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*Economic, social and cultural rights
and the internet*

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Economic, social and cultural rights and the internet

PANAMA

TELEWORK IN PANAMA

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Introduction

Technological evolution and the increase in the use of the internet worldwide have tested many of the well-known ways of offering services to consumers and have also revolutionised the labour sector. Ways of working that were unimaginable in the past are possible today due to the alternatives and advantages offered by information and communications technologies (ICTs). A clear example of this is telework.

This innovative form of work represents a "win-win" situation for the employer and employee. It serves to reduce costs, and optimise and decentralise operations. Telework potentially contributes to a better life/work balance for workers, offering an improved quality of life for citizens.[1] It can benefit the environment – for example, by reducing the number of cars on the road – and offers the opportunity for marginalised groups such as people with disabilities to be gainfully employed. However, in many countries, this innovative, alternative work arrangement does not have a proper legal framework regulating it, which can lead to employment practices that violate the fundamental rights of teleworkers.

Panama has become a services-oriented economy[2] over recent years due to its strategic location. It is now a hub for global business operations and regional headquarters for multinationals. There are strong indications that telework is on the increase and that this trend will continue.[3]

During a recent workshop that we ran on telework in Panama, we discovered that around 46 companies are employing teleworkers. Most of these enterprises, such as Dell Panama, Sitel and PCCW Teleservices, among others, do business related to customer services and telecommunications.

The strength of Panama's telecommunications infrastructure is one of the main reasons why these businesses turn to telework as an option. Panama has a solid broadband infrastructure, and the number of internet users is rising steadily: in 2010 the country had around 265,825 users; by 2015 the number had increased to 316,170.[4]

However, a question arises: Is Panama legally prepared for this new form of work? Can it guarantee the proper protection of employee rights? In this report, we analyse the legal status of teleworkers in Panama, and recommend steps that we believe our country has to take into account in order to deal with the challenges related to the social and economic development of teleworkers, and in order to ensure the proper protection of labour rights and related rights contained in domestic and international instruments.

Current legal status of telework in Panama

Panama ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1977[5] and has also ratified around 78 conventions related to international labour rights.[6]

Panama has no specific laws regulating telework. The Labour Code of 1971[7] contained two articles dedicated to "home-based work", articles which could be read as partly referring to telework. However, Law No.1 of March 1986[8] repealed those two articles because the legislator believed that there is no legal difference between workers. Therefore, in Panama the Labour Code should be applied to all workers in the same manner, taking into account specialisations or the kind of work being done.[9]

Given this legislative gap, teleworkers are considered normal employees falling under labour law, and the framework of engagement between

1   Davies, R. (2013). *Work-life balance: Measures to help reconcile work, private and family life*. Library of the European Parliament. www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130549/LDM_BRI(2013)130549_REV1_EN.pdf

2   www.worldbank.org/en/country/panama/overview

3   Information obtained in the workshop Telework: Application and regulation in Panama, organised by IPANDETEC, Panama City, Panama, 20 September 2016.

4   Telecomunicaciones/ASEP. (2014). *Indicadores de Internet*. www.asep.gob.pa/images/telecomunicaciones/Estadisticas/Estadisticas/indicadores_de_internet_2014.pdf

5   Ley No. 13 de 27 de octubre de 1976 (G.O. No. 18.336 de 11 de Noviembre 1977).

6   www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102792

7   www.mitradel.gob.pa/portal/page/portal/PGMITRADEL/código-detrabajo.pdf

8   Ley No.1 de 1986. https://docs.panama.justia.com/federales/leyes/1-de-1986-mar-17-1986.pdf

9   Collado. A. (n/d). *Derecho Laboral IV*. www.monografias.com/trabajos65/laboral-iv-panama/laboral-iv-panama2.shtml#ixzz4LRuCYIII

teleworkers and employers is defined by the contract between the two, or the terms of service contract. This is when the problem arises. How do you define the rights of a teleworker and the duties of an employer when in countries like Panama the definition of an employee is quite general and in some ways based on obsolete ideas of what work means – an office or location where there is a hierarchy, and immediate oversight and control?[10]

The ICESCR affirms the obligation of states parties to assure individuals the right not to be deprived of work unfairly. This definition emphasises the importance of work for personal development as well as for social and economic inclusion.[11] The regulation of telework will help expand labour market opportunities, but in a way that the rights of workers are guaranteed.

