



Cite this article as: Nkuhi, M.S. (2021). Human rights in labour and employment relations: international and domestic perspectives, edited by James A. Gross & Lance Compa, labour and employment relations association, Champaign - Illinois, 2009, ISBN 978-0-913447-98-7. 237pp, *East African Journal of Social and Applied Sciences*, 3(1), 192-197.

BOOK REVIEW

HUMAN RIGHTS IN LABOUR AND EMPLOYMENT RELATIONS: INTERNATIONAL AND DOMESTIC PERSPECTIVES, EDITED BY JAMES A. GROSS & LANCE COMPA, LABOUR AND EMPLOYMENT RELATIONS ASSOCIATION, CHAMPAIGN - ILLINOIS, 2009, ISBN 978-0-913447-98-7. 237PP.

NKUHI, Mathias Sylvester

Department of Law,

Moshi Co-operative University (MoCU)

Email: mathias.nkuhi@yahoo.com

ABSTRACT

The need to protect workers' rights as human rights was initiated by human rights activists in the early 1990s. For about half a century, after the United Nations (UN) recognition of the rights, there were no or less concerns on pursuit of workers' rights as human rights. The pursuit of the labour rights as human rights was a result of the feeling that the conventional approach in protecting them had not been successful, as the respect for such rights by employers and other stakeholders had tremendously fallen (accelerated by among other factors globalisation). The book is a resource for various groups engaged with labour and human rights issues (including researchers, activists and academicians). It contributes on critical labour rights and their protection as human rights. The discussion takes aboard the human rights of vulnerable workers and prohibited labour practices. Reference is made to international human rights instruments, International Labour Standards (ILS) and domestic labour law and policy of the United States (U.S.) and other selected countries. Even though the book has left out the right to collective bargaining and its focus on the domestic law is narrow, its contribution to human rights at a workplace is immense particularly in the era of globalisation and advancement in science and technology. The book provides not only understanding of the critical human rights of the workers and ILS but also the practical approaches to their protection. Besides, it is a significant literature for theories and practices on human rights at work.

Key Words: Workers/labour rights, human rights, international labour standards

Paper Type: Book Review

Type of Review: Peer Review

1. CONTEXT AND SYNOPSIS

Human Rights in Labour and Employment Relations: International and Domestic Perspective is a collection of excellent manuscripts on a momentous area of scholarship. The book centre of attention is the animating idea that workers' rights are human rights. It contains contributions by human rights activists, practitioners and scholars with extensive experience and publications. It is meant to serve as a resource for various groups involved with labour and human rights including academicians at the university level (engaged in teaching labour and Human Rights courses), researchers, practitioners as well as students.

The book is composed of nine chapters with varying discussions in terms of the labour rights and class of workers addressed. Foremost is the introduction which, *inter alia*, explains the logic behind scholarship on workers' rights as human rights and sums up the substance of the authors' discussions (p. 1-12).

Triggering the discussion is the explanation on the reasons why human rights in labour is referred to as an emerging area of scholarship. The authors discussion is premised on the belief that the human rights approach would yield better results compared to the economic one which is premised on a notion that working conditions and rights would be improved and realised on the improvement of markets (relied upon for a longtime by institutional labour economists).

Chapter one enlightens on the convergence between labour and human rights particularly the timing, reasons for longstanding divergence, signs and ultimately reasons for the convergence. Human rights advocates focus on gross violations of civil and political rights (outrages like *genocide, torture, arbitrary arrest and imprisonment and deaths quad killings*) is explained as the reason for half century (1940's – 1990's) failure to pursue labour rights as human rights. Globalisation is cited as one amongst the major factors for the convergence where trade unions and activists mind changed due to alarming multiple human rights abuses including child labour, trafficking, discrimination, forced labour and sufferings by workers on attempts to form unions mostly tied with globalisation (p.2).

The authors do not only analyse workers' rights as human rights as a slogan but also provided a framework to the pursuit and realisation of the rights. They, as well, address critiques laid against the pursuing workers' rights as human rights offering new thoughts to keep the ideas intact (p. 7-11). The authors' main argument is that, the human rights approach to labour rights is significant at the present order. The discussion on human rights at the American workplace dwells in the second chapter. Critical international human rights instruments are analysed with the motive of trying to understand economic rights and their place to human development. The discussion captures the individuality and collectiveness of the rights, cultural relativism as well as national sovereignty and challenges associated with it. U.S. labour law and standards are analysed against those under international law (p. 28-34). The chapter disputes the assertion that the U.S. labour laws and standards are equal to those at the international level and set forth the real need of bringing such laws to international standards (the ones in the International Bill of Rights and those under the International Labour Standards (ILS) particularly the ILO Core Treaties on Human Rights of Workers. Multiple misfortunes with the U.S. labour law are cited and pertinent to them is the violation of black people's rights as a no economic misfortune (p.30). (The "negro jobs" factor is cited with observations "*servility not compatible with human rights*").

