

Statement of the Tahirih Justice Center

Submitted to the
Committee on the Judiciary of the United States House of Representatives
Hearing to Mark-up An Amendment in the Nature of a Substitute to
H.R. 391 “The Asylum Reform and Border Protection Act of 2017”
Offered by Congressman Johnson of Louisiana
July 25, 2017

The Tahirih Justice Center (“Tahirih”) respectfully submits this statement to the United States House of Representatives, Committee on the Judiciary (the “Committee”), as it considers H.R. 391: “The Asylum Reform and Border Protection Act of 2017” (“the Act”).

Tahirih is a national, nonpartisan organization that has assisted over 22,000 immigrant survivors of gender-based violence over the past 20 years. Our clients include women and girls who endure horrific persecution such as rape, forced marriage, female genital mutilation/cutting, and domestic violence. Traumatized and fleeing for their lives, they are in dire need of humanitarian protection. When applying for asylum in the U.S., women and girls face rigorous legal and evidentiary standards, with limited access to counsel and due process.

Yet, contrary to our international treaty obligations and proud, longstanding history as a champion of human rights, H.R. 391 unconscionably seeks to *further* restrict access to asylum and related relief. If enacted, H.R. 391 will undoubtedly elevate the risk of further atrocities, including death, for our clients. We therefore unequivocally oppose H.R. 391 and urge the Committee to reject it.

H.R. 391:

- **Unduly raises the standard for determining whether refugees subject to expedited removal may even apply for asylum.** As a threshold matter - in order to *apply* for asylum before the immigration courts - those subject to the expedited removal process must currently demonstrate a “significant possibility of establishing eligibility for asylum.”ⁱ Section 4 of H.R. 391 adds yet another *preliminary* requirement – that the individual show that “it is more probable than not” that her statements are true. During this initial “credible fear” screening, traumatized women and girls already face adverse circumstances. They are detained, and must recount sensitive details of horrific abuse to immigration officials through interpreters and/or over the phone, without access to legal representation, witnesses, and evidence. Citing high approval rates, proponents of the higher standard mischaracterize the current process as a “rubber stamp” approval by the U.S. government. In fact, the severe and relentless violence rampant in our clients’ and others’ home countries is indisputable.ⁱⁱ Despite the obstacles they endure, many do establish an initial “credible fear” because they genuinely face persecution as defined by our longstanding asylum laws and international obligations.ⁱⁱⁱ

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In addition, as explained above, the purpose of an “approval” at the credible fear stage is simply to identify and provide permission to individuals who may *apply* for asylum before the immigration court. Once there, an applicant must present her case in great detail, through a lengthy, in-depth process. Both the Department of Homeland Security and the Immigration Judge thoroughly evaluate each claim on its legal and evidentiary merits. Asylum is anything but guaranteed, and grant rates vary widely around the country. In 2015, a mere 8246 asylum claims were granted by the immigration courts.^{iv}

H.R. 391’s heightened screening standard will, as intended, wrongfully prevent women and girls fleeing horrific violence from even presenting their cases in court. Our asylum laws are intended to, at the very least, afford refugees meaningful access to the asylum process consistent with the U.S.’ unequivocal obligation of *non-refoulement*.^v The consequences of *refoulement* are severe and avoidable; H.R. 391 will put more women and girls at risk of suffering a violent and tragic fate at home.

- **Prevents the majority of asylum seekers, who pass the initial credible fear screening interview, from being paroled into the U.S.** It is well-documented that asylum seekers have a natural incentive to appear for their hearings in immigration court. Above all else, they are eager to have their cases heard and seek to avoid detention, insecure legal status, and *refoulement*.^{vi} According to U.S. government data, families represented by counsel appear for their hearings in immigration court 98% of the time.^{vii} Prolonged detention of vulnerable women and girls in jail-like settings is well-known to be re-traumatizing and contrary to U.S. domestic laws and international humanitarian obligations.^{viii} Limiting the availability of parole for traumatized refugee women and girls is inhumane and unnecessary, particularly when highly successful and more cost-effective alternatives can be used.^{ix} We therefore oppose the proposed parole reforms in Section 6 of H.R. 391.
- **Prevents individuals from receiving asylum if they pass through any country prior to arriving in the U.S., even if they are not entitled to legal status there; permits removal of refugees to transit countries, where there is no relevant agreement between the U.S. and the transit country.** Currently, asylum seekers who pass through another country on their way to the U.S. may still receive asylum here if they prove that they are unable to secure lawful status in the transit country. H.R. 391, however, prohibits asylum even if an individual, including an unaccompanied child, cannot return to a transit country through which she passed during her flight from persecution. This provision leaves refugees in an unsustainable, perpetual state of limbo, with no place to go and no hope of a stable future. Instead of being able to seek asylum, vulnerable women and girls with legitimate claims for protection could summarily be returned to a country of transit that will then return them home to face more persecution.
- **Heightens the risk of return of unaccompanied children to traffickers or persecution at home.** Currently, asylum seekers are subject to a one-year asylum filing deadline, with limited exceptions.^x The deadline often results in arbitrary denials of protection to genuine refugees. Recognizing the particular vulnerability of unaccompanied children and the unique obstacles they face, the bipartisan Trafficking Victims Protection Reauthorization Act of 2008 exempted them from the deadline. Section 6 of H.R. 391, however, eliminates this exemption. It is unreasonable and inhumane to expect unaccompanied minors who have suffered severe trauma to be able to comply with the deadline. The result will be to punish precisely those child survivors of trafficking and other horrors who desperately need protection the most.
- **Could drastically limit asylum eligibility for those fleeing gender-based violence.** Our asylum laws aptly define persecution as “harm or suffering” or “a threat to one’s life or freedom” on account of

