FEATURES:

- Immigration Reform
- People Fleeing Gang Persecution
- Sexual Violence in the Military
- U.S., China Notorious for Executions
This year we have celebrated The Advocates for Human Rights’ 30th anniversary. We have focused on amazing successes accomplished over the years, as well as the people instrumental in turning ideals into reality. We have honored the founding members’ vision of a world in which all people live with dignity, freedom, justice, equality, and peace.

The landscape for human rights and human rights protection has changed dramatically during our history. When we first began our work, the international human rights movement’s main focus was political prisoners. We forged ahead in new directions: one major initiative was developing a protocol for autopsies to determine whether human rights violations were involved in individual deaths. Second, we began providing free legal services for political asylum seekers.

When the organization started, recognition of women’s human rights was limited mainly to freedom from discrimination. Since then, we have seen a significant expansion of what is meant by “women’s human rights.” The U.N. in 1993 expressly stated that women’s rights are human rights and that violence against women violates fundamental human rights. Since 1994, when the U.N. adopted the Declaration on the Elimination of Violence Against Women, responses to violence against women around the world have surged. Many have developed legal interventions to address the problem. In fact, at last year’s Commission on the Status of Women, countries around the world publicly declared their commitment to eliminating violence against women.

While the major human rights treaties were intended to apply to all people regardless of race, religion, national origin, sex and other classes, recognition increased over the past three decades of the necessity of treaties focused on specific groups’ rights. For example, in 1991, the U.N. adopted the Convention on the Rights of the Child; every country in the world, except the U.S. and Somalia, has ratified this important convention.

Unfortunately, there have also been major human rights’ setbacks, most notably the response to the September 11 terrorist attacks. In the U.S., the right to counsel, the right not to be detained without charge, and the right to privacy have all been diminished. In addition, our government’s use of drones has resulted in a wide range of human rights violations.

While we celebrate our victories and the advancements in recognizing and protecting human rights, we are mindful of the tremendous work ahead. We are confident, however, that the principles on which The Advocates was founded will continue transforming the world. The Advocates’ work proves that each of us has a part in making human rights real. Good, smart, committed people do make a difference.

Robin Phillips, Executive Director
Despite results of a Gallup poll conducted in June and July indicating that 83 percent of white conservatives support a plan for allowing immigrants to become citizens, U.S. Speaker John Boehner declared in November that he has “no intention of ever going to conference” on the Senate immigration bill, according to news reports.

Several immigration proposals have been introduced in the House, including the STAPLE Act targeted at high-skilled employment-based immigration, the American Families United Act designed to restore discretion to many of the barriers impeding family-based immigration, and a companion to the Senate’s comprehensive immigration bill. Boehner’s announcement likely ensures that the only immigration measure to pass the House in 2013 will be H.R. 2217, introduced by Rep. Steve King (R-IA), calling for the deportation of young people known as DREAMers.

The Senate passed a comprehensive immigration bill by a 68-32 vote in June. While the bill includes a troubling amendment increasing spending along the U.S.-Mexico border and narrows eligibility for U.S. citizens to reunite with family members, other provisions make strides toward restoring respect for human rights. The bill’s cornerstone would create a process for undocumented people to receive authorization to live and work in the U.S. and to eventually apply for lawful permanent resident status and later, citizenship. The bill seeks to reform the asylum system, provide oversight to the detention system, and strengthen due process protections for noncitizens.

“The failure of U.S. immigration policies to meet human rights standards has reached a crisis and simply must end,” said Michele Garnett McKenzie, advocacy director at The Advocates.

Of urgent concern are the human rights of detained immigrants, who are subject to an arbitrary appropriations mandate to detain at least 34,000 people every day.* Also of concern are increasing reports of denial of access to protection requested by asylum seekers at the U.S.-Mexico border. In October, The Advocates worked with the U.N.’s High Commissioner for Refugees to convene a listening session on the problems facing asylum seekers.

The Advocates described U.S. failures to the U.N. earlier this year in a report filed with the U.N. Human Rights Committee and in an amicus brief filed with the Inter-American Commission on Human Rights (IACHR). Thanks to Mark Grouard, of Nilan Johnson Lewis, PA, for assistance on filing with the Committee and to Suzanne Turner, Dennis Hranitzky, Diane Princ, and Sarah Rivard, of Dechert, LLP, for representing The Advocates before the IACHR.

Because of the U.S. government shutdown, the U.N.’s October review of U.S. human rights compliance was postponed until March, and the U.S. did not appear at the IACHR hearing.

*Read “34,000 Heads in 34,000 Beds” on TheAdvocatesPost.org.
A major ruling issued by the United States Eighth Circuit Court of Appeals in April holds promise for asylum-seekers fleeing to this country out of fear of retribution and persecution by gangs in their home countries.

In an April 6 decision, the Eighth Circuit asserted that people who defect from the violent Mungiki criminal gang, notorious in Kenya, constitute a “particular social group,” an important qualification people must meet before gaining asylum in the United States.

At its core, the ruling is important because it holds that people defecting from gangs can be protected under asylum, a decision that may begin to break the mold for these cases.

“The definition of a ‘social group’ varies, and depends on which Court of Appeals’ circuit issued the ruling,” said Deepinder Mayell, director of The Advocates’ Refugee and Immigrant Program. “The Sixth and Seventh Circuits have held that gang defectors constitute a ‘social group’; the Fourth Circuit has determined the opposite, that gang defectors don’t constitute a social group.”

To say this is murky is an understatement, according to Mayell. “The Eighth Circuit’s ruling exacerbates the split between the circuits, and the conflicting decisions and definitions beg for a U.S. Supreme Court review and ruling.”

