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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS

Initial reports submitted by States parties to the Covenant concerning
rights covered by articles 6 to 9, in accordance with the first stage
of the programme established by the Economic and Social Council in its
resolution 1988 (LX)

Addendum

VENEZUELA

[14 March 1983]

1. The object of this report is to comply with article 16 of the International Covenant on Economic, Social and Cultural Rights as regards Venezuela's implementation of articles 6 to 9 of the Covenant. It describes the action taken by Venezuela to protect the rights recognized in those articles of the Covenant, in general following the order of the articles themselves.

I. ARTICLE 6. THE RIGHT TO WORK

A. Constitutional recognition of the right to work

2. Venezuela's Constitution recognizes work as being both the obligation (art. 54) and the right of every individual (art. 84).

3. While the right to work is recognized in theory in the first part of article 84: "Every person has the right to work", the second part provides for its practical attainment: "The State shall endeavour to ensure that every able person can obtain employment that affords him a worthy and decent livelihood".

B. Administrative measures to implement the right to work

4. A department of the Ministry of Labour, the Department of Economy and Employment, is responsible for gathering information on the state of the labour market and for regulating that market by means of labour exchanges or employment agencies, of which there are 18 in the country. The Department has also set up a Technical and Professional Division which is responsible for channelling the supply of technical and professional manpower resources.

5. In this connection, a 1976 decree prohibits the operation of fee-charging employment agencies. This prohibition had been planned since the adoption of the Labour Act in 1936.

C. Technical and vocational training

6. In recent years, there has not been a significant level of unemployment in Venezuela.

7. On the other hand, the country's rapid industrialization, accompanied by intensive domestic and international migration, has created an imbalance in the labour market. While the demand for labour is for technical personnel with some degree, or a high degree, of training, the labour supply is made up chiefly of former peasants and unskilled labour in general.

8. As a result, Government action has been directed towards resolving this problem by giving training and technical training to manpower resources.

National Training Institute

9. The National Training Institute was set up to provide vocational training and to promote and develop apprenticeship schemes.

10. The Institute is an independent body under the administrative control of the Ministry of Education but with organizational links to the Ministry of Labour.

11. The Institute's functions include setting up schools, offering courses in undertakings and organizing apprenticeships in the workplace with employers' co-operation and in its own schools. The apprenticeship section of the Act setting up the Institute imposes on undertakings the obligation to have a certain percentage of their staff working as apprentices and following courses at the same time. This percentage has been increased by special decrees, taking into account the economic situation at a given moment.

12. Between 1959, when it was set up, and 1980, the Institute trained 2,551,948 individuals; in 1980, 335,056 people received vocational training.

Training fellowships

13. The 1936 Labour Act imposes on undertakings employing more than 400 workers the obligation to create a training fellowship for one of its workers or the child of one of its workers. In accordance with this Act, the number of fellowship-holders is increased to three when the undertaking employs over 2,000 workers.

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14. Since the Act's adoption, it has been consistent practice to include in collective agreements a clause requiring the employer to institute far more vocational training fellowships than are provided for in the Act.

Ratification of Conventions of the International Labour Organisation

15. On 27 August 1981, the Venezuelan Congress ratified a number of ILO Conventions, including Convention No. 122 concerning Employment Policy. By virtue of that ratification, the provisions of the Convention have become part of Venezuela's domestic legislation.

II. ARTICLE 7. THE RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

A. Constitutional recognition of the principle of fair remuneration, minimum wage and legal wage-protection institutes

16. Article 87 of the Constitution provides that:

"The law shall provide appropriate means for obtaining fair remuneration, establish rules for ensuring that every worker receive at least a minimum wage, guarantee equal pay for equal work without discrimination of any kind, determine the share in an undertaking's profits to which workers are entitled and protect wages and social benefits from restrictions in whatever proportion and cases are established and with whatever privileges and guarantees it itself provides."

As we can see, the Constitution not only recognizes the right to fair remuneration as a theoretical principle but also imposes on the law the obligation to set a minimum wage and to determine how workers are to share in the profits of an undertaking and how their wages are to be protected.

Minimum wage-fixing

17. The Labour Act provided the possibility for the executive branch to set up committees to fix minimum wages by branch of industry. Subsequent regulations made tripartite membership of such committees compulsory.

