



Governing Body

349th Session, Geneva, 30 October–9 November 2023

Institutional Section

INS

Date: 30 October 2023

Original: Spanish

Eighteenth item on the agenda

Report of the Director-General

Sixth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Peru of the Equal Remuneration Convention, 1951 (No. 100), the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Maternity Protection Convention, 2000 (No. 183)

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► I. Introduction

1. In an official communication received by the Office on 12 March 2021, the College of Nurses of Peru (CEP) and the Federation of Nurses of Peru (FEP) made a representation to the International Labour Office under article 24 of the ILO Constitution alleging non-observance by Peru of the Equal Remuneration Convention, 1951 (No. 100), ratified by Peru on 1 February 1960, the Social Security (Minimum Standards) Convention, 1952 (No. 102), ratified by Peru on 23 August 1961, the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratified by Peru on 10 August 1970, and the Maternity Protection Convention, 2000 (No. 183), ratified by Peru on 9 May 2016. All the above Conventions remain in force in the country.
2. The following provisions of the ILO Constitution relate to the representation:

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. In accordance with article 1 of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution, 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 thereof, and brought the representation before the Officers of the Governing Body.
4. At its 342nd Session (June 2021), the Governing Body decided that the representation was receivable and set up a tripartite committee for its examination. The tripartite committee was composed of Mr Gerardo Corres (Government member, Argentina), Mr Juan Mailhos Gutierrez (Employer member, Uruguay) and Ms Eulogia Familia (Worker member, Dominican Republic).
5. The Government of Peru submitted its observations concerning the representation in a communication of 31 August 2021.¹ On 23 December 2021 and 9 February 2022, the Government sent additional information relating to the representation.

¹ Prior to the submission of the representation examined, on 15 February 2021, the CEP and the FEP also submitted to the ILO a request for direct intervention on the basis of the allegations made in the representation, to which the Government sent replies on 24 June and 4 August 2021. In its communication of 31 August 2021 concerning the representation made under article 24, the Government indicated that its observations could be supplemented by the arguments already provided by the Government in reply to the aforementioned direct intervention.

6. In their representation, the complainant organizations did not express their intention to conciliate with Government of Peru. The Government did not express its interest to engage in a voluntary conciliation procedure at the national level either.
7. The Committee met on 24 August and 19 September 2023 to examine the representation and to adopt its report.

► II. Examination of the representation

A. The complainant's allegations

8. The complainant organizations allege non-observance by the Government of Peru of Conventions Nos 100, 102, 111, and 183, in particular Article 9.

Conventions Nos 100 and 111

9. The complainant organizations allege that nurses are subject to discrimination in that they receive lower remuneration than physicians and fewer benefits, and have worse conditions of work. They indicate that such discrimination is based on the fact that nursing, which is predominantly female, – in contrast to medicine, which, while also exercised by women, was originally only accessible to men – is an occupation in which not all characteristics are sufficiently valued as a result of gender stereotypes. More specifically, the arguments presented in the representation refer to differences in treatment relating to special bonuses established during the COVID-19 pandemic, and to the use of contracting regimes.
10. The complainant organizations refer firstly to a difference in treatment between physicians and nurses arising from Emergency Decree No. 039-2020 of 16 April 2020 (which was in force until 31 December 2020) establishing additional measures for the health sector in the context of the health emergency arising from the effects of coronavirus (COVID-19). Section 6.4 of the above Emergency Decree provides for a special monthly bonus for resident physicians amounting to 3,000 soles. The complainant organizations allege a difference in treatment in that nurses were excluded from this financial incentive, even though the work that they perform is equally intense and high-risk to their lives.
11. Furthermore, the complainant organizations indicate a difference in treatment among nurses according to the type of contacts of workers arising from Emergency Decree No. 026-2020 of 15 March 2020 (Title I of which was in force until 31 December 2020) establishing various and temporary measures to prevent the spread of COVID-19 in the national territory. By means of this Emergency Decree, the Government established a series of special benefits, including a special bonus for health personnel engaged in activities and work related to combating COVID-19. The complainant organizations indicate that, in accordance with the above Emergency Decree, this special benefit is only granted to certain health professionals, not including nurses who are currently working under service-provider contracts or similar arrangements ("third parties"), despite the fact that they also perform the work indicated in Emergency Decree No. 026-2020.
12. The complainant organizations also allege that, while the recruitment of health professionals, technicians and healthcare assistants under contracts for services provided by third parties or for non-personal services, or service-provider contracts, is prohibited under Act No. 31125 of 18 February 2021 declaring an emergency in the national health system and regulating its reform process, health establishments at the national level continue to hire health

professionals under such arrangements, which the complainant organizations consider to be a violation of Convention No. 111 in that there is unfair treatment directed at a profession that is predominantly female.