To be eligible for asylum, an applicant must show that he or she is unable or unwilling to return to the country of origin because of persecution or a well-founded fear of persecution on account of membership in a particular social group, race, religion, nationality, or political opinion, according to the law. “There are many young, vulnerable individuals struggling to overcome poverty where traditional state authority and police control have eroded,” said Mayell. “With rampant corruption and the absence of the rule of law, powerful gangs can shape a country’s economy, culture, and day-to-day life, such as in Mexico and Central America.”

The decision may begin to break the mold for these types of cases.

Those who join gangs may do so out of fear of retaliation for not joining and because life outside of a gang cannot exist for them, he said. Others, such as The Advocates’ client, are misled into joining.

The Kenyan businessman Francis Gathungu, who is the subject of the Eighth Circuit’s ruling, made an unwitting decision to link with a group that had promised to restore his business after it was attacked and destroyed by people affiliated with the Kenyan government. The group also promised to assist people of his tribe, the Kikuyu. It was only after his initiation into the organization that he discovered the group was the Mungiki.

Gathungu began to doubt the wisdom of his Mungiki affiliation after discovering the group was involved in criminal activities and had changed its political stance toward the government.

Later, he witnessed Mungiki members armed with machetes attack people near a bus station. He heard news reports of Mungiki members publicly stripping women they believed were dressed provocatively. He also learned that the group strongly advocates female genital mutilation, a horrendous abuse to which he and his family are adamantly opposed.

Gathungu wanted to part from the group, but he had become well aware of the dangers—one of his friends was murdered after expressing such intent.

One day, the Mungiki summoned Gathungu to a small house in the mountains. There, they accused him of wanting to leave the gang. He was given hallucinogenic drugs, beaten, and hung upside-down over a fire. Out of fear he would be murdered, Gathungu continued to deny any desire to leave. The men eventually released him, and ordered him to not report the torture to police or seek medical treatment for his injuries.

With scar-laced ankles reminding him daily of the suffering endured in the mountain house, Gathungu lives in fear of further torture. Not only does he fear reprisal from the Mungiki, he believes that if he returns to his home country, the Kenyan government will persecute him because of his past Mungiki affiliation.

He took his chance to escape with his family in 2001 when his wife was invited to visit a friend in the U.S. He decided
that he and the couple’s daughters would accompany her. After arriving in this country, he filed a claim for asylum. While in the U.S., Gathungu learned that Mungiki men had kidnapped his sister and forcibly subjected her to female genital mutilation.

He and his family’s journey through the U.S. immigration system has been arduous, frightening, and many years long. His asylum claim was filed in 2001, and there has been hearing after hearing before the immigration judge and Board of Immigration Appeals (BIA). Matthew Ralph, a partner at the Dorsey & Whitney law firm and a volunteer attorney with The Advocates, represents Gathungu. He has been part of his client’s journey since 2005, when Gathungu was scheduled to appear for the first time in immigration court.

Gathungu’s appeal to the Eighth Circuit was based, in part, on the determination by both the immigration judge and the BIA that defectors from the Mungiki do not constitute a particular social group.

The Eighth Circuit did not agree with the rulings. The court ruled, “Mungiki defectors are an analogous social group with shared experiences. Thus, applying the Board of Immigration Appeals’ definition, Mungiki defectors constitute a ‘particular social group.’”

The court wrote, “. . . we hold that Mungiki defectors constitute a ‘particular social group’ and that the records compel the conclusion that the Kenyan government is unwilling or unable to control the Mungiki. Mungiki defectors are socially visible, and no reasonable fact-finder could conclude otherwise based on the record. Although members of Kenyan society might not be able to identify a Mungiki defector by sight, the record amply demonstrates Kenyan society perceives ‘Mungiki defectors’ as a specific group targeted by the Mungiki.”

The opinion goes on to read, “Numerous media reports in the record detail the targeted murders of Mungiki defectors, demonstrating that Mungiki defectors ‘suffer from a higher incidence of crime’ at the hands of the Mungiki than Kenyans in general. By the same evidence, status as a Mungiki defector ‘is the reason’ for their persecution.”

Gathungu’s case now heads back to the BIA and the immigration judge. While the language in the Eighth Circuit’s ruling is strong and unequivocal, the immigration judge must consider the applicant “credible” to grant Gathungu asylum, something the judge has refused to do in the past. Thus, Gathungu’s and his family’s futures remain tenuous.

“. . . Mungiki defectors constitute a ‘particular social group’ . . .”

Eighth Circuit Court of Appeals

Matt Ralph > Never Giving Up

Corporations and antitrust litigation typically consume the days and evenings of Matthew Ralph, a partner at the Dorsey & Whitney law firm. When he volunteers for The Advocates, however, it’s a much different story.

“My clients are typically corporations, not people,” said Ralph. “The stakes are typically money, not a family’s safety, liberty, or well-being.”

Ralph, who represents Francis Gathungu in the case described in the adjacent article, began volunteering with The Advocates in 2005, when the organization needed a volunteer on an emergency brief to the Board of Immigration Appeals. The case was eventually reported as Hassan v. Gonzales, 484 F.3d 513 (8th Cir. 2007). Ms. Hassan won her appeal to the Eighth Circuit in a decision notable for recognizing that Somali women who oppose female genital mutilation (FGM) are members of a “particular social group” and women who had suffered FGM had been “persecuted” within the meaning of the relevant statute.

Shortly after that, The Advocates sent Dorsey & Whitney a list of pro bono cases, and Ralph selected Gathungu’s case because it looked like another interesting “particular social group” case.

“The Gathungu and Hassan cases illustrate what can be accomplished by never giving up,” he said. “In civil litigation, it’s usually a good idea for one or both parties to give up at some point. Only rarely in a civil case would it make sense to fight to the limit.”

That is perhaps the most rewarding part of asylum work, according to Ralph.

