AN EXPERIMENT IN PROTECTING WORKERS’ RIGHTS: THE GARMENT INDUSTRY OF THE U.S. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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In the aftermath of World War II, the decision to turn the three-hundred mile western pacific archipelago of the Northern Marianas into a United Nations’ Trust Territory under the administration of the United States created a model from which lessons about the rights of workers can be learned. In the late 1990s, the microcosm of the Commonwealth of the Northern Mariana Islands (CNMI) garment industry unwittingly became the guinea pig in an “experiment” to find the most effective method of protecting the rights of workers. To date, the power of a human rights campaign, the merits of law enforcement regimes, and the efficacy of self-regulation efforts have all been tested. The outcome, thus far, is far from satisfactory in the CNMI garment industry. But the results are clear. The experiment yielded one method for protecting the rights of workers, without which all other methods are futile: federal labor law enforcement. The efforts of human rights activists, local law enforcement, and industry reformists are all worthy. But none can be successful independent of federal labor law enforcement.

A comprehensive understanding of the varying methods “tested” in this “experiment” is necessary to understand why federal law enforcement must be the priority in any attempt to protect workers’ rights. The unique political relationship the CNMI has with the United States provides an opportunity to independently examine each of these efforts. The lessons learned from the CNMI garment industry are valuable in a broader

2. “Commonwealth of the Northern Mariana Islands” is the formal name of the archipelago since the 1976 Covenant with the United States that establishes it. Id.
examination of efforts to protect workers' rights in the United States.

Part I of this Comment provides a brief history of the Northern Marianas, the Covenant that established its relationship with the United States, and an overview of the labor abuse problem in the garment industry. Part II presents various methods tested in the "experiment" to protect workers. First, this Comment examines the adversarial method of human rights class action litigation and its failures. Next, the ineffectiveness of local law enforcement is addressed. Finally, industry self-regulation is reviewed, and its shortcomings are identified. Part III of this Comment first suggests that additional federal controls are not necessary. It then identifies the federal government's duty under the Covenant to increase enforcement of existing laws and identifies which applicable federal laws have thus far been inadequately enforced. Finally, this Comment concludes that despite the importance of all the methods of protecting workers' rights, none are as critical as federal labor law enforcement.

I. CRISIS IN THE AMERICAN PACIFIC

A. From U.N. Trusteeship to U.S. Commonwealth

1. Occupied Archipelago

In 1947, the Northern Mariana Islands became a part of the United Nations' Trust Territory of the Pacific under the administrative authority of the United States. Located just north of Guam, and constituting 183.5 miles of land on fourteen islands, the population totaled below 8,000 at the time it came under U.S. control. Under the U.N. Trusteeship Agreement, the United States was responsible for promoting self-government or independence, and economic, social and educational advancement.

2. U.S. Territory

In 1976, Congress approved the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the


Northern Mariana Islands (Covenant), jointly negotiated by the Northern Mariana Islands and the United States. The negotiations for the Covenant overcame two major issues: 1) customs regulations for goods made in the CNMI imported into the United States; and 2) the applicability of U.S. federal laws in the CNMI. "The two delegations... readily agreed that... 'exports from the Marianas entering the customs territory of the United States would be free of any import duty subject to the same conditions now applicable to the Territory of Guam.'"

The CNMI lawyers wanted to "ensure that certain laws that brought financial benefits to the Marianas would apply and conversely, to provide that certain laws with adverse economic effects would not apply." To support their position, they pointed to Puerto Rico and the Virgin Islands, where federal minimum wage laws did not apply and emphasized the concern that application of the federal minimum wage would cause serious dislocation in the local economy... [They] were [also] keenly aware that their economic growth depended heavily on the use of alien laborers—a fact that had to be harmonized with their concern over inundation by aliens coming to the Northern Marianas in order to qualify for US citizenship.

The Covenant ultimately resulted in granting the CNMI 1) control over immigration until the end of trusteeship, and thereafter unless Congress decided otherwise, 2) exemption from federal minimum wage unless Congress decided otherwise after the termination of the trusteeship, 3) exclusion from U.S. customs territory, thus giving the CNMI independent control over duties on goods imported into its own territory.

7. U.S. Dep't of the Interior, supra note 3.
8. Howard P. Willems, An Honorable Accord: The Covenant Between the Northern Mariana Islands and the United States 115 (2002) (quoting MPSC Position Paper on the applicability of US customs and excise taxes to CNMI, Dec. 6, 1973). In fact, the representatives from the CNMI to the negotiations over the Covenant recognized the importance of the issue of federal law applicability and proposed that "the parties should resolve questions as to the general applicability of federal laws in the Marianas, if possible, before the status agreement is signed." Id.
9. Id. at 178.
10. Id. at 179–80. Ironically, many of the local CNMI citizens assumed that their economic status would improve via an increased minimum wage once the archipelago became a U.S. territory. See id. at 236 ("Many [C]NMI voters thought that better jobs and higher wages would be immediately available under commonwealth status.").
(except those goods from the U.S.),\textsuperscript{13} and 4) exemption from tariffs for goods exported to the United States under the same regulations as exports from Guam to the United States.\textsuperscript{14} The Covenant, which was fully implemented in 1986,\textsuperscript{15} created a privileged position for the CNMI in relation to the United States.

