



**SPLC**  
**Southern Poverty**  
**Law Center**

**Midwest**  
**Coalition**  
**for Human**  
**Rights**

June 25, 2013

Tom Vilsack, Secretary of Agriculture  
Michael T. Scuse, Acting Deputy Secretary of Agriculture  
Elisabeth A. Hagen, Undersecretary for Food Safety  
United States Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, DC 20250

*Via U.S. Mail*

Dear Messrs Vilsack, Scuse, and Ms. Hagen:

The Midwest Human Rights Coalition, Nebraska Appleseed Center for Law in the Public Interest and the Southern Poverty Law Center (SPLC) enclose a copy of the petition jointly filed today with the Inter-American Commission on Human Rights citing violations of the human rights of meat and poultry processing workers resulting from unreasonable health and safety hazards at slaughtering and processing plants.

The fast speeds at which meat and poultry processing plants are permitted to run under current USDA regulations are central factors contributing to these human rights violations. Line speed continues to cause a staggering number of workers to experience crippling and even life threatening injuries in these industries. As the agency currently regulating line speeds and considering a new rule that would dramatically increase line speeds for workers and for food safety inspectors, we urge the USDA to consider workers' basic human rights to occupational health and safety as it continues to make rules directly impacting workers.

Earlier this year, the SPLC and Alabama Appleseed Center for Law and Justice published the report *Unsafe at These Speeds: Alabama's Poultry Industry and its Disposable Workers*, providing a unique inside look at the operation of poultry plants. The report documents health, safety, and other conditions affecting workers in all positions in the chicken industry, from chicken catchers, live hangers, and rehangers to deboners, skin pullers, and box stackers.

Nearly three-fourths of the 302 workers who were interviewed for the report revealed that they had suffered some type of significant work-related injury or illness, yet 68% felt that they could not ask their supervisors to improve health or safety hazards. The most common injuries suffered involved debilitating pain in workers' hands, gnarled fingers, cuts, and skin and

respiratory problems, and workers in positions most sharply affected by processing line speeds and high rates of repetitive motions reported the highest rates of musculoskeletal injuries. Over three-fourths (78%) of workers said that an increase in the line speed makes them feel less safe, makes their work more painful, and causes more injuries. Eighty-six percent of wing cutters and 80 percent of deboners reported hand and wrist pain such as swelling, numbness or an inability to close their hands – symptoms of disabling repetitive motion injuries.

The realities workers face demonstrate an ongoing health and safety crisis in the poultry and meat processing industry, principally driven by the punishingly fast speeds at which slaughtering and processing lines currently operate. The extent of the crisis is understated in employer-reported data, known by workers and industry alike to undercount actual injury and illness rates.

In light of these findings, we respectfully urge you to use your agency's authority to withdraw the current proposed rule entitled "Modernization of Poultry Slaughter Inspection," which would increase maximum permitted line speeds to 175 birds per minute and which would replace independent federal food safety inspectors with plant employees already too intimidated to ask for protections for their own health. If that is not possible, we ask you to implement worker safety protections in this rule, including allowing the National Institute for Occupational Safety and Health (NIOSH) to study the health and safety impact on workers of increased line speeds and make occupational safety recommendations before allowing the rule to take full effect.

We respectfully bring this petition to your attention.

Truly,



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June 25, 2013

Mr. Emilio Álvarez Icaza  
Executive Secretary  
Inter-American Commission on Human Rights  
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**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, Nebraska Appleseed Center for Law in the Public Interest, and the Southern Poverty Law Center, we respectfully request a thematic hearing pursuant to Article 66 before the Inter-American Commission on Human Rights (IACHR) during its 149th period of sessions to address the United States' occupational health and safety policies related to one of the most dangerous jobs in the U.S.: meatpacking and poultry processing. These policies fail to protect the fundamental human rights of tens of thousands of workers – many of whom are immigrants – frequently resulting in permanently debilitating, life altering injuries, as well as sometimes mortal injuries.