“Francis is a man of profound faith, and I have tried to repay that faith by never giving up on him.” he was quoted as saying in a Pioneer Press article by Ruben Rosario published August 29. “As a result, I have bonded with him in a unique way, and I have learned how important it is for a lawyer to represent his client to the absolute limit of his ability.”
Many people are surprised to learn that the U.N. Human Rights Committee will soon meet in Geneva to review the human rights record of the U.S.

By ratifying several human rights treaties, including the International Covenant on Civil and Political Rights, the U.S. agrees to conduct periodic “self-audits” to show that it upholds its treaty obligations. Civil society organizations like The Advocates then submit their own independent audits—called “shadow reports”—to shed more light on human rights issues. A committee of independent treaty experts—in this case, the U.N. Human Rights Committee—reviews the reports and meets with government delegates to ask questions and clarify issues addressed in the submissions.

The Advocates contributed two shadow reports for the U.S.’s 2014 review. The first addresses the rights of non-citizens in detention. To illustrate the human rights issues that can arise, consider The Advocates’ client who returned to the U.S. three times, fearing for his safety in his home country in Latin America. The first two times, immigration officials discouraged him from petitioning for asylum, warning that he faced mandatory detention in jail waiting for a decision—potentially for years.

After attacks escalated back home, he again came to the U.S., telling immigration officials he could not return. The officials sent him to a county jail notorious for its onerous conditions for long-term detainees. Most county jails are equipped for stays of less than one week; they typically do not have exercise facilities, kitchens, educational or vocational programs, or even opportunities for inmates to breathe fresh air. Non-citizens who face mandatory detention do not have a right to a hearing before an immigration judge to challenge their detention conditions or even request a transfer, which violates the fundamental right to a hearing and the prohibitions against arbitrary detention.

While the client sits behind bars, his child and fiancée, who are Minnesota natives, face considerable burdens. Now the sole parent at home, the client’s fiancée had to quit her job to take care of their child, who has health problems.

The Advocates’ second shadow report focuses on the death penalty. Human rights law recognizes the right to an effective remedy for human rights violations; yet, the death penalty is irreversible. Even people who are exonerated find few available remedies for being wrongfully convicted and sentenced to death. Many states do not have compensation laws for people to seek reparation. In those that do, eligibility barriers are onerous and compensation meager. Moreover, many death-row inmates are denied access to in-prison education and job-training programs, so wrongfully convicted people can face daunting hurdles as they attempt to reintegrate into society.

Take the case of Damon Thibodeaux, sentenced to death in Louisiana in 1997. With the help of attorneys Steve Kaplan and Richard Kyle, of the Fredrikson & Byron law firm, Thibodeaux was exonerated by a Louisiana court. In 2012, after more than 16 years of incarceration, Thibodeaux left prison carrying a small bag of his personal belongings. To date, he has not received any compensation from the State of Louisiana.

U.S. treaty obligations, recognized in the U.S. Constitution, should inform the debates on immigration reform and the death penalty. It is hoped that by the time of its next review, the U.S. will be able to point to legislative progress on immigration detention and exoneree remedies as concrete evidence that it takes its human rights obligations seriously.
Featured Donor > Kathleen Seestadt

Kathleen Seestadt’s contributions to The Advocates make her a stand out. She and her husband, Bob, are monthly and quarterly sustaining donors. They contribute at house parties and to special appeals throughout the year, sponsor a table at the Human Rights Awards Dinner, and host a bi-annual house party.

“For the Oromo community, the report was extremely validating; it told them that someone was listening,” said Kathleen, who continues to serve as an informal liaison between The Advocates and Minnesota’s Oromo community. “Because of the report and The Advocates’ on-going involvement with the Oromo community, they believe they have a strong ally in The Advocates. That’s important in many visible and non-visible ways.”

The project was important to The Advocates, too. “Our work with the Oromo diaspora was fundamental in establishing the framework for all of our subsequent work with diaspora communities,” said Robin Phillips, The Advocates’ executive director.

Kathleen taps the Oromo community to give to The Advocates in an unusual way—community members provide delicious traditional Oromo cuisine for The Advocates’ house parties hosted by the Seestadts.

“The Advocates is proud to be associated with Kathleen and the brave leaders of the Oromo diaspora community in Minnesota,” said Phillips. “With Kathleen in our corner, more human rights victories lie ahead.”

Featured Donors > Sassafrass, Fast Horse, UrbanPlanet

You may have noticed something different when this issue of The Human Rights Observer landed in your mail box. A new design revamps the newsletter and its format is now akin to a magazine. “People who support The Advocates have deep interest in our mission and the circumstances confronting people around the world,” said Robin Phillips, executive director of The Advocates. “Our supporters and volunteers want to dig into issues and learn as much as they can.”

Kudos go to Jen Vee of Sassafrass Design Inc., a firm specializing on corporate identity, collateral development, direct mail, and website design, for developing a newsletter template. The design was built on another round of recently-concluded creative work — this time done by Fast Horse, an innovative, integrated marketing agency in Minneapolis. Fast Horse expanded and enhanced The Advocates’ brand and designed a new website, with a user-friendly navigation and a fresh presentation. The website is now being built by Charles Weed and his colleagues at UrbanPlanet Software, long-term supporters of The Advocates. UrbanPlanet, in Saint Paul, develops custom software for organizations seeking robust solutions to complex public policy problems.

“We are indebted to these firms, and we deeply appreciate their donations,” said Phillips. “They are true advocates.”
The largest provider in the Upper Midwest of free legal services to low-income people seeking asylum, The Advocates’ and its powerhouse of volunteer attorneys give people the opportunity to live without fear and persecution. Here are a few of The Advocates’ most recent victories.

