

August 17, 2011

Dr. Santiago A. Canton  
Executive Secretary  
Inter-American Commission on Human Rights  
Organization of American States  
1889 F Street, NW  
Washington, DC 20006

**Request for Hearing on the Human Rights Situation of Meat and Poultry Processing  
Workers in the United States**

On behalf of the Midwest Coalition for Human Rights and Nebraska Appleseed Center for Law in the Public Interest, we respectfully request a hearing before the Inter-American Commission on Human Rights (IACHR) during its 142nd period of sessions to address the United States' occupational health and safety policies towards meatpacking workers. These policies fail to protect the fundamental human rights of thousands of workers.

**I. Introduction**

The U.S. meat and poultry processing industry is one of the most dangerous manufacturing industries for workers.<sup>1</sup> Meatpacking and poultry industries exploit the lack of ergonomics and work speed regulations. These practices violate the fundamental human rights of

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<sup>1</sup> In 2009 the incidence rate of *reported* nonfatal injuries in meatpacking and poultry plants was 6.9%, compared to 4.3% for manufacturing as a whole. (The incidence rate for animal – except poultry – slaughtering were 9.3%, meat processing was 6.6%, and poultry processing was 5.5%.) U.S. Bureau of Labor Statistics, 2009. These statistics do not take into account industry-wide failures to fully report true injury rates, as noted by the U.S. government; *see infra* notes 13, 14 and accompanying text.

their workers, leading to extraordinary injury rates, abuse by supervisors, employer biased medical coverage, and the denial of reasonable bathroom breaks. These practices result in serious physical and mental harm to meatpacking workers. Because many workers in this industry are recent immigrants to the United States, they face additional economic and social pressures that increase their vulnerability in the workplace. Immigrant workers are often hesitant to report injuries or complain about working conditions for fear of losing their jobs or exposing themselves and their families to the scrutiny of immigration officials.

The story of one former poultry line worker, Felipa Soriano Jimenez, given on July 7, 2011, is typical: “While working at Jennie-O, I fell and received an injury to my back and arms. I did not report this injury because I was afraid of being fired because I have known 3 workers who were terminated after reporting injuries. After this injury my supervisor continually told me to work faster, he would yell at me using profane language. I was eventually fired from Jennie-O; my supervisor told me this was because I used the bathroom.”

Article XIV of the American Declaration of the Rights and Duties of Man states that “[e]very person has the right to work, under proper conditions. . . .” However, numerous violations of international Occupational Health and Safety (OSH) law demonstrate the failure to secure proper conditions for meat and poultry processing workers.

## **II. Legal Basis of Request**

This request for a hearing on the human rights situation of meatpacking and poultry processing workers in the U.S. is brought under Article 66 of the IACHR Rules of Procedure,<sup>2</sup>

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<sup>2</sup> Rules of Procedure, Inter-Am. Comm. H.R., art. 66(2) (2010) [hereinafter IACHR Rules of Procedure] (“Persons who are interested in presenting testimony or information to the Commission on the human rights situation in one or more States, or on matters of general interest, shall direct a written request for a hearing to the Executive Secretariat at least 50 days prior to the beginning of the respective session of the Commission.”).

and Article 18 of the Commission's statute.<sup>3</sup> Petitioners request 25 minutes to present the information outlined in this submission and ten minutes to respond to any questions asked by the Commission. Petitioners request that David Michaels, Assistant Secretary of Labor for Occupational Safety and Health, and Jordan Barab, Deputy Assistant Secretary of Labor for Occupational Safety and Health, be present at the hearing to discuss the policies and practices of the United States Government in relation to the human rights of these workers.

### **III. The Victims, Advocates, and Human Rights Violators**

The victims are U.S. meatpacking and poultry processing workers.<sup>4</sup> Nebraska Appleseed and the Midwest Coalition for Human Rights are non-governmental organizations. Nebraska Appleseed is a public interest law firm located in Lincoln, Nebraska; the Midwest Coalition for Human Rights is a regional network of 56 organizations dedicated to domestic and international human rights activities.

The United States is the world's largest producer of beef and poultry and one of the largest producers of pork.<sup>5</sup> U.S. meat and poultry companies are directly responsible for the violations of human rights described here;<sup>6</sup> however, these violations are perpetrated with the tolerance of the U.S. government.

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<sup>3</sup> Statute of the Inter-American Commission on Human Rights, O.A.S. G.A. Res. 447, art. 18.

<sup>4</sup> In the Midwest region of the United States these workers are often immigrants. *See id.* at 16 n.3. *See also* U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WORKPLACE SAFETY AND HEALTH: SAFETY IN THE MEAT AND POULTRY INDUSTRY, WHILE IMPROVING, COULD BE FURTHER STRENGTHENED, 29 (2005) [hereinafter, GAO].