18. This method of minimum wage-fixing was hardly ever used in Venezuela, however, mainly because collective bargaining became widespread and was the method generally used by parties to fix minimum wages, either at the level of the undertaking or at the level of the branch of industry concerned, by means of the compulsory extension of agreements between workers and employers.

19. In spite of this and above all in view of the existence of non-unionized sectors not covered by collective agreements, a national minimum wage for all occupations was decreed in May 1974, and in June of the same year, an overall increase in current wage levels. Both measures were taken by the executive branch in the form of decrees by virtue of the fact that a special act (in conformity with art. 190 (8) of the Constitution) had authorized the President of the Republic, acting in Council of Ministers, to enact special economic and financial measures.

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20. In December 1979, an act was promulgated which provided for overall wage increases and set a new national minimum wage for all occupations.

21. This served to supplement a system under which, while the minimum wage is normally fixed by collective agreement, a national minimum wage is also established by law which acts as a guaranteed minimum for any form of employment and cannot be reduced by either individual or collective contracts.

Principle of equal pay for equal work

22. Like all fundamental principles of labour law, the principle of equal pay for equal work is expressly recognized and guaranteed by the Constitution (art. 87).

23. At legislative level, the Labour Act expands on the constitutional principle.

24. The principle of equal pay for equal work can be regarded as the practical expression, in the matter of wages, of the fundamental human right to non-discrimination. In Venezuela, there has never been any real problem of discrimination on national, religious or philosophical grounds with regard to either labour rights or any other right.

25. In the past, foreign corporations operating in the country discriminated against national workers with regard to pay and conditions of work and special rules had to be enacted to protect the labour of national workers. This situation was resolved when the country's basic industries were nationalized.

26. In practice, some forms of discrimination against women workers also persist. This is not a problem of law, however, since there are many legal norms guaranteeing equality of rights between men and women.

27. As Venezuela has already reported, countless measures have been taken in recent years to eliminate such practices.

28. Of these, the principal measure was the creation of the Ministry of State for Women's Participation in Development.

Ratification of Conventions of the International Labour Organisation

29. By act of 27 August 1981, the Venezuelan Congress ratified a number of ILO Conventions, including Convention No. 95 concerning the Protection of Wages and Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

30. By virtue of that ratification, the provisions of those Conventions have become part of Venezuela's domestic legislation.

B. Safe and healthy working conditions

31. Venezuelan positive law establishes industrial safety and health standards which accord with universally accepted standards and with ILO conventions and recommendations.

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32. The Labour Act has a special section containing industrial health and safety standards which are in turn, regulated by special decree. The Labour Act also lays down basic principles with regard to employers' liability for industrial injury. This legislation must be read in conjunction with the legislation in force on compulsory social insurance.

33. Although existing legislation can be regarded as adequate in the areas of industrial health and safety, since it conforms to standards applicable worldwide, Government, employer and trade union circles consider industrial safety to be a serious problem and one that is difficult to resolve.

34. Administrative action, entrusted to the Ministry of Labour has focused in recent years on the creation of industrial safety committees within individual undertakings or establishments. Two thousand four hundred and fifteen such Committees were set up in 1980. This has made for marked improvements, especially in large industrial undertakings.

35. Another course of action to improve the industrial health and safety situation has been to draft a bill on working conditions and the working environment. The Commission responsible for considering this bill has stated that:

"In this connection, the Committee took the view that the formulation of a comprehensive, integrated industrial health and safety policy must of necessity be directed not only towards standardizing the occupational health and safety legislation in force which covers industrial hygiene and environmental health, but also towards creating an institution, attached to the Labour Office and enjoying sufficient authority at national level, to direct, monitor and implement occupational health and safety policy. Such an institution would bring together under one roof the various units which are currently scattered throughout different organs of the central government.

"This institution would enjoy the co-operation of all the national bodies involved in this area and the technical co-operation of international bodies such as the International Labour Organisation (ILO) and the World Health Organization (WHO).

"The Commission believes that, despite the existence of public and private bodies and entities which, in a great spirit of service, have dedicated their efforts to safeguarding and protecting the health and life of workers, the socio-economic momentum of the current industrial process, the quantitative growth of labour sectors (an employed labour force of over 4 million), the use of modern machinery and industrial complexes, the increasing utilization of highly dangerous technologies which make indiscriminate use of chemical substances and raw materials that are dangerous to handle and pollute the environment and the lack of education about industrial health and safety that prevails in the working environment, are factors and circumstances which warrant the adoption of measures to protect the environment and improve working conditions".

