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Report of the Director-General

Sixth Supplementary Report: Report of the Committee set up to examine the representations alleging non-observance by Peru of the Hours of Work (Industry) Convention, 1919 (No. 1)

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▶ I. Introduction

1. In communications received on 1 September 2020 and 20 January 2021, the Federation of Mineworkers of Shougang Hierro Peru and Others (the federation) and the Santa Luisa de Huanzalá Mineworkers' Union (the trade union), respectively, made two independent representations to the International Labour Office under article 24 of the ILO Constitution alleging non-observance by the Government of Peru of the Hours of Work (Industry) Convention, 1919 (No. 1), ratified by Peru on 8 November 1945. The Convention remains 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 both representations, informed the Government of Peru accordingly and brought them before the Officers of the Governing Body.

4. At its 340th Session (November 2020), the Governing Body decided that the representation made by the federation was receivable and set up a tripartite committee to examine it. Subsequently, at its 341st Session (March 2021), the Governing Body declared the representation made by the trade union to be receivable and decided that it would be examined by the tripartite committee set up to examine the representation made by the federation. The tripartite committee is composed of Ms María Isabel Salazar Urrutia (Government member, Guatemala), Mr Fernando Yllanes Martínez (Employer member, Mexico) and Mr Gerardo Martínez (Worker member, Argentina).

5. The Government of Peru submitted its observations concerning the representations made by the federation and the trade union in communications received by the Office on 27 February and 16 June 2021, respectively.

6. In a communication received by the Office on 11 November 2021, the Government of Peru sent further information in relation to the representation made by the federation. Furthermore, in communications received by the Office on 17 November and 14 December 2021, the

Government of Peru sent further information in relation to the representation made by the trade union.

7. The Committee met (in a virtual format) on 24 January and 10 February 2023 to examine the representations and adopt its report on them.

▶ II. Examination of the representations

A. The complainants' allegations

1. Allegations by the Federation of Mineworkers of Shougang Hierro Peru and Others

8. In its communication received on 1 September 2020, the federation alleges a violation of the Convention by the Government of Peru owing to the implementation in 2020, by the enterprise Shougang Hierro Perú S.A.A. (enterprise A), of a work schedule consisting of 30 days of work and 14 of rest (30x14 work schedule) at the mining site located in the district of San Juan de Marcona, in the province of Nazca, in the department of Ica (mining site A) and the lack of a ruling by the administrative labour authority in respect of the complaints lodged by the federation in this regard.

9. The federation maintains that, in the context of the resumption of its operations, which had been suspended owing to the public health emergency declared at the national level in the context of the COVID-19 pandemic (the pandemic), in August 2020 [1] enterprise A formally called on its workers to resume their work in accordance with a work schedule consisting of: (i) 30 consecutive days of work on-site at mining site A, with 8 to 12 hours of work each day, without the possibility for the workers, as had been the case before the pandemic, to leave the mining site at the end of their working day to rest with their families at their homes in the mining camp, located half an hour from mining site A; and (ii) 14 days of rest, divided into 7 days of actual physical rest in their respective homes followed by 7 days of isolation, prior to the period of work, in a hotel selected by enterprise A. The federation adds that the 7 days of actual rest are granted to workers upon signature of a document prepared by enterprise A, in the form of an advance of paid leave, paid time off that must subsequently be made up by the worker, or unpaid leave. In the view of the federation, this work schedule exceeds the maximum three-week period stipulated in the Convention, is exhausting and is endangering workers' safety and health, and non-compliance leads to threats of dismissal against the workers concerned.

10. Furthermore, in the above-mentioned communication, the federation indicates in this respect that: (i) in May 2020, it submitted an initial complaint [2] to the National Labour Inspection Authority (SUNAFIL) concerning the implementation of the 30x14 work schedule, in the context of which the labour inspector responsible concluded, solely on the basis of a statement by a representative of enterprise A and without making any observations on-site or interviewing the workers, that the work schedule in question was not being applied; (ii) it subsequently lodged an appeal [3] against this decision, considering the inspector's conduct to be

[1] From the information indicated below, it is clear that, although workers were officially called on to return to work in August 2020, the 30x14 work schedule was introduced some months earlier.

[2] Processed under Inspection Order No. 800-2020-SUNAFIL/IRE-ICA.