Convention No. 102

13. The complainant organizations allege that the health personnel recruited under service-provider contracts or similar arrangements are excluded from social security coverage and do not have the right to: (i) medical care; (ii) sickness benefit; (iii) old-age benefit; (iv) employment injury benefit; (v) family benefit; (vi) maternity benefit; (vii) invalidity benefit; or (viii) survivors' benefit, in violation of Convention No. 102.
14. The complainant organizations indicate that public health workers hired under service-provider contracts or similar arrangements, in particular nurses, may have higher rates of injury and illness as they are more exposed to risks that seriously threaten their physical integrity or even their life.
15. The complainant organizations allege that workers hired under these arrangements do not benefit from the same protection as the rest of health personnel in terms of access to some of the measures adopted in response to the COVID-19 pandemic. They refer, in particular, to the life insurance approved by the Government of Peru through Decrees Nos 032-2020 and 037-2020 for all health personnel during the health crisis resulting from the COVID-19 pandemic, with the exception of personnel working under service-provider contracts. They underscore the gravity of the case of nurses whose work shifts have increased from 12 to 24 hours, and whose duties are constantly carried out in close proximity to patients, therefore exposing them to a high viral load of coronavirus. They also highlight that, in the event of contagion, personnel working under these contracts are not entitled to paid sick leave.
16. The complainant organizations add that they have received complaints and reports on inadequate care measures and working conditions, and poor provision of personal protective equipment (PPE). According to the complainant organizations, this situation violates Convention No. 102 as it does not guarantee adequate social protection for health personnel and exposes them to unnecessary risks that infringe the rights to life, integrity and health.

Convention No. 183

17. The complainant organizations allege that pregnant and breastfeeding nurses are obliged to work despite the health risks that they face as a result of the COVID-19 pandemic, which the complainant organizations consider a violation of Convention No. 183, in particular Article 9.
18. According to the complainant organizations, Emergency Decree No. 026-2020 entitles an at-risk group (which includes persons over 60 years, and persons with diabetes, cardiovascular disease or asthma) to work remotely or, where this is not possible, to take paid leave, but excludes pregnant workers and health professionals who are breastfeeding. They indicate that the CEP requested the Ministry of Health to include these workers in the aforementioned protected group, but that this request has yet to be addressed.

B. The Government's reply

19. The Government of Peru provided three replies, submitted on 31 August 2021, 23 December 2021 and 9 February 2022, in which it rejects the allegations concerning the four Conventions covered by this representation.

Conventions Nos 100 and 111

20. In its replies, the Government refers to the legislative framework comprising Act No. 28983 on equality of opportunity for men and women, Act No. 30709 prohibiting gender pay discrimination and Supreme Decree No. 008-2019-MIMP approving the National Gender Equality Policy, which seeks to combat all forms of discrimination. The Government underscores that section 1 of Act No. 30709 recognizes the objective of “prohibiting gender pay discrimination, by establishing categories, duties and remuneration that make it possible to implement the principle of equal remuneration for equal work”, and provides for inspection mechanisms to verify such practices.
21. With regard to the wage scheme for physicians and nurses, the Government refers to Act No. 23536 establishing general regulations governing the work and careers of health professionals, and Supreme Decree No. 019-83-PCM regulating Act No. 23536. Section 3 of this Supreme Decree differentiates between “end activities”, which are considered as those that directly meet the demand of patients by providing them with comprehensive care through diagnosis, treatment and/or restoration of health, and “intermediary activities”, which are considered as those that supplement the comprehensive care of patients by providing necessary elements and/or care. The Government explains that section 33 of Supreme Decree No. 019-83-PCM identifies the activities carried out by physicians as “end activities”, and those carried out by nurses as “intermediary activities”. It further indicates that section 34 establishes that physicians have “absolute autonomy”, while nurses have “relative autonomy”. The Government further indicates that, pursuant to section 26 of Act No. 26842 (General Health Act), only physicians can prescribe medicine.
22. The Government also refers to section 8 of Legislative Decree No. 1153 regulating the comprehensive policy on financial compensation and benefits for health personnel in the service of the State. The Government indicates that financial compensation for health personnel is structured in a specific manner so as to ensure its uniformity, and includes a main payment (financial remuneration granted monthly on an ongoing basis), an adjusted payment (allocated for a specific position, depending on the entity, through the corresponding bonuses), and a prioritized payment (allocated for a position in accordance with exceptional and specific situations related to the performance of the position for periods of more than one month). This regulation governing remuneration is based on the principles of legality and *lex specialis*, equity, effectiveness and efficiency, internal consistency and budgetary provision.
23. The Government therefore indicates that the financial compensation of health professionals is based on reasonable criteria that justify the payment of such compensation in accordance with the type of position, demands, responsibility or complexity of the functions performed. It concludes that the difference in remuneration between both professions can be explained by the relation of dependency between them, as physicians (who diagnose and treat patients) have greater responsibility than nurses (who supplement patient care through the provision of necessary elements and/or care).
24. Concerning special bonuses in the context of the COVID-19 pandemic, the Government underscores that, while Emergency Decree No. 039-2020 (of 16 April 2020) granted a special monthly bonus to resident physicians, prior to that, a special bonus for nurses had also been provided through Emergency Decree No. 026-2020 (of 15 March 2020).²

