist discourse within the ultra-Orthodox Jewish community in Israel, to raise awareness of women's rights, and to call on the State to fill its responsibility to advance gender equality for ultra-Orthodox women. Among its activities, *Nivcharot* led several protest campaigns under the slogan "If we can't be elected, we won't vote" - "no Voice – No Vote" during several national and municipal elections, to increase awareness among ultra-Orthodox Jewish community of women's equal right to full participation in the Israeli public sphere.

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A. Introduction

1. This report focuses on Israel's abstention from taking measures, including the enactment of appropriate legislation, to ensure that political parties do not discriminate against women and that they respect the principles contained in Articles 7 and 8 of CEDAW. The report focuses on two political parties, namely the ultra-Orthodox Jewish parties 'Yehadut Hatorah'¹ and 'Shas'² whose regulations include **formal exclusion of women from being eligible for election to the Knesset and to municipal councils**. These parties are a significant part of Israel's coalition for decades, constitute part of its government and their representatives are senior ministers.
2. While these two parties are the most natural political base for ultra-Orthodox Jewish women and have significant electoral power in the Knesset, as well as significant influence in the government, they both formally and completely ban access to ultra-Orthodox Jewish political representation of women.
3. Israel's abstention from addressing discrimination against women in practicing their right to public and political participation on equal terms with men within the framework of the ultra-Orthodox political parties violates Articles 2(e), 2(f), 3, 4, 7 and 8 CEDAW. It is also opposed to articles 27 and 42 of CEDAW's General Recommendation no. 23. In this regard, it is worth reiterating CEDAW's principles according to which **the most significant factors inhibiting women's ability to participate in public life have been the cultural framework of values and religious beliefs,³ and that formal removal of barriers and the introduction of temporary special measures are essential prerequisites to true equality in political life.⁴**
4. Israel's abstention from addressing ultra-Orthodox women's right to be eligible for election within ultra-Orthodox Jewish parties is also opposed to the Committee's previous concluding observation 33,⁵ which called upon Israel to

¹ In translation to English: 'United Torah Judaism'.

² An acronym for the Hebrew expression of: 'Guardians of the Sephardim'.

³ General Recommendation 23, para. 10.

⁴ General Recommendation 23, para. 15.

⁵ UN Committee on the Elimination of Discrimination against Women, Concluding observations of the Committee on Israel, Forty-eighth session, 5 April 2011, CEDAW/C/ISR/CO/5, available at:

"pursue sustained policies aimed at the promotion of the full and equal participation of women in decision-making in all areas of public, political and professional life" and to "fully utilize the Committee's general recommendation No. 23 and ... adopt temporary special measures, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25, in order to accelerate the full and equal participation of women in public and political life".

5. In June 2016, *Nivcharot* submitted a shadow report to the pre-sessional working group for the List of Issues Prior to Reporting (LOIPR), calling on the committee to request information from the State of Israel, regarding, *inter alia*, the steps taken to eliminate discrimination against women in their right to be elected, including the imposition of sanctions on political parties whose regulations formally prohibit the election of women.
6. Correspondingly, paragraph 14 of the LOIPR requested the State to provide updated information on the situation of women regarding their participation in public life, particularly in the Knesset, State boards, senior positions in the government, the judiciary and the Foreign Service. In addition, the committee requested information on specific measures, including temporary special measures and other programs to promote women's participation in political and public life; including measures taken - since the last review of Israel's report - to sanction political parties whose regulations forbid the election of women. All, in order to meet a minimum representation rate in line with the Sustainable Development Goal 5, target 5.5.
7. Unfortunately, and despite the fact that *Nivcharot* approached the International Department at the Israeli Ministry of Justice prior to submitting this report with a letter dated April 26, 2017, explaining how severely ultra-Orthodox women suffered from political exclusion, and calling on the State to proactively act to eliminate the formal exclusion of women from political life;

a review of the report of the State of Israel shows only passing reference to our letter, and evasion of dealing with the difficult questions raised in it.

8. Therefore, the current report aims at providing CEDAW with a better understanding of the situation of ultra-Orthodox Jewish women in Israel with respect to their right to equal political participation. It also aims at persuading CEDAW to include, in its concluding observations, specific recommendations that target the exclusion of ultra-Orthodox Jewish women from ultra-Orthodox Jewish political parties as detailed below, along with the other recommendations that address similar issues in other sections of the Israeli society (Arab Women).