The Ethiopian government targeted Mr. H, a citizen of Ethiopia, and tortured him because of his political opinion. While not formally a member of an opposition party, he sewed ribbons for party events, ultimately leading to his arrest and detention. He escaped an Ethiopian prison and fled to the U.S. With the help of volunteer attorney David Woodward, he was granted asylum in summer 2013.

After rebel forces murdered his family in Liberia, Mr. B fled and embarked on a journey through Guinea and Senegal, and eventually found his way to the U.S. After appealing an adverse decision by an immigration judge, he received relief when the Board of Immigration Appeals overturned the ruling, instructing the judge to grant asylum. The University of Minnesota Law School’s Immigration & Human Rights Clinic represented Mr. B with the supervision of The Advocates’ staff attorney and clinical instructor, Emily Good.

A citizen of Ethiopia fleeing political persecution, Ms. L successfully appealed her decision to the Board of Immigration Appeals, and eagerly awaits her second opportunity to be heard by the immigration court. The University of Minnesota Law School’s Immigration & Human Rights Clinic represented Ms. L.

An attorney and a citizen of The Gambia, Ms. M was forced to undergo female genital mutilation (FGM) at age 12. In high school, she joined several anti-FGM organizations aimed at abolishing the practice. When she was an adult, Ms. M’s mother told her that she had been betrothed to an older man. Her mother also warned of the long-term health risks associated with FGM, marriage, and childbirth. Fearful for her life and looking for a chance to escape the marriage, Ms. M secretly applied to school in Minnesota. When accepted, she convinced her parents to allow her to defer the marriage until she completed her studies. She came to the U.S. in August 2011. With the representation of volunteer attorneys Dean Eyler, Karen Wenzel, and Liz Dillon, of the Gray Plant Mooty law firm, she was granted asylum in August 2012.

Mr. R grew up trapped between two worlds. When he was a child, Mr. R and his family, of Nepalese ethnicity and living in Bhutan, were forced across the border to neighboring Nepal when the Bhutanese government stripped them of their Bhutanese citizenship because of the family’s ethnicity. At the same time, the Nepalese government would not grant them full rights because they were from Bhutan, forcing the family to live in a refugee camp. Through sheer determination, Mr. R learned English and came to the U.S. to study. Fearing that he had no home to which he could return, he applied for asylum. After a lengthy process and with the counsel of his volunteer attorney, he, as well as his wife and young son, made the difficult decision to ask the court to close their case rather than continuing to fight it in court. The family will be permitted to live and work in the U.S. indefinitely. They are eager for immigration reform, which might afford them more options in the future.

Mr. J, a citizen of Egypt and a member of that country’s Coptic Christian minority, was persecuted because of religion. He and his family received many threats to their lives, and two men attempted to kidnap Mr. J’s young son. Mr. J and his family contacted the U.S. embassy in Cairo to seek safety in the U.S., and they hid until their visas were issued. They fled to the U.S. in 2011, and with assistance from volunteer attorney Francisco Gonzalez, the family was granted asylum in October of this year.

“When evil men destroy, good men must build and bind.”
Anas Aremeyaw Anas

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Saving Lives; Giving Hope
Thirty years ago, attorney Sam Heins brought together a group of lawyers to discuss his idea of harnessing the community spirit of social justice and volunteer ethic to improve human rights conditions around the world. The group included then-Minneapolis Mayor Don Fraser, whose leadership during his time in Congress provided the framework for U.S. monitoring of human rights conditions worldwide.

Heins had been inspired by an article about the work of David Weissbrodt, law professor at the University of Minnesota, a world renowned human rights scholar and impassioned activist who later was the first American since Eleanor Roosevelt to lead a human rights body at the U.N.

The group, originally called the Minnesota Lawyers International Human Rights Committee (MLIHRC), took on Weissbrodt’s challenge to develop a uniform legal or medical standard in the way suspicious deaths, including politically motivated murders, were investigated around the world. The move was timely: Benigno Aquino, a longtime political opponent of Philippine dictator Ferdinand Marcos, had recently been assassinated at the Manila International Airport.

“Heins, along with the first full-time director, Barb Frey and others conducted exhaustive research and consulted local and international human rights, legal, and forensic experts. Their work culminated in the publication of “Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.” Known as the Minnesota Protocol, the manual established international human rights standards; a model protocol for investigating extra-legal, arbitrary, and summary executions; a model autopsy protocol; and a model protocol for disinterment and analysis of skeletal remains. The U.N. Economic and Social Council formally adopted the protocol in 1989, and it continues to be widely used.

Weissbrodt was instrumental in what he calls the “mystery country project,” responding to the predicament that some countries, such as North Korea, Albania, and Saudi Arabia, received insufficient attention by the human rights world because of their self-imposed isolation. He and the MLIHRC conducted a series of country studies, including the first-ever major survey of human rights conditions in the Democratic People’s Republic of Korea, revealing a society tightly controlled and secluded from the rest of the world and one that had established a comprehensive system consistently depriving its citizens of basic human rights and freedoms.

In addition, Weissbrodt advised the organization on its trial observer work, investigating human rights in other countries, including Romania and South Africa.

Weissbrodt points with pride to other initiatives of The Advocates that have been developed under the same model, such as the program to provide legal services to indigent asylum seekers.

He credits many, especially Heins and Frey, for The Advocates’ early success. “Sam was the inspiration, founder, first volunteer, and first board chair,” he said. “Barb, the first director, led the organization effectively for more than 10 years.”

At the end of the day, Weissbrodt delights in another key element of his legacy: The Advocates’ staff members Jennifer Prestholdt, Michele Garnett McKenzie, Amy Bergquist, Emily Good, and Beatriz Menanteau. “I’m blessed that people like these were students of mine,” he says.
SEXUAL VIOLENCE IN THE MILITARY >

Brutal Betrayal

For only the third time in the last half century, the U.S. Army is preparing to court-martial a general. But while Army Brig. Gen. Jeffrey Sinclair’s January court-martial trial for sex-crime charges grabs headlines, it is only the proverbial tip of the iceberg.