[3] Claim No. 0000000013-2020-SUNAFIL/IRE-ICA.

questionable; (iii) with a view to finding a solution to the ongoing disputes, in July 2020, it called a conciliation meeting with enterprise A, but the parties did not reach agreement; (iv) in August 2020, it submitted a second complaint to SUNAFIL [4] on the grounds that enterprise A was still forcing its workers to comply with the 30x14 work schedule and, in addition, it reported the allegations to the Directorate for the Prevention and Settlement of Labour Disputes and Corporate Social Responsibility of the Ministry of Labour and Employment Promotion; and (v) despite the urgency of the situation, it has received no reply from the above-mentioned authorities.

2. Allegations by the Santa Luisa de Huanzalá Mineworkers' Union

11. In its communication, the trade union alleges that, as from July 2020, the Santa Luisa Mining Company S.A. (enterprise B) gradually replaced the work schedule of 14 days of work and 7 of rest (14x7 work schedule), entailing 10 hours and 17 minutes of work per day, which had been in force before the pandemic, by work schedules that consisted of: (i) 40 days of work and 20 of rest (40x20 work schedule); and (ii) 30 days of work and 15 of rest (30x15 work schedule), which, in the view of the trade union, violates Article 2(c) of the Convention. The trade union also alleges the absence of a final and effective ruling by the administrative labour authority in respect of the appeals it lodged against the implementation of the work schedules in question.

12. More specifically, the trade union indicates that: (i) between 1 July and 28 October 2020, in the context of the resumption of its operations, which had been temporarily suspended owing to the pandemic, and in accordance with article 25 [5] of Emergency Decree No. 029-2020, [6] which authorized employers, during the health emergency, to modify and stagger work shifts and working hours as a preventive measure against the risk of the spread of COVID-19, enterprise B implemented the 40x20 work schedule, under which the 20 days of rest are divided into 8 days of isolation of the workers, prior to the period of work, in a hotel selected by enterprise B, and 12 days of actual physical rest in their respective homes, following the period of work; (ii) on 29 October 2020, also in the framework of the Emergency Decree, enterprise B modified the work schedule in question and since then it has been implementing the 30x15 work schedule, under which the 15 days of rest are divided into 5 days of isolation prior to the period of work and 10 days of actual physical rest; (iii) the 40x20 and 30x15 work schedules entail a reduction in rest days as they include a period of preventive isolation established due to the pandemic, are exhausting and are damaging for workers' safety and health; and (iv) staff under service provider contracts and workers employed by mining contractors of enterprise B are subject to even longer work schedules than those mentioned above.

13. The trade union indicates that, in view of this situation: (i) in July 2020, it challenged [7] the implementation of the 40x20 work schedule before the Regional Directorate for Labour and

[4] Processed under Inspection Order No. 1204-2020-SUNAFIL/IRE-ICA.

[5] Article 25. Modification of shifts and timetables of work schedules: Public and private sector employers are authorized, for the duration of the health emergency, to modify and stagger the shifts and working hours of their workers and civil servants as a preventive measure against the risk of the spread of COVID-19, without detriment to the right to compulsory weekly rest.

[6] Although the period of validity of the above-mentioned Emergency Decree ended on 31 December 2020, it allows for the option referred to in article 25 to be applied for the duration of the health emergency resulting from the pandemic. The state of emergency remains in effect until 23 February 2023 by virtue of Supreme Decree No. 015-2022-SA.

[7] Under article 2(2) of the single consolidated text of Legislative Decree No. 854, Act on working time, working hours and overtime, approved by Supreme Decree No. 007-2002-TR, the employer may modify the working time and must provide advance notice, with the reasons for the change, to the trade union concerned, the workers' representatives or, in the absence

Employment Promotion (DRTPE) of Huánuco, which considered that it was not competent to hear the case and referred it to the General Labour Directorate of the Ministry of Labour and Employment Promotion; (ii) it subsequently lodged an initial complaint with SUNAFIL regarding the work schedule in question, [8] in the context of which, in January 2021, SUNAFIL decided in the last administrative instance [9] to sanction enterprise B (by imposing a fine) for not having continued to apply the 14x7 work schedule that had been in force before the pandemic, and instead implementing the 40x20 work schedule; according to SUNAFIL, this work schedule was in violation of article 25 of Emergency Decree No. 029-2020 [10] and was unconstitutional for, among other reasons, not considering the provisions of the binding precedents issued in 2006 by the Constitutional Court in respect of working time (see paragraph 14); [11] and (iii) in November 2020, given that enterprise B had modified the work schedule mentioned and had implemented the 30x15 work schedule, it lodged a second complaint with SUNAFIL regarding this work schedule. [12] The trade union adds that, up until the time it submitted this representation (January 2021), and despite the emergency situation: (i) SUNAFIL's decision in respect of its first complaint relating to the 40x20 work schedule has not yet been implemented; and (ii) the authorities concerned have not yet issued a final decision on either the appeal lodged with the DRTPE of Huánuco concerning the 40x20 work schedule or the second complaint lodged with SUNAFIL regarding the 30x15 work schedule.