B. The Formal Exclusion of Ultra-Orthodox Women from Public and Political Space

9. Israeli women in general are underrepresented in the Knesset and constitute only 27.5% of all Knesset Members (“MK”).⁶ Yet, the most severe expression of violating women’s right to be elected is found in the ultra-Orthodox parties ‘Yehadut Hatorah’ and ‘Shas’ which together have 13 MKs out of 120.⁷
10. Yehadut Hatorah’s regulations prohibit women from becoming members in the party by stipulating that only Jewish men are allowed to become the party’s candidates for the Knesset.⁸ The regulations further preclude women from active participation in the party and indicate that “a woman is entitled to join the ‘Women of Agudat Yisrael’ movement, which is a separate body that does not take part in the general or municipal elections. To the best of our knowledge, similar provisions exist in Shas’ party regulations too.

⁶ For more information on the representation of women in politics in Israel, see Israel Democracy Institute (“IDI”), Women in Politics 2017, available at: <https://en.idi.org.il/articles/14034>

⁷ For more information on current Knesset Members (the 20th) by parliamentary group, see the Knesset website at: https://www.knesset.gov.il/mk/eng/mkindex_current_eng.asp?view=1

⁸ Yehadut Hatorah’s party regulations, 1994, Article 6.

11. In 2015, a petition to the High Court of Justice was filed to invalidate discriminatory article 6 of Yehadut Hatorah's regulations.⁹ On February 8th 2016, the court asked the Attorney General to provide his legal opinion on the case.
12. The Attorney General filed a long and detailed opinion in which he referred to the problematic nature of those provisions in Yehadut Hatorah's regulations; describing them as harming the founding principles of democracy, harming women's right to dignity and equality, a strict and formal barrier that keeps women away from positions of influence, and as comprehensively harming a minority group based on its religious belonging. However, and despite all his reservations, **the Attorney General's opinion is that there is no legal basis for invalidating those specific regulations, or disqualifying the party and precluding it from taking part in the elections.**
13. The Attorney General's legal grounds for the aforementioned conclusion derive from the rationale of restraining state and judicial authorities from intervening in the activities of political parties, the lack of legislation that allows such intervention and the fact that the Political Parties' Law¹⁰ does not oblige parties to operate in accordance to democratic principles. For example, the Law does not oblige parties to conduct elections for appointing personnel in different positions in the party, and it does not oblige parties to join members to the party on equal basis. Regardless of this litigation's outcome, which is still pending before the court, the fact remains that State authorities have not taken any measures to remove the official barriers to ultra-Orthodox women's participation in political life.
14. The issue of denying women the right to be elected within religious parties based on religious grounds was addressed by the European Court of Human Rights in *Staatkundig Gereformeerde Partij v. The Netherlands* (2012).¹¹ Staatkundig Gereformeerde Partij – a Religious Christian party in the

⁹ HCJ 1823/15 *Ben Porat v. Registrar of Political Parties*, Pending. The petition was filed prior to the general elections in 2015, and after it was submitted tens of women organizations joined the petition.

¹⁰ The Political Parties' Law - 5452.

¹¹ *Staatkundig Gereformeerde Partij v. The Netherlands*, App. no. 58369/10 [2012] ECtHR 1898, 10th July 2012, 49.

Netherlands that as well denied women the right to be elected – filed a complaint with the European Court of Human Rights against the State of Netherlands following a prolonged legal struggle in domestic courts that resulted, eventually, in a decision by Netherland's Supreme Court. The Supreme Court in Netherlands reaffirmed the State's obligation under CEDAW to ensure that political parties allow women to exercise their right to stand for election, emphasized the special status of this right in a democratic regime, and ruled, under the circumstances, that the right to equality between men and women overturns other rights, such as the rights to freedom of religion and freedom of expression. The European Court of Human Right embraced the analysis and the conclusion of Netherland's Supreme Court and dismissed the complaint.

C. The Exclusion of Ultra-Orthodox Women from the public sphere has no reasonable grounds in the Jewish or the Israeli Law:

15. The issue of women's participation in public and political life arose at the stage of the establishment of the State. At the time, many of Israel's Rabbis, such as Rabbi Ben-Zion Meir Hai Uziel, took the view that women are allowed to take part in public activities, both passively and actively.¹² The ultra-Orthodox political parties however, excluded themselves from that general rule by granting women suffrage but not the right to be elected, and anchored these regulations in the Parties' constitutions.
16. A central argument used by ultra-Orthodox Jewish political parties to prevent women from participation in public and political life is said to be based on values of modesty and on the view relegating women to the private sphere, and entrusting men, exclusively, with government affairs. However and as further detailed below, this argument has little to do with modesty and religious beliefs and is systematically used to exclude ultra-Orthodox women from policy making and political activism.

¹² Id.