**I. Introduction**

Every day, meatpacking and poultry workers in the U.S., many of whom are Latino immigrants<sup>1</sup>, face brutal working conditions in one of the most dangerous jobs in

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<sup>1</sup> National Council of La Raza, *Latinos in the Poultry Processing Industry* (May 4, 2012) (“Latinos are disproportionately employed in the poultry processing industry . . .”).

America.<sup>2</sup> The meat and poultry processing industries violate the fundamental human rights of their workers by systematically exploiting the lack of ergonomic and work speed safety regulations in the U.S., and the U.S. negligently permits the industry to do so. Every day, workers must endure a punishing, unsafe, and undignified work environment in which they experience extraordinary injury rates, abuse by supervisors, and grueling work shifts. The industry's massive disassembly lines can slaughter and process 400 head of livestock per hour, forcing low-wage workers to maintain intensely high rates of speed in their work – in often cold conditions, with slippery floors, electric knives, and inadequate safety equipment. The extreme speed of the production line often results in permanently crippling repetitive motion injuries to workers' hands, wrists, shoulders, and

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<sup>2</sup> The U.S. government has noted that official data do not take into account industry-wide failures to fully report true injury rates; *see infra* note 15 and accompanying text. In 2009 the incidence rate of *reported* nonfatal injuries in meatpacking and poultry plants was more than one and a half times that of manufacturing as a whole (6.9%, compared to 4.4%). (The incidence rate for animal – except poultry – slaughtering was double the overall manufacturing rates at 8.8%, meat processing was 6.5%, and poultry processing was 5.9%.) U.S. Bureau of Labor Statistics, 2010. The Southern Poverty Law Center's 2013 survey reported that 72% of the 302 workers surveyed suffered from work-related injury or illness, while Nebraska Appleseed's 2009 survey of meatpacking workers in Nebraska found that 62% of workers described having been injured in the past year. Academic and government studies have also illustrated that sustained repetitive motion in poultry processing plants lead to higher rates of severe carpal tunnel syndrome and other musculoskeletal disorders compared to non-poultry workers: Cartwright MS, Walker, et al., *The prevalence of carpal tunnel syndrome in Latino poultry-processing workers and other Latino manual workers*, *Journal of Occupational and Environmental Medicine*, Vol. 54, No. 2, Feb. 2012; Lipscomb HJ, Dement JM, et al., *Are we failing vulnerable workers? The case of black women in poultry processing in rural North Carolina*, *New Solutions* 2007; Lipscomb HJ, Epling CA, et al., *Musculoskeletal symptoms among poultry processing workers and a community comparison group: lack women in low-wage jobs in the rural South*, *American Journal of Industrial Medicine* 2007; Lipscomb HJ, Kucera K, et al., *Upper extremity musculoskeletal symptoms and disorders among a cohort of women employed in poultry processing*, *American Journal of Industrial Medicine* 2008; McPhee CS, Lipscomb JH, *Upper extremity musculoskeletal symptoms and physical health-related quality of life among women employed in poultry processing and other low-wage jobs in Northeastern North Carolina*, *American Journal of Industrial Medicine* 2009.

backs due to tendon, nerve, joint, and bone damage.<sup>3</sup> The work speed is so unrelenting that it has resulted in workers urinating and defecating in their clothing while working on the line because employers deny reasonable bathroom use, violating workers' rights to dignity<sup>4</sup>. Workers also describe serious concerns about proper medical care due to employer-biased medical care and coverage. The story of one former poultry line worker, [REDACTED], given on July 7, 2011, captures some of the common human rights violations workers are experiencing every day:

“While working at Jennie-O, I fell and [injured] 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.” (See appendix M).

The policies, practices and attitudes shown by employers and supervisors in the industries result in serious physical and mental harm to meatpacking and poultry processing workers, preventing them from reporting injuries or drawing attention to unsafe working conditions. Furthermore, many workers in this industry are recent immigrants to the United States and face additional economic and social pressures that

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<sup>3</sup> See Kristin Musolin, et al., *Musculoskeletal Disorders and Traumatic Injuries Among Employees at a Poultry Processing Plant*, Interim Report, HHE No. 2012-0125 (April 2013) – a report published by NIOSH detailing the findings from its study with workers in the Pilgrim's Pride plant in Sumter, South Carolina that is poised to increase its line speeds under the USDA/FSIS's separate Salmonella Initiative Program (SIP). The study found that, even before the plant increases its speeds, a disturbingly high 42% of line workers have evidence of carpal tunnel syndrome, based not only on workers' description of their symptoms, but also on the results of neurologist-interpreted nerve conduction tests. Further, 41% of workers had job tasks involving levels of hand activity and force above the threshold limit values established by the American Conference of Governmental Industrial Hygienists. NIOSH further found that, even after controlling for age, body mass index, diabetes, and gender, work-related factors of force and hand repetition were significantly associated with carpal tunnel syndrome.

