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Report of the Director-General

Fourth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Peru of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Workers with Family Responsibilities Convention, 1981 (No. 156), and the Safety and Health in Mines Convention, 1995 (No. 176)

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► I. Introduction

1. By communications received by the Office on 16 June and 18 September 2020, the National Federation of Mine, Metal and Steel Workers of Peru (FNTMMSP) made a representation to the International Labour Office under article 24 of the Constitution of the International Labour Organization alleging non-observance by the Government of Peru of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Workers with Family Responsibilities Convention, 1981 (No. 156), and the Safety and Health in Mines Convention, 1995 (No. 176). These Conventions were ratified by Peru on 10 August 1970, 16 June 1986 and 19 June 2008, respectively, and all are in force in the country.
2. The provisions of the ILO Constitution concerning the submission of representations are as follows:

Article 24

Representations of non-observance of Conventions

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

Publication of representation

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

3. Pursuant to article 1 of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization, as revised by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation, informed the Government of Peru and brought it before the Officers of the Governing Body.
4. At its 340th Session (October–November 2020), the Governing Body decided that the representation was receivable and set up a tripartite committee to examine it, composed of Mr Gerardo Corres (Government member, Argentina), Mr Guido Ricci (Employer member, Guatemala) and Ms Liliana Ocmin (Worker member, Italy). By communications dated 18 December 2020, the Office informed the Government of Peru and the complainant of the Governing Body's decision. It also informed them of the measures adopted by the Governing Body at its 334th Session (October–November 2018) concerning the operation of the procedure for the examination of representations under article 24 of the Constitution, which provides for the adoption of arrangements to allow for optional voluntary conciliation or other measures at the national level (GB.334/PV, paragraph 288(1)(a)).

5. In its communication dated 16 June 2020, the complainant informed the Office that it did not consider optional voluntary conciliation or other measures at the national level to be possible as the legislation concerns the fundamental bases of labour law.
6. The Government of Peru submitted its observations on the representation in a communication of 26 February 2021.
7. The Committee met on 14 and 21 March 2023 to examine the representation and adopt this report.

► II. Examination of the representation

A. The complainant's allegations

8. The complainant explains that, in the context of the COVID-19 pandemic, on 9 May 2020 Supreme Decree No. 083-2020-PCM was adopted. It identifies people in "at-risk groups" with regard to the COVID-19 pandemic and provides in article 8.3 that workers belonging to these at-risk groups at risk should prioritize the remote provision of services, but that "if they wish to be physically present to work or provide services in authorized activities, they may sign a waiver by which they voluntarily assume personal responsibility". The FNTMMSP alleges that the effects of this waiver violate the provisions of Conventions Nos 111, 156 and 176, as they absolve the employer of responsibility, which presents persons in at-risk groups with a dilemma of whether to work on-site at the workplace or to protect their health. The complainant also states that the at-risk groups that were identified have been expanded through other legislation, and refers in this regard to Ministerial Decision No. 448-2020-MINSA, which contains the technical document "Guidelines for the monitoring, prevention and control of the health of workers at risk of exposure to COVID-19".

Convention No. 111

9. The complainant alleges that the requirement to sign the waiver creates a difference in treatment between workers who, due to their physical condition and health, belong to at-risk groups (identified in Supreme Decree No. 083-2020-PCM and Ministerial Decision No. 484-2020-MINSA) and workers outside these groups. According to the complainant, this requirement creates a difference in treatment as, to be physically present in the workplace, workers in an at-risk group must sign a waiver that absolves employers of responsibility, leaving those workers without safety and health coverage.
10. To this end the complainant alleges non-observance of Articles 1 and 2 of Convention No. 111. The FNTMMSP refers to the Political Constitution of Peru, which prohibits discrimination on the grounds of "origin, race, sex, language, religion, opinion, economic situation or any other nature", and links it to Article 1(1)(a) of the Convention. The FNTMMSP also alleges that, by determining the persons in at-risk groups and the consequences in employment without consulting the representative workers' organizations, the Government violated Article 1(1)(b) of the Convention. Lastly, the FNTMMSP alleges a violation of Article 2 of the Convention, indicating that the aforementioned legislation is contrary to equality of opportunity and of treatment.