17. Nowadays, ultra-Orthodox Jewish women are the primary earners in their households; they participate in the workforce to enable ultra-Orthodox Jewish men to engage in full-time religious study.¹³ In addition, in recent years, there has been an increase in the number of ultra-Orthodox Jewish women studying in academic institutions.¹⁴ Furthermore, ultra-Orthodox Jewish male MKs work closely with other female MKs. All these interactions and the obvious active role of ultra-Orthodox women in the public sphere, suggest that the refusal to include ultra-Orthodox women in political life lies in a deliberate and systematic exclusion, is political in nature, and has little to do with modesty and other religious beliefs. Ultra-Orthodox Jewish women are essential to their family and community in terms of social and economic impact, where their influence is paramount, yet when it comes to wielding any power in policy making and political activism, their role is denied.

18. In December 2015, the High Court of Justice in Israel rendered a precedential decision in which it allowed for a religious women organization to file a class action against “Kol Barama” – a radio station for an ultra-Orthodox audience – claiming that the station acted by a declared policy of banning women from being heard in their broadcasts, and that this policy constitutes unlawful discrimination under the *Prohibition of Discrimination in Products, Services and in Entry into Places of Entertainment and Public Places Law 5761-2000*.¹⁵

19. Among the questions that the Court was concerned with was whether the policy of the radio station constitutes ‘Unlawful Discrimination’ as defined in the law or whether it falls under the exceptions that allow for gender distinctions on religious grounds. The court ruled that the policy constitutes an unlawful discrimination and does not fall under the exceptions to the prohibition of the law. By ruling so, the court reasoned that in order for a

¹³ The Israel Democracy Institute, *Haredi Women in the 21st Century: Family, Community and Society*, available at: https://www.idi.org.il/media/4437/haredi_women_book.pdf; The Knesset's Research and Information Center, data on ultra-Orthodox employment by Neta Moshe (2016), available at: <https://www.knesset.gov.il/mmm/data/pdf/m03737.pdf>. According to the research as of 2015, the rate of participation of ultra-Orthodox women in the labor market was 75.8%.

¹⁴ The Israel Democracy Institute, *supra* note 13.

¹⁵ PCA 6897/14 *Kol Barama Radio Station v. Kolekh – a forum for religious women* (published in Nevo: 09.12.2015).

discriminative policy to fall under the exceptions on religious grounds (and be lawful as a result), the religious norm that lies beneath that discriminative policy has to be both unassailable and obligatory, as opposed to non-binding norm.¹⁶ The Court rejected the appeal and ruled that the petition can be classified as Class Action both in its essence and in the way it was filed.

20. Despite its focus on discrimination under the *Prohibition of Discrimination in Products, Services and in Entry into Places of Entertainment and Public Places Law 5761-2000* the “Kol Barama” case indicates that a religious norm that is not well established, as the one used to exclude ultra-Orthodox Jewish women from political and public life, cannot overturn the basic rights of women to dignity and equality.

D. Implications of Lack of Political Representation on the Life of Ultra-Orthodox Women, and Ultra-Orthodox Community in General

21. Ultra-Orthodox women represent the community to which they belong. Therefore, their inability to be elected to the Knesset has a broad impact on the aspects of their life, and the life of ultra-Orthodox community.

22. **Employment.** The ultra-Orthodox Jewish women, who work and finance their families, are discriminated against in the employment field, not only compared to men but also compared to non-ultra-Orthodox Jewish women. The lack of political representation and the exclusion from political and public life clearly perpetuates discrimination as well as the violation of their rights and terms of employment.

23. The employment rate among ultra-Orthodox women is not significantly lower than the national employment rate among women.¹⁷ However, the salary of ultra-Orthodox women is significantly lower than that of an average woman in

¹⁶ Supra note 15 at para 53.

¹⁷ The Knesset's Research and Information Center, supra note 13. According to the report as of 2015, the rate of participation of ultra-Orthodox women in the labor market was 75.8%, while the participation rate of non-ultra-Orthodox Jewish women was 84%.

Israel (which itself is lower than the salary of men).¹⁸ Moreover, the employment rate of ultra-Orthodox women in the public service is only 65%, compared to 73% among non-ultra-Orthodox Jewish women.¹⁹ Ultra-Orthodox women also suffer from discriminatory employment conditions, including non-payment of full wages, illegal lay-offs, prevention of seniority and more.²⁰ This discrimination of ultra-Orthodox women in the employment market harms not only them as women but also their family members who depend on them for their survival.