B. The Government's replies

1. General replies (relating to both representations)

14. In its communications received on 27 February and 16 June 2021, the Government provides technical opinions of similar content on the issues covered by the representations presented by the federation and the trade union. In these opinions, reference is made, among other things, to the binding precedents issued by the Constitutional Court in 2006, according to which: (i) in the case of cumulative or atypical work schedules, in any type of work activity, the average number of hours worked may not exceed 8 hours per day or 48 hours per week, over a period of 3 weeks or less, in accordance with the provisions of article 25 of the Constitution of Peru [13] and Article 2(c) of the Convention; [14] (ii) cumulative or atypical work schedules in any type of work activity, including mining, that exceed the three-week average are not compatible

of either, the workers affected. In addition, in the absence of an agreement with the workers or their representatives, the article provides that the employer may introduce the proposed measure, without prejudice to the workers' right to challenge it before the administrative labour authority.

[8] Processed under Inspection Order No. 1294-2020-SUNAFIL/IRE-ANC.

[9] By way of regional administrative decision No. 001-2021-SUNAFIL/IRE-ANC, of 14 January 2021.

[10] More specifically, SUNAFIL considered that while article 25 of Emergency Decree No. 029-2020 authorizes the establishment of shifts and staggered work schedules, it does not allow employers to modify the work schedule, as its aim is to reduce the amount of time workers spend at the work site, to prioritize their isolation and to reduce congestion at start and finish times, in order to reduce the risk of spreading and catching COVID-19.

[11] Subregional administrative decision No. 102-2020-SUNAFIL/IRE-ANC-SIRE, of 2 November 2020, paras 34, 36–38 and 64, and regional administrative decision No. 001-2021-SUNAFIL/IRE-ANC, para. 30.

[12] Processed under Inspection Order No. 2083-2020-SUNAFIL/IRE-ANC.

[13] This constitutional provision stipulates that the ordinary work schedule is a maximum of eight hours per day or 48 per week, and that in the case of atypical or cumulative work schedules, the average hours worked in the corresponding period may not exceed that maximum. It also establishes that workers are entitled to paid weekly rest and annual leave and that the modalities for their enjoyment and payment are regulated by law or agreement.

[14] Recitals 13, 15(b) and 29 of the ruling of 17 April 2006 handed down in Case No. 4635-2004-PA/TC.

with the Constitution of Peru; [15] and (iii) article 25 of the Constitution of Peru provides for a maximum of 48 hours of work per week, and, as the standard that affords the best protection, this provision takes precedence over the provisions of any international or domestic agreement that allows for longer weekly hours of work, such as, for example, Article 4 of the Convention, which allows for a limit of 56 working hours per week in certain circumstances. [16]

2. Replies to the allegations by the Federation of Mineworkers of Shougang Hierro Peru and Others (enterprise A)

15. With regard to the complaints and the appeal submitted by the federation (see paragraph 10), in its communications received on 27 February and 11 November 2021, the Government states that: (i) the appeal against the decision by SUNAFIL in respect of the first complaint regarding the 30x14 work schedule [17] was dealt with by SUNAFIL, and a letter on this matter, dated 4 September 2020, was sent by email to the general secretary of the federation; and (ii) with respect to the second complaint, [18] in 2021, SUNAFIL decided in the first administrative instance to impose a fine on enterprise A, after the labour inspector responsible had verified, among other things, that: (a) between June and August 2020, the workers, who were supposed to be working 8 hours per day and 48 hours per week under a rotating shift system (3 shifts per day), were working as much as 30 consecutive days on-site at mining site A, and an average of more than 11 hours per day; (b) during the period in question, the workers performed overtime and worked on days of weekly rest on an ongoing basis, spending each night at mining site A, which prevented them from exercising their right to leisure time and rest provided in articles 2.22 [19] and 25 of the Constitution of Peru; [20] and (c) during the same period, the workers were housed in makeshift dormitories in work areas at mining site A that did not guarantee the health conditions established in the health protocols adopted in the context of the pandemic. [21] The Government adds that the labour inspector in question took into account during his inspection activities that, by virtue of the above-mentioned binding constitutional precedents (see paragraph 14), in the case of cumulative or atypical work schedules, the number of hours worked may not exceed of the limit of 8 hours per day or 48 hours per week over a period of 3 weeks, in accordance with article 25 of the Constitution of Peru and the Convention. [22]