² The Government explains that Decree No. 026-2020 included not only nurses but also chemists, pharmacists, obstetricians, biologists, psychologists and medical technicians, among others.

25. The Government further adds that Emergency Decree No. 026-2020 was subsequently amended by Emergency Decree No. 053-2020, which authorized the granting of a special bonus for personnel providing COVID-19 warning and response services. The reason for the amendment was that, although at the beginning of the pandemic, Emergency Decree No. 026-2020 had been issued for personnel providing specific services, the effects of the pandemic increased and the efforts of staff came under strain. Therefore, Emergency Decree No. 053-2020 was adopted to expand the scope of Emergency Decree No. 026-2020. The Government indicates that both measures included the health personnel specified in section 3, paragraph 3.2 of Legislative Decree No. 1153 and personnel hired under the provisions of Legislative Decree No. 1057. The Government indicates that, in both cases, the amount of the special bonus is uniform and standard for all personnel who met the established criteria. The Legislative Decrees were supplemented, respectively, by Supreme Decrees Nos 068-2020-EF and 184-2020-EF, which approve the amount, timing of payment, procedures for the identification of beneficiaries and criteria for the granting of the special bonus.
26. The Government also indicates that Emergency Decree No. 020-2021 (supplemented by Supreme Decree No. 027-2021-EF) authorized, on an exceptional basis, the granting of another special bonus for exposure to the risk of contagion by COVID-19 for the months of February (1,440 soles) and March (720 soles) 2021. The measure was aimed at personnel engaged in an employment relationship with the bodies specified therein. The beneficiaries were the same human resources identified in the two preceding Emergency Decrees. Again, no distinction was made as to their professional group, however, they were required to fulfil the criteria established in the measure. This Emergency Decree included human resources in care and administrative sectors and services subject to the contractual regimes under Legislative Decree No. 276 and Legislative Decree No. 1057, and was aimed at a diverse range of professionals.³
27. Regarding the bonuses that were not granted to personnel recruited under service-provider contracts, the Government indicates that the incorporation of such personnel into one of the labour regimes set out in Legislative Decrees Nos 1057 and 276 is gradually being established. In this respect, the Government refers to the explanations provided in connection with the allegations of the violation of Convention No. 102 (see paragraphs 32 to 42).
28. Throughout its reply, the Government indicates that the complainant organizations do not describe or identify specific cases of discrimination, or state in which working units nurses were reportedly experiencing discriminatory treatment in order to allow for the immediate intervention of the competent authorities.

Convention No. 102

29. In its replies, the Government of Peru indicates that, for over a decade (1990–2008), most of the personnel working in the national public service were hired under civil contracts for the provision of services (section 1764 of the Civil Code), which cover, in practice, labour-related elements such as dependence, subordination and payment of remuneration.