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C. The right to rest, leisure, limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Recognition in positive law

36. As with other fundamental labour rights, the right to limitation of hours of work is expressly recognized and guaranteed by the Constitution (art. 86).

37. The Labour Act and the regulations deriving therefrom reaffirm the universally recognized principles of a maximum working day of eight hours and a maximum working week of 44 or 48 hours. In general, the standards set by ILO conventions and recommendations have been followed with regard to maximum hours of work, weekly rest, holidays with pay, special limitation of night work, rest breaks, special limitations for minors and women, etc.

Regulation by means of collective agreements

38. It should be borne in mind that the above legislation, which in many instances, offers better guarantees than those provided in ILO conventions (for instance, with regard to special pay for annual holidays) is supplemented by the negotiation of collective agreements through which workers' benefits may be enhanced but in no circumstances diminished.

39. We cannot give a detailed explanation of the way in which the conclusion of collective agreements has enhanced the rights of workers in this area, given the tremendous number of collective agreements that are concluded in Venezuela and the fact that such agreements adopt different solutions for different undertakings or different branches of industry. None the less, we can mention the following general principles: extension of the weekly rest to a continuous period of 48 hours covering the whole of Saturday and Sunday; reduction of the working week to 40 or 36 hours (the latter generally for office work); high percentage increases in pay for authorized overtime which tend to discourage recourse to overtime work; increase in the number of days of paid annual leave and, much more frequently, special pay for statutory holidays; increase in the number of public holidays for which remuneration is given, etc.

Leisure

40. Government agencies have programmes for enhancing workers' use of their free time. These agencies include the National Sports Institute, the Workers' Training and Recreation Institute, the National Cultural Council, etc. The latter sponsors cultural activities in general and in recent years has concluded agreements with the main trade union federation on implementing cultural plans for trade unions with worker participation. It must, however, be mentioned that collective bargaining is also very important in this area since collective agreements provide for bodies usually comprising representatives of both management and workers, to be set up at the level of the undertaking to encourage workers to devote their free time to cultural activities (choral or theatre groups or sports clubs) which reach large numbers of the country's workers.

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III. ARTICLE 8. TRADE UNION RIGHTS

A. Constitutional guarantees of the right to organize

41. Article 91 of the Constitution recognizes the right to organize of both workers and employers. That article expressly establishes the principle that, in order to exist and function, trade unions shall be subject to no other requirements than those laid down by law to ensure the optimum performance of their functions and guarantee the rights of their members. It should be borne in mind that, in accordance with Venezuela's constitutional system, this principle means that any action taken by the public authorities to limit the right to organize which does not take the form of legislation, in other words has not been approved by both houses of Parliament in accordance with the constitutional procedures for the adoption of laws, can be declared unconstitutional and therefore null and void. In accordance with these principles, even a law enacted in accordance with all the constitutional procedures for the adoption of laws can be declared unconstitutional by the Supreme Court if it subjects the trade union or its operation to rules which are not aimed at ensuring the optimum performance of its functions or at guaranteeing the rights of its members.

B. Constitutional guarantee of the right to bargain collectively

42. The Constitution also recognizes and safeguards the right to bargain collectively and even provides expressly that collective agreements may contain a trade union clause, on the conditions prescribed by law.

43. Although a law regulating the application of the trade union clause has never been enacted, there have been judicial rulings that the most extreme versions of that clause, namely the "closed shop" or "union shop", are null and void since they are contrary to the principle of freedom of association. As a result, while the trade union clause continues to be fairly widespread in collective agreements, it almost always takes the form of a clause on trade union preference or some other such clause which does not violate freedom of association either with regard to the right to join any trade union or with regard to the right to withdraw from such union at any time.

C. Right to strike

44. The right to strike is also recognized in Venezuela's Constitution (art. 92). That article provides that the conditions for exercising the right to strike shall be laid down by law. As we have already indicated, the term "law" must be understood in the context of formal law, i.e. a law adopted by both houses of Parliament in accordance with the procedures laid down in the Constitution.