<sup>5</sup> M. Lowe, Gereffi, G., *A Value Chain Analysis of the U.S. Beef and Dairy Industries*, Center on Globalization, Governance & Competitiveness, Duke University, 4, 29 (2009).

<sup>6</sup> The meat and poultry industries are highly concentrated as a handful of major processors constitute a majority of the market including: Tyson Foods, Inc., JBS S.A. and its subsidiaries, Hormel Foods, Perdue Farms, Cargill Meat Solutions Corp., and Pilgrim's Pride Corp. However, several other smaller processors throughout the U.S. exist as well.

## **IV. Facts Detailing Violations of Human Rights by Meat Processing Employers<sup>7</sup>**

### **a. Severe Trauma and Permanent Disabilities**

Serious wounds,<sup>8</sup> disabling injuries,<sup>9</sup> neurological disorders,<sup>10</sup> and even tragic work related fatalities<sup>11</sup> are well documented in large-scale meat and poultry processing plants. Within the past decade the incidence rate of reported injuries in the meatpacking industry peaked at nearly double that of the national average for manufacturing industries.<sup>12</sup> However, the actual rate of injuries is likely much higher due to the systemic underreporting of injuries in the meat

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<sup>7</sup> These facts have been gathered from published studies and publicly available documents and corroborated directly from the statements of eleven meat or poultry workers and several other interviews. The statements and interviews can be found in the appendix.

<sup>8</sup> Don, Walton, *Injured and Jobless*, LINCOLN JOURNAL STAR A2 (October 7, 2009); Barbara Frey, et. al. *Meatpacking in Minnesota: An Assessment of the Packinghouse Bill of Rights*, 4 (2009). [http://www.workdayminnesota.org/upload/Meatpacking\\_in\\_Minnesota.pdf](http://www.workdayminnesota.org/upload/Meatpacking_in_Minnesota.pdf) (“[O]ver half of the workers surveyed had experienced or witnessed injuries in the plants”); University of Minnesota, Worker Survey (2007) (on file with author) (“[E]mployees stab themselves, cut their hands. . .”).

<sup>9</sup> See GAO, *supra* note 4 at 21 (“Workers in the meat and poultry industry . . . , can suffer a host of serious injuries and illnesses, most often musculoskeletal disorders.”). Of the eleven workers willing to provide statements for this hearing request, ten of the workers were either diagnosed with a musculoskeletal disorder or showed signs of a musculoskeletal disorder. See appendix.

<sup>10</sup> See, e.g., Josephine Marcotty, *Mayo identifies pork-plant disease; The neurological ailment suffered by the workers is linked to the immune system. Similar cases have been seen elsewhere*. STAR TRIBUNE 1A (April 17, 2008) (noting progressive inflammatory neuropathy found in Minnesota, Nebraska, and Indiana pork processing workers).

<sup>11</sup> Fatalities are less frequent, but do occur every year in meat and poultry plants; see Bureau of Labor Statistics, 2009 CENSUS OF FATAL OCCUPATIONAL INJURIES, <http://www.bls.gov/iif/oshwc/foi/cftb0241.pdf>; see also Rachel Grey, *Investigators, Tyson officials looking into death at plant*, THE GARDEN CITY TELEGRAM (June 9, 2011) (discussing the death of a worker who received a fatal cut to the neck); *No charges in worker's death*, AUSTIN AMERICAN-STATESMAN (June 21, 2008).

<sup>12</sup> See GAO, *supra* note 4 at 27 (2006).

and poultry industries.<sup>13</sup> In 2009 a survey showed that in a single year as many as sixty-two percent of meatpacking workers are injured on the job.<sup>14</sup>

Modern meat and poultry plant lines slaughter and process an extraordinary number of animals with very few workers.<sup>15</sup> Slim profit margins lead processors to constantly seek ways to increase the volume and the speed of production.<sup>16</sup> Processors require their line employees to work at an extremely fast pace to keep up with these demands.<sup>17</sup> The work is performed in very dangerous conditions: floors are slippery with grease, blood, and fat; temperatures are extremely cold or hot;<sup>18</sup> and the work is arduous and repetitive—employees make upwards of 20,000 cuts a day.<sup>19</sup>

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<sup>13</sup> *Id.* at 29, *see also* Michael S. Worall, note, *Meatpacking Safety: is OSHA Enforcement Adequate?*, 9 DRAKE J. AGRIC. L. 299, 309 (noting deficiencies with BLS statistics).

<sup>14</sup> Nebraska Appleseed, *The Speed Kills You*, 3 (2009) [hereinafter, *The Speed Kills You*] [http://neappleseed.org/docs/the\\_speed\\_kills\\_you\\_030910.pdf](http://neappleseed.org/docs/the_speed_kills_you_030910.pdf) (surveying meatpacking workers in five communities in Nebraska).