³ This included: health professionals, technicians and healthcare assistants in primary, secondary and tertiary care establishments who are involved in the diagnosis, treatment and management of suspected or confirmed cases of COVID-19; health professionals, technicians and healthcare assistants who handle and collect corpses; those who work in triage and who are part of psychosocial support teams and community mental health centres; personnel engaged in epidemiological surveillance, those collecting samples and conducting home visits; rapid emergence response team drivers; and personnel engaged in maintenance, cleaning, dispatch and delivery of equipment and supplies in health establishments in relation to COVID-19.

30. The Government indicates that, to resolve this issue, on 27 June 2008, Legislative Decree No. 1057 was promulgated to regulate the special regime governing administrative service contracts, and thus provides employment benefits, pension scheme contributions and social security benefits for a significant number of persons hired by the State under service-provider contracts.
31. The Government adds that, through the promulgation of Act No. 31131 of 2021 (which establishes provisions to eliminate discrimination in labour regimes in the public sector), the duration of contracts under Legislative Decree No. 1057 became indefinite, unless for temporary or substitute work.
32. In the context of the health emergency resulting from COVID-19, the Government indicates that, to address the excess demand for human resources in various specialized areas of the health sector, the Peruvian Government issued a series of Emergency Decrees. These Emergency Decrees authorized the national and regional government authorities to hire new health personnel and personnel previously hired under service-provider contracts.⁴ According to the Government, this temporary authorization aimed to ensure the continuity of healthcare in 2021 and extended the aforementioned employment benefits during the period of validity of the Emergency Decrees.
33. The Government adds that, by means of Act No. 30763 of 2018, the State declared that it was of national interest to grant life and accident insurance to health personnel in the public sector in the event of an accident while on duty. It also indicates that the measures established by this Act also apply to professionals hired under Legislative Decrees Nos 1153 and 1057, regardless of the labour contracting regime.
34. However, the Government indicates that, with respect to the recruitment of workers under the service-provider contracts established by section 1764 of the Civil Code, there is no direct obligation to provide social security coverage or, therefore, pay benefits in the event of sickness, death or invalidity. It underscores that such contracts only grant the right to payment or compensation for the service provided.
35. The Government also indicates that, in February 2021, Act No. 31125 was published, which prohibits the hiring of health professionals, technicians or healthcare assistants under contracts for the provision of services by third parties or non-personal services, or service-provider contracts in the Ministry of Health, its public agencies, regional and local governments, EsSalud (Peruvian Health Social Security), and healthcare services of the armed forces and the National Police of Peru, under the administrative, civil or criminal liability of the head contractor, except when, due to service needs, certain specializations are required and do not involve ongoing activities.
36. The Government also refers, regarding the insurance of health personnel irrespective of their association with the Peruvian State, to the promulgation of Emergency Decree No. 046-2021, which issues special and urgent economic and financial measures to strengthen universal health insurance in the context of the national emergency resulting from COVID-19. Section 2 of this Emergency Decree provides for universal health insurance for all persons of Peruvian nationality residing within the national territory who, at the date of entry into force, have no health insurance. This protection also applies to nurses who are not yet subject to the labour regime under Legislative Decree No. 1057. The Government further indicates that this

⁴ In accordance with Legislative Decree No. 1057 and for work required to meet a temporary need.

comprehensive health insurance grants full coverage with respect to COVID-19 and affiliation is free for citizens and no monthly payments are required.

- 37.** Lastly, the Government provides additional documents and indicates that: (1) the National Centre for Strategic Health Resourcing provided information concerning the adequate provision of PPE for personnel in health establishments during the COVID-19 pandemic; and (2) compliance was ensured with section 7, paragraph 7.3 of Supreme Decree No. 012-2020, which establishes measures and actions for the prevention, control, diagnosis and treatment of COVID-19.

Convention No. 183

- 38.** The Government indicates that Act No. 31051 of 2020 was published in October 2020, which amended section 1 of Act No. 28048 on the protection of pregnant women performing work that endangers their health and/or the normal development of the embryo and foetus, as follows:
- (a) Pregnant workers shall request their employer to allow them not to perform work that threatens their health and/or the development of the embryo and foetus during the pregnancy.
 - (b) Once the employer has recognized this request, the employer shall assign work to the pregnant worker in order to safeguard their health and/or the normal development of the embryo and foetus, without affecting their labour rights.
 - (c) During the period of validity of the state of health emergency, the employer shall identify the pregnant and breastfeeding workers whose integrity or that of their youngest child are endangered by the circumstances that led to the state of emergency, with the purpose of implementing mandatory remote work for the fulfilment of their work activities.
 - (d) Where the nature of the activities is not compatible with remote work and for the duration of the health emergency, the employer shall assign to pregnant and breastfeeding workers tasks that are compatible with the work that they originally performed or, where this is not possible, the employer shall preferably grant them paid leave subject to compensation at a later date.
- 39.** The Government notes that compliance with this Act is mandatory for officers responsible for public service units at the national level, when there is knowledge of health personnel who are pregnant or breastfeeding. For information purposes, the Government indicates that, in the case of violation, the complainant should have specified the health or hospital units in which this legislation was being violated, so that the competent authorities could have intervened immediately.