<sup>4</sup> See American Declaration of the Rights of Man, Article XIV (“Every person has the right to work, under proper conditions, . . .”).

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.

Meatpacking and poultry workers in the U.S. have “the right to work, under proper conditions” as required by Article XIV of the American Declaration of the Rights and Duties of Man. Further, under *Velásquez Rodríguez*, the United States has a duty to prevent, investigate and punish violations of the fundamental human rights of workers, including meatpacking workers. The Ruggie Protect, Respect, and Remedy Framework<sup>5</sup> (hereinafter “Ruggie Framework”) reiterates this duty. The Ruggie Framework is not binding, but does provide an effective normative framework to address the prevention and remedy of human rights abuses perpetrated by third parties, including business. The Ruggie Framework has been endorsed or employed by individual Governments and several multilateral institutions.<sup>6</sup> Further, the Ruggie Framework contributes to the discussion of due diligence and the duties of a State to protect human rights abuses perpetrated by businesses.<sup>7</sup>

The United States has not acted with due diligence nor has it taken proper steps to prevent abuses of meatpacking and poultry processing workers’ human rights, and is

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<sup>5</sup> The Ruggie Framework was unanimously adopted by the Human Rights Council on March 21 2011. *See* Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, and Remedy Framework,” U.N. H.R. Council, U.N. Doc. A/HRC/17/31; 17th Sess. (Mar. 21 2011) [herein after “Ruggie Framework”].

<sup>6</sup> *Id.*

<sup>7</sup> The Ruggie Framework is relevant to the Inter-American Commission. Human Rights Council Resolution A/HRC/Res/8/7 requested Special Representative of the UN Secretary-General, John Ruggie, to meet and consult with regional bodies in formulating and developing policies. John Ruggie attended a working meeting with the Inter-American Commission on Human Rights on October 17 1998. John Ruggie, *Business & Human Rights: Presentation of the Work of the UN Secretary-General on Business and Human Rights to the Inter-American Commission on Human Rights* (October 17 2008).

inasmuch violating the rights of workers in the poultry industry through its negligence. The numerous violations of international Occupational Health and Safety (OSH) law demonstrate the failure to secure proper working conditions for meat and poultry processing workers. Our request for a hearing will: (1) allow the U.S. government to participate in critical dialogue regarding the protection and promotion of the rights of workers in the meatpacking and poultry processing industry without discrimination, consistent with its obligation under the American Declaration of Human Rights; and (2) engage the Commission in an important application of the Ruggie Framework—one which contemplates the fundamental human rights of tens of thousands of meatpacking and poultry processing workers in the United States.

## **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>8</sup> and Article 18 of the Commission's statute.<sup>9</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 specifically 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.

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<sup>8</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.").

<sup>9</sup> Statute of the Inter-American Commission on Human Rights, O.A.S. G.A. Res. 447, art. 18.



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

The victims are U.S. meatpacking and poultry processing workers, many of whom are immigrant workers from other states in the Inter-American system.<sup>10</sup> The advocates are three non-governmental organizations: the Midwest Coalition for Human Rights, Nebraska Appleseed Center for Law in the Public Interest, and the Southern Poverty Law Center. The Midwest Coalition for Human Rights is a regional network of 56 organizations dedicated to domestic and international human rights activities; Nebraska Appleseed is a statewide nonprofit law and policy organization based in Lincoln, Nebraska; and the Southern Poverty Law Center is a nonprofit civil rights organization headquartered in Montgomery, Alabama. The advocates have had direct contact with the victims through fact-finding efforts and have first-hand knowledge of the human rights abuses meatpacking and poultry plant workers experience.