<sup>15</sup> *See, e.g.*, Worall, *supra* note 13 at (“A John Morrell plant in Sioux Falls, South Dakota, increased its slaughter of hogs from 640 per hour in the late 1960s to 1,065 in 1986 -- without increasing the number of workers.”).

<sup>16</sup> *Cf. id.* at 319.

<sup>17</sup> From worker interviews across Minnesota, Nebraska, and other states, the perceptions of line speed is overwhelmingly found to have increased over time. Frey, *supra* note 8 at 4 (“84% of workers said that line speed had increased even more in the last one or two years.”); *see also* Midwest Coalition for Human Rights, Worker Statement # 3, Neb. (Jun. 6, 2011) (“Cuando empezé a trabajar en Hormel matamos 5,000 marranos en 8 horas después con el tiempo fueron aumentando has 10,000 marranos por dia.”); *see also* Midwest Coalition for Human Rights, Worker Statement # 4, Neb. (Jun. 6, 2011) (stating that since the worker began working the plant began to slaughter one hundred to two hundred more cattle per day); Midwest Coalition for Human Rights, Worker Statement # 5, Neb. (Jun. 6, 2011).

<sup>18</sup> Interview by Stephanie Bates with three current meatpacking workers, Jennie-O Turkey Store, Inc., in worker’s home, Faribault, Minn. 1 (Sept. 15, 2007) [hereinafter *Interview in Worker’s Home*] (“Biggest problem is cold. I can’t adapt. I am always cold.”).

<sup>19</sup> Workers commonly report handling 40-50 pieces of meat per minute, because the line does not stop or slow down over 8 hours a worker easily makes 20,000 repetitive movements or more in a day. *See e.g.*, *Meatpacking Industry Workers Bill Of Rights and Ombudsman Position Established: Hearing on H.F. 643 Before the Labor & Consumer Protection Division of the H. Comm. on Commerce & Labor, 2007-2008 Leg., 85th Sess. (Minn. 2007)* [hereinafter *Minn. House Hearing*] (statement of Fardo Haji) (“every minute there is 45 birds.”)

The lack of adequate ergonomic training and equipment, along with incessant repetitive motion, leads to lifelong disabilities that interfere with major life activities for many meat and poultry processing workers.<sup>20</sup> Musculoskeletal disorders (MSDs) are a form of injury that occurs when repetitive movement, forceful exertions, tool vibrations, and awkward positioning over time cause severe injury to tissue and nerves.<sup>21</sup> Industrial hygienic studies examining MSDs often find that the meat and poultry industries have higher injury rates than many other fields.<sup>22</sup>

These disorders are made worse by excessive cold, heat, and the rapid speed of work.<sup>23</sup> Workers afflicted with MSDs lose the ability to participate in major life activities such as cooking,<sup>24</sup> sleeping,<sup>25</sup> using the phone,<sup>26</sup> and playing with their children.<sup>27</sup>

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[http://www.house.leg.state.mn.us/audio/archivescomm.asp?comm=85005&ls\\_year=85](http://www.house.leg.state.mn.us/audio/archivescomm.asp?comm=85005&ls_year=85); see also Human Rights Watch, *Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants 12* (2004), available at <http://www.hrw.org/en/reports/2005/01/24/blood-sweat-and-fear>. In meat processing lines workers sometimes make significantly fewer cuts but they also have to handle heavier pieces. Midwest Coalition for Human Rights, Worker Interview # 5, Neb. (Jun. 6, 2011) (expressing knee and back pain felt from the approximately 9,180 repetitive movements made in a day processing five hundred forty twenty to twenty five pound pieces of meat).

<sup>20</sup> See generally, *The Speed Kills You*, *supra* note 14 (describing that the most frequent worker complaint was the fast speed of work).

<sup>21</sup> GAO, *supra*, note 4 at 21, n. 22; see generally Wendy A. Latko et. al., *Development and Evaluation of an Observational Method for Assessing Repetition in Hand Tasks*, 58 AMERICAN INDUSTRIAL HYGIENE ASSOCIATION JOURNAL 278, 279 (highlighting conclusions of studies on the correlation between ergonomics hazards such as sustained repetition and MSDs).

<sup>22</sup> See e.g. Hester Lipscomb et. al., *Upper extremity musculoskeletal symptoms and disorders among a cohort of women employed in poultry processing*, 51 AM. J. IND. MED 24 (2008). Additionally, advances in technology generally do not decrease the strain on workers, as some have claimed, but merely provide a more hectic workplace *C.f.* R.G. Gorsche et. al., *Sasyniuk Prevalence and incidence of carpal tunnel syndrome in a meat packing plant*, 20 OCCUP. ENVIRON. MED. 17 (1999) (comparing older plants and modernized plants). Plants that strive to intensify work usually have higher rates of injuries. J. Novak, *The Labor Process and Workplace Injuries in the Canadian Meat Packing Industry*, 29 CANADIAN REVIEW OF SOCIOLOGY AND ANTHROPOLOGY 17 (1992).