The lack of a clear definition for telework

While preparing this article we noticed that there is not enough reliable data produced by government institutions in Panama to determine the actual number of teleworkers in the country or data that can support arguments regarding the benefits or costs associated with telework.

This could be due to several factors, including the lack of a clear definition of telework in Panama and disinterest among the authorities to quantify the sector, given other social priorities in the country.

A general definition of telework is essential for the sector to be regulated. A definition will allow different types of telework, categories of teleworkers, and their respective rights and obligations such as minimum remuneration and standards for occupational safety and health to be defined. A definition will also enable lawmakers to distinguish telework from other forms of similar work, such as home-based work.

The two concepts are normally confused, but they are slightly different. "Remote work", a concept commonly used in companies, is a benefit that the companies grant to their employees, allowing them to work from a location other than the office; however, their presence at the office is generally required. They have to comply with the same rules and obligations as the office-based employees. Remote work also refers to work done while travelling on business.

Teleworkers, however, are contracted to work outside of the office environment. They perform the job using information technologies that allow them to have access to systems available in the office, such as specific software programmes and databases, and can even use the printers which are located in the offices. Therefore, the use of technology and communications are crucial.

In this regard, the international community has been working on a definition of telework, even though there is no consensus on its definition. There are some agreements and guidelines such as the European Framework Agreement on Telework signed in 2002[12] that could help legislators identify the main elements and characteristics of telework and develop a definition. This agreement, which was signed by the European Trade Union Confederation (ETUC), the Union of Industrial and Employers' Confederations of Europe (UNICE), the European Union of Crafts and Small and Medium-Sized Enterprises (UEAPME), and the Centre of Enterprises with Public Participation (ECPE) states that teleworkers should enjoy the same working standards as employees working in an office – which means that the employer is responsible for the protection of their occupational health and safety, that the workload and performance standards are equivalent, and that the training and career development are comparable, among others.

Telework offers countless benefits, but at what cost?

As mentioned, telework potentially offers a wide range of benefits to workers and companies alike. However, currently the relationship with telework employees in Panama is defined by the employer. Normally, under this type of contract, the teleworker does not have company employment benefits, a situation which also rewards the company with lower administrative costs. This means that the teleworker has to assume the risks and costs as an independent professional services supplier, while at the same time be subordinate to company rules and supervision.

Without a proper legal framework, a company's policy in contracting teleworkers can generate a series of challenges that could outweigh the benefits. These are some of them:

Isolation and lack of relationship building

Everyday interaction and informal communication among co-workers help to develop ideas and help employees work together more efficiently and effectively. The lack of day-to-day interaction may gradually isolate teleworkers from a professional as well as a social point of view, and can affect their career development.

10   According to Panama's Labour Code. www.mitradel.gob.pa/portal/page/portal/PGMITRADEL/código-detrabajo.pdf

11   Comité de Derechos Económicos, Sociales y Culturales. Observaciones Generales. https://conf-dts1.unog.ch/1%20SPA/Tradutek/Derechos_hum_Base/CESCR/00_1_obs_grales_Cte%20Dchos%20Ec%20Soc%20Cult.html

12   www.eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Ac10131

A report by the European Foundation on the health and safety issues facing teleworkers in the European Union found that in several countries such as Ireland, telework often leads to a lack of both formal and informal contact and that teleworkers spend very long periods of time working alone. In some countries like Portugal and the Netherlands, teleworkers are required to make periodic visits to the company offices.[13]

The relative isolation can also create difficulties for teleworkers fulfilling their work duties, especially if they experience difficulties in communication with managers and co-workers, and in getting responses to their work queries on time.

No distinction between work time, family life and leisure

Teleworkers have to manage their own time. There is a tendency to work longer hours when you work outside of an office, a situation that can generate family conflict due to multiple roles and commitments. This is especially a challenge for women. These types of situations produce stress and can lead to the development of health problems.[14]

Safety and health

There are some health risks that could be related to telework, including the stress caused by overlapping home and work commitments, and depression caused by the isolation. The European Foundation report found that in the United Kingdom (UK), social isolation is generally regarded as the largest potential problem facing teleworkers. Isolation and loneliness are work stresses faced by teleworkers, and should be considered alongside other work stresses as factors that can have harmful psychological effects, impacting both on the teleworker and the organisation if not taken seriously. There is a worrying gap in legislation in Panama recognising these phenomena.[15]

Lower remuneration

Teleworkers' salaries are generally lower compared to comparable work done by other employees. Overtime is typically not financially rewarded. Research carried out in the UK showed that computer professionals employed as teleworkers earned between 19% and 29% less than onsite workers performing similar activities, and that overtime compensation is not usually paid to the teleworkers.[16]