Violence against women in the military replicates many of the dynamics of the abuse taking place in the civilian world, according to Cheryl Thomas, director of The Advocates’ Women’s Human Rights Program. “Advocates have worked for decades to put an end to violence against women,” she said. “The military would do well to learn from these struggles.”

Sexual assault across all U.S. military services is rampant and shocking: Sexual assaults occurred at an average of more than 70 per day during 2012, according to a report released by the U.S. Department of Defense. However, information is lacking because the abuse is often under-reported. While both genders face the threat of sexual assault, women are statistically more likely to be victims.

Violence against women in the military is exacerbated by numerous factors, ranging from a very hierarchical and command-driven structure, to a culture that promotes masculine traits of power and control, to a pattern of underreporting and impunity.

Survivors of sexual assault in the military explain how perpetrators often exert control over victims, and likely outrank them. If a perpetrator is in a victim’s chain of command, reporting the incident can seem impossible, and a victim often feels that she needs to choose between a military career and justice. Sexual assault prosecutions occur exclusively within the military’s chain of command, and many victims do not report sexual assaults for fear that they will be disciplined for misconduct. The chain of command system also raises concerns over the lack of impartiality.

Consider the case of Petty Officer Second Class Rebecca Blumer, whose terror-inducing experiences were detailed in the February 2013 issue of Rolling Stone and are a textbook example of everything that can go wrong. After reporting being raped by at least one Army soldier in 2010, Blumer, a sailor with a sterling record, was jailed, denied adequate medical care, accused of inflicting injuries on herself, blamed, and called a liar. She was penalized by superiors, and ostracized and ridiculed by colleagues.

The Navy stripped Blumer of her responsibilities. Instead of sifting through top-secret Iraqi transmissions, the IT whiz was picking up pine cones and performing other rudimentary tasks. She was discharged from the military and given a $14,000 bill for a re-enlistment bonus that she was told she owed the Navy for the years remaining on her contract. “Once my assault happened, my whole future disappeared,” Blumer said.

Consider 23-year-old Lance Cpl. Nicole McCoy, assaulted so often during her four years of service that she came to regard it as unavoidable, even sanctioned. “It seemed like everyone gets raped and assaulted and no one does anything about it; it’s like a big rape cult,” said McCoy in an interview in the Rolling Stone report.

Consider Kori Cioca, a veteran featured in “The Invisible War,” a documentary by filmmakers Kirby Dick and Amy Ziering, that presents stories of former service members who say they were sexually assaulted by a fellow member of the military during their service. Even worse for Cioca, veteran’s health benefits to cover treatment for her jaw, broken during a sexual assault by a superior, were denied.

Reporting sexual assault in the military

When a U.S. service member has been sexually assaulted, the victim has two options for reporting the assault: either the Restricted Reporting System or the Unrestricted Reporting System. The Restricted Reporting System allows victims to confidentially report cases of sexual assault and to receive medical care or psychological counseling. Under this system, an official investigative process is not triggered, perpetrators are not
held accountable, a victim will not receive a military protective order, and a victim must continue to have contact with the perpetrator, if they are in the same organization.

For an official investigation, the Unrestricted Reporting System is used. The victim’s commander will be notified, and an investigation will begin. Contrary to the civilian justice system, legal responsibilities in the military fall on a commanding officer in the offender’s chain of command. The Uniform Code of Military Justice dictates that the commanding officer may choose to: 1) decline to take any action if he/she believes the case is frivolous; 2) order non-judicial punishment for the offender; or 3) elect to take administrative, rather than judicial, action. Administrative measures include discharges, reduction of rank, reprimands, withholding of privileges, and reassignment.

If a commanding officer believes the best solution is a judicial forum, he/she can send the case to a court-martial. The court-martial determines whether to convict or acquit the offender or discharge the offender without a trial.

Many who have been raped have no legal recourse because of the Feres Doctrine, established in 1950 by the U.S. Supreme Court to prohibit service members from suing the military for any injuries that occurred “incident to service.” The doctrine’s purpose was to prevent civil litigation from interfering with the military’s operation during war, but it expanded over the years to include everything that happens to an individual while serving in the military, including rape.

“The chain of command provides violent offenders an opportunity to manipulate the system and avoid accountability for rape,” said The Advocates’ Thomas. “Truly, there’s no transparency with this system, and the military essentially colludes with sexual predators. Offenders are empowered by the system, and impunity for their crimes prevails. It’s similar to a batterer’s use of unfettered power and control to intimidate and silence victims that our legal system has struggled with for decades in domestic violence cases.”

A policy enacted in April 2012 requires more senior officers, higher up in the chain of command, to handle sexual assault cases. However, many call for more substantial action. “Last year’s reform to make colonels the convening authorities over sexual assault cases was a step in the right direction, but it does not resolve the issue of institutional bias,” Anu Bhagwati, executive director of the Service Women’s Action Network, stated in testimony before the Military Personnel Subcommittee of the Senate Armed Services Committee.

One promising practice includes the establishment of the U.S. Air Force’s Victim’s Counsel Program, consisting of a group of lawyers who advocate for victims and help them navigate the legal process. The attorneys do not work for the defendant or the government. Counselors provide legal assistance, aid with transfer or housing issues, and ensure that victims feel safe. U.S. Secretary of Defense Chuck Hagel announced in August that this program would be extended to other military branches.

Advocates contend the changes are too minimal. “Small-scale military sexual assault solutions will not stem the cultural tide created by years of victim-blaming and retaliation,” said Bhagwati. “The solutions announced demonstrate that the U.S. Department of Defense is still only wading in the shallow end on the issues, unable to create the deeper, large-scale solutions our service members and veterans need.”