Chapter two spot an increased labour movement interests on the use of the ILO complaints and international law mechanisms particularly the unions' use of the ILO Committee on the Freedom of Association (ILO CFA) (p. 32-33). One of the concrete examples provided is the successful challenging of the Supreme Court decision on the *Hoffman Plastic Case* (p.32). There is also noted employers' increasing recognition of workers' rights as human rights. The chapter sums up how authors of the contributing essays have responded to critics of the labour rights as human rights agenda (the one insisting on the focus to labour solidarity and industrial democracy).

Chapter three provides new frontier for industrial relations with a focus on workplace health and safety as a human right (p. 43-72). The argument in the chapter is that workplace hazards are responsible for major human rights crisis of latest and the evils of globalisation (child abuses, trafficking, discrimination, unionization complexities, chemicals and biological substances to mention a few) are at the heart of the crisis. Acknowledged are the facts that working conditions has been an ongoing topic of scholarship and

government for more than a century and that an understanding of WHS as a fundamental right is a recent phenomenon (p.43). The author, using workplace health and safety right, develops a framework under which the right can be pursued as a human right. The framework embodies policy evaluation, the role of government and human rights in the social context.

The discussion encompasses the evaluation of the institutional labour economists approach and the human rights worldview approach (p. 59-66). The author believe in the human right approach and calls for a distinct human rights analysis in industrial relations in order to '*catch up with the reality of the suffering of many millions of workers*'. He sees the growth in concern for protection and promotion of the right in the U.S. and elsewhere in the world as promising. According to the author, thoughts over the redefinition of labour problems with human rights perspectives are critical as new vision and potential to challenging traditional concerns in labour-employment relations.

The human rights law and policy perspective regarding child labour is what chapter four rests in. Child labour is analysed as an undisputed human right problem with reference to children in appalling conditions (p. 73).The problem is discussed under five premises: the harmful nature, the need to abolish it, the application of multidimensional approach, eliminating business as usual approaches by business entities and the seeking of changes through the application of human rights law and policies (p. 76). Child labour is explained as worst before 1989 and strangely the world was silent in tackling it as violation of human rights.

The post 1990 era is acknowledged as the era of change with key Inter Governmental Organisations (IGOs) and Non Governmental Organisations (NGO's) recognizing the link and committed to combat child labour with a human rights approach. Reference is made to works of some IGOs and NGOs to substantiate this contention. The link between child labour and human rights, as portrayed in the chapter, is not only broad but deep (p. 80). The chapter advances the human rights approach calling for not only legal but also extra legal measures to abolish child labour. The analysis responds to skeptic arguments on the propositions (p.80). Interestingly, the chapter explains why child labour has continued to exist notwithstanding all global efforts. The author proposes multiple practical measures (p.94-109) without which, according to the chapter, no broad changes would be visible.

The fifth chapter provides critical discussion on Workers Freedom of Association (WFA). The discussion is on the freedom as part of international human rights instruments, constitutions and domestic laws. The controversy on the nature and scope of entitlements on the freedom is the core focus of the discussion. Two issues are raised and discussed namely; whether the freedom encompasses both positive and negative entitlements (to associate or to refuse to associate); and whether the freedom extends to the collective ability to exercise rights without state interference (p. 124). Reference is made to multiple international legal instruments (significantly the ILO Declaration on Fundamental Principles and Rights at Work 1998); works of international bodies dedicated with protecting the freedom (including the ILO Committee on WFA); and legal positions in Canada, U.S. and U.K. noting the countries non compliance to the ILO standards.

Significantly, the author take note of the decline in trade union membership to these countries in the past 50 years and discusses what is happening to the countries particularly linking the 'individual choice' aspect and enforcement of human right by courts (p. 133). With these, the chapter discussion on appeal of individual choice and respective arguments for collective action is rich. The conclusion drawn in the chapter is that the right has to be understood as multifaceted with civil, political and socio-economic implications and that state must respect, protect and fulfill the freedom (p. 148).