3. Replies to the allegations by the Santa Luisa de Huanzalá Mineworkers' Union (enterprise B)

16. With regard to the challenge and the complaints presented by the trade union (see paragraph 13) in its communications received on 16 June, 17 November and 14 December 2021, the Government indicates that: (i) the challenge to the 40x20 work schedule brought by the trade union in July 2020 before the DRTPE of Huánuco must be settled by the DRTPE of Ancash, which however considers that the General Labour Directorate is the competent

[15] Recital 14 of the Constitutional Court decision of 11 May 2006.

[16] Recitals 15(e), 17 and 29 of the ruling of 17 April 2006.

[17] Inspection Order No. 800-2020-SUNAFIL/IRE-ICA.

[18] Inspection Order No. 1204-2020-SUNAFIL/IRE-ICA.

[19] This article provides that every person has the right to peace, quiet, leisure and rest, as well as to enjoy a balanced environment suitable for the development of their life.

[20] See footnote 11.

[21] Notice of Infraction No. 137-2020-SUNAFIL/IRE-ICA, of 26 November 2020, paras 4.28 to 4.38 and 4.41 to 4.43.

[22] Notice of Infraction No. 137-2020-SUNAFIL/IRE-ICA, paras 4.39 and 4.40.

authority in the matter; (ii) with regard to the first complaint, [23] the decision to impose a sanction issued in the last administrative instance by SUNAFIL was challenged in court by enterprise B in 2021, [24] and for this reason, the implementation of this decision (in particular the payment of the corresponding fine) has been put on hold; and (iii) in the context of the second complaint, [25] in 2021, SUNAFIL decided, in the last administrative instance, to impose a fine on enterprise B for not having provided information necessary for the labour inspectors to discharge their inspection function, which prevented them from performing any inspections. The Government adds that the payment of the corresponding fine is still outstanding and that a request was made to the labour inspectorate to issue a new inspection order for enterprise B in order to effectively verify compliance with legislation on working hours in that enterprise.

17. The Government also states that, on the basis of an inspection procedure initiated in 2021 by SUNAFIL, since 28 May 2021, enterprise B had replaced the 30x15 work schedule, which in turn had replaced the earlier 40x20 work schedule, by a work schedule consisting of 20 days of work and ten days of rest (20x10 work schedule), and 10 hours and 17 minutes of work per day. [26]

C. The Committee's conclusions

18. The Committee's conclusions are based on its review of the allegations presented by the complainant organizations contained in the representations made by the federation and the trade union, and of the corresponding replies sent by the Government.

1. Representation made by the Federation of Mineworkers of Shougang Hierro Peru and Others (enterprise A)

19. The Committee observes that the federation alleges that: (i) the 30x14 work schedule, implemented in 2020 by enterprise A at mining site A in the context of the resumption of its operations, which had been suspended owing to the pandemic, exceeds the limits for work over a three-week period stipulated in the Convention, [27] is exhausting and is endangering workers' safety and health; in spite of this, SUNAFIL has not ruled on the complaints lodged by the federation in this respect (first allegation); and (ii) workers who do not agree to return to work on the basis of this schedule are threatened with dismissal (second allegation).

20. With regard to the first allegation, the Committee notes that the complainant organization indicates that: (i) the 30x14 work schedule entails 30 consecutive days of work on-site (without the possibility for the workers to leave the mining site at the end of their working day), with 8–12 hours of work each day and 14 days of rest (divided into 7 days of actual physical rest granted on a conditional basis, for example as an advance of paid leave, and 7 days of preventive isolation); (ii) the working time under this schedule exceeds the limits for work over a 3-week period stipulated in the Convention, is exhausting and is endangering workers' safety and health; and (iii) SUNAFIL has not ruled on the appeal lodged by the complainant organization against the decision rejecting its first complaint, nor has it ruled on the second

[23] Inspection Order No. 1294-2020-SUNAFIL/IRE-ANC.