Convention No. 156

11. The FNTMMSP also alleges a violation of Articles 1 and 2 of Convention No. 156, highlighting that in Peru it is common for parents, children, siblings and grandchildren to live in the same household and that, during the COVID-19 pandemic, this entailed a responsibility "to avoid infecting family members". The complainant alleges that absolving the employer of responsibility through the waiver not only leaves workers in at-risk groups unprotected, but also transfers to workers the risk of contracting the virus at work and infecting their family members, when the employer should assume this risk.
12. The complainant also refers to non-observance of Article 3 and alleges discriminatory treatment, as workers who belong to at-risk groups face a dilemma of whether to go to work and take a risk of infecting their family members, or not go to work so as not to become a burden for their families in the event of infection. Lastly, the FNTMMSP refers to Article 4(b), according to which measures should be taken to take account of the needs of workers with family responsibilities in terms and conditions of employment. In this respect, the complainant alleges that the measures taken by Supreme Decree No. 083-2020-PCM are contrary to the needs of workers with family responsibilities belonging to at-risk groups in terms and conditions of employment, as it removes one of the basic conditions of any job: that employers assume responsibility for prevention, protection and safety with regard to the health and life of their workers.

Convention No. 176

13. Lastly, the complainant alleges a violation of Article 3 of Convention No. 176, indicating that the Government has not consulted the most representative workers' and employers' organizations to discuss safety and health measures in mines in the context of COVID-19, despite the significant rate of infection in Peruvian mines. The FNTMMSP also alleges that article 8.3 of Supreme Decree No. 083-2020-PCM establishing the requirement of a waiver assuming personal responsibility, violates the provisions of Articles 6-12 of the Convention, as those Articles do not provide for any hypothetical case that would release employers from their responsibility concerning the safety and health of their workers. In this regard, the FNTMMSP adds that the waiver under article 8.3 of Supreme Decree No. 083-2020-PCM renders the provisions of Articles 6–12 of the Convention inoperative.

B. The Government's reply

Context of the adoption of Supreme Decree No. 080-2020-PCM

14. The Government indicates that Supreme Decree No. 080-2020-PCM authorized the gradual and progressive resumption of economic activities in the context of the national health emergency that had been declared due to the serious circumstances affecting the life of the nation as a result of COVID-19; Phase 1 of the resumption of activities started in May 2020. As a result, it was considered advisable to establish, through article 8.3 of Supreme Decree No. 083-2020-PCM, that people in at-risk groups should prioritize providing their services by working remotely, and a measure was devised to enable such workers to work on-site at their workplace if they so wished by signing a waiver indicating that they voluntarily assume responsibility.
15. The Government explains that the procedure for this waiver was developed through Ministerial Decision No. 099-2020-TR, issued by the Ministry of Labour and Employment

Promotion in coordination with the Ministry of Health, to implement article 8.3 of Supreme Decree No. 083-2020-PCM. It indicates that the procedure for signing the waiver is as follows:

- (a) The worker with a risk factor for COVID-19 who wishes voluntarily to work or provide services in person at the workplace undergoes a fitness-for-work assessment.
 - (b) The waiver is submitted in the appropriate format by the time limit.
16. It also indicates that the procedure is inclusive and has very few steps so as not to overexpose the aforementioned workers to the risk of contracting COVID-19 (use of digital or virtual means and physical means).
 17. In addition, the Government mentions that Ministerial Decision No. 099-2020-TR highlights the importance of the employer providing information to workers with risk factors for COVID-19 who wish to work on-site, and of reducing the risk of their exposure to the COVID-19 virus at the workplace. In addition, the employer's legal representative signs the waiver, to indicate acceptance, as does the workplace occupational health physician, to indicate that the worker is authorized to work on-site.
 18. In this context, the Government affirms that the procedure of signing the waiver is based on the key principles of prevention, responsibility and information stipulated in national legislation.