The sixth chapter addresses human rights of the migrant workers and those in forced labour. Focus is on the needs for prosecution, prevention and protection. The migrants' poor working and living conditions, violative of their bundle of rights and responsible for their sufferings are highlighted with reference to the Dominican Republic, Ireland, South Korea and the US (p.155). Push pull factors and globalisation are looked at as critical to migration. The analysis of law and practice is done with a motive of providing models for comprehensive migrants' rights protection schemes. The option of migrating illegally and particular migrants 'stay in the shadows' is noted and analysed.

According to the author, without controlling the imbalances, migrants will continue to fall in situations of forced labour (*imbalances in terms of labour rights for legal and illegal migrants; the imbalances of the guest worker program; and the failure to identify and protect the victims of trafficking*).The chapter takes aboard a critical analysis of the U.S. law on the treatment of illegal migrants and guest workers, setbacks in the materialisation of the US anti-trafficking legislation and the role of NGO's in the protection of migrant workers' rights (p. 157-163).Drawing lessons from international community the author hails the European Union (EU) law for providing the best model in handling migrant workers' rights and protections on the area of trafficking (p. 166-167). The conclusion drawn is a reminder of globalisation, migration and possibilities of migrants' subjection to difficult situations.

In the seventh chapter the discussion is on the corporate perspective regarding human rights and sustainability. Underlined is the recognition of immutable human rights as an important social phenomenon resulting from the spread of capitalism, democracy and market economics with the U.S. identified as the catalyst (post World War II) (p. 182). The Business and Human Rights (BHR) agenda is analysed as a guide to integrating human rights into business management, inspiring businesses to act on human rights out of self interest to the benefits of the society (p. 183-192).

The chapter explains the move from businesses denial of responsibility for human rights to endorsing them and difficulties in some countries. Discussion and questions on BHR framework embodies obligations of businesses under international law ("respect, protect and remedy"). The gap in upholding international human rights standards on business activities and the sticking with the legislative and regulatory requirements approach are problems linked with the U.S. framework. Looking ahead, the authors' believe that companies can improve human rights at work if they take pragmatic standards and actions supported by broader initiatives by government and civil society (p. 192).

Chapter eight analyses the theoretical and practical aspects of employment discrimination. A different approach is taken where employment discrimination and law is analysed with human rights perspectives (*a departure from traditional treatment of workplace discrimination as merely civil or work law based*).The chapter provides reasons as to why discrimination is understood as a violation of human rights (p. 196-200). The examining of employment discrimination as a human rights issue was with a view of providing a different lens through the U.S. law could be critiqued. The ILO approach to workplace discrimination has also occupied a significant part of the discussion. Using the ILO principles on nondiscrimination as a comparative standard, the author argues that U.S. law is falling short of providing full protection for the human rights of American workers (p. 211). Consequently, the chapter calls for either reforms in the existing laws (different laws or different interpretations) to ensure full compliance with international norms.

The final chapter (i.e. the ninth chapter) embodies a discussion on the human rights of workers with disabilities. Primary focus is on the recognition of human rights of workers with disabilities as the beginning in the process of doing away with the approach that ignored these rights (the medical approach). It links the recognition with an understanding of the problems of People with Disability

(PWDs) and their abilities to make valuable contributions. The discussion of the evolution and growth in the attention of disabled rights as human rights, policies and legislation ((p. 214-215)), and the implications of recent developments for policy, programs, service and research are embodied in the chapter (p. 227-230).

Pointing out the gap of protection of the rights of PWDs at work, the chapter takes note of changes brought by the U.N. Convention on the Rights of Peoples with Disabilities (p. 216-219). Critically, the chapter discusses the U.S. and E.U. disability laws and the human rights implications, majorly for workers with disability. Attention is to anti-discrimination law of the two. The authors call for professionals to contribute to research on the new dimensions (*as many researchers have been on the field of rehabilitation counseling and rehabilitation psychology*). There are several other measures proposed including countries sharing experiences on the implementation of the Convention and its ratification (p. 224-227).

2. IMPORTANT CONTRIBUTIONS AND REVIEWER'S CONCERNS

The book makes a significant addition to scholarship in labour and human rights. The contributions are critical to the development of the U.S. labour policies and law. Thoughts over the alignment of the policies and laws with the international human rights standards are pertinent at the time when workers face difficulty challenges regarding working conditions and rights. Admittedly, the general principles discussed and examples offered in the book are of universal application. To the reviewer, the principles and examples are significant to developing nations where the rates of occupational health menaces (fatalities, diseases and injuries) are far more higher compared to the U.S. and the E.U.