U.S. Secretary of Defense Chuck Hagel announced in August that the U.S. Air Force’s Victim’s Counsel Program is being extended to the other military branches. Consisting of attorneys who advocate for victims, the counselors provide legal assistance, aid with transfer or housing issues, and ensure that victims feel safe. The attorneys do not work for the defendant or the government.

Hagel announced other policy changes, including:

- Amending the manual for courts-martial to allow victims to make recommendations on what penalties should be levied against offenders;
- Requiring military department secretaries to develop policies allowing offenders to be reassigned or transferred to prevent contact with victims;
- Standardizing policies prohibiting inappropriate relations between trainers and trainees and recruiters and recruits;
- Requiring the status reports of allegations to be taken without delay to the first general/flag officers within the chain of command;
- Requiring judge advocates to serve as investigating officers for preliminary hearings in sexual assault cases; and
- Regularly evaluating closed sexual assault investigations to check for errors.

StopViolenceAgainstWomen.org (StopVAW), The Advocates’ Women’s Human Rights Program’s website dedicated to ending violence against women, receives 20,000-30,000 visits each month from people from around the world.

StopVAW contains extensive resources about sexual violence in the military, thanks to the diligence and expertise of the Women’s Human Rights Program. A special nod goes to Kate Vohs, a William Mitchell College of Law student who interned at The Advocates, for her assistance on the project. The new website was the source for much of the information in “Sexual Violence in the Military: Brutal Betrayal.” Check it out:

StopVAW.org/sexual_assault_in_the_military
The persecution of people on the basis of real or perceived sexual orientation or gender identity is one of the most serious human rights violations in Cameroon. Cameroon, like many other sub-Saharan African countries, criminalizes consensual adult sexual conduct between people of the same sex, but unlike other countries, the government of Cameroon vigorously enforces these laws.

People are arrested just for acting in non-gender-conforming ways; police assert that such conduct is “circumstantial evidence” that a suspect engages in same-sex sexual conduct. Law enforcement officials torture suspects to extract “confessions” of homosexuality. Only two Cameroonian attorneys, Michel Togué and Alice Nkom, represent people arrested for violating the country’s anti-homosexuality laws.

In February, The Advocates’ Jennifer Prestholdt and Amy Bergquist traveled to Cameroon with volunteer attorneys Julie Shelton, Kara Lyons, and Tom Slaugther, of the Faegre Baker Daniels law firm, to meet with local non-governmental organizations. Prestholdt is The Advocates’ deputy director and director of its International Justice Program; Bergquist is a staff attorney. “The goal of our trip was to identify ways that lawyers in the U.S. could assist these local NGOs through pro bono work,” said Prestholdt. “Despite the dangerous climate in Cameroon, several local organizations in the country work to advance the rights of lesbian, gay, bisexual, transgender, and intersex (LGBTI) people.”

Human rights defenders who work on LGBTI issues— and their family members—face threats, harassment, and sometimes worse. This year, attacks have escalated: torture and murder of an activist; arson at one organization’s service center; multiple break-ins in which computers and confidential client files were stolen; rape of a human rights defender’s niece; an attempted kidnapping of a human rights defender’s child; and anonymous threats.

Criminalization of real or perceived LGBTI identity gives vigilantism free rein in Cameroon. A youth group organizes brigades to patrol the streets of Yaoundé on Fridays and Saturdays to “hunt down” suspects and hand them over to the police.

In August, more than 100 members staged the group’s second anti-gay march. Marchers made throat-cutting gestures, as if to encourage people to kill homosexuals, and carried signs and distributed brochures saying, “Kill the faggots.”

“The government appeared to be in favor of the rally because large-scale gatherings must have government approval or risk being broken up,” attorney Togué said. The youth group’s leader boasted that the Secretary of Defense gave the group a mandate to track homosexuals.

Eric Lembembe, executive director of Cameroonian Foundation for AIDS (CAMFAIDS) spoke out in July about the attacks on human rights defenders. “There is no doubt: anti-gay thugs are targeting those who support equal rights on the basis of sexual orientation and gender identity,” he said. “Unfortunately, a climate of hatred and bigotry in Cameroon, which extends to high levels in government, reassures homophobes that they can get away with these crimes.”

Two weeks later, he was tortured and murdered in his home. “The government’s investigation into Eric’s murder has been lackluster; the coroner never released autopsy results, and police have made no arrests,” said Bergquist.

At a U.N. Human Rights Council review in September, a government representative said “there’s no proof” Lembembe was murdered because of his sexual orientation, and suggested that he “might have committed crimes,” and might have been “the victim of a settlement of scores which was all too quickly attributed to the government.”

The Advocates collaborated with CAMFAIDS and other groups in Cameroon to submit a shadow report on LGBTI rights to the African Commission on Human and Peoples’ Rights, which reviewed Cameroon’s human rights record in October. At the review, the Commission questioned the government about the lack of safety for human rights defenders working on issues of LGBTI rights. Commissioners expressed reservations about Cameroon’s approach to protecting human rights defenders, including those working on LGBTI rights.

“The African Commission amplified the pleas to the Cameroonian government to uphold its obligations to protect human rights defenders and to identify and prosecute the perpetrators of Eric’s torture and murder,” said Bergquist. 

Pictured above: Eric Lembembe
A former client, grateful for the safety and opportunity that asylum provides, spoke of his gratitude for The Advocates’ mission and the hope he has for his new life. Volunteer attorney Shira Shapiro, of the Robins Kaplan Miller & Ciresi law firm, described the importance of helping clients seeking asylum. Deepinder Mayell, program director, and Sarah Brenes, staff attorney, talked about recent work and asylum successes.