45. While the right to strike is protected for all workers, the Constitution provides that, in the public service sector, this right shall be exercised in the cases laid down by law. In practice, all matters relating to the right to strike are regulated by the current Labour Act and its regulations.

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46. In fulfilment of the constitutional mandate, legal norms have created a system of protection of trade union officials from dismissal by virtue of which workers who promote a trade union and trade union leaders cannot be dismissed without first being given the reasons for their dismissal.

47. The same system of protection from dismissal covers all workers during the exercise of the right to strike or during collective bargaining.

48. Furthermore, protection of trade union officials from dismissal is extended, through the negotiation of collective agreements, not only to the union's main officials but also to the workers' delegates or representatives in the individual establishment or workplace. In this same connection, we should also refer to the 1975 Act prohibiting arbitrary dismissal, which gives all workers fairly extensive protection against dismissal.

D. Effective exercise of the right to organize

49. The number of trade unions in Venezuela has increased dramatically in recent years under the system of trade union freedom and protection. In 1981 alone, 426 new primary trade union organizations were registered.

50. In general, primary trade union organization (direct worker affiliation) takes place at the level of individual undertakings. These trade unions are grouped together into secondary organizations or federations either by branch of industry or by region. Federations are in turn grouped together into confederations, of which there are four in the country.

51. Venezuela has ratified ILO Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively. As this report was being drafted, the executive branch requested the legislature to ratify Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize.

IV. ARTICLE 9. RIGHT TO SOCIAL SECURITY

Social insurance system

52. A system of compulsory insurance against the risks of illness, employment, injury, invalidity, old age and death has been in operation in the country since 1944.

53. Conditions in the country both then and now have so far prevented the social insurance system from being extended to all areas of the national territory. Starting from minimum coverage in 1944, the system has, however, been gradually extended by successive reforms.

54. As of now, all workers throughout the national territory are eligible for long-term benefits (old age, invalidity and survivors' benefits). On the other

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hand, coverage against the risks of illness and industrial accident has yet to be extended to areas with a low population density. Workers in these areas are protected against the risks of illness and industrial accident, in accordance with the Labour Act, by a system of employers' objective liability which in many cases is improved upon and expanded by collective agreements and which employers usually cover by taking out commercial insurance policies.

55. In that part of the country where the social insurance system covers the risks of illness and accident, it pays cash benefits to compensate for loss of income and provides comprehensive medical care. The latter is also provided to the workers' immediate family.

56. In recent years there has also been a trend towards extending social security coverage to individuals who are not included in the traditional definition of employed workers, bringing under the social insurance system self-employed workers such as taxi drivers who drive their own taxis or previously unprotected workers such as domestic employees.

57. The covered population increased from 4.6 million in 1978 to 7 million, or 48.8 per cent of the total population of the country in 1981.

58. Non-contributory forms of protection have also been introduced by means of sickness or accident insurance for unprotected population groups such as schoolchildren. The Compulsory Social Insurance Act envisaged the possibility of the social insurance system also providing coverage against the risk of unemployment. However, thus far it has been understood that the circumstances do not exist which would require that insurance coverage be extended to include unemployment.

59. Venezuela's social insurance system operates on the basis of compulsory contributions by employers and workers, plus State contributions.

60. The system is administered as an autonomous entity by a board comprising Government representatives and representatives of workers' and employers' organizations.

61. There is also a system of non-contributory old-age pensions.

62. In addition to the compulsory social insurance scheme, Venezuela's social security system also includes public assistance measures in such areas as the construction of housing by State agencies or with assistance from State agencies.

63. The introduction of a direct, non-contributory subsidy for sectors of the population who do not have an adequate minimum income is currently being considered.

64. In recent years, it has been very common practice in collective agreements to increase or supplement social insurance by extending the payment of sickness benefit to the first three days not covered by the social insurance scheme and covering the difference between the sickness benefit payable under that scheme and the wage normally earned by the worker.

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65. By act of 27 August 1981, Venezuela ratified the following ILO Conventions relating to social security: Convention No. 118 concerning Equality of Treatment of Nationals and Non-Nationals in Social Security; Convention No. 102 concerning Minimum Standards of Social Security; Convention No. 121 concerning Benefits in the Case of Employment Injury; and Convention No. 130 concerning Medical Care and Sickness Benefits.
