



universität
wien

MASTER-THESIS

Titel der Master-Thesis

„The Violation of Labour Rights and Other Human Rights
Related to Domestic Work and the Precarious Protection
in Peru“

Verfasserin

Kimberly Caline Alvites Acker

angestrebter akademischer Grad

Master of Arts (MA)

Wien, 2014

Universitätslehrgang: Master of Arts in Human Rights

Studienkennzahl lt. Studienblatt: A 992 884

Betreuer: Univ.-Prof. Dr. René Kuppe

ACKNOWLEDGEMENTS

I would like to express my gratitude to all the people who have invested time and effort to contribute to this report especially to Helma, Matt, and my supervisor, Prof. Dr. Kuppe.

My special thanks to the NGO “Asociación Grupo de Trabajo Redes” and all the interviewees.

TABLE OF CONTENTS

ACKNOWLEDGEMENT.....I

LIST OF ACRONYMS.....V

CHAPTER I

INTRODUCTION

- 1.1 Description of the Problem.....2
- 1.2 Statement of the Problem.....8
 - 1.2.1 Main problem.....8
 - 1.2.2 Specific problems.....8
- 1.3 Objectives of the Study.....8
 - 1.3.1 Main objective.....9
 - 1.3.2 Specific objectives.....9
- 1.4 Significance of the Study – Justification.....9
- 1.5 Limitations and Delimitations of the Study.....10
- 1.6 Hypothesis and Variables.....11
 - 1.6.1 Hypothesis.....11
 - 1.6.2 Variables, indicators and operationalization.....12
- 1.7 Definition of Terms.....12
- 1.8 Organization of the Study.....14

CHAPTER II

LITERATURE AND LEGAL INSTRUMENTS

RELEVANT TO DOMESTIC WORK

- 2.1 Previous Investigations.....16
- 2.2 Theoretical Base.....17
 - 2.2.1 International legal instruments.....17
 - 2.2.1.1 The United Nations Human Rights System.....17

2.2.1.1.1	International Bill of Human Rights.....	17
2.2.1.1.2	Women's rights.....	19
2.2.1.1.3	Children's rights.....	21
2.2.1.2	The Inter-American Human Rights System.....	23
2.2.1.2.1	American Convention on Human Rights.....	23
2.2.1.2.1	Convention of Belem Do Para.....	23
2.2.1.3.	International Labour Organization.....	24
2.2.1.3.1	ILO Conventions relevant to Domestic Work.....	25
2.2.1.3.2	Before the ILO Convention No.189.....	28
2.2.2	National Law.....	31
2.2.2.1	Evolution of Domestic Work Policies.....	31
2.2.2.2	Comparison between labour regime of private activity and the special regime for domestic workers.....	35
2.2.2.3	Other relevant laws for Domestic workers.....	37
2.2.3	Domestic Worker's circumstances in Peru.....	43
2.2.3.1	Characteristics of Domestic workers.....	43
2.2.3.2	Labour rights and other Human Rights violations.....	46
2.2.3.2.1	Violence and abuse.....	46
2.2.3.2.2	Discrimination.....	50
2.2.3.3	Precarious Working conditions.....	52
2.2.3.4	Child Work.....	59
2.2.3.5	Access to education.....	63
2.2.3.6	Migration to other countries country.....	65
2.2.3.7	ILO Convention 189.....	66
2.2.3.8	Employment Agencies.....	67
2.2.3.9	The Demand of Domestic work.....	70
2.2.3.10	Governmental Institutions / Entities.....	70

CHAPTER III
METHODOLOGY

- 3.1 Methodology and Research Methods.....76
- 3.2 Populations and Sample.....77

CHAPTER IV
FINDINGS AND ANALYSIS OF INTERVIEWS

- 4.1 The Interviews.....79
 - 4.1.1 Domestic workers.....79
 - 4.1.2 Ombudsman and NGO.....100
- 4.2 Discussion.....106

CHAPTER V
CONCLUSIONS AND PROPOSALS

- 5.1 Conclusions.....109
- 5.2 Proposals.....110

- BIBLIOGRAPHY.....I
- DATA COLLECTION INSTRUMENTS.....VIII
- ABSTRACT (ENGLISH).....XIV
- ABSTRACT (GERMAN).....XVI

LIST OF ACRONYMS

AGTR	NGO Asociación Grupo de Trabajo Redes
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CONFIEP	Confederation of private business Institutions
CTS	Compensation of time of Service
ENAHO	National Household Survey
ICESCR	International Covenant on Economic, Social and Cultural Rights
MIMDES	Ministry of Women and Social Development
MIMP	Ministry of Women and Vulnerable Populations
MTPE/ Mintra	Ministry of labour and employment promotion
NSE	Socioeconomic Status
OAS	Organization of American States
OIT/ILO	International Labour Organization
RENAPE	National Registry of private employment agencies
SUNAT	National Superintendence of Tax Administration
UN	United Nations

CHAPTER I
INTRODUCTION

1.1 Description of the Problem

Domestic work, which has its origins in historical periods of servitude, in many countries has been a matter of concern to sociologists, anthropologists, administrators, jurists, psychologists, human rights activists and others. International bodies such as the United Nations (UN), through the International Labour Organization (ILO), has recognized the urgent need to engage countries around the world to make changes and to grant domestic workers the recognition of their rights so they are treated with dignity and equality, by adopting the Domestic Workers Convention. Countries should overcome socio-cultural, economic and historical differences for this marginalized group. The main aim is to achieve decent work for domestic workers and that States assume the defence and protection of the rights of this group of workers.¹

In Latin America it is estimated that between 17 and 19 million workers perform domestic work in private households, representing 7% of the regional urban occupation.² Although domestic work is a common activity in all countries, there are profound differences in its nature, origin and evolution, so the characteristics of the work vary in every nation.

In the case of domestic work in Peru, the problem adopts very complex and profound characteristics because it involves latent racism that exists in Peruvian society. Domestic work it is not only undervalued because it is an activity that is considered “natural” for women and that requires no special competences, there is also discrimination based on race and social class.

¹ The Domestic Workers Convention No. 189 and the recommendation 201 of the ILO were adopted in 2011 and they give the base to improve the domestic workers conditions so they can have a decent work.

² Valenzuela, María Elena, Situación Del Trabajo Doméstico Remunerado En América Latina. ILO, 2012. p.59

When Peruvian sociologist Flores Galindo studied the origin of contemporary racism and the figure of servitude in Lima in the nineteenth century, he argued that domestic servitude seems to be an extension of pongaje (personal service) that farmers engaged in the “haciendas”³⁴. This author argued that racism, as a practice and ideology, radiated from Lima. The customs among wealthy families was to ask to family or friends traveling to the Sierra (Highlands), for young peasants from the Andes to provide domestic service. These "cholitos" and "cholitas" spoke Quechua and were usually uprooted from their villages, sometimes as young as 4 years old and often with the complicity of prefects or local authorities.⁵

According to the census of 1876, domestic service was the most important activity in Lima, representing between 20% and 30 % of the labour force. Domestic servitude in Peru grew from 1854 to the present day and was consolidated as an institution not recognized legally but accepted by high and mid classes that had political and monetary power.⁶

While domestic work was expanding during the 19th century, the differences between people from the capital and the highlands expanded and the “Serranos” (people from the highlands) were considered as low class and only suitable for domestic work.

Given this historical background, with high racism linked to domestic work in Peru, we can try to explain the complex reality of the current problems of this activity, in which we can find many cases of real abuse of these workers. The Peruvian State has not showed a strong policy against the abuse of domestic

³ Hacienda. Large farm with a core housing. Spanish property system, the model was exported to America during the colonial period.

⁴ Méndez, Cecilia, De Indio a Serrano p.58

⁵ Ibidem

⁶ Flores Galindo, Alberto. República sin ciudadanos, Buscando un inca p.31

workers and an important part of society seems to accept the conditions in which they work and are being treated as natural.

In 2010 only 75,000 domestic workers were registered in SUNAT⁷. This means that 83.7% were informal workers. As the real numbers of domestic workers is not completely accurate it is probable that more than 90% of domestic workers are informal, with little or no job security or protection from the state.

Violence is another key issue for domestic workers; it is evidenced by the UN in its study on violence against women.⁸ Cases of violence are invisible because they occur within households where domestic work is performed. It is invisible and hidden and it is even worse because of the abstention of the State to intervene. The lack of an easy access to justice and the limitations domestic workers have to report these acts makes the problem difficult to solve.

A study from the Ministry of Women and Social Development (MIMDES) revealed that 54% of domestic workers claimed they suffered psychological abuse and 11% reported being the victims of physical violence. In addition, 13.8% of this group reported having been the victim of sexual violence by their employers or the employer's sons.⁹

A large part of this population of domestic workers is prone to abuse and rape, and so far do not have the necessary protection of their rights or the means to enforce them.

Summarizing the data that currently exists on domestic work in Peru, it is easy to recognize the following problems faced by domestic workers:

⁷ SUNAT- Peruvian entity in charge of the registry of domestic workers.

⁸ UN, Estudio a Fondo Sobre Todas Las Formas De Violencia Contra La Mujer, 2006. p.38 and 43

⁹ MIMDES, Detrás del mándil: Trabajadoras del hogar, víctimas de maltrato y hostigamiento sexual, 2007, p.40 and 41

Their work is often ignored and their vulnerability is high. It is a segment of the working population whose labour force is engaged mainly in the informal sector; many suffer of discriminatory treatment; they do not have time off or periods of rest and do not get annual holidays; do not have normal working hours; are not guaranteed a minimum wage; have no sick leave; and often suffer because they are not provided adequate food and shelter. Sometimes they are held against their will and receive violent treatment. If they are minors, frequently they are not allowed to attend school to study. In many cases they are minors under 14 that are not legally allowed to work.

The population of domestic workers in Peru are mostly women aged between 17 and 55 (61%), and are mainly women from different departments of Peru. In 2004 it was estimated that nationwide there were 600,000 domestic workers which 90% were poor women who come from different provinces to the capital city in search of better opportunities, to get higher income and expand their education opportunities.¹⁰

The largest concentration of domestic workers is in Lima. Within this population 76.2% come from the mountains of Peru, particularly those departments affected by extreme poverty such as Cusco (15.8%), Puno (13.9%), Cajamarca (10.9%) and Apurimac (9.9%). Given this social composition and the existence of a marked phenomenon of racism, marginalization and social exclusion in the Lima culture against people from the highlands, it follows that this feature reinforces prejudices and stereotypes that devalue the domestic worker. They are considered to be small-town, indigenous women, who speak bad Castilian and have a different - inferior - culture, accentuating a deep cultural gap between domestic workers and employers. This study was done in 2007; nowadays the percentage of women born in the outskirts of the capital and employed as domestic workers has increased and the percentage of people coming from outside the capital to work as domestic workers has decreased.

¹⁰ Ibidem p.28

In the context of marginalization and where fundamental rights are being violated, the State does not protect effectively domestic workers. The Peruvian Constitution recognises some of their fundamental rights but even those are not respected.

An explanatory approach of this situation of vulnerability and exploitation of domestic workers in the city of Lima, with a social perspective, is provided by the MIMDES study. It argues that discrimination and exclusion experienced by domestic workers are produced by three conditions that characterize them; gender; ethnicity; and social status. The abuse and exploitation of domestic workers is a given because they are woman, indigenous and poor.

In this challenging context, where a culture of contempt and discrimination against domestic workers still persists, violations of labour rights and other human rights related to domestic work often arise. Among the fundamental rights that are affected are; the right to equality and non-discrimination; the right to liberty and security of person; the right to physical and psychological integrity; the right to sexual freedom; the right to health; the right to food; the right to work; the right to education; the right to identity; the right to freedom of association; the right to justice and due process; and the right to education.¹¹

Given this serious abuse of fundamental rights, in May 2003 the Peruvian government enacted Law No. 27986 for domestic workers. Even though it constituted a breakthrough in the recognition of labour rights for domestic workers they did not go far enough because they only partially recognize these rights. They also lack effectiveness because the Peruvian State does not have institutions to check and enforce compliance.

¹¹ Ombudsman. Las Trabajadoras Del Hogar En El Perú. Una Mirada Al Marco Normativo Nacional E Internacional Establecido Para Su Protección, 2012, pp.20-38

In the international sphere the ILO showed concern about domestic workers and on 16th June 2011 the ILO Convention 189 on Domestic workers was adopted. This Convention is currently in the process of ratification by members of the ILO. Convention No. 189 And Recommendation No. 20 constitute the legal basis that will ensure that domestic workers enjoy the respect and recognition of the rights that workers in the formal economy currently enjoy. These legal instruments have been structured on the fundamental premise that domestic workers are not "servants", "family members" or second-class workers.

However, even though Peru is a member of the ILO, the Peruvian government still did not sign Convention 189, which leaves the protection of fundamental rights of domestic workers in uncertainty and in a legal vacuum. It is true that the government is trying to change the situation, especially since last year. The Vice Minister established a "working table" with the representatives of domestic workers, the Ministry of Work and with the CONFIEP¹². At the moment they are waiting for an answer from CONFIEP about ILO Convention No. 189.

Currently many Human Rights of domestic workers are violated not only because there is a gap in the legislation, but because of the weakness of institutions responsible for protecting the rights of these workers and the legal system's lack of efficiency.

By analysing the situation it can be seen that domestic workers in Peru have little effective legal protection from the state, so it is necessary to know in depth what fundamental rights of domestic workers are transgressed, what are the resources available for domestic workers who are victims of abuses of their fundamental rights and the current limitations or barriers to give the same rights to domestic workers as other workers in Peru. It is also important to analyse

¹² The CONFIEP is the institution that brings together and represents the Peruvian private Enterprise at a national and international level.

and understand both international and national law that is applied to this group of vulnerable workers.

1.2 Statement of the problem

1.2.1 Main problem

What forms of violation of fundamental rights do domestic workers suffer and what is the effectiveness of the regulatory framework established for protection?

1.2.2 Specific problems

1. What are the main characteristics of domestic work in Peru?
2. Which are the main abuses of fundamental rights of domestic workers in Peru?
3. Which factors impact/influence the violation of fundamental rights of domestic workers?
4. What is the effectiveness of the international regulatory framework on the protection of the fundamental rights of domestic workers?
5. What is the effectiveness of the national regulatory framework for the protection of the fundamental rights of domestic workers?
6. To what extent domestic workers have access to public and private entities responsible for the protection and promotion of their fundamental rights?

1.3 Objectives of the study

1.3.1 Main objective

To describe the different types of violations of fundamental rights of domestic workers in Peru and assess the effectiveness of the regulatory framework established to protect them.

1.3.2 Specific objectives

1. Describe the main characteristics of domestic work in Peru.
2. Analyse the main violations of fundamental rights of women working as domestic workers in Peru.
3. Identify the factors that impact the violation of fundamental rights of domestic workers.
4. Examine the effectiveness of the international regulatory framework for the protection of the fundamental rights of domestic workers.
5. Examine the effectiveness of the national regulatory framework for the protection of the fundamental rights of domestic workers.
6. Analyse the extent to which domestic workers have access to public and private entities that protect and promote fundamental rights.

1.4 Significance of the study - justification

The present study on the protection of Fundamental Rights of domestic workers in Peru has been carried out because of the lack of attention this group of women and children receive. This study hopes to contribute to the knowledge of a complex reality that transcends inadequate regulatory protection as well as

political, institutional, cultural and geographic conditions that lead to the violation of the rights of this vulnerable group of workers.

One of the main factors that characterize this problem is the persistence of racism in Lima's society. Prejudices spanning the entire Peruvian society and gender inequality also exacerbate the abuses of fundamental rights.

The existence of a vulnerable population of domestic workers, deficiencies in the protection of their Fundamental Rights, when compared with the rest of society. The barriers that exist in Peru for victims to access justice means that it is important to establish the causes and effects of this problem before proposing solutions that can help to protect domestic workers.

From a legal perspective is important to analyse the national and international regulatory framework to protect Fundamental Rights of domestic workers and it is also important to analyse the implementation of these standards and their effectiveness.

The results may serve as a reference or guide for students, institutions that protect the rights of domestic workers, those responsible for national and international organizations and associations, domestic workers, teachers and researchers who are interested in the Peruvian reality of this group of vulnerable workers.

1.5 Limitations and delimitations of the study

In this study I will have two major sources of information. The first is all the past studies of domestic workers done in Peru by Scholars, Ministries, NGOs, the UN among others and the second will be a primary source with interviews done with domestic workers, a specialised NGO and the Ombudsman.

One limitation is the number of “official” studies found, given that there are not many studies on the subject from the government. Another big limitation is to obtain the exact numbers of domestic workers and their circumstances, given that the official numbers are believed to be underestimated. Some labour unions believe that official numbers only represent half of the total domestic working population.

In the interviews with domestic workers, the first limitation is the number of interviews that I was able to carry out, due to the extent of the study. The second is the difficulty of approaching domestic workers, asking them sensible questions and gaining their trust to answer honestly (not because of the difficulty in finding domestic workers to interview, but in getting their trust to be able to talk with them). In this regard we only interviewed randomly selected domestic workers that approached one NGO/employment agency on specific days (Sundays as it is usually their day off). This way they felt more comfortable in sharing their experiences.

For these reasons the study does not aim to represent the circumstances of all Domestic workers in Peru, but to give examples of the abuses suffered and how their rights are not being effectively protected. With the interviews I want to corroborate if the existing studies reflect the situation of the domestic workers being interviewed.

1.6 Hypothesis and Variables

1.6.1 Hypothesis

In Peru the fundamental rights of domestic workers are violated because they are not properly protected, due to the existence of a weak legal and institutional

framework and insufficient progress made by the Peruvian State. This is aggravated by the existence of an exclusionary and racist culture.

1.6.2 Variables, indicators and operationalization

Operationalization of variables

A. Violation of Fundamental Rights of domestic workers

Indicators:

1. Characteristics of domestic work in Peru
2. Main fundamental rights affected
3. Factors involved in the abuse of fundamental rights

B. Protection of Fundamental Rights of domestic workers

Indicators:

1. International Legal framework
2. National Legal framework
3. Access to private and public institutions

1.7 Definition of terms

Domestic work

Work performed in or for a household or households (Domestic workers Convention).

Domestic worker

Any person engaged in domestic work within an employment relationship (Domestic workers Convention).

Workers who perform; cleaning; cooking; laundry; assistance; childcare; or other activities for the conservation of a residence that does not involve profit for the employer or their family (Domestic workers Peruvian Act).

Human rights

Human rights are rights inherent to all human beings. These rights are all interrelated, interdependent and indivisible. The principle of universality of human rights is the cornerstone of international human rights law (UN).

Fundamental rights

These are rights that originate in a country's Constitution. These fundamental rights usually encompass those rights considered natural human rights (<http://www.mpfm.gob.pe/home>).

Labour rights

Labour rights are a group of legal rights and claimed human rights having to do with labour relations between workers and their employers, obtained under labour and employment law (<http://www.mintra.gob.pe>).

Child

Any human being younger than eighteen years of age (UN Convention on the Rights of the Child).

Children and Adolescent

- Child: Any human being from birth to twelve years of age
- Adolescent: any person aged between thirteen and seventeen years (Child and adolescent Code).

1.8 Organization of the study

Chapter 1 has presented the Introduction with the description of the problem, statement of the problem, objectives of the study, significance of the study, limitations and delimitations of the study, the hypothesis and finally the definition of terms. Chapter 2 contains the review of related literature and research related to domestic workers. The methodology and procedures used to gather data for the study are presented in Chapter 3. Chapter 4 presents the findings and Chapter 5 presents proposals to the current situation.