The United States is the world's largest producer of beef and poultry and one of the largest producers of pork.<sup>11</sup> The failure of the United States to enforce existing laws and enact adequate regulatory protections has a direct result on the violations of human rights described here.<sup>12</sup>

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<sup>10</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>11</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>12</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>13</sup>

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

Serious wounds,<sup>14</sup> disabling injuries,<sup>15</sup> neurological disorders,<sup>16</sup> respiratory injuries<sup>17</sup>, and even tragic work-related fatalities<sup>18</sup> are well documented in large-scale meat and poultry processing plants. A 2012 study by the Southern Poverty Law Center and Alabama Appleseed found that 72% of the 302 poultry workers surveyed suffered from work-related injury or illness, while a 2009 study by Nebraska Appleseed showed that as many as sixty-two percent of the 455 meatpacking workers surveyed had been

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<sup>13</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. These statements and interviews can be found in the appendix.

<sup>14</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>15</sup> See GAO, *supra* note 10 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>16</sup> See, e.g., Josephine Marcotty, *Mayo identifies pork-plant disease*, STAR TRIBUNE 1A (April 17, 2008) (noting progressive inflammatory neuropathy found in Minnesota, Nebraska, and Indiana pork processing workers).

<sup>17</sup> See Southern Poverty Law Center and Alabama Appleseed Center for Law and Justice, *Unsafe at These Speeds: Alabama's Poultry Industry and its Disposable Workers*, 22 (2013) [hereinafter *Unsafe at These Speeds*] (documenting how 21% of workers surveyed experienced respiratory problems from working at a poultry plant).

<sup>18</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/cfoi/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); *Man Who Died in Wis. Industrial Accident ID'd*, THE DAILY REPORTER (December 16 2011) (discussing the December 2011 death of Wisconsin meatpacking employee Edgar Rodriguez Becerra).

injured on the job.<sup>19</sup> The incidence rate of officially reported injuries in the meatpacking industry is nearly double that of the national average for manufacturing industries.<sup>20</sup> However, the actual rate of injuries is likely much higher due to the systemic underreporting of injuries in the meat and poultry industries.<sup>21</sup>

The June 11, 2011 statement of █████ from West Point, Nebraska, a former meatpacking employee, highlights some of the permanent injuries workers suffer.<sup>22</sup> █████ was working as a meat cutter on June 18, 2008, attempting to meet her employer's demanding goal of pounds of meat cut per hour. Every piece of meat █████ handled was heavy, each weighing around 10 pounds. While pulling a tray, █████ felt a strong pain in her lower back. The pain did not go away. Following a year of injections and medications recommended by her employer, █████'s situation did not improve. She finally had surgery a year later, on October 1, 2009. A cadaver's disc, three rods on each side, and bone graft from her pelvis are now in place of █████'s disc. Following six months of recovery, █████ failed to regain her complete health. She lost 15% of her mobility and dexterity. The nerves in her left leg were slightly cut and inflamed. Although █████ tries to live a normal life, the permanent injuries she suffered at Omaha Steaks make it difficult. For instance, █████'s foot unexpectedly jolts sideways at times and she is unable to return her foot to its natural position. █████'s sleep is interrupted

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<sup>19</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>20</sup> See GAO, *supra* note 10 at 27 (2005).

<sup>21</sup> See *Unsafe at These Speeds*, *supra* note 17 at 12-13 (explaining how a whole host of incentives encourage companies to underreport injuries and to report them inaccurately); GAO, *supra* note 10 at 28 (2005)

<sup>22</sup> Midwest Coalition for Human Rights, Statement of █████ from West Point (Worker 2) (Jun. 11, 2011).

because her toes distort while she sleeps, causing her immense pain. There are many other stories that are discouragingly similar to ██████'s due to the inhumane working conditions found in packinghouses in the U.S.