The ideas and their practicality are critical to influencing of policy and legislative considerations in the developing countries. The discussions are wakeup calls. A handful of examples from developing countries are enough to trigger discussions regarding the application of human rights at work in their legal systems. This is particularly possible with the contributions in the book identifying gaps in policies and laws as well as providing the appropriate human rights approach to their resolution.

Undeniably, the animating idea and discussions on the practicality of human rights in employment and labour is not only momentous but also timely. Its area of focus is one fundamental especially in the era of globalisation and advancement in science and technology. It offers an understanding of workers' menaces in the globalised world and areas which governments, activists, employers, businesses and other stakeholders involved in the protection of workers' rights can work on to address the sufferings.

The book provides avenues to address workers sufferings caused by the evils of globalisation and advancement of science and technology. The contributions on WHS right, WFA, the rights of the vulnerable workers (migrant workers and workers with disability inclusive), prohibited labour practices (child labour and employment discrimination inclusive) and the application of human rights in business raises important concerns, questions and provide required roadmaps towards protecting workers' rights as human rights and the need for the human right approach in businesses and workplaces in general. The contributions cannot therefore be ignored for the critical role on this important area of scholarship.

The book provides basis for the human rights at work and the proposed approaches. The contribution in it counters critiques on the human right approach for workers' rights. For instance, the book responds to critiques raised by the institutional labour economists whose belief is that the problems of workers, including poor working conditions would be resolved with the improving of labour markets. It also responds to critiques the discussion provided is more of utopian than it is in the practical world. The countering responses have explained, not only the basis for the approach but also how would it work.

Even though the book provides serious concerns on human rights in employment and labour relations the reviewer has some concerns on it. Foremost to it is the reviewer's observation that the book's coverage in terms of the domestic perspectives is narrow. The domestic perspectives referred to in the title are limited, at a great part tied up with the US laws. The authors ought to have encompassed the discussion of human rights at work with relevant examples from more developed and developing countries to enable the readers understand the problems of both worlds. There is too little reference to third world countries.

The reviewer believes that the level of protection, enforcement mechanisms and knowledge (even with human rights in play) varies between the developed and developing worlds. Even though cultural relativism is noted, human rights are universal and so the discussion of the international standards versus those in countries other than the U.S. would have given a clear picture of the reality in terms of "international and domestic" perspectives.

Moreover, the discussion of human rights in employment and labour discussion is silent on the right to collective bargaining which is part of the core/fundamental labour rights not only as per the ILO Declaration of Fundamental Principles and Rights at Work 1998 but also according to the International Bill of Rights. The discussion would have been critical in narrating the international perspectives and other significant narratives under the U.S. and other domestic laws.

Nevertheless, the shortcomings pointed out above do not take away the fact that the book is a very good literature for workers unions, academicians and university students, researchers, legal practitioners and human rights activists working in the area of human rights at work. The gaps and shortcomings identified can be utilised by members in the aforementioned target group as further areas for research.

REFERENCES

- Gross, J.A., (Ed) (2003), *Workers' rights as human rights*, Cornell University Press: New York
- Gross, J.A. & L. Compa (Eds) (2009), *Human rights in labor and employment relations: international and domestic perspectives* (1st Edn), LERA: Illinois
- Hilgert, J., (2013). *The future of workplace health and safety as a fundamental right*, CLLPJ,
- Politakis G.P., (Ed) (2007), *Protecting labour rights as human rights, present and future of international supervision*, ILO: Geneva
- ILO, (1998), *International labour standards: a workers' education manual*, (4th Edn), ILO: Geneva
- Dorman, P., (2009), *Markets & mortality: economics, dangerous work, and the value of human life*, Cambridge University Press: Cambridge
- Jain, R., (2016), *Textbook on human rights: law and practice*, Universal Law Publishing: Allahabad
- ILO, *Gaps in coverage and barriers to ratification and implementation*, ILO: Geneva at https://www.ilo.org/safework/areasofwork/hazardous-work/WCMS_110188/lang--en/index.htm, on 04/10/2018 at 11:42 a.m.
- Virginia Mantouvalou, *Are labour rights human rights*, ELLJ 3 (2), 151 (2012), <https://journals.sagepub.com/doi/abs/10.1177/201395251200300204>, retrieved on 11/09/2019 at 06:20 p.m.