CHAPTER II
LITERATURE AND LEGAL INSTRUMENTS
RELEVANT TO DOMESTIC WORK IN PERU

Chapter 2 provides an extensive review of the literature and research related to domestic workers in Peru. This chapter will be divided into 3 sections that include a. International legal instruments b. National Laws c. Domestic Workers' circumstances in Peru.

2.1 Previous investigations

There are few official studies regarding domestic workers. One of the main sources of information is the "Encuesta Nacional de Hogares"/ National house survey ENAHO and The National Survey of levels of life.

The first important study from the Ministry of Women was "Detras del Mandil: Trabajadoras del hogar, victimas de maltrato y hostigamiento sexual" Lima; Ministerio de la Mujer y Desarrollo Social (MIMDES), 2007. This report from the Ministry of Women and Social Development was produced in 2007 and focuses on sexual harassment and maltreatment of domestic workers in Peru.

Another important study comes from the Ombudsman in 2012 and is titled "Las trabajadoras del Hogar en el Peru, una mirada al marco normativo nacional e internacional establecido para su protección." The report explains the fundamental rights violations, and the law involved in the protection of their rights.

The most recent study is "Trabajo Domestico Remunerado en el Peru. Situación y perspectivas en función del Convenio 189 y la recomendación 201 de la OIT. Lima." OIT/ Oficina de la OIT para los Paises Andinos, 2013. This report, from the International Labour Organisation (ILO) and UN Women, is the latest and most detailed report regarding domestic workers in Peru.

Prior to these studies I could not find any official reports, only a small number of studies from NGO's and students for their degree.

2.2 Theoretical base

2.2.1 International Legal Instruments

Domestic workers around the world, whether they are adults or children, are at risk of abuse such as physical, psychological and sexual abuse, food deprivation and forced confinement among others.

Domestic workers are also prone to suffer from non-payment of wages, excessively long working hours with no rest days and no social services. Some of the rights that are repetitively violated are; the right to equality and non-discrimination; the right to physical and psychological integrity; the right to sexual freedom; the right to health; the right to education; the right to marriage and a family; the right of access to justice and due process; and right to rest and leisure.

Peru is part of two International Systems for the protection of Human Rights; The United Nations Human Rights system; and The Inter-American Human Rights system.

The treaties related to Peru and domestic workers are going to be described in this section and it is important to highlight that Article 55 of the Peruvian Constitution of 1993 states that “treaties signed by the State and in force are part of national law.” In other words, the Constitution recognizes international treaties signed and ratified by the country as rules of national law itself¹³.

2.2.1.1 The United Nations Human Rights system

2.2.1.1.1 International Bill of Human Rights

¹³ Defensoría, *Las Trabajadoras Del Hogar En El Perú. Una Mirada Al Marco Normativo Nacional E Internacional Establecido Para Su Protección*, 2012, p.41

The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.

Universal Declaration of Human Rights

The Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly the 10 December 1948.

The rights that this instrument recognizes that are related to domestic work are; equality and non-discrimination; life; freedom; prohibition of slavery; the right to move freely; the right to marry and found a family; freedom of peaceful assembly; the right to social security; the right to work, rest and enjoy leisure; the right to an adequate standard of living; and the right to education.

International Covenant on Civil and Political Rights

ICCPR was adopted in 1966 and ratified by Peru in 1978. It recognizes; Equal enjoyment of civil and political rights, prohibition of slavery, the right to liberty and security, right to move freely, right not to arbitrary or unlawful interference with privacy, the right of freedom of expression, right to peaceful assembly and association, right to family, marriage, non discrimination and equality before the law.

International Covenant on Economic, Social and Cultural Rights

The ICESCR was adopted in 1978 and ratified by Peru in 1978. It recognizes the right to work under just and favourable conditions; the right to have social security, including social insurance; the right to a family life, including paid parental leave and the protection of children; the right to an adequate standard of living, including adequate food, clothing and housing, and the continuous

improvement of living conditions; the right to health, specifically the highest attainable standard of physical and mental health; and the right to education, including free universal primary education, generally available secondary education and equally accessible higher education.

2.2.1.1.2 Women's rights

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and The Declaration on the Elimination of Violence Against Women

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by Peru in 1982. It is the international legal instrument designed to promote and protect women's rights in both the public and private spheres, it addresses gender inequalities within the State, market, family and community so "transcends the focus in other treaties on state actors who violate women's rights, towards also ensuring State accountability for rights violations by non-state actors, including the family".¹⁴

Relevant articles for Domestic workers are:

Art. 1 "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of gender, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Art. 5(a) States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customs and all other practices which are based

¹⁴ UNIFEM, Claim & Celebrate Women Migrants' Human Rights through CEDAW: The Case of Women Migrant Workers, 2005 p.3

on the idea of the inferiority or the superiority of either gender or on stereotyped roles for men and women.

Sexual harassment is a form of gender-based violence and discrimination. The CEDAW Committee has commented that sexual harassment includes; unwelcome sexually determined behaviour as physical contact and advances; sexually coloured remarks; showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when a woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment and promotion, or when it creates a hostile working environment¹⁵.

Also ILO's Committee of Experts considers that sexual harassment falls within the scope of ILO Convention No. 111 concerning Discrimination in Employment and Occupation ratified by Peru in 1970¹⁶.

When the Declaration on the Elimination of Violence Against Women was made on 20 December 1993, the United Nations stated that governments have an obligation to "prevent, investigate, and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by states or by private persons."¹⁷ A state's consistent failure to do so amounts to unequal and discriminatory treatment, and constitutes a violation of the state's obligation to guarantee women equal protection of the law¹⁸.

¹⁵ CEDAW Committee, General Recommendation No. 19, paras. 17-18.

¹⁶ Human Rights Watch. Swept Under the Rug, 2006, p.21

¹⁷ UN General Assembly, Declaration on the Elimination of Violence against Women, p.20

¹⁸ Human Rights Watch, Swept Under the Rug, 2006, p.20

2.2.1.1.3. Children's Rights

The Convention on the Rights of the Child and Worst Forms of Child Labour Convention, ILO convention No. 182

International law does not prohibit child labour in itself. It recognizes that there are different realities in the world that may require children to work to support themselves or their family's needs and in most countries forms of child labour are considered normal and even healthy. What international law does require is that nations set a minimum age for employment and eliminate the worst forms of child labour¹⁹.

The CRC guarantees children the right "to be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." (Art. 32.1)

The ILO's Worst Forms of Child Labour Convention develops the prohibition on harmful work in more detail. Under the Worst Forms of Child Labour Convention, some forms of child labour are prohibited such as practices similar to slavery. Other types of work are prohibited if they constitute "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children." (Art. 3)

ILO recommendations for what constitutes hazardous labour under the Worst Forms of Child Labour Convention include work that "exposes children to physical, psychological or sexual abuse" or involves "particularly difficult conditions such as work for long hours or during the night or work where the

¹⁹ Ibidem p.54

child is unreasonably confined to the premises of the employer.”²⁰
(Recommendation 190, paragraph 3.)

The CRC affirms a child’s right to be in regular and direct contact with his or her parents and prohibits arbitrary interference with a child’s family. Separation from their families can contribute to cumulative psychological harm of abusive situations, in contravention of the right of children to the highest attainable standard of health and their physical, mental, spiritual, moral and social development. (Art. 24, 27)

The CRC guarantee the right to education, as does the UDHR and ICESCR. These instruments dictate that primary education “must be compulsory and available for free to all.” (UDHR, Art. 26(1); CRC, Art. 28(1)(a); ICESCR, Art. 13(2)(a).) Secondary education must be “available and accessible to every child,” and states parties must “take appropriate measures, such as the introduction of free education and offering financial assistance in case of need.” In addition, the CRC obligates states “to take measures to encourage regular attendance at school and the reduction of drop-out rates.”²¹(CRC, Art. 28(1)(b) (e)).

The Convention on the rights of the Child has been ratified by every country with the exception of United States and Somalia. Peru ratified the Convention the 4th September 1990.

The ILO’s Worst Forms of Child Labour Convention, adopted in 1999, was ratified by Peru the 28th November 2000.

²⁰ Ibidem p.55

²¹ Ibidem p.62

2.2.1.2 The Inter-American Human rights system.

2.2.1.2.1 American Convention On Human Rights "Pact Of San Jose, Costa Rica" Adopted at San José, Costa Rica, November 22, 1969.

Peru ratified the Convention the 7th December 1978. The general rules established by the American Convention are very strong on the need to protect the physical, mental and moral integrity of a person (Art. 5) and the protection of honour and dignity (Art. 11), all with respect to every person, without any discrimination based on gender, among others (Art. 1), and the principle of equality before the law (Art. 24)²². This also recognizes the prohibition of slavery and servitude.

2.2.1.2.1 Inter-American Convention on The Prevention, Punishment And Eradication Of Violence Against Women "Convention Of Belem Do Para"

The Convention of Belem do Para was adopted in 1994, was signed by Peru the 7th December 1995 and ratified the 4th February 1996.²³

Peru has the obligation to prevent, investigate and punish violations of the physical, mental and moral integrity of women, their lives, as well as violations of other fundamental rights for the elimination of violence against women. Peru also has an obligation to take the necessary legislative measures to give effect to these rights and to provide a remedy for any violations²⁴.

There are two articles that are most relevant to the domestic workers circumstances. Article 4 and Article 6 state;

²² Krsticevic, Viviana La Denuncia Individual Ante La Comisión Interamericana De Derechos Humanos En El Sistema Interamericano De Protección De Los Derechos Humanos

²³ OAS, Convention Of Belem Do Para, 9 June 1994

²⁴ Krsticevic, Viviana La Denuncia Individual Ante La Comisión Interamericana De Derechos Humanos En El Sistema Interamericano De Protección De Los Derechos Humanos

“Every woman has the right to recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others;

- a. The right to have her life respected;
- b. The right to have her physical, mental and moral integrity respected;
- c. The right to personal liberty and security;
- d. The right not to be subjected to torture;
- e. The rights to have the inherent dignity of her person respected and her family protected;
- f. The right to equal protection before the law and of the law;
- g. The right to a simple and prompt recourse to a competent court for protection against acts that violate her rights;
- h. The right to associate freely;

The right of every woman to be free from violence includes, among others;

- a. The right of women to be free from all forms of discrimination;
- b. The right of women to be valued and educated free of stereotyped patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination.²⁵

International Labour Organization

The tripartite structure of the ILO gives an equal voice to workers, employers and governments to ensure that the views of the social partners are closely reflected in labour standards and in shaping policies and programmes.

The main aims of the ILO are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues²⁶.

²⁵ MIMDES, Documento informativo: Trabajadora y Trabajador del hogar, Tu tienes derechos conócelos y exígelos, July 2009, p.5

2.2.1.3.1. ILO Conventions relevant to domestic work

Ratified by Peru:

1. C. 26 Minimum wage-Fixing machinery Convention, 1927, ratified 1962.
2. C. 81 Labour Inspection Convention, 1964, ratified 1960
3. C. 100 Equal remuneration Convention, 1951, ratified 1960
4. C. 102 Social Security (Minimum Standards) Convention, 1952 ratified 1961. With some reservations
5. C. 111 Discrimination (Employment and Occupation) Convention, 1958, ratified 1970
6. C 138 Minimum age Convention, 1973 ratified 2002. Minimum age specified 14 years old.
7. C. 182 Worst Forms of Child Labour Convention, 1999, ratified 2002

Not ratified by Peru:

1. C. 131 Minimum wage Fixing Convention, 1970
2. C. 132 Holidays with Pay Convention (Revised), 1970
3. C. 158 Termination of employment Convention, 1982
4. C. 183 Maternity Protection Convention, 2000
5. C. 189 Domestic Workers Convention, 2011

ILO Domestic Workers Convention No. 189

The Convention concerning decent work for domestic workers was adopted 16th June 2011 and put into force on the 5th of September 2013. It is the major single international legal instrument to promote decent work for domestic workers and contains articles on working hours, overtime compensation, workers rights to leave their place of work outside of working hours and to hold their own

²⁶ ILO webpage, Consulted 14 May 2014

passports or travel documents. It also includes articles on more basic rights, such as freedom from abuse and violence.

Peru has not ratified the Convention, as by doing so it would encourage social justice to domestic workers that have been disadvantaged historically. Moreover, ratification would supplement the regulations on equality of opportunities, in the country and enhance the standing of domestic workers.

Additionally, the ratification of the convention and the obligation to provide regular information showing evidence of compliance with its provisions would generate sensitive information in relation to the studied sector. Until now the government has only reported sporadically; there are no national reports prepared periodically by the public administration on the status and prospects for domestic workers.

Beyond the reports that the Peruvian State should develop in relation to the monitoring and progress on the implementation of the agreement, the state would need to improve the articulation of all the relevant national institutions in the field²⁷.

The convention states that each nation shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers and take the measures to respect, promote and realize the fundamental principles and rights at work such as the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation. (Art. 3).

Peru's most serious problems are covered by the following articles:

²⁷ OIT, Trabajo Domestico Remunerado en el Perú, 2013, p.50 and 51

Minimum age: The State shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182) and not lower than that established by national laws and regulations for workers generally (Art. 4).

Education: Ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education or interfere with opportunities to participate in further education (Art. 4).

Protection against violence: The state should take measures for domestic workers to enjoy effective protection against all forms of abuse, harassment and violence (Art. 5).

Decent working conditions: The state should take measures to ensure that domestic workers enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy (Art. 6).

Formation and Termination of Contract: The state should take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws. Conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employee should be informed (Art. 7).

Identity documents: The state should take measures that domestic workers keep in their possession their identity documents (Art.9). This is usually a

problem with the agencies that retain the workers ID to give them to the employer.

Working Hours and Time off: States should ensure equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws. There should be a weekly rest of at least 24 consecutive hours. An important issue to consider is that periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws (Art. 10).

Remuneration: States should ensure that domestic workers enjoy minimum wage coverage without discrimination based on gender (Art. 11). They should be paid in cash at least once a month (Art. 12).

Working conditions: Domestic workers should work in a safe and healthy environment (Art. 13). They should enjoy conditions that are no less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity cover (Art. 14).

Employment Agencies: The state should effectively protect domestic workers, recruited or placed by private employment agencies, against abusive practices (Art. 15).

2.2.1.3.2 Before the ILO Convention No.189

The First International Conference about Domestic Workers

The First international conference about domestic workers was held in Amsterdam between the 8th and the 10th of November 2006. The name of the Conference was “Respect and Rights: Protection for Domestic/Household Workers!” It was held at the headquarters of the Trade Union Federation of the Netherlands (FNV).

The focal points of the conference were:

-What do domestic/household workers want?

-The demand for recognition and rights

-Suggestions for action.

A. A new international Convention for Domestic Worker from the ILO.

B. Acknowledgments of rights in domestic laws in more countries for domestic workers.

C. Improvement of the migration system for domestic workers in the countries where they migrate to work.

D. Improvement of the protection for domestic workers in their home countries when they want to migrate to work.

E. Eliminate child domestic work.

-Actions around the world

-What is domestic/household work?

-Who is organizing domestic/household workers' rights?

One of the most relevant points of the conference for this chapter was the debate about the creation of the International Convention for Domestic Workers from the ILO. Some participants saw this as an opportunity to campaign and encourage the creation of the convention; others thought this convention would demand too much time and effort and might not be worth it²⁸.

²⁸ Mather, Celia, Extracto de la Conferencia Internacional: protección para las trabajadoras del hogar/Domesticas!, p.22

This conference was done as a follow up of the conference 'Out of the Shadow: Organizing Domestic Workers Towards a protective regulatory framework for domestic work' held in Brussels, 14-15 April 2005²⁹.

ILO Framework before the domestic Workers Convention

Some ILO conventions contained clauses that included or explicitly excluded workers in this sector, but none specifically addressed them.

Generally, however, the standards of the ILO were also applicable to domestic workers, such as rights to equal opportunity and treatment, to collective bargaining and unionization, health insurance and the minimum working age.

Conventions contain clauses that allow flexibility to ratifying countries to exclude particular categories of workers or their employers. For example, the provision of unemployment insurance to domestic workers, protection of motherhood and some restrictions on night work of young people.

C. 95 and R. 85 Protection of Wages, 1949

C. 100 and R. 90 Equal Remuneration, 1951

C. 103 Maternity Protection (Revised) and R. 95 Maternity protection, 1952

C. 175 Part-time, 1994

C. 181 and R. 188 Private Employment Agencies, 1997

C. 183 and R. 191 Maternity Protection, 2000

R. 198 Employment relationship Recommendation, 2006³⁰

The work in domestic service is different to “home work” and does not fall within the scope of this type of work. When C. 177 Convention and R. 184

²⁹ Mether Celia ,Report on the conference, Out of the Shadow: Organizing Domestic Workers Towards a protective regulatory framework for domestic work, 2005

³⁰ ILO, ABC de los derechos de las trabajadoras y la igualdad de género, 2008 pp.185-187

Recommendation on Home Work³¹ was developed to promote equality in the treatment of home workers and the rest of workers, domestic workers were recommended not to be included in this convention and to ask for one to be specially created for them as they have particular needs³².

2.2.2 National Law

2.2.2.1 Evolution of domestic work policies

In Peru there have been positive changes in the laws for domestic workers throughout the years but they are not enough to give the status that other regular workers have. In this section we make a comparison of the laws from 1901 to the present day. How it has been evolving, improving and the limitations that still exist which block the improvement of the status of domestic workers. The last modification of the law for domestic workers was created in 2003. Act No. 27986 improves domestic workers conditions (on paper) but is still not enough, as we will analyse further down.

The information for this entire section “National Law” is partially taken from the ILO study on Domestic work in Peru, the Ombudsman report on domestic workers in Peru and the MIMDES report from 2007.

³¹ Home Work Convention, 20 June 1996

³² Mather, Celia, Extracto de la Conferencia Internacional: protección para las trabajadoras del hogar/Domesticas!, p.23

This table summarises the different laws given in Peru since 1901.³³

Concept	1901	1957	1970	2003
Range of regulations	Sub prefectural Decree	Supreme Decree	Supreme Decree	Act No. 27986
Status of worker	Servant	Servant	Services contract	Worker
Social benefits	None	Some	Some	Labour benefits
Child labour	Allowed	Allowed	Allowed	Allowed with parental authorization

Terminology

We can note in the above table the terminology regarding domestic employees who went from being “servants” to “trabajadores del hogar” or “house workers”. The use of the word servant was pejorative and was as lag of the colonial heritage. The exact translation in English is difficult to explain and the term “domestic workers” is not used anymore.³⁴

Types of domestic work / Modalities

The Act from 2003 differentiates for the first time the two different types of domestic workers.

- a. Cama adentro (Bed inside modality): Workers that live in the household or sleep in the house where they work.

³³ OIT, Trabajo Domestico Remunerado en el Peru, 2013, p.39

³⁴ Defensoría, Las Trabajadoras Del Hogar En El Perú. Una Mirada Al Marco Normativo Nacional E Internacional Establecido Para Su Protección, 2012, p.73

- b. Cama afuera (Bed outside modality): Workers that work for a few hours a day and do not sleep in the household. They usually work for more than one person/ household.

Contract

Since 1901 the contracts of domestic workers can be in writing or verbal. This has not changed until now and is a problem if there is no written contract because this serves as proof that they worked in a household, for example, to get monetary benefits after they have finished working when their employer no longer needs their services.

Remuneration

Neither old norms nor the current ones specify a minimum salary. They do specify that the payment must be done with money and not payment in kind. The ILO Convention of Domestic Workers in article 12 (2) does allow some other types of payment, rather than monetary ones, but this does not apply to Peruvian law.

The fact that the current law does not specify a minimum salary and leaves payment to negotiation between the employer and employee brings a lot of concerns. Usually they perceive a salary under the minimum living wage. This puts domestic workers in a vulnerable position where they cannot afford to have a basic standard of living. This issue definitely undervalues domestic work.