<sup>23</sup> *Id.*

<sup>24</sup> *The Speed Kills You*, *supra* note 14, at 21.

<sup>25</sup> Midwest Coalition for Human Rights, Statement of Worker # 5 (Jun. 6 2011) (“En la noche tengo que dormir con las manos rectas por que se me duerman y despues me duelan mucho.”).

Wide varieties of preventable injuries are commonplace.<sup>28</sup> A U.S. Government Accountability Office study found that common injuries include bruises from falling on the treacherously slippery floors and workers cutting themselves because they are either not given sufficient time to sharpen their knives or because they are not given sufficient training in the use and sharpening of knives.<sup>29</sup> The study also found that cutting in close quarters leads to workers accidentally cutting and injuring others.<sup>30</sup> Cleaning crews are also at risk from traumatic injury as they are often exposed to noxious chemicals and pathogens in blood and feces.<sup>31</sup>

These physical injuries are often closely tied to psychological abuse by supervisors, which is disturbingly common. Workers are regularly disrespected,<sup>32</sup> supervisors yell at workers to cut faster, and insult workers with obscenities for not complying.<sup>33</sup> Workers are not allowed to leave their line position to use the restroom,<sup>34</sup> sometimes they have no choice but to urinate

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<sup>26</sup> *Interview in Worker's Home, supra* note 18 at 3 (“My hand is sore, I can feel the pain, I can’t even handle my phone”).

<sup>27</sup> Frey, *supra* note 8 at 6.

<sup>28</sup> *See supra* notes 8-11; *see also* Suzi Parker, *Ten Tyson poultry workers still hospitalized after gas exposure*, Reuters (Jun 29, 2011), <http://www.reuters.com/article/2011/06/29/us-tyson-workers-arkansas-idUSTRE75S7PF20110629> (discussing the hospitalization of one hundred seventy two workers).

<sup>29</sup> *See GAO, supra*, note 4 at 23-24; *see also Interview in Worker's Home, supra* note 18 at 3 (“There isn’t a good sharpener for the knife . . . if they tell the supervisor that the knife is not cutting they will give a warning to be quiet”).

<sup>30</sup> GAO, *supra*, note 4 at 20-21.

<sup>31</sup> *Id.* at 20.

<sup>32</sup> Don Walton, *Workers share their experiences on 'fast' lines*, LINCOLN JOURNAL STAR A1 (October 7, 2009) (“They show no respect for workers. There's lots of yelling.”).

<sup>33</sup> Midwest Coalition for Human Rights, Statement of Felipa Soriano Jimenez, Willmar, Minn. (Jul. 7, 2011).; *see also The Speed Kills You, supra* note 14 at 32 (“When supervisors talk to you, they scream at you and insult you, using obscenities. There is no respect for the workers.”).

<sup>34</sup> *Minn. House Hearing, supra* note 19 (“[T]he people working there; if they need to use the bathroom or something like that, they don’t give the right.”); Midwest Coalition for Human Rights, Statement of Felipa Soriano Jimenez, Willmar, Minn. (Jul. 7, 2011), Midwest Coalition for Human Rights, Statement of Worker # 5, Neb. (Jun. 6 2011).

and defecate in their clothing.<sup>35</sup> The increase in work speed without an increase in workers implies that these physical and psychological injuries are considered acceptable by the employer.<sup>36</sup>

### **b. Underreporting of Injuries and Failure to Provide Medical Attention**

One reason why injuries are underreported in the meat and poultry processing industry is that workers who report injuries are often retaliated against by supervisors who relegate these workers to the most difficult jobs, force them to work harder than their peers, or terminate them.<sup>37</sup> Immigrant workers are especially fearful of reporting injuries for fear of termination.<sup>38</sup> Another factor leading to underreporting is the importance employers place on “accident free” days. Employers benefit in the form of lower insurance premiums if there are fewer reported work accidents, so they offer worker incentives for increasing the number of accident free days. Ironically, these worker incentives do not actually decrease the actual number of accidents or injuries, but instead decrease the *reporting* of accidents and injuries to the detriment of the injured worker and workplace safety.<sup>39</sup> These measures suppress the reporting rate because employees do not want to incur reprisal by peers for not getting the reward for accident free days, and supervisors often discourage or ignore employee reports of injuries.<sup>40</sup>

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<sup>35</sup> *The Speed Kills You*, *supra* note 14, at 4.

<sup>36</sup> See LOUISE LAMPHERE, STRUCTURING DIVERSITY: ETHNOGRAPHIC PERSPECTIVES ON THE NEW IMMIGRATION, 49 (1992). The line speeds in meat processing plants have increased in recent years. See *supra* notes 15-17.

