

Principle 9

ACCESS TO REMEDY IS PROVIDED

Migrant workers should have access to judicial remedy and to credible grievance mechanisms, without fear of recrimination or dismissal.

Many migrant workers lack access to effective remedy when their rights are abused. Migrant workers seeking any form of redress, which can range from an apology, reinstatement, restitution to compensation, often face huge challenges accessing State-run judicial mechanisms such as courts or labour tribunals, or non-judicial grievance mechanisms such as publically funded mediation services where they exist. Migrant workers in many cases do not have access to operational level (company) grievance mechanisms. There is often a lack of awareness among migrant workers of their rights to bring complaints concerning their working conditions or treatment either to State or to company mechanisms. Migrant workers moreover may be deliberately misinformed or denied access to worker representatives who could advise them on the process to access independent legal advice. This situation is frequently exacerbated by language or cultural barriers. They may fear discrimination, intimidation, or losing their jobs and being repatriated. This fear will be particularly acute when migrant workers face financial pressures, such as a heavy debt or where wages or benefits are outstanding.

In some countries, work permits/visas are terminated the moment a migrant worker is dismissed. This can render it almost impossible for them to pursue their claims in the country where the work took place, as many judicial and non-judicial systems require migrant workers to be present during any hearings/trial. Women migrant workers may face particular obstacles, including legal constraints in some countries on their ability to use the legal system, if they wish to bring claims around unpaid wages, discrimination or sexual violence.

IMPLEMENTATION STEPS

- All workers must have access to judicial or non-judicial grievance mechanisms beyond the company level, including legal complaints procedures. Migrant workers should not be denied access to consular services.
- Employers should provide access to workplace level grievance mechanisms, administered by themselves and their trade unions or in collaboration with others. The mechanism should be explained, and fully accessible, in a language each worker understands. Genuinely confidential channels to lodge complaints or raise concerns should be provided.
- Employers should make appropriate provision for all workers to lodge complaints (individually or with other workers) and to seek remedy without fear of financial penalty, intimidation, recrimination or dismissal. Employers should never threaten to or contact immigration authorities services as a means of eliminating or deterring complaints.
- Employers should ensure that company grievance policies and procedures adhere to relevant laws, are timely, and meet the eight effectiveness criteria⁹ set out in the UN Guiding Principles. Grievance procedures should be reviewed regularly with input from workers' representatives, and performance should be tracked impartially.
- Employers should not interfere with migrant workers' approaches to worker representatives who can provide impartial advice on, and support with accessing, appropriate grievance mechanisms, including translation/interpreting and legal assistance. Employers should not use such mechanisms to undermine the exercise of the workers' right to form or join trade unions or to use such mechanisms to deny workers access to legal remedies.
- Dismissal procedures should always allow for a proper suspension period to enable workers to pursue an independent investigation without risk of deportation.

⁹ UN Guiding Principle 31 sets out effectiveness criteria for non-judicial grievance mechanisms. These should be: a) legitimate, b) accessible, c) predictable, d) equitable, e) transparent, f) rights-compatible, g) a source for continuous learning, and h) at the operational level be based on engagement and dialogue.

- Migrant workers whilst pursuing complaints should have the right to remain employed. Accommodation should remain available throughout the complaints process.
- Grievance mechanisms for female migrant workers should include safe processes specifically designed to identify and address sexual harassment or other gender-related complaints. It may be appropriate to provide safe alternative accommodation in cases involving sexual harassment during the complaints process.