[24] Action brought before the Fourth Administrative Labour Disputes Court of the High Court of Justice of Santa under file No. 00782-2021-0-2501-JR-LA-04.

[25] Inspection Order No. 2083-2020-SUNAFIL/IRE-ANC.

[26] Notice of Infraction No. 346-2021-SUNAFIL/IRE-ANC, of 17 June 2021, para. 4.16.

[27] Although the federation does not mention the number of the Article to which reference is made, it can be assumed that it is Article 2(c) of the Convention.

complaint by the complainant organization, both relating to the above-mentioned work schedule (for further details on these complaints, see paragraph 10).

21. The Committee notes the Government's reply to the effect that: (i) in September 2020, SUNAFIL heard the federation's appeal against the decision rejecting its initial complaint; (ii) in 2021, in the context of its second complaint, SUNAFIL decided, in the first administrative instance, to impose a fine on enterprise A after having first verified that, between June and August 2020, the workers at mining site A were working under a shift work system for up to 30 consecutive days, working an average of more than 11 hours a day, constantly working overtime and on their weekly rest days and spending each night at the mining site in question, all of which prevented them from exercising their constitutional rights to rest and leisure time; and (iii) according to the binding rulings issued by the Constitutional Court in 2006, atypical or cumulative work schedules, in any economic activity, including mining, are subject to the limits on working hours provided for in Article 2(c) of the Convention and the limits permitted under Article 4 of the Convention are not applicable on the grounds that this provision is less favourable than article 25 of the Constitution of Peru, which sets a limit of 48 hours of work per week. [28]

22. The Committee recalls the following Articles of the Convention, which were referred above: (i) Article 2: the working hours "shall not exceed eight in the day and forty-eight in the week"; (ii) Article 2(c): "where persons are employed in shifts it shall be permissible to employ persons in excess of eight hours in any one day and forty-eight hours in any one week, if the average number of hours over a period of three weeks or less does not exceed eight per day and forty-eight per week"; and (iii) Article 4: "[t]he limit of hours of work prescribed in Article 2 may also be exceeded in those processes which are required by reason of the nature of the process to be carried on continuously by a succession of shifts, subject to the condition that the working hours shall not exceed fifty-six in the week on the average. Such regulation of the hours of work shall in no case affect any rest days which may be secured by the national law to the workers in such processes in compensation for the weekly rest day". The Committee also recalls that: (i) while the exception to Article 2(c) of the Convention applies to shift work, the exception to Article 4 applies to shift work in continuously operating processes; (ii) the preparatory work leading to the adoption of the Convention show that it was considered that some of the processes inherent in the mining industry sector were typical examples of the application of the exception of Article 4; [29] (iii) unlike Article 2(c), Article 4 does not establish

[28] In the two decisions issued by SUNAFIL following the second complaint by the federation regarding the 30x14 work schedule (Subregional administrative decision No. 102-2020-SUNAFIL/IRE-ANC-SIRE and Regional administrative decision No. 001-2021-SUNAFIL/IRE-ANC), reference is also made to these constitutional precedents.

[29] In the conclusions of the report prepared by the organizing committee, which served as the basis for the first draft Convention, it was indicated that one of the cases that justified an exception to the principle of the 48-hour week was that of the "continuous industries", in which "by reason of the nature of the work", it was customary "to carry on the work by a succession of shifts working seven days a week". A typical case of such industries was that of "the blast furnaces in the iron smelting industry". For such cases, it was recommended that "*on an average* over one month or less the hours of work shall not exceed 56 in the week". During the discussion of the draft Convention in the framework of the First Session of the International Labour Conference, the committee appointed to examine the draft Convention considered that, given the characteristics and the level of development of the iron and steel industry in the immediate post-war period, the weekly extension of hours should be accepted "for each of the three shifts in such works", with the understanding "that only continuous processes should benefit by the exception, and not the entire undertaking in which such work is carried on", "it being understood … that the national laws can, by means of special holidays, … insure to the workers … compensating leave for their weekly day of rest". See International Labour Conference (1st: 1919: Washington, DC) Organising Committee: "Conclusions of the Report on the eight-hours' day or forty-eight hours week" in *Official Bulletin,* Vol. 1 (April 1919–August 1920), 366–373 (Geneva, ILO, 1923); and International Labour Conference (1st: 1919: Washington, DC): "Report on a Draft