Principles of prevention, responsibility and information, and the legal basis for the waiver procedure

19. The Government reports that the legal basis for the provisions concerning the waiver procedure is rooted in the principles of prevention, responsibility and information.
20. The **principle of prevention** is provided for by paragraph I of the preambular title of the Occupational Safety and Health (OSH) Act, under which the employer shall guarantee that the means and conditions that protect workers' life, health and well-being at the workplace are established. The Government also refers to paragraph IX of the preambular title of the Act, which establishes the right of workers to have decent working conditions that guarantee them a physically, mentally and socially healthy state of life continuously ensured by the Government and employers (including a safe working environment and working conditions that are compatible with their well-being and dignity).
21. The applicable measures for prevention and protection are set out in article 21 of the OSH Act (treatment, control or isolation of hazards, minimization of risks, protective equipment and so on). According to section 6.4.6 of the technical document "Protocols for Occupational Medical Examinations and Diagnostic Guides for Mandatory Medical Examinations by Activity", it is the occupational health physician who determines through occupational medical assessments whether a worker is "fit for work", "fit with restrictions" or "unfit for work".
22. The Government also specifies that, in the event of non-observance of the principle of prevention, the **principle of responsibility** under paragraph II of the preambular title of the OSH Act applies, whereby the employer assumes the economic, legal and any other implications of an accident or illness that a worker suffers during or as a result of the performance of their duties. It further indicates that article 26 of the same Act provides that the occupational safety and health management system is the responsibility of the employer, who is not exempt from their duty of prevention and, if applicable, of compensation.

23. Lastly, the Government indicates that, according to the **principle of information** set out in article IV of the preambular title of the OSH Act, workers have the right to receive from the employer appropriate preventive information about the work to be performed, with an emphasis on potential risks to the life and health of the workers and their family members.
24. The Government indicates that, in line with the mandate of article 8.3 of Supreme Decree No. 083-2020-PCM, it assessed each aspect of the aforementioned legislation to ensure that workers' right to safety and health was respected and safeguarded.

Identification of at-risk groups

25. Regarding the identification of "at-risk groups", the Government explains that this was done through the technical document of Ministerial Decision No. 448-2020-MINSA and was updated through Ministerial Decisions Nos 972-2020-MINSA and 905-2020-MINSA.
26. It indicates that these groups were identified in accordance with the scientific information continuously disseminated globally and the available data on the presence of comorbidities and the risk of severe complications in the event of contracting COVID-19, such as increased risk of hospitalization, intensive care, mechanical ventilation and/or death, irrespective of other comorbidities. The Government also mentions that specialists from the Ministry of Health are continuing to study the COVID-19 health emergency so that they can incorporate provisions into sectoral regulations as appropriate.
27. The Government indicates that the determination of at-risk groups forms part of the overall governance policies, strategies and programmes and the interventions of the World Health Organization, and is based on scientific evidence. Accordingly, the Government considers that the determination of at-risk groups is more closely related to public health than to occupational health and that, as public health is the sole preserve of the Ministry of Health, the determination of at-risk groups does not need to undergo consultations.

Repeal of Supreme Decree No. 083-2020-PCM

28. Lastly, the Government informs the Committee that Supreme Decree No. 083-2020-PCM, which provided for the waiver, was repealed by the supplementary repealing provision of Supreme Decree No. 184-2020-PCM of 30 November 2020.

► III. The Committee's conclusions

29. The Committee's conclusions are based on its examination of the allegations made by the complainant and the observations submitted by the Government in these proceedings.
30. The Committee notes that the complainant alleges non-observance by the Government of Peru of Conventions Nos 111, 156 and 176 following the adoption of Supreme Decree No. 083-2020-PCM, article 8.3 of which provides that, if they wish to work or provide services on-site in authorized activities, workers belonging to at-risk groups can sign a waiver indicating that they voluntarily assume responsibility.
31. The Committee notes that, in general terms, the Government reports that: (1) in the context of the resumption of economic activities during the COVID-19 pandemic, it was considered advisable to establish, through article 8.3 of Supreme Decree No. 083-2020-PCM, that people in at-risk groups should prioritize providing their services by working remotely, and a

measure was devised to enable such workers to work on-site at their workplace if they so wished by signing a waiver indicating that they assume personal responsibility; (2) the procedure for signing the waiver was designed in such a way as not to overexpose the affected workers to the risk of contracting COVID-19; (3) Ministerial Decision No. 099-2020-TR highlights the importance of the employer providing information to workers with risk factors for COVID-19 who wish to work on-site, and of reducing their risk of exposure to the COVID-19 virus at the workplace; and (iv) the procedure for signing the waiver is based on the key principles of prevention, responsibility and information as defined by national legislation. Furthermore, the Government emphasizes that the identification of at-risk groups forms part of overall governance policies, strategies and programmes and is based on globally disseminated scientific evidence. Lastly, the Government reports that Supreme Decree No. 083-2020-PCM was repealed by the supplementary repealing provision of Supreme Decree No. 184-2020-PCM on 30 November 2020.