Fewer possibilities for promotion than office workers

The career advancement of teleworkers can be jeopardised. The lack of face-to-face supervision and communication with management can impact negatively on the possibilities of promotion.[17] An article in TIME Magazine refers to a study published in the MIT Sloan Management Review, which showed that bosses are heavily influenced by "passive face time", the mere presence of someone's face in the office on a regular basis.[18] Performance, therefore, is not the sole issue taken into account for a promotion. There are other elements like leadership skills and being a good team player that normally cannot be measured when you are a teleworker.

Conclusions

In this report we have tried to suggest that telework can offer a work alternative that gives flexibility and a series of benefits to the teleworker.

Telework promotes inclusiveness because it can be an effective alternative for people with disabilities, people who have to care for a family member at home, breast-feeding mothers or those taking care of children, people living in rural areas, and qualified professionals living in another country, among others. However, there are also various issues that must be considered, and it is necessary to analyse both the advantages and the challenges of teleworking before opting for this form of work.

There is a long way to go before we have appropriate regulation of telework in Panama.

Some countries in the region such as Chile, Colombia and Argentina, among others, have been working on developing policies and regulations. In the specific case of Colombia, telework has a strong legal framework that includes guidelines and legal procedures both for the public and private sector.[19] Telework in Colombia is regulated through Law 1221 of 2008. The law offers a clear definition in Article 2: "Telework is a form of work which consists of the performance of remunerated activities or provision of services to

13 Huuhtanen, P. (1997). *The Health and Safety Issues for Teleworkers in the European Union*. European Foundation. https://pendientedemigracion.ucm.es/info/seas/estres_lab/informes/Informe%20europeo%20Health%20&%20Safety%20Issues%20for%20Teleworkers.pdf

14 Tremblay, D., Paquet, R., & Najem, E. (2006). Telework: A way to balance work and family or an increase in work-family conflict? *Canadian Journal of Communication, 31*(3). www.cjc-online.ca/index.php/journal/article/view/1721/1840

15 Ibid.

16 Di Martino, V., & Wirth, L. (1990). Telework: A new way of working and living. *International Labour Review, 129*(5). www.oit.org/public/english/support/itcom/downloads/pdf/distance.pdf

17 Illegems, V., & Verbeke, A. (2004). Telework: What Does It Mean for Management? *Long Range Planning, 37*(4). https://www.researchgate.net/publication/222695036_Telework_What_Does_It_Mean_for_Management

18 Luckerson, V. (2012, 17 July). Work From Home and You Might Miss a Raise. *TIME Magazine*. https://business.time.com/2012/07/17/work-from-home-and-you-might-miss-a-raise-2

19 www.teletrabajo.gov.co

third parties using information and communication technologies (ICT) for contact between the worker and the company, without requiring the physical presence of the worker in a specific workplace."[20] In Chile, the government modified the Labour Code through Law No. 19.759 in 2001 with the aim of incorporating new labour contract requirements for alternative forms of work such as telework.[21]

There are also some regional initiatives regarding telework. The Economic Commission for Latin America and the Caribbean (ECLAC) contributes to the implementation of the Millennium Development Goals by pursuing a series of short-term action plans with concrete qualitative and quantitative goals.[22] In the first Regional Action Plan on the Information Society in Latin America and the Caribbean (eLAC2007), 13 working groups were created with regional experts from various sectors to research and develop joint initiatives related to specific eLAC goals. One is the Working Group on Telework, which is coordinated by Argentina and now bases its work on the Digital Agenda for Latin America and the Caribbean (eLAC2018) that was adopted during the Fifth Ministerial Conference on the Information Society in Latin America and the Caribbean in 2015.[23] The working group has been working on issues such as the regulation of telework in the public and private sectors, and on exchanging good practices. In 2008, the working group presented a study on legislation and norms related to telework in the region.[24]

Panama can also learn from international organisations that are working on the issue of telework, such as the Sectoral Policies Department in the International Labour Organization, which has organised events such as the Global Dialogue Forum on the Challenges and Opportunities of Teleworking for Workers and Employers in the ICTS and Financial Services Sectors.[25] The United Nations Conference on Trade and Development (UNCTAD)[26] offer its state members technical assistance and cooperation to research, design and implement policies related to its work – in this case, telework is related to its work on e-commerce.[27]

We believe that our country can benefit from these initiatives as a first step. While the government has an important role to play, companies also have an obligation to develop good-practice guidelines before offering telework as an option.