Last year, Refugee and Immigrant Program staff, with the help of The Advocates’ powerhouse of hundreds of volunteer attorneys, served more than 600 clients needing help with asylum claims, other immigration matters, or facing deportation. The program is the largest provider in the Upper Midwest of free legal services to low-income people seeking asylum.

The Advocates is grateful for the support of its foundation funders and individual donors who make its work possible.

In what has become a fall tradition, more than 100 people gathered in the front yard, the back yard, and inside Marlene and Tom Kayser’s home on September 8 to celebrate the Women’s Human Rights Program.

Cheryl Thomas, director of the program, inspired the crowd with highlights of work for women in Minnesota, Mongolia, Malaysia, and Serbia. Lieutenant Scott Jenkins, a champion volunteer with The Advocates, described how his experience as a former Duluth Police Department lieutenant helps him teach police officers around the world about responding to domestic violence.

“New attitudes and know-how ripple throughout a country, helping protect women and children in families impacted by domestic violence, when Scott and the Women’s Human Rights Program train groups of police officers,” said Thomas. “We give our heartfelt ‘thank you’ to Marlene and Tom, all of the event co-hosts, and all of our donors for an amazing event—our supporters make all of our work possible. Even better, donations given at the party were matched, thanks to generous contributors who donated $30,000 of matching funds.”

The home of Andrea and Jim Rubenstein burst at the seams when supporters of the The Advocates’ Refugee & Immigrant Program gathered on October 10 to celebrate and support the program at the Rubenstein’s annual party.

Pictured above, from top: The Advocates staff attorney Sarah Brenes; Mary Kay O’Loughlin and Marlene Kayser; and Lt. Scott Jenkins.
Marya is strikingly beautiful, but the scar above her lip is what draws the eye.

The Advocates’ Women’s Human Rights Program met Marya (not her real name) in Mongolia, where teams of staff and volunteers traveled twice in 2013 to conduct fact-finding for a report on the implementation of the country’s domestic violence laws. While working in a remote area, the teams were introduced to Marya, a domestic violence victim, by a local advocate with our Mongolian partner, the National Center Against Violence (NCAV).

Sitting on the edge of her seat, Marya recounted years of brutal abuse. She described how her husband took her to remote areas around the country and beat her so severely that she expected to die. She lifted her shirt and revealed more scars.

In Mongolia, The Advocates worked with NCAV to conduct more than 135 interviews with police, prosecutors, judges, government officials, members of the country’s parliament, staff of non-government organizations, social workers, and victims. Some of the most inspiring people the group met were the advocates, who work with extremely limited resources to protect victims, provide them with services, and pursue accountability for the perpetrators. The Advocates will release, in early 2014, a report on their fact-finding mission.

Working in the Balkans
The Advocates brought together Duluth Police Lieutenant Scott Jenkins, Hennepin County District Judge Kathryn Quaintance, and women’s advocate Shelly Carlson to travel to the Balkans in October. In Serbia, police prosecutors, judges, NGOs, and government social workers from across the country participated in The Advocates’ training.

In Burgas, Bulgaria, on the Black Sea Coast, The Advocates presented workshops, continuing its 20-year partnership with the Bulgarian Gender Research Foundation, to sustain and grow the movement to end violence against women.

Police officers eagerly learned how to deal with the problems they face while implementing their laws. For example, many of the officers hadn’t had training on investigating and documenting strangulation, common with domestic violence. This type of assault can qualify as attempted murder and internal injuries can result.

The U.S. embassy staff in Serbia, who hosted The Advocates’ team, described The Advocates’ work as transformational, and credited the group with working a miracle.

“Around the world, we share the knowledge and lessons learned in Minnesota, where our experience with reform on violence against women is 40 years old, among the oldest legacies in the world,” said Cheryl Thomas, director of The Advocates’ Women’s Human Rights Program and one of the people who worked in the Balkans.

Stories like Marya’s demonstrate why it’s vital for The Advocates to continue its work: documenting domestic violence, publishing monitoring reports, reforming laws, training legal professionals, and bringing greater government attention to protecting victims and holding perpetrators accountable.

“I truly created a small miracle. Thank you for making a difference beyond what we could have imagined.”

U.S. Embassy in Serbia

Pictured: Lt. Scott Jenkins, upper left; Cheryl Thomas, lower right; and a group of police officers who participated in The Advocates’ training in Bulgaria.
“Thank you, Interns”

The Advocates’ internship program attracts students from around the world. The program sows seeds for the future—interns become human rights defenders and partners for The Advocates. Thank you to those who served during the summer.

Luke Allen, Macalester College
Ariadne Baskin, Macalester College
Unis Doeway, Univ. of St. Thomas
Charles Forrest, Univ. College London Law
Baldwin Giang, Yale Univ.
Danielle Gies, Notre Dame Univ.
Katherine Goodyear, Carleton College
Jane Huber, Univ. of Chicago
Laura Jaffe, Colgate College
Gabe Keller, Carleton College
Claire Kelly, Univ. of Michigan Law School
Yoo Jin Kim, Univ. of Georgia School of Law
BriAnna McCurry, South High School/Penumbra Theatre
Erik Katovich, Univ. of Minnesota
Eva Maria Najjar Smith, Johns Hopkins Univ.
Hilde Nelson, Univ. of Chicago
Aurelija Olendraite, International Fellow from Lithuania
Thea Reilkoff, Univ. of Minnesota Law School
Eric Peffley, Univ. of Minnesota Law School
Amy Perna, Univ. of Minnesota
Daniela Prigozhina, Univ. of Minnesota
Racine Ratnaswamy, Univ. of Cardiff Wales/BPP Law School London
Emma Steinbergs, Davidson College
Linnea Van Pilsum-Bloom, Grinnell College
Emma Vitale, Boston College
Kate Vohs, William Mitchell College of Law
Danielle Werder, Univ. of Minnesota
Presenters