32. The Committee will address the various issues under the Conventions to which they relate.

Convention No. 111

33. The Committee notes that the complainant alleges non-observance of Articles 1 and 2 of the Convention due to the difference in treatment of workers depending on whether they belong to at-risk groups in the context of the COVID-19 pandemic. In its view, the provisions of article 8.3 of Supreme Decree No. 083-2020-PCM are contrary to equality of opportunity and violate the provisions of the Convention. The Committee recalls that Articles 1 and 2 of Convention No. 111 provide that:

Article 1

1. For the purpose of this Convention the term **discrimination** includes:
 - (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
 - (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.
2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.
3. For the purpose of this Convention the terms **employment** and **occupation** include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

34. Regarding the allegation of non-observance of Articles 1(1)(a) and 2 of the Convention, according to which the waiver provided for by the Decree creates a difference in treatment between workers who belong to at-risk groups due to their physical condition and health and

workers outside these groups,¹ the Committee recalls that "physical condition and health" is not one of the grounds of discrimination prohibited under Article 1(1)(a) of the Convention (namely, race, colour, sex, religion, political opinion, national extraction or social origin).

35. In this regard, the Committee recalls that Article 1(1)(b) of the Convention provides the possibility for Member States to determine other prohibited grounds of discrimination in addition to those included under Article 1(1)(a) of the Convention. The Committee notes that the Political Constitution of Peru, to which the complainant refers, prohibits discrimination on the grounds of "origin, race, sex, language, religion, opinion, economic situation or any other nature". However, the Committee notes that neither the complainant nor the Government provided information about legislative or other provisions that specify physical condition or health as a prohibited ground of discrimination in respect of employment and occupation in accordance with Convention No. 111.
36. ***In these circumstances and in view of all the information at its disposal, the Committee concludes that physical condition and health cannot be considered to be a prohibited ground of discrimination in respect of employment and occupation under Convention No. 111 in Peru and, accordingly, will not pursue its examination of the allegations in this respect.***

Convention No. 156

37. The Committee notes that the complainant alleges non-observance of Articles 1–4 of Convention No. 156, which provide that:

Article 1

1. This Convention applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.
2. The provisions of this Convention shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.
3. For the purposes of this Convention, the terms dependent child and other member of the immediate family who clearly needs care or support mean people defined as such in each country by one of the means referred to in Article 9 of this Convention.
4. The workers covered by virtue of paragraphs 1 and 2 of this Article are hereinafter referred to as ***workers with family responsibilities***.

Article 2

This Convention applies to all branches of economic activity and all categories of workers.

Article 3

1. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable people with family responsibilities who are engaged or wish to engage in employment to exercise their

¹ According to section 7.3.4 of the technical guidelines, persons to whom one of the following applies must prioritize remote work: over 65 years of age; refractory arterial hypertension; severe cardiovascular disease; cancer; diabetes mellitus; moderate or severe asthma; chronic lung disease; chronic renal failure in treatment with haemodialysis; immunosuppressive illness or treatment; or obesity with a BMI of 40+.

right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

2. For the purposes of paragraph 1 of this Article, the term discrimination means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

Article 4

With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities shall be taken:

- (a) to enable workers with family responsibilities to exercise their right to free choice of employment; and
- (b) to take account of their needs in terms and conditions of employment and in social security.