<sup>37</sup> See *id.* at 29.

<sup>38</sup> See, e.g. Statement of Felipa Soriano Jimenez, *supra* note 2.

<sup>39</sup> *The Speed Kills You*, *supra* note 14, at 33.

<sup>40</sup> See Kyle W. Morrison, *What's your reward? The debate over incentive programs*, NATIONAL SAFETY COUNCIL, <http://www.nsc.org/safetyhealth/Pages/4.11IncentivePrograms.aspx> (last accessed May 31, 2011) (“Such incentive programs result in under-reporting or non-reporting of injuries. . . . Employees who suffer a workplace injury may want to cover it up to stay eligible for the reward. . .”).

When employees do report their injuries medical neutrality becomes an issue. Workers are frequently given inadequate treatment by nurses or doctors hired by the company or who receive many referrals from the company.<sup>41</sup> Company doctors and nurses have been reported to tell seriously injured workers that they must return to work.<sup>42</sup> This is also a problem where the worker is injured at a plant with an on-site clinic.<sup>43</sup> Even when the workers comply and go back to work with injuries, they reportedly experience retaliation and are sometimes discharged from employment simply because of their injuries or because they are seen as a threat.<sup>44</sup>

### **V. Violations of Human Rights by the U.S.**

The U.S. has failed to perform its obligations to end these human rights abuses with sufficient due diligence, “[a]n illegal act which violates human rights and which is initially not directly imputable to a State . . . can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation. . . .”<sup>45</sup> The U.S.

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<sup>41</sup> *Id.* at 73, *see also*; Midwest Coalition for Human Rights, Statement of Felipa Soriano Jimenez, Willmar, Minn. (Jul. 7, 2011); Interview by Stephanie Bates with two meatpacking workers, Jennie-O Turkey Store, Inc., in UFCW Office, Faribault, Minn. 1 (Sept. 15, 2007) [hereinafter *Interview in UFCW office*].

<sup>42</sup> It is common to require injured workers to put ice on injuries and get back to work. *See Minn. House Hearing, supra* note 19; University of Minnesota, Worker Survey (2007) (on file with author) (“Solo pusieron poco hielo y a seguir trabajando”); *c.f.* Midwest Coalition for Human Rights, Statement of Worker # 3, Neb. (Jun. 6, 2011) (asserting that when injured the supervisor thought the worker was not being truthful).

<sup>43</sup> *See Minn. House Hearing, supra* note 19.

<sup>44</sup> Morrison, *supra* note 40 at 73-74; *see also* Interview by Stephanie Bates with two meatpacking workers, Jennie-O Turkey Store, Inc., in UFCW Office, Faribault, Minn. 1 (Sept. 29, 2007) (“After I was injured they took me to their doctor. . . . They found out I was disabled and fired me. . . .”).

<sup>45</sup> Velásquez Rodríguez case. Judgment of July 29, 1988. Series C No. 4, ¶ 172; *and cf.* Godínez Cruz case. Judgment of January 20, 1989. Series C No. 5, ¶¶ 181, 182 and 187.

tolerates the exploitation of meat and poultry processing workers, violating these workers human rights as a result.<sup>46</sup>

**a. The U.S. Violates International OSH Standards by the Lack of Ergonomics and Line Speed Standards**

U.S. OSH law does not adequately protect meat and poultry workers' human rights. Art. XIV of the American Declaration of the Rights and Duties of Man states that all persons have the right to work in proper conditions. Essential to proper work conditions is occupational safety and health, interpreted by several international instruments and texts as a basic human right.<sup>47</sup> Of these instruments the most helpful for interpreting the meaning of proper conditions is Art. 7 of the International Covenant on Economic, Social, and Cultural Rights, which requires that states

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<sup>46</sup> Recent expert studies on international human rights obligations of businesses have used an analysis similar to that of the Velásquez Rodríguez case. Report of the Special Representative of the U.N. Secretary-General on Business & Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, H.R. Council, U.N. Doc. A/HRC/17/31 (Mar. 21 2011) ("States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.").

<sup>47</sup> World Congress Summit on Safety and Health at Work, Seoul Declaration on Safety and Health at Work (June 29, 2008), available at [http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/statement/wcms\\_095910.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/statement/wcms_095910.pdf) ("Recalling that the right to a safe and healthy working environment should be recognized as a fundamental human right."); see also Constitution of the ILO preamble, Oct. 9, 1946, 15 UNTS 35 (highlighting the importance of protecting workers "against sickness, disease and injury arising out of his employment."); World Health Organization, *Global strategy on Occupational Health for All: The Way to Health at Work*, (October 11, 1994) available at [http://www.who.int/occupational\\_health/globstrategy/en/index2.html](http://www.who.int/occupational_health/globstrategy/en/index2.html) ("According to the principles of the United Nations, WHO and ILO, every citizen of the world has a right to healthy and safe work and to a work environment that enables him or her to live a socially and economically productive life."); see generally International Labour Organization, *Health and Life at Work: A Basic Human Right* (April 28, 2009) [http://www.ilo.org/legacy/english/protection/safework/worldday/products09/booklet\\_09-en.pdf](http://www.ilo.org/legacy/english/protection/safework/worldday/products09/booklet_09-en.pdf).