specific daily limits to working hours and does not include a precise reference period to be used as a basis to calculate the 56 hours permitted per week; (iv) to avoid the abuses to which the inclusion of the Article 4 exception could lead, [30] the Conference committee tasked with examining the draft Convention, decided to introduce, through Article 7(a), the requirement for the governments of the ratifying States to communicate to the Office a list of the processes which are classed as being necessarily continuous in character; [31] and (v) in its reports, the Government has not included the mining sector in that category.

23. On the basis of the above, the Committee observes that: (i): the work schedules described above were implemented during the period of the pandemic; (ii) by virtue of binding constitutional precedents (see paragraph 14), it was decided not to apply the provisions of Article 4 of the Convention to any economic activity, including mining, given that article 25 of the Constitution of Peru contains more favourable provisions for workers in respect of working time, by setting the weekly limit on hours of work at 48 hours, without exception; (iii) SUNAFIL issued rulings on the complaint and the appeal submitted in 2020 in respect of the 30x14 work schedule applied by enterprise A at mining site A; and (iv) the second complaint by the federation was settled by SUNAFIL, taking into consideration the aforementioned constitutional precedents and sanctioning, in the first administrative instance, the enterprise concerned (see paragraph 15). **In these circumstances**, **observing that national legislation and jurisprudence afford greater protection than that provided by Article 4 of the Convention, since its Article 2(c) applies to all activities covered by the Convention, and that the labour inspection procedures operated correctly, the Committee considers that there is no violation of the relevant provisions of the Convention.**

24. Regarding the second allegation relating to accusations by enterprise A of disciplinary offences levelled at workers who were reluctant to adhere to the 30x14 work schedule, which would potentially justify dismissal, the Committee observes that the Convention contains no specific provisions with regard to termination of the employment relationship at the initiative of the employer. **In this context, the Committee will not pursue its examination of this allegation.**

2. Representation made by the Santa Luisa de Huanzalá Mineworkers' Union (enterprise B)

25. The Committee observes that the trade union alleges that: (i) the 40x20 and 30x15 work schedules implemented gradually in 2020 by enterprise B in the context of the resumption of its operations, which had been suspended owing to the pandemic, exceed the limits for work over a three-week period stipulated in Article 2(c) of the Convention, are exhausting and are damaging to workers' safety and health; in spite of this, the competent authorities have not ruled on the appeals lodged in this regard by the trade union (first allegation); and (ii) staff under service provider contracts and workers employed by mining contractors of enterprise B are subject to even longer working hours than those mentioned above (second allegation).

convention relating to the eight-hours day and the forty-eight hours week", in *International Labour Conference, First Annual Meeting* (29 October–29 November 1919), 224 (Washington DC, 1920).

[30] It should be recalled that during the discussion on the draft Convention in the framework of the First Session of the International Labour Conference, Schedule A appended to the original draft was deleted, which included a list of those establishments whose operations included continuous processes, one of which was mines, considering that its formulation required a thorough examination that exceeded the time and information available to the Committee.

[31] ILO, "Report on a Draft convention relating to the eight-hours day and the forty-eight hours week".

26. With regard to the first allegation, the Committee notes that the trade union indicates that: (i) the 40x20 work schedule entails 40 consecutive days of work and 20 days of rest divided into 12 days of actual rest and 8 days of preventive isolation; (ii) the 30x15 work schedule which was subsequently implemented, entails 30 consecutive days of work and 15 days of rest divided into 10 days of actual rest and 5 of isolation; (iii) the working time under this schedule exceeds the three-week period stipulated in Article 2(c) of the Convention, which together with the reduction in actual rest time owing to the need to include the preventive isolation in that period, means that the work schedules are exhausting and damaging to workers' lives and their health; (iv) in the context of its first complaint regarding 40x20 work schedule, in 2021, SUNAFIL decided, in the last administrative instance, to sanction enterprise B, considering that their implementation contravened article 25 of Emergency Decree No. 029-2020 and was unconstitutional, among other reasons, for not considering the provisions of the 2006 binding precedents of the Constitutional Court in respect of working time; however, that decision has apparently not yet been implemented; and (v) the authorities concerned have not yet issued a final decision on either the appeal lodged with the DRTPE of Huánuco in 2020 regarding the above-mentioned work schedule, or the second complaint lodged by the trade union in 2020 with SUNAFIL regarding the 30x15 work schedule.