One of the main issues is that medical insurance (social security) is calculated on the base of the minimum living wage of Peru that is 750 soles a month, approx. 200 Euros.

Daily working hours

A decree from 1957 stated that to be considered a domestic worker individuals had to work no less than 8 hours a day. Current law states that domestic workers should not work more than 8 hours a day, 48 hours per week in total and it is considered effective work when the domestic workers are doing tasks

asked by the employee. This is also an issue because when we talk about the modality *cama adentro*, usually domestic workers are available more than 8 hours, and receive tasks from the employees so they end up being available the whole day and do not have a schedule.

Termination of contract

A decree from 1957 talked about the obligation of domestic workers to inform the employer 15 days before they wanted to quit. The actual law does not only talk about employee's duties but employers duties. If employers want to terminate the contract with no reason they should previously inform the worker 15 days prior to termination or provide 15 days wages in the case of immediate termination.

Term of service compensation (CTS)

Since 1957 the right to term of service compensation has been recognised. The new law specifies that it should be equivalent to 15 days of remuneration per year or the proportional part for the fraction of a year. This is paid directly by the employer to the employee when the contract is finished. It can be also paid every year cancelling the duty of paying it afterwards.

Weekly rest

In 1957 the weekly rest was only 12 continuous hours, this was modified in 1970 and went up to 24 hours. The present Act confirms the 24 continuous hours of rest is required but does not specify which day of the week or who decides when this is taken.

Holidays rest / working on a holiday

A decree from 1970 states that there should be three public holidays with no work per year, on the set dates of 1st of May, 28th of July and 25th of December. Nowadays, domestic workers enjoy the same holidays that private companies enjoy.

A decree from 1970 stated that if a worker worked on a holiday pay should be doubled. Nowadays they only have to be paid 50% extra salary for that day. It also states that there should be an agreement between both parties if the worker would work or not on that day.

Vacations

Since 1970, 15 days of holiday a year is recognised after a year of employment. If the worker leaves before the year the corresponding days should be paid.

Bonuses - Christmas and Independence Day bonus

Current Law recognises for the first time the right to be paid the two bonuses regular workers receive. One bonus should be paid in July and one in December. They receive half of their monthly salary each time.

Education

The law in 1957 forced employers to give facilities to minors under 14 so that they could study. Nowadays the law does not specify an age; everyone should have the possibility to attend school outside the working hours.

Health Insurance

Domestic workers should have Social Security if they work a minimum of 4 hours a day. The payment is 9% of the salary but calculated on the base of the minimum living wage that usually is higher than their real salary.³⁵

2.2.2.2 Comparison between labour regime of private activity and the Special Regime for domestic workers.

There are different norms for domestic workers and workers in other areas. Domestic workers do not have the same rights and are disadvantaged in certain areas like vacations, bonuses, compensation and CTS because Act No. 27986

³⁵ Ibidem pp.74-78

states they should get half of what “regular workers” get without justification. This is why it is seen as a discriminatory regime. The most important differences will be analysed.

Remuneration – Article 5

Act No. 27986 does not recognize a minimum living wage, contrary to regular workers. Article 5 states that worker and employee would decide the salary.

Vacations – Article 10

For regular workers paid vacations are 30 days a year, for domestic workers this is only 15 days in the same period of time.

Payment for working on a Holiday – Article 11

If domestic workers work during a holiday they receive an extra 50% of the equivalent of their salary for that day, whereas regular workers receive 100%.

CTS – Article 9

Regular workers CTS is based on 100% of their monthly salary, for domestic workers this is only 15 days of payment for each year of work.

Bonus – Article 13

Regular workers receive an extra monthly salary in July and December; domestic workers receive only half of their monthly salary in these months.

Compensation in case of dismissal – Article 13

The law for regular workers states that if there is an arbitrary dismissal the worker should get one and a half months salary per year, up to a maximum of 12 years. Employees of domestic workers can dismiss the worker with a previous notice of 15 days or paying them for those 15 days if they were not previously informed.

We can conclude that even though there has been progress for domestic workers rights with the Act of 2003, there is still a big gap between domestic workers and the rest of the workforce with very little justification. The right to equality and non-discrimination is being violated, as there are no relevant criteria for such differentiation. The differentiation does not have a reasonable or objective basis. As explained in the ombudsman report, the situation is even worse when these differentiations happen to historically marginalised and discriminated groups.³⁶

2.2.2.3 Other relevant laws for Domestic workers.

In the previous section we reviewed the current Act No. 27986 of domestic workers. In this section we will analyse the rest of the national legislation that is related to this group of vulnerable workers.

a. National Agreement (2005)

It is not a legal norm but a set of policies that establishes principles of non-discrimination and equal opportunities in public policy.

This agreement was made within the most important political parties of the country.

The National Agreement is the first document with policies on the new stage of democratization of the country that specifically refers to domestic workers as a vulnerable group that should be prioritized in the design, implementation and monitoring of the policies of the Peruvian State.

The main two policies related to domestic workers are Policy 11 and Policy 14.

Policy 11: Promoting equality of opportunity without discrimination

³⁶ Ibidem pp.91-93

The National Agreement acknowledges that in Peru there are different expressions of discrimination because of race, gender, class, ethnicity and culture. This affects numerous groups of Peruvians.

The National Agreement notes in particular discrimination against women, children, adolescents and members of different ethnic communities among others.

These inequities require affirmative action / positive discrimination by the state and mechanisms to revert it to create economic, social and political opportunities for these vulnerable groups.

The State proposes:

1. To combat all forms of discrimination through the promotion of equal opportunity.
2. To strengthen the participation of women in dialogue and consultation with the State and society.
3. Creation of an institution at the highest level of State with the task of governing public policies and programs that promote equal opportunities between women and men.
4. Develop protection systems for children and adolescents, female heads of household, the elderly, people with disabilities and others that are often discriminated against or excluded.
5. To promote and protect the rights of ethnic communities that have been discriminated against.

Policy 14: Access to full, decent and productive employment

The State should promote public and private investment improving the employability of individuals through the development of their personal skills, technical and professional, as well as improving working conditions.

In particular, it aims to improve and protect the employment status of women workers, children, young workers and domestic workers, amongst others.

The National Agreement expressed policies to promote development plans that include:

1. Female employment and disability.
2. The principle of equal payment without discrimination on the grounds of gender, race, religion or age.
3. Lowering the income gap between groups of higher and lower income.
4. Elimination of the worst forms of child labour.
5. Promote better working conditions and adequate protection of domestic workers.³⁷

b. Supreme Decree No. 005-2003-TR. Registry for Private employment agencies was created (2003).

The national register for private employment agencies is created. Article 8 states that the information required for the applicants of employment should be limited to personal data, professional qualifications and past job experience. The information should not violate privacy. The supervision of agencies is stated in article 14 and would be carried out through the job inspections.

c. Act No. 28806 labour Inspection Act (2006).

Article 1 states that the objective is to regulate the system of labour inspection, its composition, structure, powers and duties. It is in charge of monitoring the compliance of socio-labour norms and social security in compliance with ILO convention No. 81.

Article 4 states that the inspection of work extends to all parties responsible for compliance with socio-labour standards. Whether natural or juridical, public or private persons and exercised in the houses where domestic workers work, with limitations on the free entry for inspectors in the case of the employer's home.

d. Supreme Decree No. 019-2006-TR. Regulation of General Act of labour inspection.

³⁷ OIT, Trabajo Domestico Remunerado en el Peru, 2013, pp.40-42

This decree states that it is a gross breach of domestic workers rights if they do not receive food or housing, or if employers do not provide them with the possibility to attend school.³⁸

e. Act on equal opportunities for women and men (LIO) No. 28983 (2007).

LIO allowed defining in an operative way general discrimination and specifically gender discrimination, it also makes explicit reference to the most affected groups like children and adolescents. The objective of LIO is "Recognition and respect for children, adolescents, adults, older adults, disabled persons or groups most affected by discrimination "

Labor rights backed by the LIO should be reflected in the design and implementation of State programs that address the issue of employment in the country. By 2010, the Equality of opportunities plan (PIO) aimed at achieving equality between women and men in the workplace: The goals it set out are:

- Labor legislation that guarantees the full exercise of labor rights with equal opportunities and gender equality.
- Men and women with equal opportunities to improve their income, getting quality jobs through access, recruitment, promotion and progress in work activity.
- Women and men to have access to programs to strengthen productive capacities, financial resources and equal opportunity.
- Improving the coverage and quality of the social security systems and social safety, occupational equal opportunities and gender equality.

LIO- Article 6

Specifies the principles of non-discrimination for domestic workers.

³⁸ Defensoria, Las Trabajadoras Del Hogar En El Perú. Una Mirada Al Marco Normativo Nacional E Internacional Establecido Para Su Protección, 2012, p.69

- Paragraph h - refers to domestic workers. "Guarantee the non discrimination treatment to domestic workers"
- Paragraph f - "Guarantee the right to productive work in conditions of equality, freedom, dignity and human security incorporating measures to avoid any kind of employment discrimination between women and men. "
- Paragraph g - Talks about the need to regulate Informal work.
- Paragraph k – States that public education is mandatory.³⁹

f. Supreme Decree No. 004-2009-TR. Prohibits discrimination acts against Domestic Workers. (2009)

This Decree refers specifically to domestic workers. It was done after a civil society protested because some beaches did not allowed domestic workers to enter the beach at the same time their employers where there.

It states that discrimination, specifically towards domestic workers, would imply a sanction. It is considered discrimination when workers use aprons or clothing that is intended to "distinguish" or differentiate the worker in public areas like parks, restaurants, hotels, shops, social clubs among others, and restrict or limit their access to public or private services.

The limitation of this is that non compliance results in a fine, rather than more serious sanctions.⁴⁰

g. Act No. 27942 about Prevention and Punishment of Sexual Harassment (2009)

This Act aims to prevent and punish sexual harassment with relations of authority or dependence whatever the nature of the relationship (labour, marital or civil) in both the public and private sectors.

Sexual harassment is defined as "repeated verbal or physical conduct of a sexual nature not desired or rejected" by one or more persons in a dominant position against a subordinate or disadvantaged individual.

³⁹ OIT, Trabajo Domestico Remunerado en el Peru, 2013, p.42

⁴⁰ Ibidem p.46

The law recognizes the disadvantage that domestic workers face and the high risks of sexual harassment to which they are exposed.

This law against discrimination to the domestic worker does not define a system for complaints or campaigns.

h. Act No. 27337. The Children and Adolescents Code (2009)

14 year old or older adolescents are allowed to work as domestic worker.

Law No. 27986 of Domestic Workers, in its final and supplementary provisions, addresses the reality of teenage workers, stating "... adolescents working as domestic workers will be under Act 27337 and as complementary they shall be subject to this law in whatever benefits them."

The law states that they require their parent's authorization and only if the work does not interfere with regular attendance to school, if they are in a good health condition and their mental and physical capabilities are fine. The adolescents should get free regular medical checkups.

Some specifications are:

- They would not work more than 4 hours a day or more than 24 a week.
- They should be paid as other workers in their category.
- They should be registered in special lists of the municipalities. In 2008 none of the municipalities had a registry.⁴¹

i. Supreme Decree No. 020-2012-TR. Regulatory Standards For The Operation Of Private Employment Agencies.

Specifies that it is forbidden to charge the person looking for a job.

j. Supreme Decree No. 004-2012- MIMP. National Plan for gender equality. (Planig 2012-2017)

The Planig guideline number 4 is referred to "Ensure the exercise the full economic rights of women", especially against special labor regimes which mostly consists of women. An example of this is the domestic workers regime.

⁴¹ Ibidem p.48

Strategic Objective No. 5 is to ensure the economic rights of women in terms of equity and equal opportunities with men. The goals of 2017 are to change the domestic workers act, so they have equal rights and that 50% of domestic workers have social security.⁴²

We note that most of the general norms do not refer directly to domestic workers; if it does it does not go into detail or establishes specific mechanisms for their protection.

2.2.3 Domestic Workers situation in Peru

2.2.3.1 Characteristics of Domestic workers in Peru

In Peru more than 450 thousand people work as domestic workers, 95.6% are women and more than half work in Lima. The rest work in different areas in the country.⁴³

These numbers, and the rest presented in this report, are official but only approximations, given that domestic work is mostly informal / un-official work that it is not registered. Some syndicates in Peru, state that actual numbers are double those the official, but this work is almost invisible so it is very difficult to obtain actual figures. The Ministry of Work (MINTRA / MTPE) states that in 2008 the number of domestic workers represented 3.1% of the total working population (PEA).⁴⁴

As explained previously in the first chapter domestic workers are highly discriminated due to their ethnicity, gender and social status.

⁴² Defensoría, Las Trabajadoras Del Hogar En El Perú. Una Mirada Al Marco Normativo Nacional E Internacional Establecido Para Su Protección, 2012, p.70

⁴³ OIT, Trabajo Domestico Remunerado en el Perú, 2013, p.11

⁴⁴ Defensoría, Las Trabajadoras Del Hogar En El Perú. Una Mirada Al Marco Normativo Nacional E Internacional Establecido Para Su Protección, 2012, p.13

Domestic work is recognised by Peruvian society among others as one of the last options someone would chose to work.⁴⁵

Peruvians believe that domestic service does not require any special training and is natural for women. This is also why it is undervalued and it is also one of the easiest options to opt for low-income Peruvian women who did not have access to education.⁴⁶ Even though nowadays domestic workers enjoy a better salary than in the past, it does not mean they have gained recognition in society or that they have a better social status.

Domestic work in Peru is going through several changes. In the last 30 years women have started entering the formal labour market and the number of women choosing to do this have grown fast, which has increased the need of families to have someone to take care of household chores. The household chores and domestic work has been redistributed among women and the differentiation between empowered and non-empowered women has grown. The most empowered women are situated in the urban coast areas of the country. Women with access to formal work are the ones considered to be in socioeconomic level / groups (NSE) A, B and C (a type of categorisation in Peruvian marketing studies to divide society and their incomes) while D and E groups only have access to the informal labour market.⁴⁷

In an approximation done in 2010, it was estimated in a study by Apoyo S.A. that there are 3.7 million families in Peru. More than a third of Peruvian households belong to the NSE of less income (D and E), another third belong to NSE of mid income (c) and only 18.5% belong to NSE A and B. NSE A being only 4% of the Peruvian population.⁴⁸

⁴⁵ MIMDES, *Detrás del mándil: Trabajadoras del hogar, víctimas de maltrato y hostigamiento sexual*, 2007, p.41

⁴⁶ OIT, *Trabajo Domestico Remunerado en el Peru*, 2013, p.26

⁴⁷ *Ibidem* p.31

⁴⁸ *Ibidem* p.86

Most of the domestic workers in Lima come from different parts of the country. In 2010 68.2% of domestic workers were migrants. The internal or external migratory flow is determined by the levels of remuneration and the possibilities of a greater access to education. Being Lima the region with the highest incomes s a driver that attracts rural women who are looking to improve their circumstances.⁴⁹

48% domestic workers are single, while 15.7% are married, 18.3% live with a partner and 15.2% are divorced. In 2010 the largest age category was between 14 and 24 years old (38.2%) followed by 30 to 44 years (27.9%).⁵⁰ The table below summarises the information of age and percentages of domestic workers in each group.

Age	2004	2010
14 - 24 years	46.9	38.2
25 - 29 years	13.1	11.3
30 - 44 years	26.4	27.9
45 - 54 years	9	14.8
55 or more years	4.6	7.8

The biggest group is between 14 and 24 years old, ages where education is crucial for their future development.

There are two types of domestic work. The table below shows their main differences.⁵¹

⁴⁹ Ibidem pp.82-83

⁵⁰ Ibidem p.85

⁵¹ Ibidem p.94 and 96

Characteristics	Full time (Cama adentro)	Part time (Cama afuera)
Where they live	Live in the House where they work	Live somewhere else where they work
Working days	Work 6 days a week, usually Sunday off	Works for hours
Salary	100 soles to 1200	30 to 50 Soles per day
Employer	Only one	More than one
Law	Regulated	Not regulated
Tendency	Number is reducing	Growing as preferred Type of work
Number / %	89,500 / 18.8	386,300 / 81.2

2.2.3.2 Labour Rights and other Human Rights violations

2.2.3.2.1 Violence and abuse

Many domestic workers suffer from bad treatment on behalf of their employers; from verbal abuse sexual violence, domestic workers are prone to suffer these abuses, particularly if they live in the household where they work. The following quote from the Human Rights Watch study on domestic workers gives a good summary on the situation:

“Women and girls employed as domestic workers in private households are often at risk of psychological, physical, and sexual abuse. These risks are heightened given their isolation, the imbalance of power between employer and domestic worker, lack of information or ability to seek help, and financial pressures and debts that make them afraid to lose their employment. The risk of

abuse may be heightened when domestic workers are confined to the household, and is particularly great for young girls, who are typically even more isolated and dependent on their employers.”⁵²

Psychological abuse

“Almost without exception, the domestic workers interviewed by Human Rights Watch around the world suffered some form of psychological abuse.”⁵³

Domestic workers are in a situation where they are vulnerable to abuses due to their low levels of education, lack of money and many times low self-esteem due to discrimination; all this influences employers on committing psychological violence. In the outskirts of Lima (not the wealthiest areas) many domestic workers are treated by their employers like they are from a lower level, many were domestic workers before so they do comments like:

“ I also went through this, you should be thankful, I did not go out on Sundays like you”

“ I did not get paid, at least you go to school”

In the study it was noted that this type of discrimination and attitudes was worse from employers who came from the highlands and now had domestic workers.⁵⁴ In a Study from MIMDES it was found out that 5 out of 10 domestic workers interviewed suffered from psychological abuse, being the most common attitude shouting when ordering something from them (72%), insulting them (44.4%) threaten them on firing them (31.5%) on not paying them their salary (27.8%) or on harming them physically (9.3%). The female employer head of the family

⁵² Human Rights Watch. Swept Under the Rug, 2006, p.10

⁵³ Ibidem

⁵⁴ MIMDES, Detrás del mánvil: Trabajadoras del hogar, víctimas de maltrato y hostigamiento sexual, 2007, p.42

was mainly (85.5%) the one committing this acts followed by the sons (27.8%) and the male head of the family (18.5%)⁵⁵

The study of HR watch showed almost the same attitudes, in the case of Peru it would be threatening to send them back to the highlands and telling their family that they behaved badly by being lazy:

“Typical threats against domestic workers include withholding pay, physical violence, reporting the worker to labour agents, or reporting them to the police or immigration officials... Employer abuse, combined with isolation at the workplace, excessive work demands, and financial pressures may contribute to intense anxiety and depression.”⁵⁶

Physical violence

“Physical violence against domestic workers ranges from slaps to severe beatings using implements such as shoes, belts, sticks or household implements; knocking heads against walls; and burning skin with irons, among other forms of violence.”⁵⁷

In the MINDES study it was found that 11% of the interviewed in Lima suffered from physical abuse, the most common was pushing them and throwing them to the floor (54.5%), pulling their hair (45.5%) and slapping (36.4%). The frequency of these violent acts was almost always (45%) and occasionally (36.4%). The main perpetrator was the female head of the household (72.7%) and the son (18.2%). Almost all (89%) of the domestic workers suffering from physical abuse were living in the household where they worked, Cama adentro modality.⁵⁸

⁵⁵ Ibidem p.40

⁵⁶ Human Rights Watch. Swept Under the Rug, 2006, p.11

⁵⁷ Ibidem p.12

⁵⁸ MIMDES, Detrás del mándil: Trabajadoras del hogar, víctimas de maltrato y hostigamiento

Sexual violence

“Isolation in the household, and lack of privacy or of conditions to ensure their personal security, place domestic workers at risk of sexual harassment and assault. The true dimensions of sexual violence against women and girl domestic workers may never be known; under-reporting is likely to be significant due to workers’ isolation and the deep social stigma attached to sexual assault.”⁵⁹

Sexual harassment of domestic workers has been characterized as a “widespread phenomenon” in Latin America⁶⁰

The MINDES study it shows that 28% of the interviewed were victims of sexual harassment in the households where they worked, four of the interviewed were raped at work. Two were raped when they were little kids. 75% of the girls rapped where from outside Lima, and half of the girls rapped are still working in the house because they do not have somewhere else to go. The main perpetrators where the male head of the house (62%) and the sons (31%). After the violent acts took place the family reacts as accomplice.⁶¹

One of the main problems of girls who suffer sexual assault is that they do not denounce their aggressors. There are many reasons for this but mainly are:

a. They are afraid of the consequences that can be more harmful afterwards.

sexual, 2007, pp.43-45

⁵⁹ Human Rights Watch. Swept Under the Rug, 2006, p.16

⁶⁰ Human Rights Watch. Swept Under the Rug, 2006, p.17 taken from Gaby Ore-Aguilar, “Sexual Harassment and Human Rights in Latin America,” in Adrien K. wing, ed., Global Critical Race Feminism. An International Reader (New York: New York University Press, 2000), p.368

⁶¹ MIMDES, Detrás del mándil: Trabajadoras del hogar, víctimas de maltrato y hostigamiento sexual, 2007, p.46

- b. They feel acute financial pressure to remain in their jobs and they are not aware of their rights.
- c. Local authorities will not help them, processes are too long and often require money and time to invest.

