

a guide to workers' rights



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Kenya Human Rights Commission
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A Guide To Workers' Rights

KENYA HUMAN RIGHTS COMMISSION	
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Kenya Human Rights Commission

Mission Statement

THE KENYA HUMAN RIGHTS COMMISSION (KHRC) is a non-governmental membership organization founded in 1992. It has an observer status with the African Commission on Human and People's Rights. KHRC is the 1998 winner of the MS International Award, bestowed in Denmark.

The mission of the Commission is to promote, protect and enhance the enjoyment of the human rights of Kenyans. It does this through monitoring, research and documentation of human rights violations. It organises activist events and undertakes public awareness campaigns on human rights. KHRC is committed to mainstreaming gender in all its programmes and initiatives.

KHRC is committed to the realization of human rights ideals in Kenya by strengthening the human rights movement. KHRC supports social, political, economic, and cultural change aimed at enhancing respect for the rule of law, the development of a society that upholds democratic values, a society aware of its rights and comes to their defense whenever threatened or attacked.

Strategic Objectives

KHRC strategic objectives are to:

- Reduce human rights violations in Kenya
- Strengthen the human rights movement in Kenya

- Hold state, institutions and individuals accountable for human rights violations
- Raise awareness of human rights in Kenya
- Place Kenya on a truly democratic trajectory

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Preamble

This background calls for the enforcement of the and workers' rights that have so far remained an empty shell of the work place where many persons are deprived of the means of decent living. This is what the book is about.

Every Kenyan has the right to work.

Kenya Human Rights Commission is of the view that the whole The ILO convention defines employment in its widest possible sense to include any productive activity enabling individuals and groups to ensure their livelihood and which contributes meaningfully to their society. Employment yields an output, provides an income to the employed and gives an individual a feeling of self-respect, dignity of being a working member of society.

Article 23 of the Universal Declaration of Human Rights provides that everyone has a right to work, [in exemption for reasons such as advanced age, schooling or some serious disabilities] to free choice of employment, to just and favourable working conditions of work, and protection against unemployment. Work thus belongs to the vocation of every man and woman; in fact people get fulfilment in work. Today, majority of Kenyans are unable to find employment. The state has the responsibility of organizing its citizenry to ensure that they are productive. Kenya is not an exemption in this respect. The Kenyan law does not recognize that Kenyans have a right to work. This is why the few who get some of the scarce jobs, often work for low wages and in poor working conditions. That's not all; Because of the meagre income, most of them end up living in very poor conditions and reside in slum areas or squatter camps. There are also those who, because their incomes are too low to meet all their needs, briefly report to work and then sneak to pursue extra income through some business

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This background calls for the enforcement of the right to work and workers' rights that have so far remained an empty shell at the work place where many persons are deprived of the means of decent living. This is what this booklet hopes to promote. The Kenya Human Rights Commission is of the view that the whole gamut of human rights has to be reflected in the concept of employment.

chapter one

Freedom of Association

Both the employer and the employee are empowered to form associations for the purpose of organizing themselves and exercising their collective strength. The most important of such organizations for the worker is the trade union. Workers have a right to form associations for the advancement and protection of their interests. Freedom of association and of expression is essential to sustainable development

As a worker, you have the right to:

- Establish and, subject only to the rules of the organization concerned, join organizations of your choice without any body's authorization.
 - Form or join a trade union of your choice as long as you are above sixteen years old.
 - Organize and participate in strikes and boycotts.
 - Draw up constitution and rules of your organization
 - Organize your administration and activities and to formulate your own programs.
 - Elect your representatives in full freedom without interference from the public authorities or your employer.
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- Protection against harassment, warning or dismissal because of your role or activities as workers' representative.
- Access facilities like telephones that shall enable you to carry out your functions promptly and efficiently.
- Join trade unions and protection from anti union discrimination if you are a civil servant or an employee of a parastatal.
- Protection from sector discrimination.
- Share on the benefits from the Union even when you are not a member.