27. In this respect, the Committee notes the Government's reply that: (i) the 30x15 work schedule was replaced by the 20x10 work schedule, which enterprise B began to apply on 28 May 2021; (ii) with regard to the first complaint by the trade union regarding the 40x20 work schedule, the implementation of the decision to impose a sanction issued in the final administrative instance by SUNAFIL has been put on hold since being challenged in court by enterprise B in 2021; (iii) regarding the appeal lodged by the trade union in 2020 before the DRTPE of Huánuco concerning the work schedule in question, there is a dispute over which authority is competent to resolve it; (iv) in the context of the second complaint by the trade union, SUNAFIL was unable to verify the implementation of the 30x15 work schedule by enterprise B, which replaced the 40x20 work schedule, owing to the lack of information provided by that enterprise, and consequently, in the last administrative instance, a fine was imposed on enterprise B, which is still outstanding; and (v) the binding rulings issued by the Constitutional Court in 2006 established that atypical or cumulative daily working hours, in any economic activity, including mining, are subject to the limits on working hours provided for in Article 2(c) of the Convention and that the limits permitted by Article 4 of the Convention are not applicable as this provision is considered to be less favourable than article 25 of the Constitution, which sets a limit of 48 hours of work per week. [32]

28. The Committee reiterates what was stated in paragraph 22 above.

29. The Committee observes that: (i) the first complaint by the trade union regarding the 40x20 work schedule was settled on the basis of the constitutional precedents mentioned and, in the last administrative instance, by sanctioning the enterprise concerned (a sanction that is pending implementation as it has been challenged in court); (ii) its second complaint on the 30x15 work schedule led to inspections by SUNAFIL, which could not be completed due to a lack of cooperation by the enterprise, resulting in the enterprise being sanctioned; (iii) the challenge to the 40x20 work schedule presented by the trade union to the DRTPE of Huánuco in 2020 has not yet been settled due to issues of jurisdictional competence; (iv) none of the above-mentioned work schedules are currently in force, as in May 2021 enterprise B introduced a new 20x10 work schedule, which also led to the start of an inspection procedure

[32] SUNAFIL, in the trade union's first complaint regarding the 40x20 work schedule, also referred to such precedents.

by SUNAFIL in 2021; and (v) by virtue of the previously mentioned constitutional precedents (see paragraph 27), the Constitution of Peru contains provisions that are more favourable than those of Article 4 of the Convention. **The Committee observes that the work schedules questioned by the trade union are no longer in force. In any event, observing that national legislation and jurisprudence afford greater protection than that provided by Article 4 of the Convention, since its Article 2(c) applies to all activities covered by the Convention, and that the labour inspection procedures operated correctly, the Committee considers that there is no violation of the relevant provisions of the Convention.**

30. Lastly, with regard to the second allegation, the Committee notes that the trade union does not send specific information on the working hours imposed on staff employed under service provider contracts by enterprise B and workers employed by its mining contractors, which allegedly even longer than those mentioned in the previous paragraphs. **In these circumstances, the Committee will not pursue its examination of these allegations.**

31. **Lastly, the Committee observes that the representation was filed in the context of an acute health crisis caused by the COVID-19 pandemic. In this regard, and taking into account the exceptional health context, the Committee highlights the importance of holding a broad social dialogue with all representative organizations of workers and employers in the relevant sectors when taking action to find effective and sustainable solutions to crises (such as the crisis caused by the COVID-19 pandemic), as well as in the context of collective bargaining. The Committee recalls the impact of excessive working hours on the health and safety of workers and underlines the fundamental nature of the occupational safety and health Conventions, as recently recognized by the ILO.**

▶ III. The Committee's recommendations

32. **In the light of the conclusions set out in paragraphs 23, 24, 29 and 30 above with regard to the matters raised in the representations, the Committee recommends that the Governing Body:**

(a) approve the present report;

(b) publish the report and declare closed the procedure resulting from the representations.

Geneva, 10 February 2023

(Signed) Ms María Isabel Salazar Urrutia
(Government member)

Mr Gerardo Martínez
(Worker member)

Mr Fernando Yllanez Martinez
(Employer member)