The girls interviewed by MIMDES said that they won't let another situation like that to happen again but that none had the intention of denouncing the act.

2.2.3.2.2 Discrimination

There are many reasons why domestic workers are discriminated in Peru and were explained in chapter one. It is a mix of variables. They are women, they are poor and most of the time they are indigenous or indigenous descendant from the highlands. These 3 variables mixed together make domestic workers an especially vulnerable group.

- a. Because they are women. Domestic work is seen as a work that does not require special training that is "natural" to women and does not "produce" but works only as a support therefore it is not seen as a serious work.
- b. Because they are poor. In Lima the economic level gives a status and with it advantages on how people will treat you in society or on how to move in society.
- c. Because they are from the highlands. Many have Quechua as their mother tongue, do not speak Spanish and do not have a proper education because they came to Lima very young and in remote areas proper schooling is not available. Coming from the highlands also means their culture is different, the way they dress and life style is not similar to the one in the Capital.

There is also the historical background on how domestic work started in Peru that influences how domestic workers are seen nowadays.

The interviews in “De la sierra a la capital” give some examples on how domestic workers have to avoid their culture in order not to be discriminated.

“Many girls do not speak their mother tongue at work or in public spaces because they are afraid they would be discriminated. Some do not even want to listen to their typical music because is sung in Quechua.”⁶²

This also explains how discrimination makes girls think that they are persons of lower value, lowers their self-esteem and becomes very difficult to keep their cultural identity. They think they have to integrate and for this they have to hide their roots otherwise they will be discriminated against.⁶³

In the study of AGTR we find about young domestic workers:

“In their eagerness to be free from discrimination, domestic workers go through a rapid process of acculturation, reaching to deny their origins as peasants. The girls realize that being a domestic worker they occupy a very low level in the scale of occupational valuation in Peru. This is one of the reasons that they identify themselves as students or as godchildren “ahijadas”, which makes it hard for them to be aware of their labour rights.”⁶⁴

Many domestic workers suffer from discrimination in public places like restaurants, private clubs, and beaches among others. Some have policies where domestic workers cannot enter the place, cannot use the same toilets or even go to the same beach. All this caused a big protest in 2009 and the Supreme Decree No. 004-2009-TR that prohibits discrimination acts against

⁶² AGTR, De la Sierra a la Capital, Trabajadoras del Hogar, 2004, p.29

⁶³ Ibidem p.49

⁶⁴ AGTR, Las Ciudadanas Mas Marginadas, 2005, p.17

Domestic Workers was given. We see how Peruvian society considers domestic workers as not on the same level as others when these acts occur. The fact that there has to be a special decree to prohibit discrimination against domestic workers shows how bad the situation of their status in society is.

The current Peruvian Act. of labour of Domestic workers is part of the Special Labour Regime this means it is different from the private sector labour regime. The differences explained before in the study, make domestic workers be in a disadvantageous position from the rest of the workers. These differences cannot be justified, as there are no relevant criteria for this differentiation therefore considered unjust and discriminatory.

The Ombudsman explains;

“Undoubtedly there are still serious differences between that special regime and the labour regime of the private sector, that place domestic workers in a situation of clear disadvantage compared with other workers, violating their fundamental rights to equality and non-discrimination.”⁶⁵

2.2.3.3 Precarious Working Conditions

Registration/ Formal work

Domestic workers are supposed to be registered in SUNAT. There has been an increase in formality through the years but still the numbers of workers registered are too low. In 2004 approx. 6% of domestic workers were registered compared to 16% in 2010. The table⁶⁶ below shows the increase in registries through the years.

⁶⁵ Defensoría, Las Trabajadoras Del Hogar En El Perú. Una Mirada Al Marco Normativo Nacional E Internacional Establecido Para Su Protección, 2012, p.94

⁶⁶ OIT, Trabajo Domestico Remunerado en el Peru, 2013, p.119

The Study from ILO notes that some of this registered people are registering themselves as domestic workers even though they are not so they can have access to social security. This makes the figures more alarming.

Concept	2004	2005	2006	2007	2008	2009	2010
Registered Domestic Workers	32,565	31,424	38,161	45,744	52,976	64,605	75,130
Total Number of Domestic workers	481,630	479,942	534,222	515,921	477,512	475,578	475,810
% From total	6.8	6.5	7.1	8.9	11.3	13.6	15.8

Salary

The Law states that the salary of a domestic worker is decided between the employer and employee. A vital minimum wage is not required.

In the table below ⁶⁷ we can see that less than half of domestic workers receive a salary greater than or equal to the vital minimum wage. We see that although the situation has improved from 2004 the wages for domestic workers are still very low. The increase in salaries is more due to the constant growth of the country in the past years, with more jobs available and better salaries in general rather than a noticeable improvement of the status of domestic workers. In 2010 the real income (in money) was 389 soles a month on average. This is approximately 100 euros.

⁶⁷ Ibidem p.108

Minimum living wage	2004	2010
Less	62.9	51.5
More or equal	37.1	48.5

Again we have to consider that many domestic workers are not registered and it is very difficult to have access to them. In reality many domestic workers in marginal areas do not receive any salary and they work for only some food and shelter.

Domestic workers are not able to afford a minimum standard of living with these salaries and they usually depend on what the employer decides without having much choice of their own.

Social protection: Health Insurance

In Peru more than half of domestic workers are not part of EsSalud (Peruvian Social health insurance) or have a private health insurance. This is one of the biggest problems of the informality of domestic workers. Usually employers do not want to register the worker so there is no proof that they are working for them or to avoid tax problems as a result this makes it difficult for domestic workers to be part of the national health insurance. Another big reason is that employers do not want to pay the extra 9% of the salary that is the cost of the insurance.

A big issue is that the health insurance is calculated on the base of the vital minimum remuneration or if higher on the base of the total salary. Most domestic workers do not even reach this vital minimum remuneration.

On the table below⁶⁸ we can see that from the year 2004 the percentage of affiliates grew from 14.1% to 43.2% in the year 2010. The advance in this matter is an important improvement but the numbers are still not close to acceptable. As explained before some of these affiliates are not really domestic workers but were registered to be able to have the insurance.

	2004	2010
Affiliated with the health system	14.1	43.2

Social Pension system

In Peru the level of access to social foresight is one of the lowest in the Latin-American region. Only 9.5% of domestic workers are affiliated to a pension system. Usually it is impossible for domestic workers to pay the 13% of their salary when they do not even get to earn the minimum living wage.

The table below⁶⁹ compares the situation in 2004 with 2.3% affiliates and 2010 with 9.5%. Little progress has been achieved.

Mercedes Alarcon, in an interview for the ILO study, explains that another reason why the number of domestic workers affiliated to the pension system is so low, is because they value more the present time more, rather than thinking in the future. She expresses her concern about raising awareness about this matter.

Domestic workers are particularly vulnerable because of their low-income and lack of socialisation; in many cases they lack of a family, never got married or had children that can help them after they are done working.

⁶⁸ Ibidem

⁶⁹ Ibidem

	2004	2010
Affiliated to the pension system	2.3	9.5

CTS, Bonus, Holidays

Many domestic workers do not know their rights and never heard of what labour rights are, particularly when they are young and are not educated. When domestic workers do not attend school or socialise it is even more improbable for them to learn about their rights.

Some domestic workers know some of their rights such as one day of rest but ignore their rights about what should be included in their payment or how they are entitled to holidays. The percentage of workers that enjoys these rights are extremely low and the numbers are not getting better as fast as they should.

If we compare 2004 and 2010 in the table below⁷⁰ we can see that the situation did not change that much. The only noticeable increase is in the number of domestic workers receiving their December bonus.

Domestic workers that receive/have:	2004	2010
Bonus in July	20.9	22.2
Bonus in December	17.9	27.3
CTS	1.2	1.9
Holidays	4.4	2.4

⁷⁰ Ibidem p.122

Working hours

Every worker should have a maximum of 48hrs of work a week, this includes domestic workers. The reality in Peru is that more than half of domestic workers works more than 48hrs a week. In the table below⁷¹ we see that even though the number of domestic workers that work more than 48hrs a week decreased since 2004 it is still a high number. In this respect there is a big difference between Cama adentro domestic workers and Cama afuera. Usually the workers living in the employer's household work more hours with no over time payments. They are usually "available" for their employer's orders from very early in the morning until when the employers decide to go to bed.

This situation many times causes that domestic workers cannot attend school because they do not have the time also they cannot go out of the house to socialize for at least 6 days.

In this way domestic workers are distant to contact family and friends and are usually in a lonely position. They do not socialize and the houses where they work becomes their only reality; this puts them in an isolated position making them more vulnerable/ prone to abuses.

	2004	2010
Working more than 48hr a week	63.7	51.2

Housing and Food

As explained before there are two types of domestic work "Cama adentro" means that they live in the house and "Cama afuera" they only go to the house

⁷¹ Ibidem p.108

to work for some hours and leave afterwards. It is curious to see that in Lima many houses and apartments (even build nowadays) have a special area most often next to the kitchen or laundry room, with a room and a bathroom for domestic workers. It is called the service room. Not every house or apartment has this extra room and not all people that do have them use them only as a room for domestic workers, many also use the space to store things making the space smaller for the worker to sleep.

In many cases domestic workers do not have a room and bed of their own to rest and are forced to sleep on the floor or inadequate places and conditions like the laundry room, garage or storage rooms for example.

There can be also an abuse of domestic workers about the food they receive. Some families do not give them the same food they eat and give them little or food in bad state. Domestic workers living in the household are supposed to receive food and shelter that is according to the economic level of the family hosting. Art. 16 of Domestic Workers Act.

Written Contract

Peruvian law for domestic workers does not force employers to give written contracts; an oral contract is enough. Only 16%⁷² of domestic workers have a written contract that proves there is a labour relation between employee and employer. The fact that there is a written contract allows domestic workers proof in an easier way that there is a working relationship with the employer. Often domestic workers can not claim the Ministry of Labour if their employers do not want to pay them what they are entitled by law such as holidays because it is very difficult to proof the employment relationship. Usually it requires third parties to testify that the person was working with a family and usually people - because of fear - do not want to be involved.

⁷² Ibidem p.120

2.2.3.4 Child Work

In this study we will not go into depth on the issue of child labour and domestic workers since it would take a long analysis not suitable for this study, however a summary is important, as it is part of the problematic of the human rights violations of domestic workers.

In the previous section we saw how International and National law about Child work, therefore, in this section we can concentrate in their situation. Peruvian law states that the minimum working age is 14, that they should have their parents permit in order to be able to work, they should be registered and they should be able to go to school.

Schmidt shows in her interviews from 2005 that few knew about the registries of adolescent workers and none was registered.⁷³ Seven years later the ILO study shows that still no municipality has a record of the “Registry for working adolescents of the district”.⁷⁴

It seems that by law (in papers) child labour is perfectly regulated, the number of hours they should work, medical checkups to make sure they are physically and emotionally available to work and work is not harming them, insurance, resting time among others but the reality is way different that what the law states. This shows that the legislative framework regulating the work is not effective.

In Peru in 2011 it was registered that 1,795,000 minors worked. The number of child workers decreased by 4.3% compared to 2007 were 1,875,000 minors worked. A minor is considered a worker if he or she works at least an hour a week for some kind of remuneration in cash or kind.

⁷³ Schmidt, Caterina, Child Domestic Work In Peru: A Question Of Political Will? 2005 (summary p.14)

⁷⁴ OIT, Trabajo Domestico Remunerado en el Peru, 2013, p.71

In 2011 it was estimated that 70.6% of children and adolescents only studied, 19.3% studied and worked and 5.2 only worked and 4.8% did not work or study.

It is also estimated that in 2012 there were 7,014,642 children (6 to 11 years old) and adolescents (12 to 17 years old) between 6 and 17 years old. This means 23% of Peruvians belong to this group.⁷⁵

It is very difficult to estimate how many children are domestic workers as this job is an “invisible job”. Most of the time child domestic workers work for somebody his or her family knows and takes them as “nephews”. Children sent from the highlands or the jungle to Lima or children from the poorest areas of Lima are sent to families to work where the “Madrina” “Godmother” will take care of them. These Madrinas usually promise to send them to school but most children end up being workers for the family with no choice to attend school or being paid at all.

In Peru not only high economic classes employ domestic workers, even in poor areas in Lima domestic workers, usually children, work in houses in exchange of some food or clothes. Usually these children are treated in an abusive way and it is very difficult to recognise them as workers because sometimes they do not even leave the household where they work.

The treatment these children receive is very harsh; they usually work from 7 am until very late at night⁷⁶ and are responsible for many house chores including taking care of children younger than them.

“It is important to note that many employers were or are poor domestic workers, but that experience has not led them to adopt appropriate behaviours with those who serve them; rather, often they acquire negative characteristics of

⁷⁵ INEI- Enaho. El Comercio, 12 June 2012, Lima <http://elcomercio.pe/peru/lima/menos-ninos-adolescentes-trabajan-peru-noticia-1427445>

⁷⁶ AGTR, Trabajo Infantil domestico, percepciones de niñas, niños y adolescentes, 2010 p.40

their current or former employers.”⁷⁷

In a study made of 404 children, 70% of those girls working as domestic workers (139) said that they took care of younger children and it was their first experience as a domestic worker. Also noted was that it was not necessarily their only task as they could have several domestic chores.⁷⁸⁷⁹

These children most of the time are not considered part of the family, even though they can tell them they are part so they do not see themselves as workers but as somebody from the family that is just “helping” but not working. It is known for experts in child domestic work that they should not interview using the word “work” but instead “help” because children see their work as helping.

⁸⁰Usually these working children do not receive a salary and work only for food and some clothes.

Other children think their families are getting money with their work so they feel like they are helping out. The ones that do receive some money is very little. In the study of AGR 2009 it was found that in average they work 3.37 days a week. In the study from 2013 the numbers of days were they worked went up⁸¹. 11% percentage of the interviewed received money and 17% are paid in kind. Girls that are paid receive in average 8.90 soles a day and boys 10.20 soles per day. 10% of in the child domestic workers did not have any resting day⁸² In 2013 44.38% of the children worked for food and 36.89% received a tip from 0.50 cents to 5.00 soles a week.⁸³

In the case of children coming from out the capital, one of the biggest issues is

⁷⁷ AGTR, Las Ciudadanas Mas Marginadas, 2005, p.21

⁷⁸ AGTR, Trabajo Infantil domestico, percepciones de niñas, niños y adolescentes, 2010, p.14

⁷⁹ AGTR, No Somos Invisibles, 2004, p.25

⁸⁰ AGTR, Trabajo Infantil domestico, percepciones de niñas, niños y adolescents, 2010, p.13

This is an example of a study that would not use the word work so children would understand.

⁸¹ AGTR, Consulta a niñas y niños en Trabajo Infantil domestico, 2013, p.6

⁸² AGTR, Trabajo Infantil domestico, percepciones de niñas, niños y adolescents, 2010, p.38

⁸³ AGTR, Consulta a niñas y niños en Trabajo Infantil domestico, 2013, p.8

that the family thinks that their children are going to have more opportunities if they are sent to work to Lima. Many think it is the only way they can study because proper schools are difficult to find in remote areas in the highlands. Also many families are not aware that public schools are free in Lima and that there is little to invest. In exchange of the work of their children they expect the “Madrina” to pay the school.⁸⁴

There are special facts about Peruvian culture and domestic child work. For most Peruvians it is seen as a normal practise that children work, it is socially accepted. For many families it is seen that because the grandparents and the parents worked since they were very young their children should do the same, as it seems to be for them the right way forward.⁸⁵ It seems that the level of studies achieved by the parents can influence on how prone a child is or adolescent to work. If they have education the chances of boys and girls working as domestic workers slightly reduces. If both parents work as domestic workers the chances their children would work as one are higher.⁸⁶

One of the big risks for underage or child domestic workers that live where they work is their vulnerability about physical violence or sexual violence. In the studies it is difficult to ask children if they experience this because it is a sensitive subject. The way they are asked is if they have friends who they knew have been abused or if they know people that suffered from such abuses.

The study from NGO Grupo Redes shows that 45% of Child domestic workers knew friends who suffered from physical abuse and 25% knew about friends who suffered sexual abuse. The study does not specify where these abuses took place. It also showed that girls were more prone to suffer from the abuses

⁸⁴ AGTR, No Somos Invisibles, 2004, p.18

⁸⁵ OIT, Trabajo Domestico Remunerado en el Peru, 2013, p.28

⁸⁶ AGTR, Trabajo Infantil domestico, percepciones de niñas, niños y adolescents, 2010, p.19 and 20

than boys.⁸⁷

An important point from the interviews of 2013 was that 91.67% of the child domestic workers answered that they would not like to stop working. The reasons given were different but one of the main points is that they want to help their family and they feel like they should, they like the food they receive where they work or they are able to find some kind of activity where they have fun. This big percentage should not indicate that children love to work but that they have powerful influential reasons to do it.⁸⁸

2.2.3.5 Access to education

The Act Of domestic workers clearly states that domestic workers should have access to education and that their work should not interfere. Employers should give the possibility for workers to study and should not put barriers for them to attend school.

In previous pages is stated that the majority of domestic workers are between 14 and 24 years old, crucial years were education is the key for their future developments. The opportunities they could have to improve their status later in life heavily relies on their level of education. Domestic workers with higher levels of education would be able to earn more or on the contrary would probably chose to work in other fields as domestic work is one of the least wanted types of professions. Education would give the chance to expand the opportunities to find a better work but also improve the access of domestic workers to leave a job were they are being abused, badly paid among other bad treatments.

⁸⁷ Ibidem p.61

⁸⁸ AGTR, Consulta a niñas y niños en Trabajo Infantil domestico, 2013, p.14 and 15

The table below shows in percentage the level of education domestic workers achieved in the years 2004 and 2010.⁸⁹

Education Levels	2004	2010
No Education	17.5	16
Primary School	43.2	38.2
Secondary School	35.9	41.4
Complete Superior	3.4	4.4

The table shows that only a very little percentage receives access to higher education and a big percentage lacks of Secondary and even Primary school.