► III. The Committee's conclusions

- 40.** The Committee's findings are based on its review of the allegations presented by the complainant organizations and of the reply sent by the Government of Peru.

Convention No. 100

- 41.** The Committee observes that the complainant organizations indicate a remuneration difference between nurses and physicians in the bonuses granted during the COVID-19

pandemic, and allege the existence of discrimination based on sex, due to the fact that medicine is a traditionally male profession, and that nursing is traditionally female. More specifically, the complainant organizations underscore the lack of access for nurses to the special bonus established by section 6 of Emergency Decree No. 039-2020, which concerns resident physicians.

42. The Committee recalls that Convention No. 100 establishes the principle of equal remuneration for men and women workers for work of “equal value”. To apply this concept, it is necessary to have a method to measure and compare the relative value of different jobs. In this regard, Article 3 of the Convention requires the adoption of measures to promote the objective appraisal of jobs.
43. The Committee notes the explanations provided by the Government on the objective elements constituting the financial compensation of health personnel and the criteria according to which different remuneration is established for physicians and nurses, such as functions, responsibilities and dependent relationship. The Committee also notes that, although the special bonus granted in section 6 of Emergency Decree No. 039-2020 was aimed at resident physicians transferred to prioritized health establishments, other special bonuses applicable to nurses were adopted through Emergency Decrees Nos 026-2020 and 053-2020. The Committee also notes the Government’s indications that, under Emergency Decree No. 020-2021, other special bonuses were granted for the risk of exposure to the risk of contagion by COVID-19 for the months of February (1,440 soles) and March (720 soles) of 2021, which were applicable, inter alia, to nurses.
44. ***The Committee observes that, based on the information provided, the different remuneration, including the special bonuses granted, corresponds to work of different value. The Committee therefore concludes that there is no violation of Convention No. 100.***
45. Concerning the differences in access to special bonuses for different groups of workers in the nursing sector depending on their contracting regime, the Committee recalls that Convention No. 100 refers to equal remuneration for men and women. The Committee observes, however, that the allegations made do not clearly indicate whether the difference in remuneration among nurses (that is, between nurses who received special bonuses and nurses who did not receive them as they were working under contracts for the provision of services) was based on sex, and do not provide detailed information on the composition of the nursing personnel, which would allow for an analysis of this possibility. ***Consequently, regarding the allegations of discrimination in remuneration based on contractual status, the Committee will not pursue its examination under Convention No. 100, and refers to its conclusions concerning Convention No. 111.***

Convention No. 111

46. The Committee observes that the complainant organizations make allegations of discrimination based on sex against nurses with regard to their contract type. More specifically, they indicate that health professionals continue to be hired under service-provider contracts or contracts for the provision of services by third parties, which they consider to be a violation of Convention No. 111, “as a profession that has traditionally been dominated by women has been subject to unfair treatment and has been undermined through perceptions and stereotypes associated with gender”. The complainant organizations allege that, while such recruitment is prohibited under Act No. 31125, it continues to be used for health professionals.
47. The Committee observes that, in this regard, the Government refers to Act No. 31125 of February 2021, which prohibits the recruitment of health professionals, technicians and

healthcare assistants under contracts for services provided by third parties or service-provider contracts, except for situations in which “due to service needs, certain specializations are required and do not involve ongoing activities”.