Modern meat and poultry plant lines slaughter and process an extraordinary number of animals with very few workers.<sup>23</sup> Slim profit margins lead processors to constantly seek ways to increase the volume and the speed of production.<sup>24</sup> Processors require their line employees to work at an extremely fast pace to keep up with these demands.<sup>25</sup> The work is performed in very dangerous conditions: floors are slippery with grease, blood, and fat; temperatures are extremely cold or hot,<sup>26</sup> and the work is arduous and the pace is unceasing—employees make upwards of 20,000 repetitive cuts a day.<sup>27</sup>

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<sup>23</sup> See, e.g., Michael S. Worall, note, *Meatpacking Safety: is OSHA Enforcement Adequate?*, 9 DRAKE J. AGRIC. L. 299, 310 (“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>24</sup> Cf. *id.* at 319.

<sup>25</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 14 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 día.”); 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>26</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>27</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.”) [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 #

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>28</sup> Musculoskeletal disorders (MSDs) are severe and crippling injuries to tissue and nerves that occur when repetitive movement, forceful exertions, tool vibrations, and awkward positioning continue over time.<sup>29</sup> Industrial hygienic and medical studies have found that the meat and poultry industries have higher injury rates than many other fields.<sup>30</sup>

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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>28</sup> See generally, *The Speed Kills You*, *supra* note 19 (describing that the most frequent worker complaint was the fast speed of work).

<sup>29</sup> GAO, *supra*, note 10 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>30</sup> See e.g. Mark Schulz, et al., *Upper Body Musculoskeletal Symptoms of Latino Poultry Processing Workers and a Comparison Group of Latino Manual Workers*, Am. Journal of Indus. Medicine 1-9 (July 2012); Michael Cartwright, et al., *The Prevalence of Carpal Tunnel Syndrome in Latino Poultry Processing Workers and Other Latino Manual Workers*, 54 Journal of Occupational and Environmental Medicine 198-201 (Feb. 2012); Antonio J. Marin, et al., *Evidence of Organizational Injustice in Poultry Processing Plants: Possible Effects on Occupational Health and Safety Among Latino Workers in North Carolina*, 52 Am. Journal of Indus. Medicine 37, 38 (2009); 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); Sara A. Quandt, et al., *Illnesses and Injuries Reported by Latino Poultry Workers in Western North Carolina*, American Journal of Industrial Medicine, 49:343-351 (2006); Wendi A. Latko, et al., *Cross-Sectional Study of the Relationship Between Repetitive Work and the Prevalence of Upper Limb Musculoskeletal Disorders*, 36 Am Journal of Indus. Medicine 248-259 (1999); Thomas Armstrong, et al., *Investigation of Cumulative Trauma Disorders in a Poultry Processing Plant*, 43(2) Am. Indus. Hygiene Ass'n J. 103-116 (Feb. 1982). 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).

These disorders are made worse by excessive cold, heat, and the rapid speed of work.<sup>31</sup> Workers afflicted with MSDs lose the ability to participate in major life activities such as cooking,<sup>32</sup> sleeping,<sup>33</sup> using the phone,<sup>34</sup> and playing with their children.<sup>35</sup>

Meatpacking and poultry processing workers commonly suffer a wide variety of preventable injuries.<sup>36</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>37</sup> The study also found that cutting in close quarters leads to workers accidentally cutting and injuring others.<sup>38</sup> Indeed, the Southern Poverty Law Center's recent survey noted that "many workers say they do not actually get to leave, slow or stop the line to sharpen their knives."<sup>39</sup> Cleaning crews are also at risk from traumatic injury as they are often exposed to the noxious chemicals and pathogens found in blood and feces.<sup>40</sup>

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

<sup>32</sup> *The Speed Kills You*, *supra* note 19, at 21.

<sup>33</sup> See *Unsafe at These Speeds* *supra* note 17 at 23 ("A year after leaving the industry, [Lilia's] left arm still goes numb and she can't sleep at night."); 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.").

<sup>34</sup> *Interview in Worker's Home*, *supra* note 26 at 3 ("My hand is sore, I can feel the pain, I can't even handle my phone").

<sup>35</sup> Frey, *supra* note 14 at 6.

<sup>36</sup> See *supra* notes 14-18; 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>37</sup> See GAO, *supra*, note 10 at 23-24; see also *Interview in Worker's Home*, *supra* note 25 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>38</sup> GAO, *supra*, note 10 at 20-21.