Action steps

The following are advocacy priorities for civil society:

- The Ministry of Labour and Social Welfare has to create a working group on telework or establish a commission in charge of the sector. As a first step it should conduct a survey that allows for the collection of reliable data about the actual occurrence of this form of work in Panama.

- It is necessary to develop a working definition of telework that allows regulators to determine what constitutes telework so that a proper legal framework can be developed. This legal framework should establish clear rights and obligations, as well as regulations related to safety and health at work, reasonable working hours, provisions for maternity leave, and sanctions for those companies that do not comply with the regulations.

- Companies need to develop programmes and policies that allow them to establish reasonable working conditions. It is important to establish appropriate work arrangements (such as practical work objectives, duties and schedules, consideration of technology needs, etc.). Policies regarding job promotion and training also have to be taken into account.

- Any telework arrangement should take into account the family conflicts that this form of work can generate, and all policies should be gender-fair and include provisions for people with disabilities.

- Panama has to take into account and learn from the experiences of other countries both regionally and globally and use those regulations as a basis and example to develop domestic law. Panama also needs to engage with global organisations such as the ILO and UNCTAD on how to develop appropriate legislation.

20 Ley 1221 de 2008. www.mintic.gov.co/portal/604/articles-3703_documento.pdf

21 Morales Varas, G., & Romanik Foncea, K. (2011). *Una mirada a la figura del teletrabajo.* Dirección del Trabajo. https://estudios.sernam.cl/documentos/?eMjEyOTQ1Nw==-Informe_de_Actualidad_Laboral_Nº1_:_Una_mirada_a_la_figura_del_teletrabajo

22 Peres, W., & Hilbert, M. (2010). *Information Societies in Latin America and the Caribbean: Development of Technologies and Technologies for Development.* Santiago: ECLAC. www.cepal.org/publicaciones/xml/3/43803/Libro_Cepal_98.pdf

23 Quinta Conferencia Ministerial sobre la Sociedad de la Información de América Latina y el Caribe. (2015). Agenda Digital para America Latina y el Caribe. repositorio.cepal.org/bitstream/handle/11362/38886/S1500758_es.pdf?sequence=1&isAllowed=y

24 Boiarov, S. (2008). *Meta 5 eLAC2007: Informe sobre legislación y normativa vinculada al teletrabajo en América Latina y el Caribe.* Documento de Grupo de Trabajo eLAC2007. www.cepal.org/socinfo/noticias/noticias/2/32222/GdT_eLAC_meta_5.pdf

25 www.ilo.org/sector/activities/sectoral-meetings/WCMS_477666/lang--en/index.htm

26 UNCTAD. (2012). *A Guide to UNCTAD Technical Cooperation.* United Nations. www.unctad.org/en/PublicationsLibrary/dom20092rev1_en.pdf

27 UNCTAD. (2002, 17 November). Opportunities rising for women in e-commerce (press release). www.unctad.org/en/pages/PressReleaseArchive.aspx?ReferenceDocId=2927

Economic, social and cultural rights and the internet

The 45 country reports gathered here illustrate the link between the internet and economic, social and cultural rights (ESCRs). Some of the topics will be familiar to information and communications technology for development (ICT4D) activists: the right to health, education and culture; the socioeconomic empowerment of women using the internet; the inclusion of rural and indigenous communities in the information society; and the use of ICT to combat the marginalisation of local languages. Others deal with relatively new areas of exploration, such as using 3D printing technology to preserve cultural heritage, creating participatory community networks to capture an "inventory of things" that enables socioeconomic rights, crowdfunding rights, or the negative impact of algorithms on calculating social benefits. Workers' rights receive some attention, as does the use of the internet during natural disasters.

Ten thematic reports frame the country reports. These deal both with overarching concerns when it comes to ESCRs and the internet – such as institutional frameworks and policy considerations – as well as more specific issues that impact on our rights: the legal justification for online education resources, the plight of migrant domestic workers, the use of digital databases to protect traditional knowledge from biopiracy, digital archiving, and the impact of multilateral trade deals on the international human rights framework.

The reports highlight the institutional and country-level possibilities and challenges that civil society faces in using the internet to enable ESCRs. They also suggest that in a number of instances, individuals, groups and communities are using the internet to enact their socioeconomic and cultural rights in the face of disinterest, inaction or censure by the state.

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