provide “just and favourable conditions of work which ensure . . . safe and healthy working conditions.”<sup>48</sup>

The U.S. falls well short of fulfilling its duty to ensure proper work conditions as required under Art XIV of the American Declaration because U.S. OSH laws fail to ensure reasonably safe working conditions for many U.S. meat and poultry workers. To realize this obligation, the U.S. Government must put in place adequate laws and regulations and enforce them effectively. The role of the State is elaborated in Art. 9 of The International Labour Organization’s Occupational Safety and Health Convention of 1981, which clarifies that basic requirements for providing safe work conditions include: “1. The enforcement of laws and regulations concerning occupational safety and health and the working environment shall be secured by an adequate and appropriate system of inspection. 2. The enforcement system shall provide for adequate penalties for violations of the laws and regulations.”<sup>49</sup> U.S. inspection of meatpacking plants and penalties for violations of OSH law are grossly inadequate, leading to the above mentioned severely dangerous conditions. The general duty clause is the only enforceable provision of OSH law that might potentially provide meaningful ergonomic protection to workers, but the general duty clause is inadequate because it does not provide sufficient guidance on minimum thresholds for worker safety, such as criteria for work speed or ergonomic safeguards...

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<sup>48</sup> Although the United States has not ratified the International Covenant on Economic, Social, and Cultural Rights it has a duty to perform the treaty in “good faith”. Vienna Convention on the Law of Treaties, 1969, May 23, 1969, U.N.T.S., vol. 1155, art. 26; International Covenant on Economic, Social and Cultural Rights, adopted Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>49</sup> Occupational Safety and Health Convention, ILO No. 155 (1981), available at <http://www.ilo.org/ilolex>. The U.S. is not a party to this convention. However, this convention should be used to interpret the basic international obligations states must meet in protecting the fundamental human right to a safe workplace.

Congress passed the Occupational Safety and Health Act in 1970.<sup>50</sup> This Act requires all employers to provide working conditions that are “free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”<sup>51</sup> It also requires employers to comply with regulations passed by the Occupational Safety and Health Administration (OSHA), the department responsible for enforcement.<sup>52</sup>

OSHA has no ergonomics or work speed regulations and does not specifically require that employers prevent MSDs.<sup>53</sup> OSHA may cite employers with what OSHA considers to be dangerous ergonomic conditions for violations of the general duty clause quoted above; however, the general duty clause has four burdensome elements that must be proven to uphold a general duty violation, these are namely:

- (1) a condition or activity in the employer's workplace presented a hazard to employees, (2) the cited employer or the employer's industry recognized the hazard, (3) the hazard was causing or likely to cause death or serious physical harm, and (4) feasible means existed to eliminate or materially reduce the hazard.<sup>54</sup>

The general duty clause is an inadequate remedy to punish employers or protect against MSDs from poor ergonomics and work speed conditions because not only do OSHA investigators have little guidance on what actually constitutes an ergonomics violation,<sup>55</sup> but

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<sup>50</sup> 29 U.S.C. § 651(b).

<sup>51</sup> 29 U.S.C. § 654(a)(1).

<sup>52</sup> 29 U.S.C. § 654(b).

<sup>53</sup> U.S. Department of Labor, Ergonomics Enforcement, <http://www.osha.gov/SLTC/ergonomics/faqs.html>.

<sup>54</sup> See *Baroid Division of NL Industries, Inc. v. OSHRC*, 660 F.2d 439 (10th Cir. 1981); *National Realty & Construction Co. v. OSHRC*, 480 F.2d 1257 (D.C. Cir. 1973); *Pepperidge Farm, Inc.*, 17 O.S.H. Cas. (BNA) ¶ 1993 (O.S.H.R.C. 1997) (citation omitted).