24. Education. The Government of Israel is currently investing considerable resources for integrating ultra-Orthodox men into the employment market and for increasing their access to higher education.²¹ The investment of these resources, welcome as it may be, is done by discrimination of ultra-Orthodox women who, as stated, cannot be elected to the Knesset, and are absent from public and political life in Israel. Their lack of representation is reflected in their low position in the government's priorities, compared to ultra-Orthodox men and in general. It is also reflected in the reduction of their options for higher education and economic fulfillment.²² For example, these women do not receive any scholarships from the State for their education. Moreover, the money earmarked for ultra-Orthodox men is used to create separate educational frameworks that discriminate against women. They cannot teach in the campuses and sometimes cannot even pass (physically) through them.²³

25. Health. The lack of representation of ultra-Orthodox women in the Knesset directly affects their health, since the health of those women is at the margins of the public interest in Israel. A decisive testament to it is the absence of all ultra-Orthodox Knesset members from the meeting of the Committee for the

¹⁸ According to a report by the Knesset's Research and Information Center regarding the employment of ultra-Orthodox women and Arab women (2015), the average income of ultra-Orthodox women was 4,976 NIS, compared to 7,144 NIS for non-ultra-Orthodox women, available at: <http://www.knesset.gov.il/committees/heb/material/data/avoda2015-07-27-00-02.pdf>

¹⁹ Data provided by the Ministry of the Economy and "Oketz" systems (2012).

²⁰ Position paper presented by *Nivcharot* to the Knesset, February 2016, available at: <http://www.lonilobo.net/#!blank/sr6uw>.

²¹ Taub Center for Social Policy Studies in Israel (2008), Processed according to CBS data.

²² Asaf Malchi, Miryam Abramovsky "Integration of Family and Work among ultra-Orthodox Women - Summary of Key Themes in Qualitative Research", p. 7-9 (2015).

²³ Position paper presented by Yofi Tirosh, "Haaretz", August 2016. Available at: <https://www.haaretz.co.il/opinions/.premium-1.3045941>.

Advancement of the Status of Women on 12 November 2014 that dealt with the health of ultra-Orthodox women.²⁴ Another example of the neglect of ultra-Orthodox women's health is that as of 2014, the Ministry of Health has not yet conducted a comprehensive survey of health data on ultra-Orthodox women,²⁵ for providing a better understanding of the health situation of those women. This additionally to Israel's abstention from investing budgets in making health information accessible for ultra-Orthodox women and in culturally adapting existing health services to those women. ultra-Orthodox women also encounter economic barriers that prevent them from using basic health services,²⁶ and they suffer from unique health problems, including high mortality rate due to breast cancer because of late detection.²⁷

26. In conclusion, as of the current Knesset, ultra-Orthodox women cannot exercise their democratic right to be elected to the Knesset as part of the ultra-Orthodox parties, their voices are not heard and their needs are not represented. The State of Israel, despite its commitment to CEDAW convention, does not act sufficiently to promote the representation of ultra-Orthodox women in the Knesset. The immediate, necessary, and minimal step that Israel must take is **to remove the formal barriers in party regulations**, which exclude ultra-Orthodox women from public and political life.

E. Recommendations:

27. We recommend that the Committee recommend for the State of Israel to:

- Take all measures, including legislative measures or sanctions, to ensure that all political parties, **including ultra-Orthodox Jewish political parties**, remove all formal barriers that deny women the right to be elected to the Knesset or to municipal authorities.

²⁴ The Advancement of the Status of Women Committee of the Knesset, Protocol 111 (12.11.2014).

²⁵ "Me'oravot" organization "The health status of Ultra-Orthodox women in Israel- a case study" (2014).

²⁶ "Nivcharot" organization "The health status of Ultra-Orthodox women in Israel" (2014).

²⁷ Meital Simhi "Healthy beliefs, using acceptable preventive medicine services to babies among ultra-Orthodox women", p.17 (2013).

- Take all measures, including legislative measures, to ensure that all political parties, **including ultra-Orthodox Jewish political parties**, respect the principles contained in articles 7 and 8 CEDAW.
- Establish clear and explicit government policy on appropriate representation, including quantitative targets for the representation of women **in all parties and local councils**, and the deadlines for achieving these goals.
- Take all measures, including legislative measures to sanction parties that discriminate against women, inter alia by not subsidizing those parties.
- Establish enforcement mechanisms in case that parties fail to meet the appropriate representation requirement determined by the legislator.

28. In addition, we recommend that the Committee:

- Makes specific recommendations that **explicitly** target the participation of ultra-Orthodox Jewish women in politics alongside recommendations concerning other sectors of the Israeli society. For despite the social similarities between minority groups, each one of them has its own characteristics, and the link between the two (created by using general wording) masks the absolute lack of representation of ultra-Orthodox Jewish women in national and local politics.

29. We hope that this shadow report will help the Committee to make accurate recommendations for the promotion of ultra-Orthodox women's right to public and political representation within the framework of ultra-Orthodox political parties, and lead the State of Israel to act on the level of its internal law to eliminate all formal barriers to ultra-Orthodox women's access to public and political life in Israel.