48. The Committee also notes the Government’s explanation that measures were taken to progressively incorporate health personnel in general into one of the labour regimes with an employment relationship. In particular, the Government indicates that, through the special labour regime governing administrative services contracts established by Legislative Decree No. 1057 in June 2018, a significant number of persons hired by the State under service-provider contracts joined this labour regime and therefore received employment benefits.
49. The Committee observes that “sex” is one of the grounds of discrimination prohibited by Article 1(1)(a) of Convention No. 111, and that the representation submitted by the complainant organizations alleges a situation of indirect discrimination based on sex. However, the Committee also observes that no detailed information has been provided to support or allow for the verification of whether contracts for the provision of services are more prevalent among or have an unfavourable impact on nurses (who, according to the allegations, are predominantly female) in comparison with personnel in other occupations that are predominantly male. ***Taking into account the information transmitted by the parties, the Committee cannot conclude that there is a discrimination based on sex which is in violation of Convention No. 111, and will not pursue its examination of these allegations.***
50. The Committee also notes that the complainant organizations allege discrimination concerning the special bonuses received by nurses depending on the contractual arrangements of each worker.⁵ The Committee observes that, in accordance with the information provided, the special bonuses provided for in Emergency Decrees Nos 026-2020, 053-2020 and 020-2021 were received by nurses who have an employment relationship with the State, but were not granted to personnel hired under contracts for the provision of services (“third parties”).
51. The Committee observes that contractual status or regime are not included in the prohibited grounds of discrimination set out in Article 1(1)(a) of Convention No. 111 (that is, race, colour, sex, religion, political opinion, national extraction or social origin). It also 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 neither the complainant organization nor the Government have provided information on the existence of any legislative or other provisions specifying contract type or regime as a prohibited grounds of discrimination in employment and occupation in accordance with Article 1(1)(b) of Convention No. 111.
52. ***In these circumstances, and based on the information available to it, the Committee concludes that it cannot consider contractual status or regime as prohibited grounds of discrimination in employment and occupation in accordance with Convention No. 111, and therefore will not pursue its examination of the allegations in this respect.***
53. The Committee further notes that the complainant organizations allege a violation of Convention No. 111 in that pregnant women were obliged to work during the COVID-19 pandemic. ***In this respect the Committee refers to its conclusions on Convention No. 183.***

⁵ See paragraph 50 above.

Convention No. 102

54. Regarding the allegations on the lack of provision of employment injury benefit, family benefit and survivors' benefit for health workers recruited under service-provider contracts, the Committee takes into account the Parts of the Convention accepted by the Government at the time of ratification, and the exceptions of which it has availed itself.⁶ Specifically, it observes that Peru has not ratified Parts VI, VII and X of the Convention, which regulate the aforementioned benefits. ***In this context, the Committee will not pursue the examination of these allegations.***
55. Concerning the allegations referring to the lack of provision of social security benefits in the event of invalidity for health workers under service-provider contracts, the Committee notes the Government's reply, according to which: (1) there is no direct obligation to provide social security coverage or, therefore, pay invalidity benefits, to workers recruited under civil contracts for the provision of services established in section 1794 of the Civil Code; (2) workers hired under the special regime governing administrative services contracts in accordance with Legislative Decree No. 1057, receive employment benefits including a guarantee of pension plan contributions and social security benefits; (3) Act No. 31125 grants life insurance and social security benefits to workers under the arrangements provided for in Legislative Decrees Nos 276 and 1057, and prohibits the recruitment of health professionals under contracts for the provision of services by third parties or non-personal services or service-provider contracts in, inter alia, the Ministry of Health, its public agencies, and regional or local governments; and (4) Emergency Decree No. 046-2021 established universal health insurance for the entire population with identification in the State of Peru.
56. The Committee notes that, in accordance with national legislation,⁷ workers hired under service-provider contracts are not considered employees within the meaning of Article 15(d) of Convention No. 102, which establishes that persons covered by the accepted Parts of the Convention must constitute 50 per cent of all employees in industrial workplaces employing 20 persons or more, as stated by the Government at the time of ratification.
57. The Committee further observes that section 5.2 of Act No. 31125 prohibits the recruitment of health workers through service-provider contracts, except for certain specializations required in situations of need for the performance of activities on a temporary basis.
58. ***The Committee recalls that, through the ratification of Convention No. 102 and the acceptance of Parts II, III, V, VIII and IX, which regulate, respectively, benefits for medical care, sickness, old age, maternity and invalidity, and the exceptions applicable under Article 3, the Government is not required to offer coverage to workers hired under service-provider contracts. Furthermore, the Committee observes that Act No. 31125 is in line with the requirement to grant social security benefits to health workers in accordance with Parts II, III, V, VIII and IX of the Convention, which have been accepted by the Peruvian Government. In light of this information, the Committee will not pursue the examination of these allegations.***

⁶ The Republic of Peru has accepted Parts II, III, V, VIII and IX of Convention No. 102, and has availed itself of the temporary exception provided for in Article 3, by means of which a "Member whose economy and medical facilities are insufficiently developed may [...] avail itself, by a declaration appended to its ratification, of the temporary exceptions provided for in the following Articles: 9(d); 12(2); 15(d); 18(2); 21(c); 27(d); 33(b); 34(3); 41(d); 48(c); 55(d); and 61(d)", with respect to the scope of each party's coverage.