Whitson in her study about education and domestic workers in Peru emphasizes two critical points⁹⁰;

1. Lack of Time - Domestic workers have the will to study but usually do not have enough time. If they do have the time at night many are too tired to be able to study after working the whole day for the household.
2. Money – The little money domestic workers receive is spent in clothing, some is sent to their parents but little is left to invest in education.

⁸⁹ OIT, Trabajo Domestico Remunerado en el Peru, 2013, p.85

⁹⁰ Whitson, Kelley, 'El acceso a la educación para los trabajadores del hogar', 2008

Another issue for domestic workers is that when they have spare time to study usually, at night the educational system is not the same that for regular students. This system is “no escolarizado” “unschooled”. This night study system does not have the same prestige than the regular school system. This puts domestic workers in disadvantage compared to the rest of Peruvians.⁹¹

There are 3 shifts in public schools, morning shift from 8:00am to 1pm, afternoon shift from 1pm to 6pm both being part of the Regular basic education program and a night shift from 6:00pm to 10pm considered alternative basic education. It is also important to note that in an evaluation to compare achievements of regular students with different countries Peru was in penultimate place.⁹²

In 2011 the project from MIMDES (nowadays MIMP) to modify the domestic workers act started. One of the issues raised was about the poor unequal education for domestic workers but it was not taken as a priority and was dismissed as part of the proposal.

Young domestic workers want to study to progress, many of them come from the highlands to have the opportunity to study and their dreams are not always achieved.

“In the point of view of young working girls, working at home is the via to a better life, especially if they study.”⁹³

2.2.3.6 Migration to other countries

There are 3 mayor areas where Peruvian domestic workers that migrate end up, the south of South America, Europe and United States, this last one is the

⁹¹ OIT, Trabajo Domestico Remunerado en el Peru, 2013, p.100

⁹² AGTR, Trabajo Infantil domestico, percepciones de niñas, niños y adolescents, 2010, p.25 and 27

⁹³ AGTR, Las Ciudadanas Mas Marginadas, 2005, p.17

country were most Peruvians migrated 30%. Other important countries are Argentina 14% and Spain 13%.

More than half of Peruvian migrants are women and it is considered that a big group works as domestic workers but there is no statistical information about migrant women working as domestic workers. There is not too much information in general about the situation of Peruvian migrant domestic workers but it would be important to make a study given that when women migrate to work as a domestic worker usually leaves their children with the family (uncles or grandparents) and sends to Peru almost all their money from abroad.⁹⁴

2.2.3.7 ILO Convention 189

Peru still did not ratify the ILO Convention 189 of Domestic Workers. At the present moment the subject is going through a debate. There are different groups involved in the debate and they should participate with their opinions about the impacts, benefits and disadvantages the ratification of the convention can bring.

One actor involved is the State; responsible authorities like the Ministry of Women and Vulnerable populations and the Ministry of Work, other actors involved are the representative of Domestic workers, the civil society and finally the representatives of the employers sector; this last one lacks of interest.

At the beginning of the Peruvian President Ollanta Humala's mandate there were many promises to improve the situation of domestic workers, even though there is a political will to change the situation how much effort and how fast work is being done is not enough.

⁹⁴ OIT, Trabajo Domestico Remunerado en el Peru, 2013, pp.141-142

The Ministry of work created a working table “Mesa de Trabajo” to identify what points of the Domestic workers act should be modify to improve the situation of domestic workers.

The 3 main points were:

1. Access to Minimum living wage
2. Continuous and effective working hours
3. Mandatory written contracts

The Ombudsman through their “Adjuntia para los Derechos de la Mujer” is putting a lot of effort to change the actual situation of domestic workers.

2.2.3.8 Employment Agencies

In Peru one of the ways someone can find a domestic worker to hire apart from friends and family recommendations, are through employment agencies. Usually these agencies are not formal, even though they are supposed to be regulated by the Supreme Decree No. 005-2003-TR. ILO Convention 181 about Private employment agencies promotes domestic workers labour rights among others but it is still not ratified by Peru.

These agencies are supposed to be supervised and should be all registered in the “National Registry of private employment agencies” (RENAPE) that the MTPE manages through the Direction for the promotion of employment and vocational training. In reality only a small number is registered and supervised.

The table below shows the number of inspections of agencies and the number of fines from the year 2007 to 2011.⁹⁵ It is not possible to know the exact number of agencies because many are not registered.

⁹⁵ Ibidem p.92

	2007	2008	2009	2010	2011
No. Agencies inspected	206	176	128	269	335
No. Agencies fined	26	10	9	18	19

The law says that agencies are obliged to inform both workers and potential employers about the scope of the legislation governing domestic work. This however, does not prevent them from continuing with work relation; if an employer is not willing to pay the social services for example. It is very difficult to control if agencies are informing about the law to domestic workers and make sure they know their rights.

Another issue with agencies is that some of them keep the national ID of the workers and gives them to the employer. To keep someone's ID is banned by law. The Ombudsman proved this and saw how IDs were kept in files that afterwards would be given to the potential employer.

How agencies work

Even though agencies are not the most used and preferred way to involve domestic workers and employers, they are still big actors in the market. Usually socioeconomic levels B and C work with these agencies.⁹⁶ NSE A usually keeps on working with the same domestic worker for many years and they prefer to work with recommendations rather than agencies.

The way agencies work depends on the agency but most work in one of these ways.

⁹⁶ Ibidem p.91

- a. They charge a percentage of the salary, the employer is willing to pay to the domestic worker around 6% to 10% all year long as a warranty to the employer. If the worker leaves the work or the employer is not satisfied with the produced work, the agency will find a replacement.⁹⁷
- b. The agency charges the employer a fee worth 70% - 80% of the monthly salary and the employers can have changes of workers at no extra cost, should there be a problem. The worker is charged by the agency 30% of their first salary; the employer retains this money and gives it to the agency.⁹⁸ Charging the worker is not legal.

Decree No. 020-2012 from 29 December 2012 bans agencies to charge the people looking for a job in national or international territory through the private employment agencies.

There is another type of agency that is the one run by NGOs or by different Churches. The difference is that this one focuses more on domestic workers rights and on the development of their competences⁹⁹ in order to obtain a better job and salary.

The NGO Asociación Grupo de Trabajo Redes that helps domestic workers in Peru also have an employment agency for domestic workers "La Casa de Panchita". This is a model other agencies should follow as they promote decent work for domestic workers, they work strictly within the legal framework but also help domestic workers to improve their skills so they can have a better salary. Many are the strategies they follow to make sure domestic workers know their rights and have a decent work.

⁹⁷ Ibidem

⁹⁸ Information taken from an interview to a group of employers that use agencies to hire domestic workers. One of the employers stated that she did not know charging a percentage to the worker was illegal. She said that she even had a written contract with this information. After checking the contract the agency gave her she realized that the amount of money was stated but it did not state that the employee was the one paying. With this there is no proof of the worker being charged.

⁹⁹ Ibidem p.91

2.2.3.9 The Demand of Domestic work

There are no studies about domestic workers employers' profile. There is lack of studies about their needs and what are they looking for. It is also important to note that it is not easy to conclude a single profile because the employers are heterogeneous.

Domestic workers are required in all socioeconomic levels. The income of the families in different social categories differ very much from one another and the level of formality around them too. This leads to domestic workers having extreme different experiences depending on where they work. Few have a formal work, these ones can be found working in the districts with higher incomes where there is a tendency of more formality; 42% of the registered domestic workers are found in only 4 districts of higher incomes of Lima;¹⁰⁰

1. San Isidro
2. La Molina
3. Surco
4. Miraflores

In these districts domestic workers perceive the highest salaries and usually they also receive health insurance. NSE D and E were already discussed in the Child work problematic.

2.2.3.10 Governmental Institutions / Entities

a. Ministry of Women and vulnerable populations (MIMDES / MIMP)

MIMP handles the protection of the rights of women, the promotion of equal opportunities, prevention, protection and attention to violence against women

¹⁰⁰ Ibidem p.87

and the promotion and protection of vulnerable populations. Gives attention to victims of trafficking, child and forced labour among others ...¹⁰¹

MIMP is in charge of Gender Equality and Equal Opportunities. In early 2012 the official name changed from MIMDES -Ministry of women and social development to MIMP - Ministry of Women and Vulnerable Populations.

For the protection against physical and sexual violence the General Direction of Woman is involved with the fulfilment of the LIO. The Centres for Women's Emergencies (CEM) also receives complaints of violence against women but in this case complaints concerning violence of domestic workers are not recorded in a specific manner.¹⁰²

b. Ministry of Labour and Employment Promotion (MINTRA / MTPE)

Mintra is in charge of fundamental rights in the workplace, social and labour matters, labour relations, safety and health at work, work inspection, the promotion of employment and social security amongst others...¹⁰³ MTPE has:

1. The Direction of Protection of Fundamental Rights and Health and Safety at work.

2. The Sub Direction of Defence and free legal advice for workers. From 2006 to 2010 there were 14.000 consults about the domestic workers regime, 82.3% were made by domestic workers.

¹⁰¹ Defensoría, Las Trabajadoras Del Hogar En El Perú. Una Mirada Al Marco Normativo Nacional E Internacional Establecido Para Su Protección, 2012, p.110

¹⁰² OIT, Trabajo Domestico Remunerado en el Peru, 2013, p.60

¹⁰³ Defensoría, Las Trabajadoras Del Hogar En El Perú. Una Mirada Al Marco Normativo Nacional E Internacional Establecido Para Su Protección, 2012, p.111

3.The Direction of Prevention and Resolution of Labour Disputes is responsible for reconciliations. In the period from 2006 to 2010 over 1.200 reconciliations for domestic workers were attended of which only 30% reached an agreement.¹⁰⁴

4. Direction of Inspection of Work is in charge of the Labour Inspection System. This one does not have an effective monitoring system and specific references and instruments for domestic workers. The two main barriers are the Act of Privacy of Houses and the low level of complaints of domestic workers.¹⁰⁵

It also promotes the functioning of the National Council of Labour and Employment Promotion (CNTPE). This council consists of three groups, the government, the main unions of workers and the organisations that represent enterprises.¹⁰⁶

c. Ministry of Education (Minedu)

Minedu defines, directs and coordinates the policies of education. Mainly domestic workers study in the category of Alternative Basic Education, Minedu should make sure this category strengthens to guarantee the right to education to vulnerable groups.

d. Ministry of Justice and Human Rights (Minjus)

Minjus promotes and facilitates access to justice, mainly to poor people through service of Public Defense, extrajudicial conciliation and other alterative mechanisms of resolution of disputes nationwide. It also designs and maintains programs to inform the public about their rights and constitutional guarantees.¹⁰⁷

¹⁰⁴ OIT, Trabajo Domestico Remunerado en el Peru, 2013, p.59

¹⁰⁵ Ibidem p.65

¹⁰⁶ Ibidem p.58

¹⁰⁷ Defensoría, Las Trabajadoras Del Hogar En El Perú. Una Mirada Al Marco Normativo Nacional E Internacional Establecido Para Su Protección, 2012, p.113

Minjus primarily handles matters of civil law and family. The extrajudicial conciliation method is more effective in cases of labour relations.

Minjus is in charge of the complaints of discriminatory acts against domestic workers, Supreme Decree No.004-2009-TR but there is actually no complaint system that is organized and articulated to give protection to this vulnerable group. INDECOPI is the only state organisation that receives consumer complaints when they are discriminated in the access of services.

“From all analysed institutions, only MIMP (the Sub Direction of Defence and Free Legal advice for workers), The Inspection of Work of MTPE and INDECOPI are the ones who had information about complaints of domestic workers”¹⁰⁸

e. National Superintendence of Tax and Customs Administration (SUNAT)

SUNAT is part of the Ministry of Economy and Finance. It administrates domestic workers registration because it has the capacity to work and administrate Essalud and ONP (social services of health insurance and retirement pension).

f. Congress of the Republic

The Congress is responsible for the legislative process, the commission for approval of bills and the submission of international conventions.

Some of the important commissions are the Commission of Women and Families and The Commission Work and Social Security. They also have a Table of Parliamentarian Women.

The Ombudsman after the review of the law and institutions concludes that

“The current legal framework has not set up proper and sufficient mechanisms to defend the rights of domestic workers when they are violated... this topic will

¹⁰⁸ OIT, Trabajo Domestico Remunerado en el Peru, 2013, p.61

also require to be addressed when framing a reform of regulations on domestic workers...”¹⁰⁹

¹⁰⁹ Defensoría, *Las Trabajadoras Del Hogar En El Perú. Una Mirada Al Marco Normativo Nacional E Internacional Establecido Para Su Protección*, 2012, p.116

CHAPTER III
METHODOLOGY

3.1 Methodology and Research Methods

The study is out as an interdisciplinary legal and sociological scientific analysis. The theoretical part is mainly studies, reviews, domestic and international law, books and the Internet. All data came from various sources like NGOs, the UN, the Peruvian Government, and scholars among others.

The information in the second part of this study is taken from interviews done to domestic workers, and a NGO working with domestic workers in Peru as well as with the Ombudsman, the area in charge of women's rights.

The main method was document analysis and the main tool used with domestic workers, the NGO and the Ombudsman were the interviews to gain in depth information and individual views.

The Interviews with domestic workers took place at the NGO Asociación Grupo de Trabajo Redes (that also has an employment agency called La Casa de Panchita) on Sundays in the month of June. The interviews where chosen to be made in an NGO facility, so that domestic workers could feel safe to talk. The women interviewed arrived randomly to the facilities (with no previous appointment) and were interviewed as they arrived to the centre. No special cases where picked. Sundays were chosen, as usually is the free day for domestic workers.

The interviews with domestic workers could not be longer than half an hour, this due to the lack of time domestic workers have. Therefore, the questions asked had to be reduced to half compared to the original questionnaire prepared. Previous the interviews experts on the matter revised the proposed questions for the interview and gave advice on how questions should be asked and the language that should be used in order to be clear and get the most out of the time.

The interviews with the Ombudsman and the Main coordinator of La Casa de Panchita were done by phone in May and June 2014, while they were at their work offices. The main questions asked were about the current policies, actions or changes the country is doing to improve the domestic workers situation.

In all the interviews ethics were considered and the workers where explained why the study was being carried out, they were told that their names would not be revealed nor it was mandatory for them to give their real name at all. Before recording the interviews were received the permission from all to do so.

3.2 Populations and Sample

The number of domestic workers in Peru is estimated to be more than half a million, the qualitative methodology used is not looking to generalize but to show that domestic workers in Peru are suffering from abuses without proper response from the Government.

The number of domestic workers interviewed were twelve; the purpose of these interviews was to find the most common characteristics, abuses and if they suffered from lack of protection from the government. I want to compare the data available of past studies with the data collected in the interviews and find if there is a relation in the abuses found.

CHAPTER IV
FINDINGS AND ANALYSIS OF INTERVIEWS

4.1 The interviews

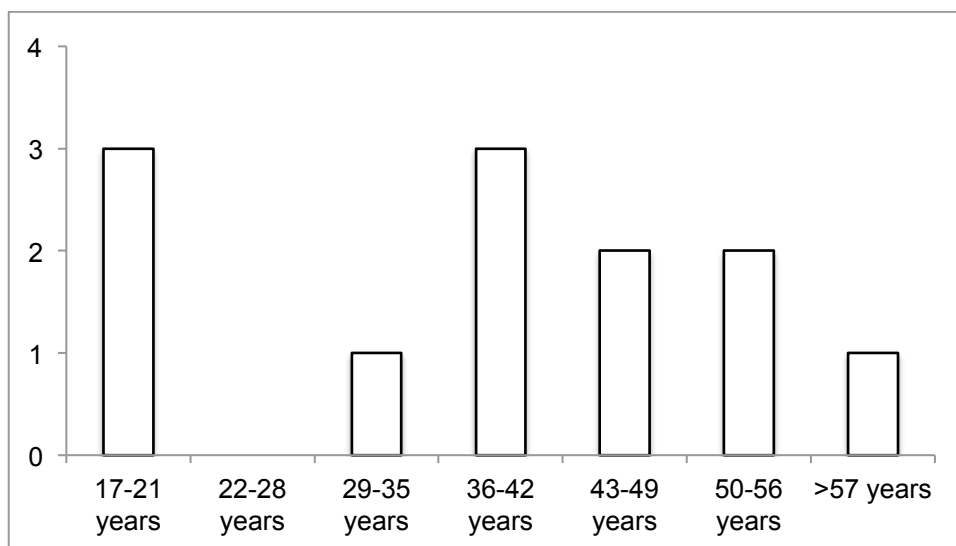
4.1.1 Domestic workers

As explained before all 12 interviews were carried out at an NGO facility that also has an employment agency where domestic workers are trained to learn their rights. Women approach for different reasons being one of them to look for new jobs. Women were interviewed as they arrived; some already have been to the agency so they were aware of their rights. In the interviews we asked about their current situation but also about their past experiences.

Age

The women that approached the agency were of various ages. Below the different ages of the interviewed, we can note that there is no specific age for domestic workers.

Chart showing the ages from the interviewed

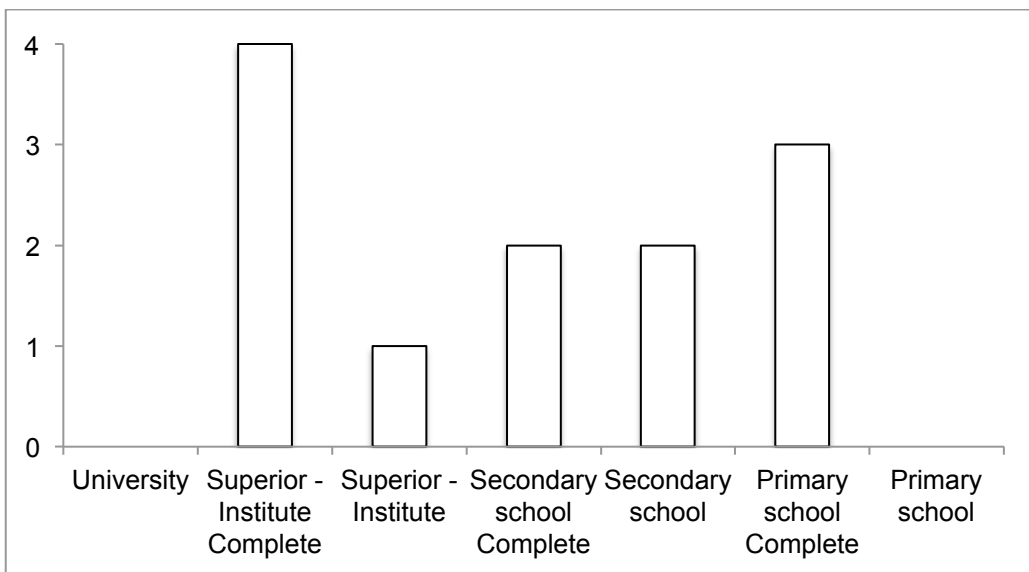


School

Four of the interviewed studied after finishing Secondary School, a technical carrier at an institute, only one of them had a job once that was related with her studies, she stopped her internship to work as a domestic worker because she needed money.

Five of the interviewed did not finished school but all of them went to school at least for a few years.