<sup>39</sup> *Unsafe at These Speeds* *supra* note 17 at 23-25.

<sup>40</sup> *Id.* at 20.

These physical injuries are often closely tied to psychological abuse and sexual harassment<sup>41</sup> by supervisors, which is disturbingly common. Workers are regularly disrespected;<sup>42</sup> supervisors yell at workers to cut faster, and insult workers with obscenities for not complying.<sup>43</sup> Workers are not allowed to leave their line position to use the restroom;<sup>44</sup> sometimes they have no choice but to urinate and defecate in their clothing.<sup>45</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>46</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. The National Council of La Raza outlined structural barriers such as “lack of job security, language barriers, immigration status, and the absence of a union” that “prevent many workers from raising concerns with supervisors or inspectors.”<sup>47</sup> The Southern Poverty

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<sup>41</sup> See *Unsafe at These Speeds* supra note 17 at 26 (2013) (noting that one-fifth of 302 workers surveyed reported that they experience unwelcome touching of a sexual nature). See also *Injustice On Our Plates: Immigrant Women in the U.S. Food Industry*, Southern Poverty Law Center (November 2011).

<sup>42</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>43</sup> Midwest Coalition for Human Rights, Statement of [REDACTED], Willmar, Minn. (Jul. 7, 2011); see also *The Speed Kills You*, supra note 18 at 32 (“When supervisors talk to you, they scream at you and insult you, using obscenities. There is no respect for the workers.”).

<sup>44</sup> See *Unsafe at These Speeds* supra note 17 at 23 (pointing out that nearly 80% of workers surveyed were not allowed to take bathroom breaks when needed); *Minn. House Hearing*, supra note 26 (“[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 [REDACTED], Willmar, Minn. (Jul. 7, 2011), Midwest Coalition for Human Rights, Statement of Worker # 5, Neb. (Jun. 6 2011).

<sup>45</sup> *The Speed Kills You*, supra note 19, at 4.

<sup>46</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 23-25..

<sup>47</sup> National Council of La Raza, *Latinos in the Poultry Processing Industry* (May 4, 2012) at 5

Law Center's recent report revealed that among all workers surveyed, 66% believed that workers were scared to report injuries, and 78% of those respondents said that fear of being fired was the reason for this reluctance.<sup>48</sup> Retaliation weighs heavily on workers who confront problems at their workplace. The Southern Poverty Law Center found that workers they surveyed were uncomfortable in voicing concerns to employers about workplace safety (68%), safety equipment (57%), discrimination (71%), and wages (60%)<sup>49</sup>. These numbers only increased for workers who witnessed an unfavorable response to a co-worker who did point out problems.<sup>50</sup>

Workers who report injuries are often relegated to the most difficult jobs, forced to work harder than their peers, or are terminated.<sup>51</sup> Immigrant workers are especially fearful of reporting injuries for fear of termination.<sup>52</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>53</sup> These measures suppress the reporting rate because employees do not want to incur reprisal by peers for not getting the

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<sup>48</sup> *Unsafe at These Speeds supra* note 17 at 13.

<sup>49</sup> *Id.* at 22.

<sup>50</sup> *See Id.* at 22 (finding that 86% of these workers were uncomfortable talking to employer about workplace safety; 82% with safety equipment; 93% with discrimination; and 86% with wage issues).

<sup>51</sup> *See id.* at 29.

<sup>52</sup> *See, e.g.* Statement of ██████████, Willmar, Minn. (Jul. 7, 2011).

<sup>53</sup> *The Speed Kills You, supra* note 19, at 33.



reward for accident free days, and supervisors often discourage or ignore employee reports of injuries.<sup>54</sup>

When employees do report their injuries medical neutrality and effectiveness 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>55</sup> Company doctors and nurses have been reported to tell seriously injured workers that they must return to work.<sup>56</sup> This is also a problem where the worker is injured at a plant with an on-site clinic.<sup>57</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>58</sup> Furthermore, workers often describe treatment from nurses as being inadequate and unresponsive to their injuries and pain. For instance, workers typically receive

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<sup>54</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. . .”).