The employer is not supposed to:

- Nominate who becomes trade union leader
 - Dissolve or suspend the workers union
 - Choose for the employees the trade union to join,
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chapter two

**Employer/Employee Relations and
Collective Bargaining Agreement**

The "collective bargaining" refers to all negotiations which take place between an employer, a group of employers, one or more employers' organizations on the one hand, and one or more workers' organizations on the other. The bargaining is usually done for:

- Determining working conditions and the terms of employment; and/or
- Regulating relations between employers and workers; and / or
- Regulating relations between employers or their organizations and a workers' organizations

As a worker, you have a right to:

- Payment of your dues after completion of the contract or at the end of the month if you are employed on a monthly basis,
 - Equal opportunity to promotion to a senior position of employment.
 - Reasonable housing accommodation at the employer expense, or
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- A sufficient amount of housing allowance to enable you to rent reasonable accommodation where the employer does not provide housing.
- Sufficient supply of water by the employer at the place of work and at the housing accommodation.
- provision of medical facilities by the employer

Remember that:

- Collective bargaining should be made possible for all employees and all groups of workers.
 - The Collective Bargaining Agreement (CBA) does not exhaust all your Human Rights.
 - The employer is legally responsible for every wrongful behaviour of his employees if such behaviour was engaged in the course of duty and with the authority of the employer.
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chapter three

Minimum Wages and Wage Guidelines

A wage is the remuneration which a worker receives after completing the task assigned in a particular contract. The bare living wage is usually referred to as minimum. Factors considered while computing the minimum wage include, but are not limited to:

- The performance of the economy over a specific period,
- Consumer price indices,
- Changes in workers' purchasing power
- The existing wages.

The minimum wage level only applies to workers paid under the Regulations of Wages and Conditions of Employment Act and not to those who have negotiated terms under their respective Collective Bargaining Agreement.

As a worker, you have a right to:

- Receive wage payment at or above the minimum wage level.
 - Just wages and equal payment for work of equal value without any discrimination.
 - Wages or salary that will accord you a dignified living with your family.
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Remember that:

Although as rule the worker is entitled to receive the entire amount agreed upon as wages, the law provides for authorized deductions to be made by the employer of:

- Contribution to funds or schemes for the benefits of the employee (e.g. towards the National Hospital Insurance Fund, National Social Security Fund).
- Genuine damage or loss of the employer's property.
- Any legitimate overpayments of wages to the worker or money shortage caused by him/her
- Unauthorized absenteeism
- Payment of loans advanced to the employee
- Permitted by the law [e.g. Taxes]
- Requests by the employee

Save for the above, any other deduction should be authorized by the employee, even if it is conditioned by a directive from the Minister of Labour. However, the total deductions should not exceed half of the employee's total monthly wage.

chapter four

Occupational Health and Safety

The questions of health and safety have always been at the forefront of concerns for workers.

As an employee you have the right to:

- Work under safe and healthy working conditions;
 - Just and favourable working environment;
 - Protection from occupational health and diseases and other hazards;
 - A clean workplace;
 - Adequate space of work to avoid over crowding;
 - Adequate ventilation and circulation of air;
 - Sitting facilities if you normally work while standing;
 - Provision of first aid facilities within the working premises;
 - Provision of storage facilities for you to keep clothes and other items not in use when on duty;
 - Provision of protective clothing and equipment for your protection;
 - Proper training if you work with machines and dangerous equipment; and
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- Clean drinking water.

Remember

As a worker you are employed when on or out of duty. Thus you are entitled to medical benefits while on or off duty.

chapter five

Hours of Work

Each company should comply with applicable laws and industry standards on working hours.

As a worker you have a right to:

- At least one day off after seven days' of work. Your CBA may give you more than this.
 - A working day which ordinarily should not exceed 8 hours per day and 48 hour per week.
 - Paid annual leave which should be a minimum of twenty one working days for every year worked.
 - Appropriate holiday when the length of service is less than a year.
 - Overtime that does not exceed 12 hours per week.
 - Work for not more than 60 hours while on night duty
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chapter six

Social Service, Housing, Leisure**Every Worker has a right to:**

- Periodic holiday with pay
 - The housing allowance of not less than fifteen per cent [15%] of the basic wage
 - Rest, leisure and reasonable limitations of working hours.
 - Compassionate leave to be agreed upon between the parties with twenty one days as maximum
 - To a maximum of thirty day's sick leave with full pay after a maximum of fifteen day's sick leave with full pay.
 - To a subsistence and accommodation allowance while working away from the principle area of employment.
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chapter seven

Women's Employment

The employment arrangement must take consideration of the productive and reproductive dynamics of the female employee. The female workers are thus entitled to:

- Special protection accorded to mothers during a reasonable period before and after child birth
- Maternity leave with full pay and social security benefits
- Maternity leave for two months and forfeiture of annual leave
- Work in day shifts only unless under special services, like nurses.
- Equal right, alongside men, to access opportunities of employment
- Fair wages and equal remuneration for work of equal value without distinction of any kind. In particular, women should be guaranteed same conditions of work to those enjoyed by men, with equal pay for equal work.

Remember that:

- The employer or other workers are not supposed to use words or illustrations in a way that undermine or belittle the equality and dignity of women workers.
 - The employer should offer protection to women workers tak-
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ing into account their natural maternal functions in the society.