Chart showing education level



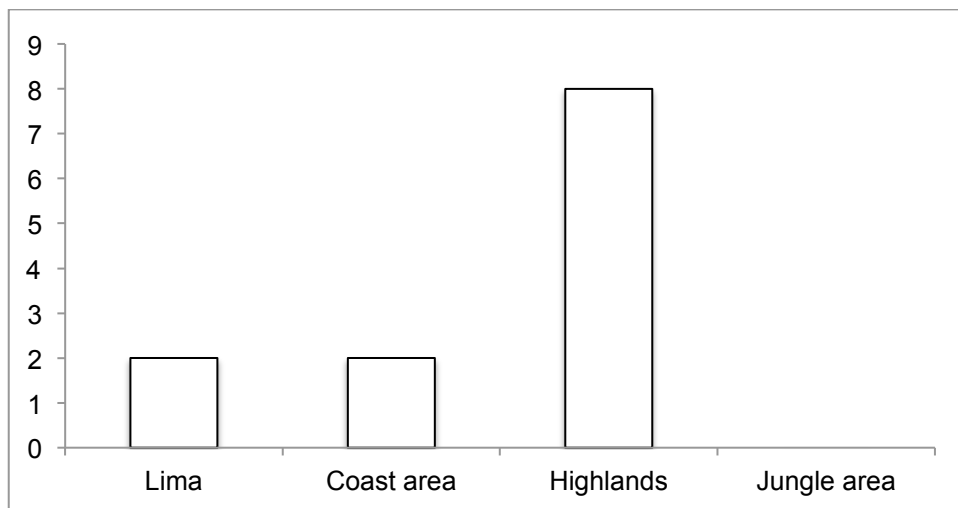
Place of birth

Almost all the interviewed 83.3% were born in province and all of them came to Lima to work.

Most of them came from the highlands 66.6% and none from the jungle area.

Lima	2
Coast area	2
Highlands	8
Jungle area	0
Capital	16.7%
Province	83.3%

Chart showing the different areas where the interviewed came from



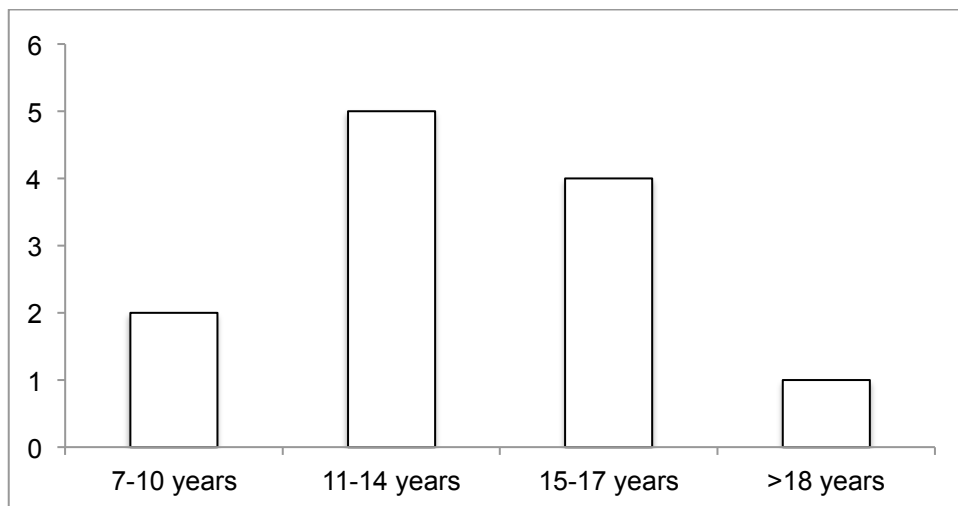
Age when they started to work

All of the interviewed started to work as domestic workers before they were 18 years old but one.

More than half said that they started helping in a household for someone of their family or a friend of the family.

We can note that more than half (58.3%) started to work from the ages of 7 to 14 years. From this group 57.1% started working being under 14 years old that is the minimum legal age for a child to work with permission of their parents.

Chart showing the ages when domestic workers started working



In the interviews many of the women said they started working in tasks like taking care of smaller children.

Interview 5

“In my land I used to take care of children when I was 7 years old”

Employment Agencies

Half of the interviewed never used an employment agency. Only one said that she liked the experience and the rest did not like using the agencies. This because they are only interested in earning money, however, not offering a good service to them if there is a problem.

Interview 2

“The agencies treat you well because they earn what you pay them but they don’t have any kind of responsibility, for example when there is a problem at work they tell you to leave things like they are...”

Interview 8

“I do not like it, it is more commercial. They earn commission from both sides and do not worry for the well being of the person. Only the money...”

One of the interviewed had a bad experience with agencies that were not professional.

Interview 10

“I did not like what I saw...it was the girls of the agency or the owner of the agency... but it was like the girls were very close with the owner... He said come here and the girls would sit on his lap... I did not approve... I do not know how it worked but I left the next day...”

“ The idea that agencies were like that remained in my head, I was 18, I wanted to earn more but I did not return...”

Experience with employers

The interviewed had both good and bad experiences with the families they worked with. Some were patient and taught them how to do house chores that they were not use to do in the highlands but others did not have the same luck, specially when they were young and did not know their rights.

Interview 1

“ She always tried to teach me because I came from the highlands and I did not know how to do things, I learned a lot...”

Interview 8

“ There are nice families specially if they come from another country, they are more considerate...”

“ I have seen some (employers) that do not let them socialize (domestic workers) or have friends because they are afraid that they would learn (referring to rights)...”

“ When you work Cama adentro sometimes they wake you up at midnight, that does not happen when you work Cama afuera.”

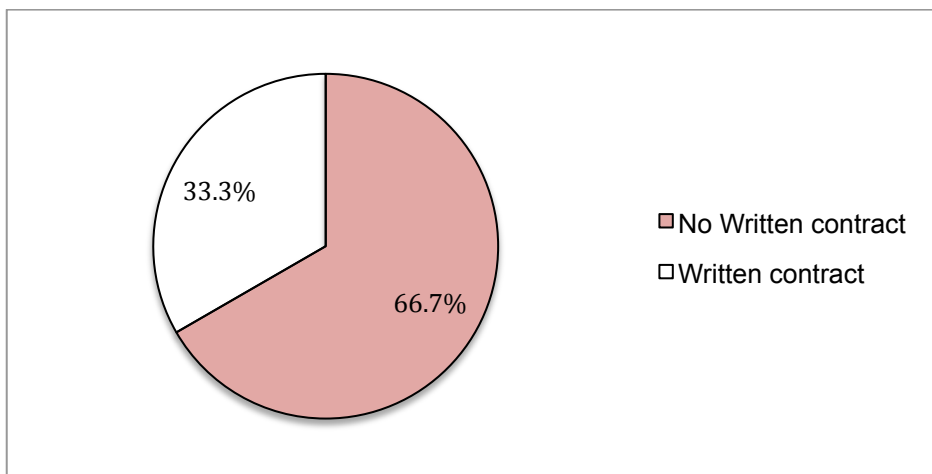
Interview 10

“ The employer interviewed my dad and he told her I did not know much, just wash clothes but not cook... the Lady replied: she will only look after my daughter... when my dad left the next day, she brought me a huge pile of dirty clothes, then clean the house and cook... she did not tell that to my dad...”

Written contract

From all the interviewed 66.7% never had a written contract and the ones that had one was because they got it through the employment agency La Casa de Panchita were they make sure all workers have a written contract.

Chart showing the percentage of workers that had a written contract.



One of the girls once signed a contract but she said the agency kept it, when she had trouble afterwards she had to ask for help to the people that worked in her building to be whitened and confirm that she used to work for the family.

Interview 2

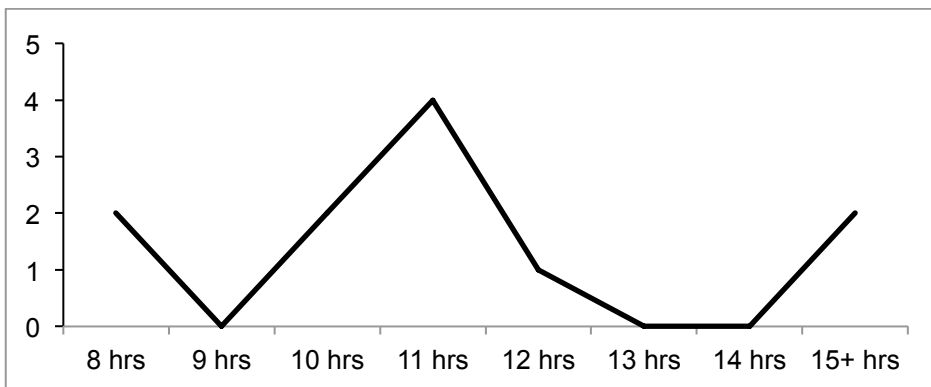
“I signed a contract but the agency kept it. The agency does not give you the contract, they don’t want you to be respected... the people from the building confirmed that I use to work in that place and that way I made them respect me...”

Working hours

Only two workers worked for 8 hours a day. One interviewed said that her working hours vary a lot so she could not tell an average and the rest stated that they work more than 8 hours a day.

From the interviewed 58.3% worked for 11 hours or more a day. From that group two workers stated that they work for 15 hours a day, one used to have a job when she was a child where she worked 17 hours a day from 6 am to 11pm.

Chart showing the amount of working hours a day



Interview 1

“... From 6 am until 11pm when I went to my room. There was no time to rest...”

“ ... Because I was a child, alone, they exploited me like they liked and I was happy because I did not know (referring to her rights)...”

Interview 2

“ ...Other jobs were day and night, I used to sleep with the babies. When the baby slept I slept...”

Interview 5

“... I work more than 8 hours because I work with children... I wake up at 5am and I go to bed at 10pm...”

Interview 8

“... I work more than 8 hours, I woke up at 6:30 am and work until 8pm, they do not tell you when you have resting moments (breaks)...”

Interview 9

“I work 12 hours, if it was Cama afuera it would be 10 hours... I woke up at 6am and start at 6:30am or 7am... I go to bed at 9pm or 10pm, I rest at lunch time...”

Interview 12

“ ...There was no resting time since I woke up... at 7pm or 8pm I only wanted to go to sleep...”

“ Sometimes that there is a nice relationship with the kids, the parents extend their hours out of the house... that is not convenient for the children nor for me that I am already very tired...”

Day to rest

All of the interviewed had a day a week to rest like but many told about past experiences were they did not know they had this right and would not go out ever.

Interview 1

“... Because I did not know, I did not go out, I did not have a Sunday to rest...”

Health emergency

Only few interviewed had accidents or got very sick when working. Some of them had good experiences where the employer took them to private clinics and others did not show any worry at all.

Interview 1

“... The times where I got a cut or burned myself I used to tie it up and keep on working, it was because I was 15...” (Referring she was young and did not know her rights)

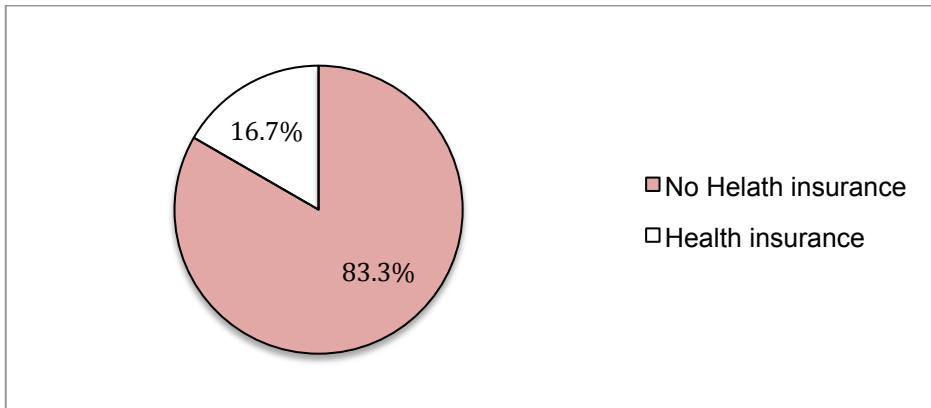
Interview 3

“... They used to take me where they go (referring to private clinics)... I've been lucky, I've been to the best clinics...”

Health Insurance

Only two interviewed had health insurance (16.7%) and only in one case it was paid by the employer.

Chart showing percentage of workers with health insurance



Interview 2

“ ...No one ever game me an insurance, I do not know what is that, I had to buy my own medicine...”

Interview 5

“... I got sick of the bronchi, I was like that for two years, now I’m healthy, I have my insurance, they pay it... but because you have to queue and ask for appointments its easier a private doctor... they take me and I get medical attention very fast...”

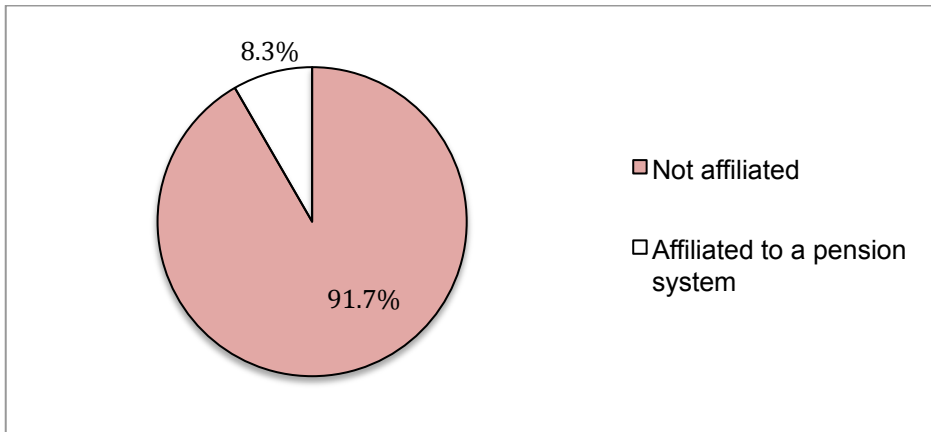
Interview 8

“I am 48 and I do not enjoy security, they don’t offer you insurance and they tell you: take it or leave it... you have to accept...”

Pension

Only one worker said she was part of a pension system. The rest did not express anything about it.

Chart showing percentage of workers affiliated to a pension system



Food they are given

All of the interviewed expressed that it varies depending on the family they work for but most of them had no mayor issues. Two workers described specific situations where they had food issues.

Interview 2

After an argument where the employer thought the worker was eating her asparagus and she explained it was the hard part that was going to be thrown away anyway...

"... She said: how are you going to eat the same as I do... she made me cry... and she kept on... what is from the trash is from the trash! "

Interview 8

"Once they gave me Tamales that were 15 days old"

Interview 11

"... Before I did not eat what they ate but I told them..." (Referring that situation changed after she complained)

Room to sleep

The thoughts workers expressed about the places where they slept also varied. Some had very good experiences while others did not have an appropriate place to rest. This lack of privacy in some cases led to uncomfortable situations.

Interview 2

“ ... In others I used to sleep in the laundry room, others with the baby. I had to eat quickly like the roster, I had to clean, wash and iron...”

Interview 8

“... Some give you good rooms but others a storage and put a bed next to it ...”

Interview 10

“... One of those days I did not like because the husband arrived drunk and tried to push the door where I was, I was given a space in the living room, I was afraid... I had to cry so my father took me away from that place...”

Knowledge about their rights

Many expressed that they recently know their rights, that when they started to work they were clueless about them and people would take advantage.

Interview 1

“... Only now that I am in training and look for jobs through the agency...”
(Referring to La Casa de Panchita and the training they give so workers know their rights).

Interview 5

“Only in the 90s I knew about my rights, before I did not have insurance, I did not know what was to go out on Sundays or holidays... back then I di not know, I never got my CTS, never went out, nothing...”

Interview 8

“I only know few things, I haven’t worried about that...” (Referring to her rights and her knowledge about them, she never had holidays or bonus, only once she says she was threatened like family)

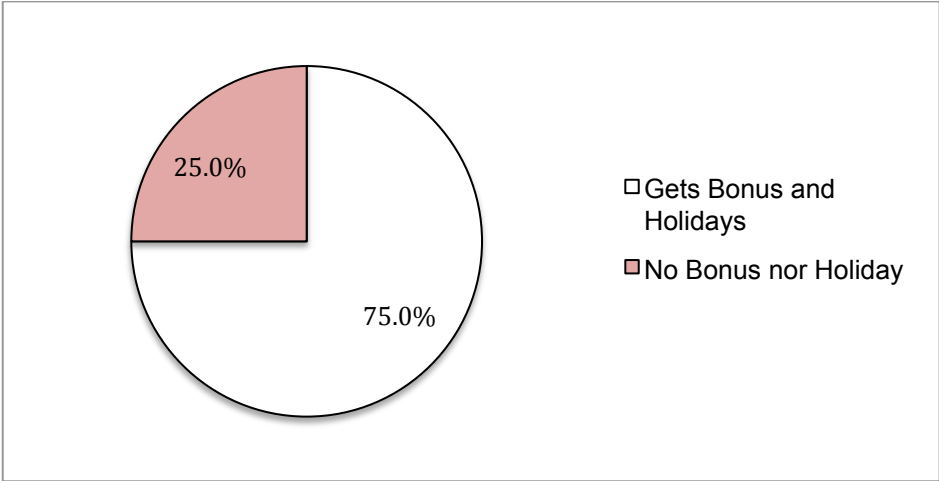
Interview 10

“... I already learned, now I only work 8 hours but before I used to stay until 11pm, 12pm, 1am and started at 6 am... now I know my rights more or less...”

Bonus and Holidays

Most of the interviewed, 75%, said that they get their Holidays and Bonuses, some a little late but they still receive them.

Chart showing the percentage of workers that gets their Bonus and Holidays.



Education

Workers lived different experiences, many explained that they got permission to study after a while they complained, and others never were allowed.

Interview 1

“I wanted to study but they said NO, that I was not going to work and I have to work”

Interview 2

“They allowed me to study in a job, not everyone is the same, some let you others no.”

Interview 11

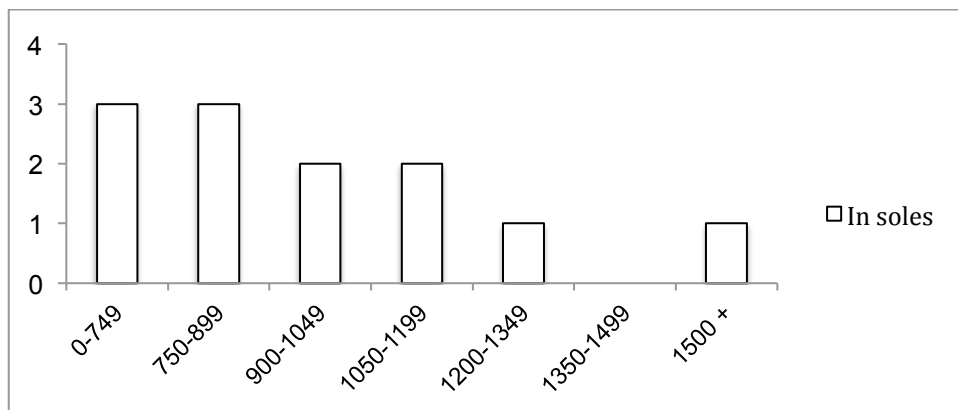
“They never let me study because I take care of children”

Salary

Nowadays only three workers earned less than the minimum living wage but all were paid in cash. Some had really bad experiences when they started to work when they were young; they got barely received any money, It was more like tips rather than a monthly salary.

The lowest salary for a worker is 400 soles a month, in order for the worker to take care of a child in her own house if she wanted (Special case). Otherwise the lowest earning was 700 soles. The women that had more experience earned more and always had their salary increased with time.

Chart showing the salaries in Soles received by the workers each month



Interview 1

“Before I used to do everything... I cooked, washed, cleaned and the lady paid me 100 soles, for 7 years I’ve earned 100 soles. Because I was a child and they brought me (took her away from the highlands to the coast area) I had to work for them... I left them when I was 21”

“Here in lima I also earned 300 soles, only last year 800 soles”

Interview 6

“...It is enough more or less, they pay me 750 soles...” (Referring to her monthly expenses and if she earns enough money)

Interview 10

“... There are people that abused with my salary, I worked for more and they paid less... I... because of necessity and loneliness, for not having a space of my own... I accepted...”