<sup>55</sup> Theresa A. Cortese, *Cumulative Trauma Disorders: A Hidden Downside to Technological Advancement*, 11 J. CONTEMP. HEALTH L. & POL'Y 479, 503, n. 82 (1995) (“[E]rgonomic standards better suit the employee and employer by providing a clear standard and equitable relief. . . . by using the “general duty” clause to prosecute CTDs, OSHA is not utilizing the

even obviously harsh repetitive movements may not be actionable under the above test. In *Pepperidge Farm* the Occupational Safety Health Review Commission interpreted ergonomics violations, similar to those found in meatpacking plants.<sup>56</sup> Although the Commission in *Pepperidge Farm* found that the employer did have a hazard in the workplace that was recognized by the employer and industry and that was causing serious physical harm in the form of MSDs,<sup>57</sup> the employer still escaped liability because the commission determined that OSHA failed to meet its burden in establishing that “1) Pepperidge failed to undertake the requisite abatement process; or 2) the specific actions allegedly not undertaken by Pepperidge were feasible and likely to materially reduce the hazard.”<sup>58</sup> The general duty clause only requires that employers make relatively inexpensive changes that also have been proven to measurably reduce MSDs.<sup>59</sup>

Requiring measures to be both inexpensive and proven stalls advances in worker safety with respect to line speed and ergonomics standards because employers refuse to implement line

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clause as it was intended and is refraining from the extensive job of adopting an ergonomics standard.”).

<sup>56</sup> “Pepperidge working women had 28.16 times the incidence of carpal tunnel experienced by the working women in Washington state (per GX 321), and 41.41 times the women in the Mayo Clinic study.” *Pepperidge Farm, Inc.*, 17 O.S.H. Cas. See also B.J. Phillips, *The Judge Rules, The Pain Persists*, PHILA. INQUIRER, Apr. 2, 1993, at B1 (stating that groups of workers would assemble cookies being produced by machines as quickly as 1500 per minute).

<sup>57</sup> *Pepperidge Farm, Inc.*, 17 O.S.H. Cas.

<sup>58</sup> *Id.* See also, *Beverly Enterprises, Inc.*, 19 O.S.H. Cas. (BNA) ¶ 1161 (O.S.H.R.C. 2000) (finding the first three prongs of the general duty clause met, but remanding as to the fourth prong, feasibility).

<sup>59</sup> Employers cannot be required under the general duty clause to periodically allow cookies to burn in order to give workers small periodic relief from repetition strain. *Id.* (“[M]icropauses’ by the dough operator would not be feasible because interrupting the flow of cookies that way creates empty space on the conveyor that goes through the tunnel oven, causing oven temperatures to increase erratically and unacceptably, resulting in burning cookies.”). Similarly, Employers can not be required to survey workers to determine the speed of the line based on employee feedback because it is not an industry proven method to measurably reduce injury. See *id.*

speed measures that impose even small costs unless employers are mandated by law to measurably reduce MSDs. Federal OSHA regulations do not require employers to measurably reduce MSDs,<sup>60</sup> and employers refuse to enact anything more than the most meager of ergonomics safety plans because it has been difficult to calculate exactly after how many repetitions MSDs occur.<sup>61</sup> During the entire span of President George W. Bush's administration, OSHA cited only 20 employers for ergonomic hazards using the general duty clause.<sup>62</sup> OSHA has remained relatively inactive at investigating meat and poultry processors; meatpacking workers have faced serious physical impairment and disability from job related conditions with no corrective action from OSHA because standards are not in place to cover the hazards of the average meat processing plant.<sup>63</sup>

Although OSHA issued a well-researched and detailed ergonomics standard in 2001, it was subsequently repealed by the U.S. Congress.<sup>64</sup> OSHA now only provides voluntary standards regarding ergonomics, which fail to include any threshold levels for work speed to guide employers and do not provide any incentive to reduce MSDs.<sup>65</sup> Work speed can be

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<sup>60</sup> Although OSHA took an important step in proposing that MSDs be added to the list of injuries which must be recorded by employers in 2010.

<sup>61</sup> *C.f.* L. O'Sullivan and P. Clancy, Guideline Threshold Limit Values (TLVs) for Discomfort in Repetitive Assembly Work, 17 HUMAN FACTORS AND ERGONOMICS IN MANUFACTURING 423, 429 (2007).

<sup>62</sup> See AFL-CIO, Death on the Job: The Toll of Neglect 19 (19th ed. 2010), available at [http://www.aflcio.org/issues/safety/memorial/upload/dotj\\_2010.pdf](http://www.aflcio.org/issues/safety/memorial/upload/dotj_2010.pdf)

<sup>63</sup> Standards currently in place do not protect against hazards. See *supra* note 55 and accompanying text; see also *Blood, Sweat and Fear*, *supra* note 19 at 34-35.

<sup>64</sup> Ergonomics Program, 66 Fed. Reg. 20,403 (Apr. 23, 2001).

<sup>65</sup> See, Ergonomics Program Management Guidelines for Meatpacking Plants, OSHA (1993), <http://www.osha.gov/Publications/OSHA3123/3123.html> ("this is not a new standard or regulation"), Guidelines for Poultry Processing, OSHA (2004), <http://www.osha.gov/ergonomics/guidelines/poultryprocessing/poultryprocessing.html> ("These guidelines are advisory in nature and informational in content. They are not a new standard or regulation and do not create any new OSHA duties. Under the OSH Act, the extent of an employer's obligation to address ergonomic hazards is governed by the general duty clause.")

addressed by government regulation. For example, the United States Department of Agriculture (USDA) has authority to regulate line speed but only to the extent that it affects food safety.<sup>66</sup>

In sum, existing voluntary OSHA regulations are not sufficient to comply with international human rights standards. They allow meat processing companies to systematically exploit workers and violate workers' rights by subjecting them to inhumane working conditions. OSHA has a responsibility to enforce comprehensive ergonomics and work speed regulations to ensure that workers are provided with proper and decent work conditions in regards to health and safety as required by international law.

