

tion of victim's testimony in sexual violence cases, the admissibility of the prior sexual conduct of the victim, the ability of consent to act as a defense, and counselor-patient privilege. The purpose of this enclave of evidentiary rules for gendered violence is to mitigate gender discrimination in the criminal justice process by, to return to Martin's words, "reducing the trauma of testifying and participating in the trial process" and "making convictions easier to obtain." Although it is necessary to make the criminal justice system more responsive to women, the question arises whether these procedural amendments to an essentially adversarial and cavalier process can promote the (re)structural reform necessary to truly promote gender equality.¹⁰ The ICTR held that rape is a "physical invasion of a sexual nature, committed on a person under circumstances which are coercive" which, if undertaken with the specific intent to destroy, in whole or in part, a particular group, can constitute genocide. However, the ICTR went beyond the "physical invasion" definition in concluding that "sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact." As a result, the ICTR found that Akayesu's ordering militia forces to undress a student and force her to do gymnastics naked in front of a crowd constitutes sexual violence. In regard to proof of "coercion," the ICTR held that "coercive circumstances need not be evidenced by a show of physical force ... threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or the military presence of *Interhamwe* [*n.b.* militia] among refugee Tutsi women at the *bureau communal*."

¹¹Press Statement, Kigali (January 13, 1998) (on file with the author). Nor has the ICTR done much to deter Hutu rebel activity in Rwanda, which has made large portions of the Rwandan state (especially in the north-west) difficult to govern.

¹²This experience challenges the thinking of many of the advocates of international criminal proceedings, such as Scharf, who concludes: "The record of the trial provides an authoritative and impartial account to which future historians may turn for truth, and future leaders for warning. While there are various means to achieve an historic record of abuses after a war, the most authoritative rendering is possible only through the crucible of a trial that accords full due process" (215).

References

Arendt, Hannah. *Eichmann in Jerusalem*. New York: Viking Press, 1964.
 Drumbl, Mark. "Rule of Law Amid Lawlessness: Counseling the Accused in Rwanda's Domestic Genocide Trials." *Columbia Human Rights Law Review* 29 (3) (1998): 545-639.

Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 935: 1994. UN SCOR, 49th Sess., Annex, at 3, UN Doc. S/1994/1405, 1994.

IRIN News Update. No 605. Tuesday February 9, 1999.
 Human Rights Watch/Africa. *Shattered Lives, Sexual Violence During the Rwandan Genocide and its Aftermath*. 1996.

Martin, Dianne. "Retribution Revisited: A Reconsideration of Feminist Criminal Law Reform Strategies." *Osgoode Hall Law Journal* 36 (1) (1998): 151-188.

McIlroy, Anne. "Tutsi woman seeks justice for brutal genocidal rapes" *Globe and Mail* 20 November 1997: A15.

Minow, Martha. *Between Vengeance and Forgiveness*. Boston: Beacon Press, 1998.

Prosecutor v. Anto Furundzija. Case No. IT-95-17/1-PT, Trial Chamber, ICTY, December 10, 1998.

Rome Statute for the International Criminal Court. Art. 17.

"Rwanda Not So Innocent (When Women Become Killers)" *African Rights* (1995): 1-27.

Scharf, Michael. *Balkan Justice*. Durham, North Carolina: Carolina Academic Press, 1997. 159-163.

Wedgwood, Ruth. "The International Criminal Court: An American View." *European Journal of International Law* 10 (1) (1999): 93-107.

JACOB KADAR PENNER

The fresh grass sways through the air
 The flowers that smell so beautiful
 crush in a battle of hatred
 Hatred of a race, hatred of a human like me
 and you.
 This group who does this is troubled,
 A people who are mad.
 War will happen, it can't be stopped—
 People tortured in camps
 Bombs happen,
 Big bombs happen.
 It's over now
 And again fresh grass sways through the air.

Jacob Kadar Penner is 12 years old. He is in Grade 7 at City View Alternative School in Toronto.