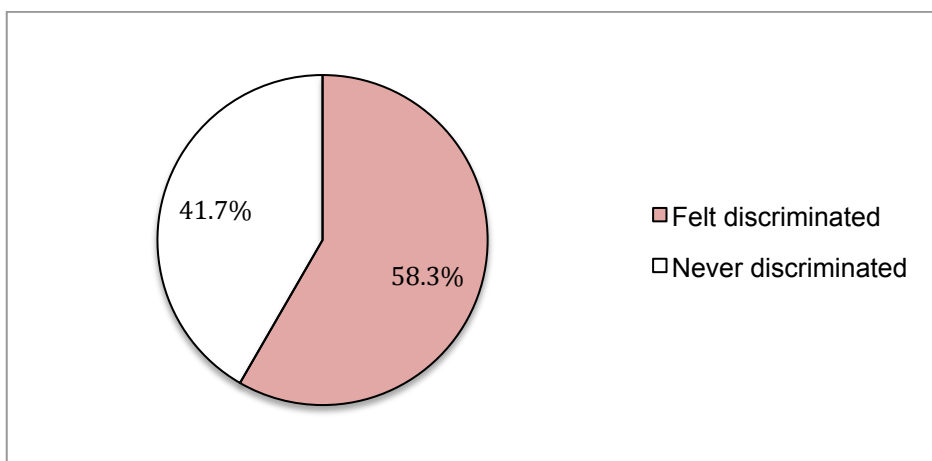
Communication with family

None of the workers had issues when they wanted to speak with their families.

Discrimination

More than half of the workers felt at least once discriminated because they worked as domestic workers or because they did not have the knowledge of something. They were discriminated by their employers or business like clubs.

Chart showing the percentage of workers that were discriminated



Interview 1

“... Because I work for them they treated me badly...”

Interview 2

“... They try to humiliate you saying; you are a domestic worker and you will always be one...”

Interview 5

“ When I went to the club where they were (the employers), they did not let me in (security from the club). I could not enter to the pool...”

“ The club caused a lot of trouble, finally I could take care of the kids from far away but I could not enter the pool... In Chosica they did not let me enter the restaurant so we left...”

Interview 8

“There are people who are arrogant, usually provincial people or people that believed to have a little more (money) they treat badly, mostly the more educated people are less likely to treat you bad, but middle class as they say...”

Interview 10

“ Because they see me with a uniform they threat me like something with little value...”

“... I feel more discrimination in the clubs... this is the bathroom for nannies... they humiliate you...”

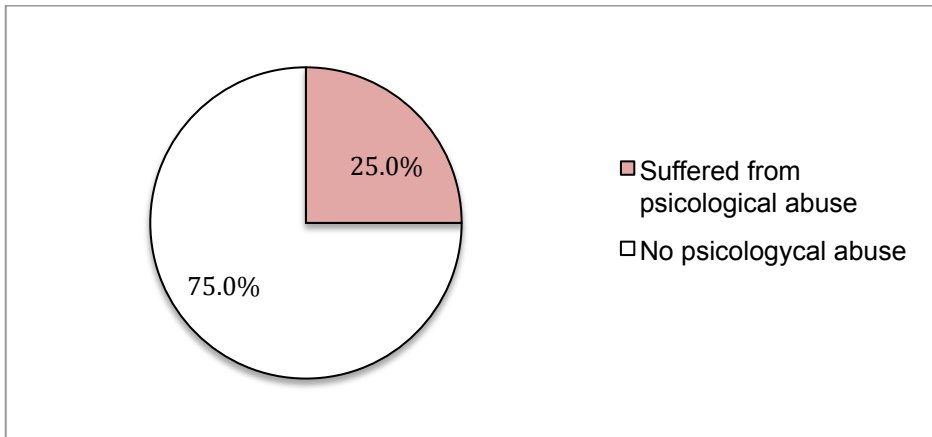
Interview 11

“I think it always happens, even if they pretend to be nice... I always see that they speak bad (about us)... there is always a differentiation, they always see it, I already got used to...”

Psychological violence

A quarter of the workers said that they suffered from psychological abuse at least once, mainly with insults, threats and shouts.

Chart showing percentage of workers that suffered from psychological violence



Interview 2

“...Once I dirtied a pair of pants and I got insulted... Chola! Stupid! ... I’ve never been hit, thank god but verbally ...”

Interview 10

“... In some jobs but not only me but also my co-workers... because they were from province... they were called Serrana! Dirty! In some cases there were shouts, insults, threats...”

“They wont accept you because you are old! (Referring to the employer telling her co-worker).They make you feel less so you stay there (working for them).”

Interview 11

“Strong shouting yes, I put my head down because I was quiet but now that I studied I learned that you have to defend yourself, I know my rights...”

Physical violence

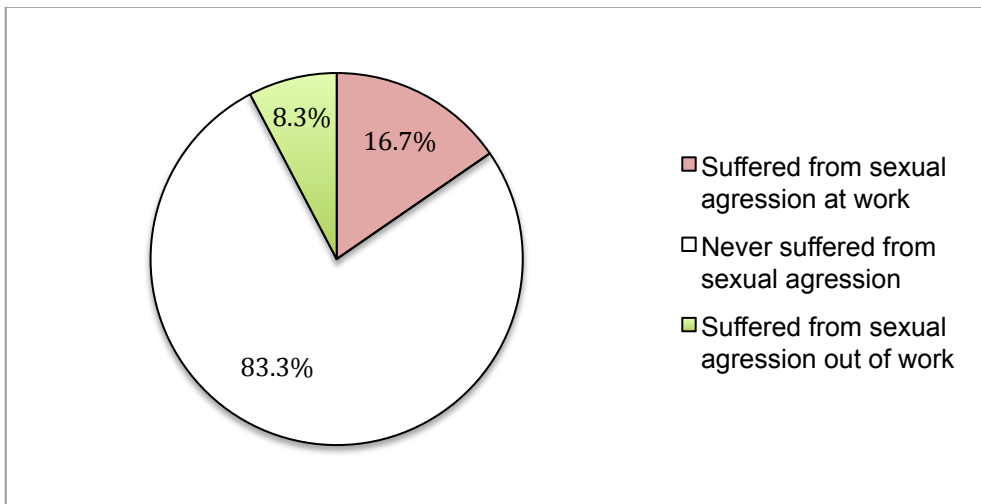
None of the interviewed said they suffered from physical violence.

Sexual abuse

Two of the workers suffered from an attempt of rape at their work from the male employer. One was in the garage where she used to sleep with no privacy. The other worker expressed that the brother of the employer also harassed her. One interviewed said that she had an attempt of rape but out of work by an uncle. In all cases rape never happened.

The definition of sexual aggression may vary depending of the country; in this case we refer to the attempt of rape or sexual act without consent.

Chart showing the workers that suffered sexual aggression.



Interview 2

“At a work when I just arrived from province... they made me sleep in the garage. The lady went to sleep and I went to the garage... the husband arrived later to put the car in the garage and its there when he tried to abuse from me... I started shouting and shouted until the wife came and shouted at her husband..

I did not wanted to stay a day longer...I've never present a complaint, I didn't even tell my sister... I was 13..."

Interview 8

" The harassment also came from the brother of the husband... when I was Young, I was 15, I was working and they send me to take the lunch for the husband and he tried to abuse sexually of me, he left me traumatized, he got naked in front of me..."

Authorities

Some workers gave reasons why they never or they would never report an abuse and others stated that if someday something happened they would immediately present a complaint to the police because hey know their rights.

Interview 1

"No because they would scare me and tell me that if I said something... If they ask you (the police) tell them we pay you 400 (she was not being paid at all)... If you tell them what you do (referring to the house chores)... you can only say you do the washing... It was a huge house, 10, 11 people..." (She used to do all the house chores and she was a child).

Why she never complaint... "I used to do everything, I was scared, they told me they would kick me out in the streets and deny everything I said if I told any one... I had no place to go"

Interview 2

"...The lady form the house was the one that treated me badly, I never though on presenting a compliant because they have money (the employers) and

maybe they pay and nobody would do something (the police), that's why I have never presented a complaint."

Interview 8

" I never presented a complaint because of fear, the wife knew but they blamed me of bad behaviour, I had to leave the work..."

Extra thoughts they added

Interview 1

"... They did not allow me to get my documents (ID) from the highlands, I cried of anger, they didn't allow me to have my documents, they did not want me to travel, not even to see my sisters and mom..." (They did not let her travel to get her documentation and see her family).

" I don't know if they sent my letters... I found out that they only sent 200 soles twice..." (She was not paid because she was told they would send the salary to her family living in the highlands)

Interview 2

"Now I know my rights and I would like that everyone knows, once they know (employers) you know your rights they threat you better..." (She was giving an advice, that if domestic workers were aware of their rights people would not take advantage of them).

Interview 8

" Sometimes blaming the parents of what I suffered because they did not know how to protect you... but what can they do if they are humble? (Have no money) they do not have anything to give in the fields and maybe so you are better they send you to work at a house... they do not know you will suffer..."

this is a backpack that pulls you” (referring that old memories of suffering are always present).

Interview 12

“It is a closer labour relationship between the employer and employee, sometimes I do not find the way to complain, I do not know how... I did not know how to negotiate with the employer...” (It is difficult to negotiate with the employer due to the close relationship domestic workers can develop during their stay at the house where they work).

4.1.2. Ombudsman and NGO

Throughout the investigation, I saw that the Peruvian government has taken some measures to change the situation of domestic workers but the measures are not enough and changes occur very slowly. I asked some questions to the Ombudsman and the NGO AGTR, to receive their expert opinions about State policies, the current situation in Peru and what could be done to improve the situation of this vulnerable group.

State policies

The ombudsman expressed that there are some initiatives and political wills to improve the domestic workers situation. However, actions taken are not done promptly enough.

Ombudsman

“I think the State is making efforts but is still insufficient... with a gender perspective... the Ministry of Woman has goals related to domestic workers...”

“The law of 2003 was a step forward but that was a long time ago..”

“ ...There are some initiatives. The ministry of work has a “Table of work” that monitors the National plan for compliance with labour standards of domestic workers. An important point is that this table is accompanied by the representatives of the unions themselves and organizations e.g. La Casa de Panchita. It seeks to listen to these voices...”

This working group “Table of work “ started in March 2013 and worked until December. It was formalised last November. The Ombudsman recommended keeping the table open for 2014. There they also debates about the ratification of Convention No. 189 of the ILO.

AGTR

“The 30th March 2014 the table was presented officially, but already existed since 2013. The Vice Minister of work presides the table, it is good because they have decision making power.”

ILO Convention 189

Ombudsman

“ The complaint is that progress is very slow... It is requested that the Convention No. 189 is ratified...” “It is a debt, we do not know what will happen because for 3 years it is in the National Labour Council...”

The debate on the Convention began long ago and not all parties have issued an opinion.

Ombudsman

“The is a positive opinion from the unions of workers, the Ministry of work does not have a formal report but it seems to be in favour... The employer sector is the one that has to emit their verdict and are they taking too long...”

AGTR

“Peru is not the only one that is being asked to ratify the Convention, there is no excuse, many neighbouring countries already ratified, Bolivia, Colombia, Argentina, Ecuador...”

Examples of main barriers

The Ombudsman explained that even legal norms, that recognize an equal treatment for all workers, make a differentiation for domestic workers that are believed to be unjustified. “This kind of differentiation is not justifiable and even the law is giving a treatment that is not coherent with the equality of opportunities and non discrimination.”

The Ombudsman also explained that there are many prejudices even from the very own domestic workers. The statistics the State receives from INEI are difficult to be seen as accurate, because of the informality and the lack of visibility of this type of work.

“...domestic workers do not talk about their work (they hide it), it is not seen as a work worthy to exercise it themselves ...”

The Ombudsman mentioned that this problem has many variables and can be seen from different perspectives, human rights, gender and intercultural. This given the fact that there are many indigenous people migrating... “An Inter-sector and integrated approach is needed...”

AGTR commented that a big problem is work inspections, the process domestic workers have to go through to claim their rights takes way too long and often is very difficult to prove the work relationship with their employer.

“Last week, two friends (domestic workers) came to have a training, one had worked 21 years in the same house for 350 Soles a month (approx. 95 Euros) and never received a day off nor has ever received any benefits... the other one was working there for 10 years in a similar situation... She never thought she could start a legal case...”

What can be improved in a short term?

Ombudsman

E.g. There are already plans for this year from the Ministry of work for compliance with the regulation of domestic workers ... “The protocol and policy for work inspections ...the work is performed in a familiar, private sector and there is a law in the Constitution about the inviolability of the home ... There should be a specific inspection protocol to guide labour inspectors and know how to audit work...”

Privacy of the family/home should be protected but also balanced with the protection rights of the workers.

“It is necessary practice for inspectors to collect information that is useful to prove that an employment relationship exists or check that the employers are meeting the standards that the law recognises.”

“The protocol was supposed to be accepted and passes in April, hopefully it will come out...”

Ombudsman also mentions that measures should be taken from SUNAT for the registry of domestic workers, this is the base for workers to have health insurance, pension funds and protect their basic rights, especially when there are old, worked in “Cama adentro” and decide to retire.

“These measures can be taken from different sectors without taking too long time to implement; contrarily to legislative changes that require a longer process, have a public debate and go to congress, the dynamics of the legislative process tend to take longer...”

She also mentioned that there are congresswomen that are putting the subject on their agenda ...” last week domestic workers held a forum at the Congress of the Republic and the women parliamentarian’s table which is now presided by Congresswoman Rosa María Cuculiza, they heard their proposals and looks like they will support them...”

AGTR commented that the services from the Ministry of work that function on Sundays for domestic workers could be improved. Usually the door is closed, you have to knock very hard and have an ID, people in Peru do not always carry IDs because they are afraid of losing it.

“ The personnel is not well trained, it is not enough to be a good lawyer and fill the papers they need, They (domestic workers) have to understand, they need to have a friendly service, they have to be treated like everyone else, they need to feel that the Ministry supports them...”

Employment agencies

The Ombudsman commented that there have been some initiatives that could be duplicated. In 2012 the Ministry of Work and the Municipality of Miraflores joint to inspect agencies.

“The legislation takes measures for the protection of domestic workers the problem is the ability of the State to inspect...the work has to be done through the cooperation of the different levels of the government...”

This year the Direction of Inspection in the Ministry said they will inspect 70 agencies. AGTR commented that it was not clear what was going to be inspected, for example, the type of service for the users, the permits or others... also important was to decide which agencies are going to be inspected.

AGTR also commented that there have been advances in this matter, for example the 2012 Supreme Decree on the operation of agencies. From 2013 onwards, domestic workers should not be charged for the services.

AGTR showed some concerns and also had some ideas to help improve the situation.

“Agencies must report every month the list of names of domestic workers who have used their services, name of both parties and address. But what do they do with this information? What are the penalties for those not meeting the rules”

AGTR also showed concerns on what the government does about the employment agencies without a formal registration. They only do follow ups with the registered ones. How would they track them is important to know because many of these agencies are linked to human trafficking.

AGTR

“...There are cases where the girls go to an agency and they are sent to houses where prostitution is exercised, I had 3 cases last month...”

AGTR also expressed that many girls from provinces are brought with fake promises using agencies and end up working in such houses without being able to leave...”

“The Decree is an important step forward, now its important to follow up...”

The Ombudsman and the NGO AGTR, both agree on many issues about the current situation and also agree which improvements need to be achieved.

4.2 Discussion

Most of the information I received from interviews match the information found in the literature. I can not do generalisations', as the group interviewed was small, however a comparison and a remark of the biggest issues can be done.

I found that the interviewed, working as domestic workers, were of all generations, showing that domestic work is present in the whole range of ages as the literature shows. I found a difference in the degree of education, a big number had higher education degree however almost all always worked as domestic workers and never practised what they studied.

The fact that large percentages were born in provinces, mainly in the highlands and started working from very young ages also agrees with the literature.

The interviewed had both good and bad experiences with employers; the main problem found was discrimination, psychological abuse and in three cases presented attempt of rape. This also matches with the literature; however, in this investigation we did not find any case of physical violence.

It was found that Labour rights were violated; most domestic workers do not work a maximum of 8 hours a day having higher number of working hours a week. They do not have health insurance amongst other things, this information is also in the literature revised. One big difference is that the interviewed have actual higher salaries than the average recorded, even though in the past many of them worked for very little and in some cases for only tips.

Other issues like bad experiences with employment agencies were also commented and agreed with the literature revised. In most cases were the interviewed came from province they stated that lack of knowledge and being young led the employers abusing of them. Once they grew and learned their rights they did not let employers abuse of them any longer.

CHAPTER V
CONCLUSIONS AND PROPOSAL

5.1 Conclusions

1. It is very common that domestic workers in Peru receive their labour rights and other human rights related to domestic work violated. One of the most recurring violations is the right to equality and non-discrimination. Also physical and psychological integrity is not respected. Other violations of rights such as the right to health and the right to education also showed up in the investigation.
2. The main labour rights violations found in the research are the number of hours worked per day/week, the lack of health insurance and lack of resting periods.
3. Domestic workers in Peru do not have the same characteristics; it is diverse and goes from child labour to elder workers that have been working at the same household for decades. They have different necessities such as schooling/education, pension and health insurance amongst others.
4. Protection of child domestic workers has not improved; it is approved by society and seen as normal.
5. The main factors that cause and worsens the violation of rights of domestic workers, are the lack of education and the lack of awareness. Almost all interviewed expressed that once they became aware of their rights and claimed them, their situation changed for the better. It was not immediate but the situation improved. We also saw that age is important, younger girls who start to work are the more vulnerable and less capable of defending themselves from the abuses they receive.

6. The history of discrimination in Peru and how domestic work has been seen as an undervalued “natural” job for women is still present and influences on how society behaves and treats this vulnerable group.
7. International law recognizes domestic workers’ rights equally, just as other workers; however, even if there has been progress in some areas, the main labour law for domestic workers (part of the Special Work Regime) does not recognize their complete rights. It is considered a discriminatory Law as there is no justification for the differentiation between this group of workers and others.
8. It is very difficult for domestic workers to claim their rights, usually they are scared because the perpetrators of the abuses have more money and power over them and usually threaten them. A fact that worsens the situation is that to make a complaint (e.g. to claim a lack of payment), they have to go through a long process that requires a lot of time (that they do not have), prove the work relation (that is very difficult) and usually they have to involve witnesses like neighbours or other workers. These do not always want to cooperate and sometimes nor do lawyers which they cannot afford. In the interviews none of the workers ever presented a complaint and the main reason were these explained above.

5.2 Proposals

1. As mentioned before one of the main problems is how society sees domestic workers and how child domestic work is part of the culture. This makes it not only necessary to focus on changing Public policies but trying to promote changes in the Peruvian culture. Raising awareness is crucial if we want to improve the situation of this vulnerable group.

Children should be educated about their rights and this would be the first step to lower the abuses.

2. The actual law is discriminatory, it does not recognise the same rights to domestic workers compared to other workers. This should be changed in the short term as it is only promoting discriminatory attitudes and treating domestic workers as less valuable.
3. Even though the State is trying to make some changes and create new policies, it is important to concentrate in the supervision and implementation of these. If there are no sanctions for people that do not follow the law, it makes little difference if the law exists or not. For example, In the case of employment agencies, the rules are written on paper but to follow up and make sure people respect them is a step further to take.
4. Domestic workers have different characteristics with different necessities, there are differences that the State should distinguish and contemplate in the law, like the different modalities “Cama adentro” and “Cama afuera”.
5. It is important to create clear policies and manuals for work inspection that respect the law in the Constitution about the inviolability of the privacy of home but also allow inspectors to prove work relations amongst others.
6. It is important to accelerate the process of debate about the ILO Convention 189. If ratified this would force the State to make changes faster in the policies and identify the existing gaps. The debate has been going on for a long time and the employer sector should emit an opinion. If not, measures should be taken, as this sector has had a long time to respond.