⁷ Sections 4, 5 and 57 of Act No. 728/1997 (Productivity and Labour Competitiveness Act).

59. Concerning the allegations related to the provision of care measures, working conditions, the lack of adequate food and adequate areas in which to eat, and the quality of PPE, the Committee notes the Government's indications that it provided adequate protective equipment for personnel in health establishments and complied with the measures and actions for the prevention, control, diagnosis and treatment of COVID-19.
60. ***In this regard, the Committee considers that the alleged facts are not covered by Convention No. 102 and, therefore, will not pursue the examination of these allegations.***

Convention No. 183

61. The Committee observes the complainant organizations' allegations that pregnant and breastfeeding workers were obliged to work, despite the health risks during the COVID-19 pandemic, and that they were not included under Emergency Decree No. 026-2020 as being an at-risk group entitled to perform remote work or, where not possible, to receive paid leave.
62. The Committee notes the Government's indications that: (1) Act No. 31051 of 2020, amending section 1 of Act No. 28048 on the protection of pregnant women performing work that endangers their health and/or the normal development of the embryo and foetus, provides that pregnant workers may request their employers to assign them tasks that do not endanger their health and/or the development of the embryo and foetus; (2) the Act also provides that employers must identify pregnant and breastfeeding workers whose integrity or that of their youngest child are endangered by the circumstances that gave rise to the state of emergency, with the purpose of implementing mandatory remote work for the performance of their work activities; and (3) where the nature of the work is not compatible with remote work and for the duration of the health emergency, the employer shall assign to pregnant and breastfeeding workers tasks that are compatible with the work that they originally performed or, where this is not possible, the employer shall preferably grant them paid leave subject to compensation at a later date; and (4) where there is a violation of the legislation in force, the representative organizations of workers should specify in which health facilities the legislation in question is reportedly being violated, so as to enable the competent authorities to intervene immediately.
63. In this regard, the Committee recalls that Articles 3 and 9 of the Convention set forth the following:

Article 3

Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child.

Article 9

1. Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including – notwithstanding Article 2, paragraph 1 – access to employment.

2. Measures referred to in the preceding paragraph shall include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment, except where required by national laws or regulations in respect of work that is:

- (a) prohibited or restricted for pregnant or nursing women under national laws or regulations; or
- (b) where there is a recognized or significant risk to the health of the woman and child.

64. *In this respect, the Committee observes that, while pregnant and breastfeeding nurses were not included in the categories listed by Emergency Decree No. 026-2020, section 1 of Act No. 31051 of 2020 grants protection for pregnant and breastfeeding workers in accordance with Articles 3 and 9 of Convention No. 183. Consequently, the Committee concludes that there is no violation of the Convention.*

* * *

65. *Finally, and in general, the Committee gives close consideration to the context of the acute health crisis caused by the COVID-19 pandemic in which this representation was submitted. It therefore strongly encourages the Government to maintain a broad and participative social dialogue, with all representative organizations of workers and employers in the affected sectors, when adopting measures aimed at finding efficient and sustainable solutions to this type of crisis, particularly those for the prevention and protection of personnel providing health services, and remaining sensitive to the difficulties that this personnel faces in such situations.*

► IV. The Committee's recommendations

66. In the light of the conclusions contained in paragraphs 40 to 65 above with regard to the matters raised in the representation, the Committee recommends that the Governing Body:
- (a) approve the present report and, in particular, the conclusions formulated in paragraphs 44, 45, 49, 52, 53, 54, 58, 60, 64 and 65; and
 - (b) make the report publicly available and close the procedure initiated by the representation.

Geneva, 19 September 2023

(signed) Mr Gerardo Corres
Government member

Ms Eulogia Familia
Worker member

Mr Juan Mailhos Gutierrez
Employer member