38. The Committee notes that the complainant alleges that the requirement to sign the waiver violates the provisions of Articles 1 and 2 of the Convention. Specifically, it alleges that during the COVID-19 pandemic, a responsibility arose "to avoid infecting family members" and that, through the signing of the waiver, the employer is released from responsibility and the risk of contracting the virus at work and infecting their family members is transferred to workers, which presents them with a dilemma of whether to go to work and assume the risk of infection, or not go to work to avoid infecting themselves and their family members.
39. The Committee notes that Articles 1 and 2 concern the scope of the Convention and, more specifically, that under Article 1 of Convention No. 156, it applies to workers with family responsibilities that "restrict their possibilities of preparing for, entering, participating in or advancing in economic activity". ***The Committee finds that, in the light of the information at its disposal, the allegations cannot be considered to fall within the scope of Convention No. 156 and, accordingly, will not pursue its examination of the allegations in respect of Articles 3 and 4 of the Convention.***

Convention No. 176

40. The Committee notes that the complainant alleges non-observance of Articles 3 and 6-12 of Convention No. 176 due to the lack of consultations with the most representative workers' and employers' organizations to discuss safety and health measures in mines in the context of the COVID-19 pandemic, and the requirement of the waiver under article 8.3 of Supreme Decree No. 083-2020-PCM. In its view, the provisions of this article render the provisions of Articles 6-12 of the Convention inoperative. The Committee recalls that Articles 3 and 6-12 of Convention No. 176 provide that:

Article 3

In the light of national conditions and practice and after consultations with the most representative organizations of employers and workers concerned, the Member shall formulate, carry out and periodically review a coherent policy on safety and health in mines, particularly with regard to the measures to give effect to the provisions of the Convention.

[...]

Article 6

In taking preventive and protective measures under this Part of the Convention the employer shall assess the risk and deal with it in the following order of priority:

- (a) eliminate the risk;

- (b) control the risk at source;
- (c) minimize the risk by means that include the design of safe work systems; and
- (d) in so far as the risk remains, provide for the use of personal protective equipment, having regard to what is reasonable, practicable and feasible, and to good practice and the exercise of due diligence.

Article 7

Employers shall take all necessary measures to eliminate or minimize the risks to safety and health in mines under their control, and in particular:

- (a) ensure that the mine is designed, constructed and provided with electrical, mechanical and other equipment, including a communication system, to provide conditions for safe operation and a healthy working environment;
- (b) ensure that the mine is commissioned, operated, maintained and decommissioned in such a way that workers can perform the work assigned to them without endangering their safety and health or that of other people;
- (c) take steps to maintain the stability of the ground in areas to which people have access in the context of their work;
- (d) whenever practicable, provide, from every underground workplace, two exits, each of which is connected to separate means of egress to the surface;
- (e) ensure the monitoring, assessment and regular inspection of the working environment to identify the various hazards to which the workers may be exposed and to assess their level of exposure;
- (f) ensure adequate ventilation for all underground workings to which access is permitted;
- (g) in respect of zones susceptible to particular hazards, draw up and implement an operating plan and procedures to ensure a safe system of work and the protection of workers;
- (h) take measures and precautions appropriate to the nature of a mine operation to prevent, detect and combat the start and spread of fires and explosions; and
- (i) ensure that when there is serious danger to the safety and health of workers, operations are stopped and workers are evacuated to a safe location.

Article 8

The employer shall prepare an emergency response plan, specific to each mine, for reasonably foreseeable industrial and natural disasters.

Article 9

Where workers are exposed to physical, chemical or biological hazards the employer shall:

- (a) inform the workers, in a comprehensible manner, of the hazards associated with their work, the health risks involved and relevant preventive and protective measures;
- (b) take appropriate measures to eliminate or minimize the risks resulting from exposure to those hazards;
- (c) where adequate protection against risk of accident or injury to health including exposure to adverse conditions cannot be ensured by other means, provide and maintain at no cost to the worker suitable protective equipment, clothing as necessary and other facilities defined by national laws or regulations; and
- (d) provide workers who have suffered from an injury or illness at the workplace with first aid, appropriate transportation from the workplace and access to appropriate medical facilities.

Article 10

The employer shall ensure that:

- (a) adequate training and retraining programmes and comprehensible instructions are provided for workers, at no cost to them, on safety and health matters as well as on the work assigned;
- (b) in accordance with national laws and regulations, adequate supervision and control are provided on each shift to secure the safe operation of the mine;
- (c) a system is established so that the names of all people who are underground can be accurately known at any time, as well as their probable location;
- (d) all accidents and dangerous occurrences, as defined by national laws or regulations, are investigated and appropriate remedial action is taken; and
- (e) a report, as specified by national laws and regulations, is made to the competent authority on accidents and dangerous occurrences.