#### **b. The U.S Violates International Standards Regarding the Number of Labor Inspectors**

The U.S. fails to maintain proper conditions because it is not able to adequately monitor whether conditions become inhumane. Even if OSHA promulgated enforceable ergonomics standards, without an increase in inspectors, the government could not adequately monitor enforcement. The United States' dearth of labor inspectors contravenes the ILO's Labour Inspection Convention, which requires: "The number of labour inspectors . . . be sufficient to secure the effective discharge of the duties of the inspectorate . . ." <sup>67</sup> OSHA has approximately 2,400 inspectors<sup>68</sup> for 139,000,000 U.S. workers.<sup>69</sup> OSHA needs 13,900 inspectors to comply with ILO standards regarding the number of inspectors.<sup>70</sup> Currently, OSHA only has the

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<sup>66</sup> See 9 C.F.R. § 310.1 (2011 through Aug. 2); FSIS Notice 08-11 (Feb. 2, 2011).

<sup>67</sup> Labour Inspection Convention. ILO No. 81 (1947), entered into force July 4, 1950.

<sup>68</sup> Occupational Safety and Health Administration, All About OSHA (2006), [http://www.osha.gov/Publications/all\\_about\\_OSHA.pdf](http://www.osha.gov/Publications/all_about_OSHA.pdf).

<sup>69</sup> Bureau of Labor Statistics, Employment & Earnings, Nov. 2010, <http://www.bls.gov/opub/ee/empearn201011.pdf>.

<sup>70</sup> ILO 2006 Strategies and Practice for Labor Inspection. G.B. 297/ESP/3, 4. Geneva. November 2006) (the number of labor inspectors in relation to workers should approach: 1/10,000 in industrial market economies).

resources to inspect a site once every 137 years.<sup>71</sup> This means that follow-up visits are rare even when plants contain serious violations. As a result of the inadequate resources provided to OSHA, most violations of meat and poultry workers' rights go unreported and right to a remedy goes unfulfilled.

## **V. Recommendations**

We recommend that the commission review the attached documentation of the conditions in the meat and poultry industry and issue a statement regarding the conditions in this industry. The commission should note the need for mandatory ergonomics and work speed regulations and more effective OSH law enforcement.

## **VI. Conclusion**

Unrelenting work speed, repetitive motion, and negligent safety policies make meatpacking one of the most dangerous manufacturing jobs in the U.S. These workers are stripped of their basic rights and dignity. The facts herein demonstrate that the United States is in violation of Article 14 of the American Declaration by failing to enforce fundamental health and safety protections. As such, the Commission should declare that the United States implement work speed and ergonomic regulations that will permit meatpacking workers to perform their duties in a safe environment that does not expose them to serious and life-changing injuries. Furthermore, the United States should guarantee proper work conditions, as stated in Article 7 of the International Labour Organization's Occupational Safety and Health Convention of 1981, by stringently enforcing current laws and regulations to ensure worker safety. Under the *Velásquez* doctrine the U.S. has a duty to prevent, investigate and punish violations of

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<sup>71</sup> AFL-CIO, *Death on the Job: The Toll of Neglect* 6 (19th ed. 2010), available at [http://www.aflcio.org/issues/safety/memorial/upload/dotj\\_2010.pdf](http://www.aflcio.org/issues/safety/memorial/upload/dotj_2010.pdf)).

fundamental human rights.<sup>72</sup> The tolerant attitude of the U.S. over several decades towards the systematic exploitation of meatpacking workers is inexcusable.

Respectfully submitted,

Midwest Coalition for Human Rights

214 Social Sciences  
267 19<sup>th</sup> Avenue South  
Minneapolis, MN 55455  
Contact: Barbara Frey, JD  
E-mail: freyx001@umn.edu  
Tel: 612.626.1879  
Fax: 612.626.2242

Nebraska Appleseed Center for Law in the  
Public Interest

941 'O' Street, Suite 920  
Lincoln, NE 68508  
Contacts: Darcy Tromanhauser or  
Omaid Zabih, JD  
E-mail: dtromanhauser@neappleseed.org  
ozabih@neappleseed.org  
Tel: 402.438.8853  
Fax: 402.438.0263

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<sup>72</sup> See Velásquez Rodríguez case. Judgment of July 29, 1988. Series C No. 4, ¶ 172.