<sup>55</sup> *Id.* at 73, *see also*; Midwest Coalition for Human Rights, Statement of [REDACTED], 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>56</sup> It is common to require injured workers to put ice on injuries and get back to work. *See Minn. House Hearing, supra* note 27; 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>57</sup> *See Minn. House Hearing, supra* note 27.

<sup>58</sup> Morrison, *supra* note 54 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. . .”).

substandard remedies such as aspirin or a Band-Aid, or suggestions to soak their hands in warm water.<sup>59</sup>

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

The U.S. has failed under the due diligence principle established in *Velásquez Rodríguez* to meet its obligations to end human rights abuses by packinghouse companies. Under *Velásquez Rodríguez* “[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>60</sup> The U.S. Government’s refusal to investigate and prevent the exploitation and hazardous working conditions of meat and poultry processing workers violates the rights of thousands of workers.<sup>61</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. Ruggie Principle 1 sets forth that States must protect against human rights abuses through effective policies, legislation, and regulations. 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

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<sup>59</sup> *Unsafe at These Speeds supra* note 17 at 15-16.

<sup>60</sup> 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.

<sup>61</sup>*Id.*, Inter-American Court of Human Rights, Case of the 19 Tradesmen v. Colombia, Merits, Reparations and Cost, judgment of July 3, 2004. Series C No. 109 ¶ 68 (“In order to establish that a violation of the rights embodied in the Convention has occurred, . . . [i]t is sufficient to demonstrate that public authorities have supported or tolerated the violation of the rights established in the Convention.”). The Ruggie Framework uses a similar analysis, *see supra* note 4, at ¶1. . (“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.”).

health, interpreted by several international instruments and texts as a basic human right.<sup>62</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 provide “just and favourable conditions of work which ensure . . . safe and healthy working conditions.”<sup>63</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 thousands of 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

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<sup>62</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).

<sup>63</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.

system of inspection. 2. The enforcement system shall provide for adequate penalties for violations of the laws and regulations.”<sup>64</sup> U.S. inspection of meatpacking plants and penalties for violations of OSH law are grossly inadequate. The general duty clause of the U.S.’s OSH law <sup>65</sup> 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>66</sup> This general duty clause does not provide adequate protection to workers because it does not provide sufficient guidance on minimum thresholds for worker safety, such as criteria for work speed or ergonomic safeguards.

U.S. OSH law also requires employers to comply with regulations passed by the Occupational Safety and Health Administration (OSHA), the department responsible for enforcement.<sup>67</sup> But, OSHA has no ergonomics or work speed regulations and does not specifically require that employers prevent MSDs.<sup>68</sup> After 10 years of study, OSHA issued a comprehensive ergonomics standard in November 2000 that would have protected an estimated 102 million workers and prevented 4.6 million MSD’s in the following decade. Yet, Congress swiftly repealed the ergonomics standard in March 2001 and no rule has been promulgated since that addresses ergonomics.<sup>69</sup>

OSHA may cite employers with what OSHA considers to be dangerous ergonomic conditions for violations of the general duty clause quoted above; however,

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<sup>64</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.

<sup>65</sup> 29 U.S.C. § 651(b).

<sup>66</sup> 29 U.S.C. § 654(a)(1).

<sup>67</sup> 29 U.S.C. § 654(b).

<sup>68</sup> U.S. Department of Labor, Ergonomics Enforcement, <http://www.osha.gov/SLTC/ergonomics/faqs.html>.

<sup>69</sup> See *Unsafe at These Speeds supra* note 17 at 31 (summarizing repeal of ergonomics standard).

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>70</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>71</sup> but even obviously harsh repetitive movements may not be actionable under the above test. As part of their duty to protect against business-related human rights abuses, States must take appropriate steps to ensure those affected have access to effective remedy.<sup>72</sup> Further, Ruggie Principle 3 (a) states that States should periodically assess the adequacy of laws that aim or have the effect of requiring businesses to respect human rights and to address any gaps. The general duty clause highlights a gap which the U.S. must address as part of its duty to protect against the violations of meatpacking workers' human rights.