Article 11

On the basis of general principles of occupational health and in accordance with national laws and regulations, the employer shall ensure the provision of regular health surveillance of workers exposed to occupational health hazards specific to mining.

Article 12

Whenever two or more employers undertake activities at the same mine, the employer in charge of the mine shall coordinate the implementation of all measures concerning the safety and health of workers and shall be held primarily responsible for the safety of the operations. This shall not relieve individual employers of responsibility for the implementation of all measures concerning the safety and health of their workers.

- 41. Regarding the alleged non-observance of Article 3 of the Convention due to the lack of consultations with the most representative workers' and employers' organizations to discuss safety and health measures in mines in the context of the COVID-19 pandemic despite the significant infection rate in Peruvian mines, the Committee notes that the Government indicates that the determination of at-risk groups forms part of the overall governance policies, strategies and programmes and the interventions of the World Health Organization, and is based on scientific evidence. Accordingly, the Government considers that the determination of at-risk groups is more closely related to public health than to occupational health and that, as public health is the sole preserve of the Ministry of Health, the determination of at-risk groups does not need to undergo consultations.
- 42. The Committee understands that Supreme Decree No. 083-2020-PCM (which has since been repealed) was adopted in the context of the health emergency caused by the COVID-19 pandemic. The Committee highlights the importance of the link between public health and occupational health to promote and maintain the highest level of physical, mental and social well-being of all workers in all sectors, and recalls that in relation to Convention No. 176, the measures to give effect to the provisions of the Convention must include consultations with the social partners in accordance with Article 3 of the Convention.
- 43. Regarding the allegation that the requirement of the waiver releases the employer from responsibility and thereby violates the provisions of Articles 6-12 of the Convention as these Articles do not provide for any cases where employers are exempt from responsibility with regard to the safety and health of their workers, the Committee notes the subsequent adoption on 29 June 2020 of Decision No. 099-2020-TR, issued by the Ministry of Labour and Employment Promotion in coordination with the Ministry of Health, article 4 of which provides that, without prejudice to a worker's signing of the waiver, the employer retains full

responsibility for the management of occupational safety and health and for ensuring full compliance with its obligations under the OSH Act, the related regulations and other legal provisions issued for the monitoring, prevention and control of COVID-19. The Committee recalls the importance of the general responsibilities of employers regarding the adoption of all necessary measures to eliminate or minimize risks to safety and health in mines, and notes that in the circumstances under examination, employers retained responsibility for safety and health pursuant to article 4 of Decision No. 099-2020-TR. The Committee therefore considers that the obligations under Articles 7 (first part) and 9(a), (b) and (c) of the Convention have been respected and will not pursue its examination of these allegations.

44. Regarding the allegation that the adoption of Supreme Decree No. 083-2020-PCM renders Articles 6, 7(a)–(i), 8, 10, 11 and 12 of the Convention inoperative, in the absence of more specific allegations the Committee will not pursue its examination of this allegation.
45. ***Lastly, taking into account the context of the acute health crisis caused by the COVID-19 pandemic in which the representation was made, the Committee highlights the importance of holding broad social dialogue with all representative workers' and employers' organizations of affected sectors when adopting measures aimed at finding effective and sustainable solutions to crises (such as the crisis caused by the COVID-19 pandemic), including preventive and protective measures to guarantee safety and health in mines.***

► IV. The Committee's recommendations

46. In the light of the conclusions set out in paragraphs 29 and 45 of the document concerning the matters raised in the representation, the Committee recommends that the Governing Body:
 - (a) approve the present report, in particular the conclusions set out in paragraphs 29 and 45;
 - (b) publish the report and close the procedure initiated by the representation made by the National Federation of Mine, Metal and Steel Workers of Peru (FNTMMSP).

Geneva, 21 February 2023

(Signed) Mr Gerardo Corres,
Government member

Ms Liliana Ocmin,
Worker member

Mr Guido Ricci,
Employer member