- Women employees must be protected from sexual harassment and exploitation.

chapter eight

Worker with disabilities

Workers with any restriction or lack of ability to perform an activity in the manner or within the range considered normal for human beings, should be given additional support to allow them to give their optimum output.

These workers have a right to:

- Special protection in view of their disabilities.
 - Equal opportunities for productive and gainful employment in the open labour market
 - Support from the state to integrate them to open employment through measures such as:
 - Oriented quota system
 - Reserved design or designated employment
 - Loans or grant for small enterprise business
 - Cooperatives
 - Exclusive contract or priority production right
 - Tax concessions
 - Measures to improve working environment in order to prevent handicapping injuries and impairments
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- Measures for the rehabilitation of employees impaired while on duty
- Adjustment of workplaces and work contents to their requirements

- Sheltered employment where you cannot deal with the demands of competitive employment

Remember that:

When acting as employers, the central and local government are required to promote employment of disabled persons in the public sector. Laws and regulations should not raise obstacles to the employment of disabled persons.

- Support from the state to integrate them to open employment through measures such as:
 - Oriented quota system
 - Reserved design or designated employment
 - Loan or grant for small enterprise business
 - Cooperatives
 - Exclusive contract or priority production right
 - Tax concessions
- Measures to improve working environment in order to prevent handicapping injuries and impairments

chapter nine

Social Security

The essence of social security entails government protected ["safety valves"] minimum standard of income, nutrition, housing and education, assured to every citizen as a right and not charity. This is more so when a worker is beyond the working age or no longer in employment. It is based on the belief of justice as a social justice. Every worker has a right to membership to these institutions. These institutions are:

The National Social Security Fund (NSSF)

This provides a pool of fund to which both the employer and the employee contributes. It is meant to benefit those retiring from employment in the private sector by being given lump sum representing the contributions to funds plus accrued interest. This fund currently only offers insurance to the employed and not the many unemployed Kenyans. The availability of this fund however, does not stop the employees in the private sector from having private group plans covering health costs, survival protection and retirement income.

Unfortunately, the scheme has over the years been grossly mismanaged. Instead of benefiting the workers, the fund has been a source of wealth for those who are politically connected and a number of crooked financial institutions. The Central Organisation of Trade Unions (COTU) which represents workers on the

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NSSF board of trustees has kept silent while the government continues to retain the ultimate say on how the fund is to be run.

Pension

The Public servant in Kenya has access to grants and pension gratuities after retirement. The private sector has mainly a provident fund.

National Hospital Insurance Fund [NHIF]

The fund is meant to assist the contributors to off-set a section of medical bills on being admitted in a hospital for treatment. However, like NSSF, it has been a gold mine for the politically well-connected and there is an urgent need that it gets de-linked from the government if the workers were to benefit.

Did you know?

That the Ministry of Labour officials have a responsibility of conducting inspections on on-going basis in the work place throughout the country? Labour inspectors and officers are appointed at the district level and their performance is monitored and evaluated on a monthly basis. They are supposed to report on the following:

- Compliance and/or contravention of statutory requirements as to, among others, wages, working conditions and provision of safety equipment.
 - Provision of adequate housing or housing allowance for employees
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- Provision of welfare and medical scheme
 - Use of child labour
 - Workers' representation in the unions
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chapter ten

International Solidarity

The scale of challenges posed by globalisation makes it imperative for organizations with common political purpose to find ways of working in an alliance and stress their common interest. This is at the level between trade unions and between the trade Unions and the consumers.

As a worker, you must remember that:

- Many companies continue growing rapidly day after day by creating global networks.
 - Countries in the southern hemisphere like Kenya, continue to be impoverished by the transnational corporations.
 - The Tripartite Arrangements result in exploitation and oppression.
 - The trade unions have the freedom to form and join any national or international federation.
 - The employers are always afraid of federations due to the immense power they give to the worker.
 - The consumers are the final link in the commercial and economic system which exploits the workers.
 - Consumption can become a formidable weapon because by
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restricting the goods purchased, profits are reduced.

- National and International Human Rights movements are friends of the workers.
- Workers' rights are human rights.

Sources for Workers Rights standards and practice

The summaries of Workers right Standards and practice contained in this booklet are based upon the sources listed bellow.

- Universal declaration of Human Rights
 - International Convention on civil and political rights
 - Intentional convention on economic social and cultural rights
 - The Kenya Constitution
 - The Employment Act, The Trade Unions Act, The Trade Disputes Act, The Factories Act, The Regulation of Wages and Conditions of Employment Act, The Public Health Act.
 - International Labour Conventions
 - Social Accountability 8000
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