race, religion, political opinion, national origin, or membership in a particular social group.^{xi} Section 14 of H.R. 391, however, departs from this definition of persecution to exclude “generalized violence” relating to membership in; participation in the activities of; or actual or feared (forcible) recruitment into a criminal gang. Section 14 further limits asylum where the feared persecution is any “crime,” unless committed primarily on account of race, religion, national origin, or political opinion. Notably absent from this list is the fifth protected characteristic named above - *membership in a particular social group*. Women and girls are disproportionately targeted for brutal crimes such as gang rape, other forms of sexual assault involving torture, and domestic violence, precisely because of their gender. Individuals who identify as LGBTQ^{xii} are especially vulnerable to crime in their home countries as well, typically motivated by their membership in a particular social group. The U.S. government has long recognized gender-based persecution as a legitimate ground for asylum, issuing extensive guidelines^{xiii} for such claims consistent with our obligations under the Refugee Convention. Yet, Section 14 inexplicably, unnecessarily, and cruelly punishes women asylum seekers by seeking to foreclose the vast majority of their claims.

- **Codifies the definition of “membership in a particular social group,” instead of respecting the heavily fact and context-specific nature of gender-based claims.** As noted above, women, girls, and LGBTQ individuals are often persecuted on account of their membership in a particular social group. The inclusion of this ground for asylum in the Refugee Convention, alongside the other four, reflects the reality that a persecutor’s motivations might be unique or complex, and take different forms depending on a variety of circumstances. A named social group might encompass gender combined with other characteristics, and is most appropriately analyzed on a case-by-case basis. Section 15 defines the specific parameters for an acceptable “particular social group,” which will likely result in undue, insurmountable evidentiary burdens for legitimate asylum seekers. Furthermore, this standard risks conflating the pervasiveness of a form of persecution such as domestic violence with a lack of “particularity” or “social distinction” in the naming of the social group. Our laws must maximize flexibility and err on the side of protecting those in need. We should not seek to impose unnecessary hurdles on refugees and risk putting them back into harm’s way.
- **Disproportionately punishes women asylum seekers by foreclosing claims based on persecution by a government official acting outside his official capacity.** In all cases, an asylum applicant must show that she was persecuted by her government, *or* someone that her government is *unable or unwilling to control*. The ability to seek safe haven elsewhere when a government acts with impunity or fails to protect its citizens from others is a cornerstone of the Refugee Convention and our asylum laws and must remain so for good reason – securing refugee or asylum status is one’s only means of safety in either case. Section 17, however, seeks to bar protection for those who may need it most. It unduly narrows the definition of a persecutor to exclude government officials acting outside the scope of their official duties. This would leave women in particular at risk of violence with no recourse. Many vulnerable survivors of domestic violence are abused by government officials, with impunity a near certainty in these cases. We must continue to protect survivors of domestic violence in these circumstances, consistent with the longstanding purpose and intent behind our asylum laws.

We appreciate the opportunity to offer this statement in opposition to H.R. 391. For additional information, please contact Irena Sullivan at irenas@tahirih.org or 571-282-6161.

ⁱ 8 U.S.C. 1225(b)(1)(B)(v).

ⁱⁱ <http://www.unhcr.org/5630f24c6.html>; <http://www.unwomen.org/en/news/stories/2013/4/femicide-in-latin-america>; <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

ⁱⁱⁱ See the Refugee Act of 1980 and The United Nations 1951 Convention and 1967 Protocol Relating to the Status of Refugees, of which the U.S. is a signatory (the “Refugee Convention”).

^{iv} <https://www.dhs.gov/immigration-statistics/yearbook/2015/table16>.

^v *Non-refoulement* is the international law principle forbidding return of a persecuted individual to her country of persecution, as outlined in Article 33 of the Refugee Convention.

^{vi} <http://www.refworld.org/pdfid/51a6fec84.pdf>.

^{vii} <http://www.humanrightsfirst.org/sites/default/files/hrf-immigration-court-appearance-rates-fact-sheet-nov2016.pdf>.

^{viii} http://lirs.org/wp-content/uploads/2014/11/LIRSWRC_LockingUpFamilyValuesAgain_Report_141114.pdf; <http://www.migrationpolicy.org/article/us-detention-asylum-seekers-and-human-rights/>.

^{ix} For example, between 2011 and 2013, the Intensive Supervision Appearance Program (ISAP) reported an appearance rate of 99% for participants in the program’s full-service component. <http://www.humanrightsfirst.org/sites/default/files/MythvFact-Immigrant-Families.pdf>; See also http://lirs.org/wp-content/uploads/2014/11/LIRSWRC_LockingUpFamilyValuesAgain_Report_141114.pdf at 20-22.

^x 8 U.S.C 1158 (a)(2)(B).

^{xi} Lesbian, gay, bisexual, transgendered, and queer (or questioning).

^{xii} See the Refugee Convention and Section 208 of the Immigration & Nationality Act (INA).

^{xiii} Coven, Phyllis. INS Office of International Affairs, Considerations For Asylum Officers Adjudicating Asylum Claims From Women, (Washington, DC: 26 May 1995).