Sustainers

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Carol & Bill Beadie
Chris Bercaw & Mary McKelvey
Aviva Breen
Sonia & John Caims
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Barbara Frey & Howard Orenstein
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Greene Espel
Rachel & Tom Hamlin & Nancy Speer
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Kathy & Allen Lenzmeier
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Kathleen & Robert Seestadt
Shepherd Data Services
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Bibelot
Black Sheep Pizza
Blue Plate Restaurant Co.
Brave New Workshop
Avva Breen
Jenny Breen
Bryant Lake Bowl

Café Latté
Calhoun Beach Framing
Casa Sirena, Isla Mujeres, Mexico
Carolyn Chalmers & Eric Janus
Children’s Theater
Christos Greek Restaurant
Clancy’s Meats & Fish
Common Roots Café
CRAVE Restaurant
Cyrus Artisan Rugs

Dancer’s Studio
Jim Dorsey & Dee Gaeddert
Debra Drayer
Jonathan Eisenberg
Elko Speedway
Karen & Rick Evans
Shereen Fahier
Matt Forsgren
France 44 Wines and Spirits
Jd Fratzke
Fulton Beer

Gandhi Mahal
Gardens of Salonica
George and the Dragon
Global Mamas

Rachel & Tom Hamlin
Haskell’s
Dianne Heins
Hennepin County Bar Association
Hilton Minneapolis
Susan & Brian Hols
Loan Huynh

Ichiban Japanese Steak House
It’s Greek To Me Restaurant

Cindy Jackson
Jawaahir Dance Company and The Cassandra School of Middle Eastern Dance
Jean Stephen Galleries

Sam and Sylvia Kaplan
Marlene Kayser
Hyder Khan & Nazneen Khatoon
Kowalski’s Uptown Market Wine Shop

Lakeside Wine + Spirits
Landmark Theatres
Kathy & Al Lenzmeier
Life Time Fitness
Sharon Link & Bob Lewis
Larissa Loden
The Lowry
Lowry Hill Liquors

Stephen Mao
The Marsh, A Center for Balance and Fitness
Melting Pot
Minnesota Landscape Arboretum
Minnesota Opera
Minnesota Timberwolves Fastbreak Foundation

Steve Yasgur
YWCA of Minneapolis

Pictured: Marilyn Carlson Nelson, speaker and presenter at the 2013 awards dinner.
More HRAD photos on page 18.

Pictured: Sam Kaplan, who, along with Sylvia Kaplan, presented the 2013 keynote speech at the awards dinner.
More HRAD photos on page 18.
The Advocates’ Jennifer Prestholdt presenting the organization’s Special Recognition Award to Faegre Baker Daniels law firm’s representative, Andrew Humphrey

Richard Carlbom, who received the 2013 Don and Arvonne Fraser Award on behalf of Minnesotans United for All Families

Jodie Boderman, Candace Whitaker, Diane Heins, and Monica Fennell of the Faegre Baker Daniels law firm

Ifrah Jimala and Myron Edmond

Attorney Sam Myers, The Advocates’ board member and volunteer auctioneer at the awards dinner

Tom Fraser, Arvonne Fraser, Don Fraser, Sam Kaplan, and Sylvia Kaplan

The Advocates’ Helen Rubenstein presenting 2013 Volunteer Award to David Woodward

Jon Pratt (left) and Jeff Martin (right) with Luchelle Stevens, who received the 2013 Don and Arvonne Fraser Award on behalf of Our Vote Our Future

Attorney Sam Myers, The Advocates’ board member and volunteer auctioneer at the awards dinner
Staff Update

Theresa Dykoschak joined the Women’s Program as a staff attorney in September, coming from Faegre Baker Daniels. She had volunteered with The Advocates projects, including the Liberian Truth and Reconciliation Commission Diaspora Project in Minnesota and the Buduburam Refugee Settlement in Ghana.

Mary Ellingen, who retired in August, made a world of difference for women’s human rights during her tenure as a staff attorney with The Advocates, and before that, her years as a volunteer with the program. Her wisdom, deep commitment to women’s equality and security, and painstaking work have made a tangible difference.

Christina Epsey-Sundt, a Lutheran Volunteer Corps member, joined the Refugee & Immigrant Program as a program assistant in August. She graduated from St. Olaf College. She has interned with the Norwegian Organization for Asylum Seekers (NOAS) and the Refugee Resettlement Program of Lutheran Social Services.

Luke O’Neill, a Jesuit Volunteer Corps member and a graduate of Boston College, joined The Advocates in August as a program assistant. He divides his time between the Refugee & Immigrant, Research, Education, and Advocacy Programs.

Kay Kautio, who served as the organization’s administrator director for seven years, retired in June after leading two office moves, installation of new phone and computer systems, and seven audits.

Kent Linder joined The Advocates as executive administrative assistant, a position supporting the executive director and administrative director. Previously, Kent worked for 15 years with Open Arms of Minnesota.

Ashley Monk began her tenure as development and communication assistant. Previously, she was with the Walker Art Center. She is a 2012 graduate of the University of Minnesota’s College of Liberal Arts.

Sally Nankivell became The Advocates’ administrative director in June. Previously, she was the executive director of the Cook County Visitors Board in Grand Marais.

Briana Okuno, of the Lutheran Volunteer Corps, and Emily Lohmeyer, of the Jesuit Volunteer Corps, completed their volunteer service year at The Advocates in August.

Luke Wilcox, Chanida Phaengdara Potter, and Mary Scott left The Advocates to pursue their studies. Wilcox is a graduate student at the University of Minnesota Carlson School of Management, Potter is pursuing a master’s degree at Hamline University, and Scott enrolled at the University of Minnesota Law School.

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