7. The State should work on its different levels and create an integrated system for complaints, training, and different services offered for domestic workers. All should be adapted to their needs, for example, work on Sundays as it is usually their only day off. Personnel should be trained in order to offer a proper service.

8. There is not enough information about the situation of domestic workers in Peru and the existing ones seem to be far from reality. The State should work on this matter, as it will help find the gaps and the most vulnerable areas.

BIBLIOGRAPHY

- Asociación Grupo de Trabajo Redes, Consulta a niñas y niños en Trabajo Infantil domestico, Lima, March 2013, available at <http://www.gruporedes.org/userfiles/file/Publicaciones%20AGTR/2013%20MAR%20Consulta%20a%20niñas%20y%20niños%20en%20trabajo%20infantil%20doméstico.pdf> (Consulted on 3 July 2014).
- Asociación Grupo de Trabajo Redes, De la Sierra a la Capital, trabajadoras del hogar, First Edition, Lima, October 2004, available at http://www.gruporedes.org/userfiles/file/Publicaciones%20AGTR/AGTR04_sierra_a_la_capital.pdf (Consulted on 3 May 2014).
- Asociación Grupo de Trabajo Redes, Las Ciudadanas Mas Marginadas, First edition, Lima, July 2005, available at http://www.gruporedes.org/userfiles/file/Publicaciones%20AGTR/AGTR05_Ciudadanas_mas_marginadas.pdf, (Consulted on 3 May 2014).
- Asociación Grupo de Trabajo Redes, No Somos Invisibles, Resultados de consulta a trabajadores infantiles domésticos (TID) y ex trabajadores infantiles domésticos (EXTID) en Perú (ciudades de Lima, Cajamarca y Pucallpa), Lima, November 2004, available at http://www.gruporedes.org/userfiles/file/Publicaciones%20AGTR/AGTR04_No_somos_invisibles.pdf, (Consulted on 3 May 2014).
- Asociación Grupo de Trabajo Redes, Trabajo Infantil domestico, percepciones de niñas, niños y adolescentes, San Juan de Miraflores - Lima, December 2010, available at <http://www.ohchr.org/Documents/Issues/Children/Study/AsociacionGrupoTrabajoRedes.pdf> (Consulted on 3 May 2014).

- Cegesti, El Convenio 189 de la organización Internacional del Trabajo sobre las trabajadoras y los trabajadores domesticos. Maria liebal, Éxito empresarial No. 217, 2012 available at http://www.cegesti.org/exitoempresarial/publicaciones/publicacion_217_191112_es.pdf (Consulted on 3 May 2014).
- Confederación Latinoamericana y del Caribe de Trabajadoras del Hogar (CONLACTRAHO) available at <http://conlactraho.org/page1/page1.html> (consulted on 18 April 2006).
- Convention on the Elimination of all forms of Discrimination against Women, General Recommendation No.26 on women migrant workers, 5 December 2008, CEDAW/C/2009/WP.1/R., available at <http://www2.ohchr.org/english/bodies/cedaw/comments.htm> (Consulted 30 April 2014).
- Defensoría de Pueblo (Obudsman Peru). Las Trabajadoras Del Hogar En El Perú. Una Mirada Al Marco Normativo Nacional E Internacional Establecido Para Su Protección, Documento Defensorial No. 21, Lima, 2012.
- Flores Galindo, Alberto. República sin ciudadanos, Buscando un inca Identidad y utopía en los Andes, Lima, 1986.
- Flores Galindo, Buscando un Inca: Identidad y utopía en los Andes 1986, 1988 p. 247 cited by Cecilia Méndez. En De Indio a Serrano. Universidad de California-Santa Barbara. Available at http://www.history.ucsb.edu/projects/histpublications/files/07955-mndez_2012_de_indio_a_serrano_historica_xxxv1_201102.pdf (Consulted 2 May 2014.)

- Human Rights Watch. Human Rights Watch and Joint International Law Program (2006) Swept Un-der the Rug: Abuses Against Domestic Workers Around the World. Vol. 18. July 2006, available at <http://www.hrw.org/sites/default/files/reports/wrd0706webwcover.pdf> (Consulted 8 May 2014).
- International Labour Organization, International Labour Conference, 99th Session, Decent work for domestic workers, ILC99-IV(1) [2008-12-0075-1]-En.doc, 2010, available at http://www.ilo.org/public/libdoc/ilo/2009/109B09_24_engl.pdf (Consulted on 3 May 2014).
- Krsticevic, Viviana La Denuncia Individual Ante La Comisión Interamericana De Derechos Humanos En El Sistema Interamericano De Protección De Los Derechos Humanos available at http://www.catedradh.unesco.unam.mx/SeminarioCETis/Documentos/Doc_basicos/5_biblioteca_virtual/3_d_h_mujeres/41/13.pdf (Consulted 9 May 2014)
- Macedo Roig, María Teresa, Factores socio-económicos y culturales que influyen en el ejercicio de la violencia psicológica contra las Trabajadoras del Hogar por parte de sus empleadores en Lima Metropolitana en la actualidad, Lima, July 2011, available at http://www.gruporedes.org/userfiles/file/Art%C3%ADculos%20AGTR/2011_Informe%20LCP%20Rosario%20Canchaya.pdf . (Consulted 3 May 2013).
- Mather Celia, Report on the Conference, Out of the Shadow: Organizing Domestic Workers Towards a protective regulatory framework for domestic work, Brussels, 14-15 April 2005, available at http://www.etuc.org/sites/www.etuc.org/files/Rapport_dosmestic_workers

- .pdf (Consulted on 18 April 2014).
- Mather, Celia, Extracto de la Conferencia Internacional: protección para las trabajadoras del hogar/Domesticas!, available at http://issuu.com/conlactraho/docs/respeto_y_derechos/1?e=2683086/3024415 (Consulted on 18 april 2006).
 - Mick, Carola, Article on “Relatos de trabajadoras del hogar peruanas. Encuentros con voces marginadas. Luxembourg, Berliner Wissenschafts-Verlag, 2011.” Exclusión e inclusión social y cultural en Lima. El caso de las trabajadoras del hogar. Construyendo Nuestra Interculturalidad. N_°6 year 7 Vol 6, 2011, available at <http://interculturalidad.org/6-7/especial-trabajadoras-del-hogar/exclusion-e-inclusion-social-y-cultural-en-lima.-el-caso-de-las-trabajadoras-del-hogar.html>. (Consulted on 3 May 2014).
 - Ministerio de la Mujer y desarrollo Social del Perú, Detrás del mándil: Trabajadoras del hogar, víctimas de maltrato y hostigamiento sexual, Lima, December 2007, available at http://www.mimp.gob.pe/files/programas_nacionales/pncvfs/detras_del_mandil_mimdes.pdf, (Consulted on 3 May 2014).
 - Ministerio de la Mujer y Desarrollo Social del Perú, Documento informativo: Trabajadora y Trabajador del hogar, Tu tienes derechos conócelos y exígelos, Lima, July 2009, available at http://www.mimp.gob.pe/files/direcciones/dgignd/publicaciones/Cartilla_TrabajadorasFinal.pdf (Consulted on 3 May 2014).
 - Oficina Internacional del Trabajo, ABC de los derechos de las trabajadoras y la igualdad de género. Ginebra, Segunda edición 2008, available at http://www.ilo.org/gender/Informationresources/Publications/WCMS_092

707/lang--es/index.htm (Consulted on 3 May 2014).

- Oficina Internacional del Trabajo, Trabajo domestico remunerado en el Perú, Situación y Perspectivas en función del Convenio 189 y la Recomendación 201 de la OIT, Lima: OIT/ Oficina de la OIT para los Países Andinos, 15 April 2013. 978-92-2-327361-3[ISBN] Available at http://www.ilo.org/americas/publicaciones/WCMS_213173/lang--es/index.htm. (Consulted on 3 May 2014).
- Ojeda Parra, Teresa, Prisiones Domesticas ciudadanías restringidas. Violencia sexual a trabajadoras del hogar en Lima. Lima, 2005, available at http://www.mimp.gob.pe/files/direcciones/dgcvg/datps/prisiones_domesticas_teresa_ojeda.pdf . (Consulted 3 May 2014).
- Ombudsman. Las Trabajadoras Del Hogar En El Perú. Una Mirada Al Marco Normativo Nacional E Internacional Establecido Para Su Protección, Defensoría del Pueblo, Lima, Fondo de Población de las Naciones Unidas, available at <http://www.defensoria.gob.pe/informes-publicaciones.php> (Consulted 20 May 2014).
- Organization of American States, American Convention on Human Rights, 22 November 1969, available at <http://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> (Consulted 8 May 2014).
- Organization of American States, Inter-American Convention On The Prevention, Punishment And Eradication Of Violence Against Women "Convention Of Belem Do Para" 9 June 1994, available at <https://www.oas.org/en/mesecvi/convention.asp> (Consulted 8 May 2014).

- Schmidt, Caterina, Child Domestic Work In Peru: A Question Of Political Will? 2005, Available at http://www.gruporedes.org/userfiles/file/Art%C3%ADculos%20AGTR/AGTR05_Thesis%20Caterina%20Schmit_eng.pdf (Consulted on 3 May 2014).
- The International Labour Organization, Home Work Convention, No. 17, 20 June 1996, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312322 (Consulted on 22 April 2014).
- The International Labour Organization, Worst Forms of Child Labour Convention, No. 182, 19 November 2000, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C182 (Consulted 8 May 2014).
- The International Labour Organization. Domestic Workers Convention (No. 189), 16 June 2011, available at [:http://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:2551460,en:NO](http://www.ilo.org/dyn/normlex/es/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:2551460,en:NO) (Consulted on 18 April 2006).
- The United Nations Development Fund for Women, Claim & Celebrate Women Migrants' Human Rights through CEDAW: The Case of Women Migrant Workers. ISBN 1-932827-21-8, 2005 available at http://www.unwomeneseasia.org/docs/2009_Claim_and_celebrate.pdf (consulted 9 May 2014).
- UN General Assembly, Declaration on the Elimination of Violence against Women A/RES/48/104, 20 December 1993, available at

<http://www.un.org/documents/ga/res/48/a48r104.htm>, (Consulted 8 May 2014).

- UN, Estudio a Fondo Sobre Todas Las Formas De Violencia Contra La Mujer, 2006. p.38 and 43. Available at https://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/61/A_61_122_es.pdf (Consulted 26 May 2014).
- Valenzuela, María Elena, Situación Del Trabajo Doméstico Remunerado En América Latina. ILO, 2012. Available at http://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/article/wcms_195947.pdf (Consulted 26 May 2014).
- Whitson, Kelley, Summary from the Study 'El acceso a la educación para los trabajadores del hogar'. Lima, 2008. available at http://www.gruporedes.org/userfiles/file/Art%C3%ADculos%20AGTR/AGTR09_KellyWhitson_Acceso%20educaci3n%20TH.pdf. (Consulted on 3 May 2014).

DATA COLLECTION INSTRUMENTS

The original guides were in Spanish as all of the interviewed have Spanish as their mother tongue.

A. INTERVIEW GUIDE FOR DOMESTIC WORKERS

Name:

Age:

Schooling:

Place of origin:

Current work:

At what age did you start to work/ when did you start helping your godmother?

Place and date of the interview:

1. Did you ever go to an employment agency? How was your experience with them?
2. Based on your experience. How were you treated in the different households where you worked? Explain Please.
3. Do you have a written contract?
4. How many hours do you work a day on average? / At what time do you wake up and start working and at what time do you go to bed?
5. If you got sick or had an accident at work... Did the employer take you to the doctor or were you given time to rest?

6. Do you have a health insurance? Are you affiliated to a pension system?
7. What do you think about the food you get when you are working and the place where you sleep?
8. Do you know about your fundamental and labour rights?/ (explain) CTS, Holydays, Bonus, Day off, resting periods ... If yes... How did you become aware or who informed you?
9. Do you have Holidays? Do you get your Bonus paid in July and December?
10. Where you allowed studying when you were working?
11. Are you satisfied with your salary as a domestic worker? Is it enough for your monthly expenses? How much on average do you earn a month?
12. Were you allowed to communicate with your family?
13. Did you ever felt discriminated because you are a women, work for a family or because you were not from Lima?/ Have you ever been treated in a different way than others?
14. Have you ever been yelled, received insults, threats or other harsh treatment?
15. Have you ever been a victim of physical violence, been pushed, pulling hair, punching or slapping, hitting with objects, or other physical violence?

16. Have you ever been sexually harassed while working or have you had any sexual assault while working?

17. Who was he responsible for these abuses?

18. Have you been to any appropriate authority to report your case? Which one? If not: Why?

19. Before we finish the interview, do you want to add something that you consider important?

B. INTERVIEW GUIDE - NGOs

I. General information:

Name of the interviewee:

Position:

Institution:

Place and date of interview:

II. General Problematic

1. Do you think that the Peruvian government is implementing policies for the effective protection of the fundamental rights of domestic workers?

III. State Policy:

2. Do you think that the Peruvian State is implementing policies for the effective protection of the fundamental rights of domestic workers?

3. Can you tell me about the 2014 Action Plan to promote the compliance of the labour rights of domestic workers?

IV. Legal framework and access to justice

4. Do you think that the rights of domestic workers are adequately protected by the legal regulations in Peru? Why?

5. Do you think that there have been significant advances in the national regulations for the protection of the fundamental rights of domestic workers?

6. Do you think that the Ministry of work handles properly the complaints of abuse and mistreatment denounced by domestic workers? Why?

7. Do you think that domestic workers who are victims of abuse and mistreatment have effective access to justice in Peru?

8. Which public entity do you consider to be most effective in protecting the fundamental rights of domestic workers who are victims of abuse and mistreatment?

V. ILO Convention 189

9. What do you think about of the ILO Convention for Domestic workers for the situation in Peru? What impact do you think it will have?

10. Based on your experience, what are the main barriers or constraints for Peru to ratify the Convention 189 of the ILO?

VI. Recommendations

11. What would you recommend the government should do to ensure the protection of the fundamental rights of domestic workers?

12. Would you like to add something else?

C. INTERVIEW GUIDE - OMBUDSMAN

I. General information:

Name of the interviewee:

Position:

Institution:

Place and date of interview:

II. State Policy:

1. Do you think that the Peruvian State is implementing policies for the effective protection of the fundamental rights of domestic workers?

E.g. gender perspective.

2. Do you think there is political will to improve the situation of domestic workers?

3. Can you tell me about the 2014 Action Plan to promote the compliance of the labour rights of domestic workers?

III. Legal framework and access to justice

4. Do you think that the rights of domestic workers are adequately protected by the legal regulations in Peru? Why?

5. What can you tell me about the plan to modify the national domestic workers law for 2017? How is this working?

6. Do you think that there have been significant advances in the national regulations for the protection of the fundamental rights of domestic workers?

7. Do you think that domestic workers who are victims of abuse and mistreatment have effective access to justice in Peru?

8. Which public entity do you consider to be most effective in protecting the fundamental rights of domestic workers who are victims of abuse and mistreatment?

IV. ILO Convention 189

9. What do you think about of the ILO Convention for Domestic workers for the situation in Peru? What impact do you think it will have?

10. Based on your experience, what are the main barriers or constraints for Peru to ratify the Convention 189 of the ILO?

V. Recommendations

11. What would you recommend the government should do to ensure the protection of the fundamental rights of domestic workers in a short term?

12. Would you like to add something else?

ABSTRACT

The present thesis aims to analyse the main forms of abuses, domestic workers suffer in Peru and to what extent they are protected and warded by the State.

First of all, the relevant literature is analysed in order to describe the related international laws, national laws and the situation of domestic workers in Peru. The second part of the research consists of an investigation containing interviews with domestic workers. This is done in order to learn from their experiences and compare the findings with the existing literature. This should allow detection of a coherence in the situations described by the workers with previous studies. The Ombudsman and a specialized NGO of domestic workers, were also interviewed to receive their views about the State's actions to protect and defend domestic workers.

The conducted analysis led to the conclusion that domestic workers in Peru suffer from a serious number of violations of labour rights and other human rights abuses, related to domestic work. Additionally they rarely enjoy proper protection by the State.

The main problems discovered are: (1)Discrimination because of their gender, origin or social class; (2)The undervaluation of their work can be seen in the lack of benefits they enjoy, such as health insurance, resting hours, minimum wage, etc.; (3)The current discriminatory labour law does not attribute them the same rights as it does for other workers. (4)A deficient system of protecting workers rights, due to the lack of policies adapted to fit their reality.

The recommendations should encourage the State to modify current discriminatory legislation, and create systems, which include a follow up procedure and repercussions for the perpetrators. These systems should be easy to access for domestic workers for them to present their claims.

It is also recommended that the government creates ad hoc policies to protect rights and creates campaigns to raise awareness about the rights of domestic workers and the abuses they suffer. This is necessary to facilitate change in the way of thinking, as they are still considered by Peruvian society and in many cases by themselves, second-class workers.

ZUSAMMENFASSUNG

Das Ziel dieser Arbeit ist die Untersuchung der häufigsten Missbräuche an HeimarbeiterInnen (domestic workers) in Peru und der Umfang des Opferschutzes durch den Staat.

Im ersten Schritt wurde die vorhandene Literatur analysiert um die rechtlichen Rahmenbedingungen für HeimarbeiterInnen auf internationaler und nationaler Ebene zu erforschen. Anschließend wurden Interviews mit HeimarbeiterInnen durchgeführt um deren Situation zu beleuchten und ihre Erfahrungen, dem Ergebnis der Literaturrecherche gegenüberzustellen. Um ein abgerundetes Bild darstellen zu können wurden NGOs und die nationale Ombudsbehörde, hinsichtlich der staatlichen Schritte zum Schutz von HeimarbeiterInnen interviewt.

Diese Analysen führten zu dem Ergebnis, dass HeimarbeiterInnen in Peru einer Vielzahl von Menschenrechtsverletzungen und Verletzungen der internationalen und nationalen arbeitsrechtlichen Mindeststandards, ausgesetzt sind. Auch der Staat unternimmt kaum Anstrengungen um dieses Risiko zu verringern.

Es wurden die folgenden Hauptprobleme festgestellt: (1) Diskriminierung aufgrund von Geschlecht, Herkunft oder sozialer Schicht; (2) Mangel an Wertschätzung, welcher sich in geringeren Begünstigungen und Sozialleistungen, wie Gesundheitsversicherung, Ruhezeiten oder Mindestlöhne, ausdrückt; (3) Diskriminierende arbeitsrechtliche Bestimmungen; (4) Unzureichende Anpassung internationaler Arbeitsstandards an die tatsächlichen Bedürfnisse der ArbeiterInnen.

Die Empfehlungen sollten den Staat dazu anregen, den gegenwärtigen Ansatz zugunsten eines umfassenden Systems zu ändern, welches insbesondere auch follow-up Prozesse und Verfolgung von Verletzungen und Rechtsbrüchen

vorsieht. Es wird auch empfohlen, dass die Regierung Verfahren vorsieht um akute Verletzungen zu verhindern. Weiters ist es essentiell, das Bewusstsein der Bevölkerung für die Rechtsverletzungen an HeimarbeiterInnen zu sensibilisieren. Dies ist notwendig um Veränderung im Denken der PeruanerInnen zu bewirken, da die Bevölkerung, und oft auch die HeimarbeiterInnen selbst, diese ArbeiterInnen Menschen „zweiter Klasse“ betrachtet.