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<sup>70</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>71</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 clause as it was intended and is refraining from the extensive job of adopting an ergonomics standard.”).

<sup>72</sup> Ruggie Framework *supra* note 5, at ¶25.

In *Pepperidge Farm* the Occupational Safety Health Review Commission interpreted ergonomics violations, similar to those found in meatpacking plants.<sup>73</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>74</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>75</sup> The general duty clause only requires that employers make relatively inexpensive changes that also have been proven to measurably reduce MSDs.<sup>76</sup>

Requiring measures to be both inexpensive and proven creates an insurmountable barrier to advances in worker safety with respect to line speed and ergonomics standards because employers refuse to implement line speed measures that impose even small costs unless employers are mandated by law to measurably reduce MSDs. Federal OSHA

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<sup>73</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>74</sup> *Pepperidge Farm, Inc.*, 17 O.S.H. Cas.

<sup>75</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>76</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.*

regulations do not require employers to measurably reduce MSDs,<sup>77</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>78</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>79</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>80</sup>

Although OSHA issued a well-researched and detailed ergonomics standard in 2001, it was subsequently repealed by the U.S. Congress.<sup>81</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>82</sup>

Work speed can be addressed by government regulation. For example, the United States Department of Agriculture (USDA) has authority to regulate line speed but only to the

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<sup>77</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>78</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>79</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>80</sup> Standards currently in place do not protect against hazards. See *supra* note 71 and accompanying text; see also *Blood, Sweat and Fear*, *supra* note 27 at 34-35.

<sup>81</sup> *Ergonomics Program*, 66 Fed. Reg. 20,403 (Apr. 23, 2001).

<sup>82</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.")

extent that it affects food safety.<sup>83</sup> Ruggie Principle 27 sets forth that States should provide effective and appropriate non-judicial grievance mechanisms to remedy business-related human rights abuses.<sup>84</sup> The commentary to Principle 27 encourages States to fill existing gaps “by expanding the mandates of existing non-judicial mechanisms,” which include legislative or administrative options. Delegating authority to an administrative agency to regulate line speed and ergonomics to the extent it affects workers’ human rights would be a welcomed step consistent with the Ruggie Framework.

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

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<sup>83</sup> See 9 C.F.R. § 310.1 (2011 through Aug. 2); FSIS Notice 08-11 (Feb. 2, 2011).

<sup>84</sup> Ruggie Framework, *supra* note 5 at ¶ 27.



inspectorate . . . .”<sup>85</sup> OSHA has approximately 2,400 inspectors<sup>86</sup> for 139,000,000 U.S. workers.<sup>87</sup> OSHA needs 13,900 inspectors to comply with ILO standards regarding the number of inspectors.<sup>88</sup> Currently, OSHA only has the resources to inspect a site once every 137 years.<sup>89</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 address the U.S.’s gap in worker protection, noting the pressing need for mandatory ergonomics and work speed regulations as well as more effective OSH law enforcement. Finally, we recommend that the Commission convene the requested hearing to allow the petitioners and the victims an opportunity to formally present the allegations made in this petition.

### **VI. Conclusion**

Unrelenting work speed, repetitive motion, and negligent safety policies make meatpacking one of the most dangerous manufacturing jobs in the U.S. Workers in U.S.

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<sup>85</sup> Labour Inspection Convention. ILO No. 81 (1947), entered into force July 4, 1950.

<sup>86</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>87</sup> Bureau of Labor Statistics, Employment & Earnings, Nov. 2010, <http://www.bls.gov/opub/ee/empearn201011.pdf>.

<sup>88</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).

<sup>89</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).

meat and poultry processing plants are denied their basic human rights and dignity. The facts herein demonstrate that the United States is in violation of Article XIV 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 Rodríguez* doctrine and the Ruggie Framework, the U.S. has a duty to prevent, investigate and punish violations of fundamental human rights.<sup>90</sup> The U.S. government's failure to take steps to regulate and monitor the working conditions of workers in beef and poultry processing industry amounts to a violation of international human rights law.

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<sup>90</sup> See *Velásquez Rodríguez* case. Judgment of July 29, 1988. Series C No. 4, ¶ 172, Ruggie Framework *supra* note 5

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