B. A Manufacturer’s Paradise

1. Laws Of The CNMI

The Covenant states that:

The President [of the United States] will appoint a Commission on Federal Laws to survey the laws of the United States to make recommendations to the United States Congress as to which laws of the United States not applicable to the [C]NMI should be made applicable and to what extent and in what manner . . . \textsuperscript{16}

However, the Covenant also explicitly states that U.S. immigration and naturalization laws shall not apply in the CNMI, nor shall federal minimum wage laws apply.\textsuperscript{17} The Covenant further states that imports from the CNMI into the customs territory of the United States will be duty free, so long as not more than fifty percent of the value\textsuperscript{18} of the products was derived\textsuperscript{19} from foreign materials.

As a commonwealth in political union with the United States, the government of the CNMI is responsible for enacting laws to fill in the gaps left when federal laws are not applicable. The CNMI used their law-making independence to create an immigration system modeled after the U.S. system for migrant workers, in which a category of “temporary” foreign workers may enter with renewable one-year visas.\textsuperscript{21} The CNMI also used its law-making independence to establish its own minimum wage laws.

\textsuperscript{13} 48 U.S.C. § 1801 note, art. VI, § 603(a), (b) (2000).
\textsuperscript{14} 48 U.S.C. § 1801 note, art. VI, § 603(c) (2000).
\textsuperscript{15} U.S. DEP’T OF THE INTERIOR, supra note 3.
\textsuperscript{17} 48 U.S.C. § 1801 note, art. V, § 503.
\textsuperscript{19} “Derived” is defined as “contain[ing] foreign materials.” Id. at 4B.
\textsuperscript{20} See 48 U.S.C. § 1801 note, art. VI, § 603 (referring to treatment of goods from Guam imported in the United States).
\textsuperscript{21} WILLENS, supra note 8, at 371.
2. Growth Of The Garment Industry

"The desire for economic development and a vastly improved standard of living was one of the driving motivations underlying the CNMI[’s] pursuit of separation from the other Trust Territory districts and permanent affiliation with the U.S."22 The desired economic growth eventually came from two sources: Tourism and garment production. Currently, tourism employs about fifty percent of the workforce,23 but garment production is "by far the most important industry."24

The development of the CNMI garment industry began on the archipelago’s main island of Saipan in 1983, and was made possible by the temporary worker immigration laws, with the majority of the garment industry workforce supplied by foreign workers.25 The garment industry quickly became the dominant source of revenue for the commonwealth as American retailers contracted with the foreign-owned CNMI factories for garment production. In 1985, the CNMI’s garment exports to the United States totaled $5 million.26 In 1998, exports reached $800 million and by 2000 it had reached the $1 billion mark.27

The success of the garment industry is due largely to the special relationship the CNMI maintains with the United States as a commonwealth. Under 48 U.S.C. § 1801, garments produced or substantially transformed28 in the CNMI enter into the United States customs territory free of quotas and duties.29 This customs-exemption status, along with the low wages for foreign workers, makes the CNMI an ideal production location for American garment retailers.30 Furthermore,

22. Id. at 357.
23. CIA, supra note 1.
24. Id. From 1983 to 1999, tourism and the garment industry combined were responsible for ninety-six percent of the CNMI exports and eighty-five percent of the domestic CNMI economy. WILLENS, supra note 8, at 360. But from 1997 to 1999, tourism fell by thirty percent. Id. at 362.
25. WILLENS, supra note 8, at 360. As of December 2003, the labor force was made up of 6,006 indigenous workers and 28,717 foreign workers. CIA, supra note 1. The supply of foreign labor was critical to the growth of the garment industry, as the relatively small native population was predominantly employed in government positions. The growth of the garment industry is reflected in the CNMI’s overall population growth after 1983, as the native population stayed fairly constant. In 1980, the population of the CNMI was 16,780, but by 1990 it had nearly tripled to 43,345. DEP’T OF THE INTERIOR, supra note 3.
26. Smith, supra note 5, at 387.
27. Id.
28. “Substantially transformed” is defined as occurring “when a new and different article is produced, having a distinctive name, character, and use.” Tariff Treatment Schedule, supra note 18, at 5B.
30. See COMMONWEALTH DEVELOPMENT AUTHORITY, Investing in the Northern Mariana Islands: A Commercial Crossroads of the Pacific, at
products made in the CNMI are entitled to use the label "Made in the U.S.A.," the value of which cannot be underestimated for U.S. clothing retailers.

3. Billions Of Dollars, Thousands In Poverty

The growth of the CNMI garment industry into a $1 billion dollar operation has provided few benefits for the indigenous population. The unemployment rate for local residents increased from 6.6% in 1990 to 16.1% in 1999, despite the constant demand for foreign laborers to work in the factories. Furthermore, in 1995, in the middle of the garment industry boom, the CNMI per capita income ranked fifty-third among the fifty-four U.S. states and territories. That same year, the local resident poverty rate had risen to thirty-five percent.

C. Human Rights Violations in CNMI Garment Factories

1. Worker Exploitation

The local resident unemployment and poverty levels are only some of the problems resulting from the garment industry’s existence in the CNMI. The thousands of foreign factory workers, mostly from China, the Philippines, Thailand, Vietnam, and Bangladesh, suffer abuse at the hands of the factory owners and recruiters as they labor to make garments for American clothing retailers.

http://www.cda.gov.mp/invest_packet.htm (last visited July 5, 2005) (detailing economic incentives for doing business in the CNMI, including duty-free ports of entry, visa-free borders, and duty-free exports to the U.S.).
31. Smith, supra note 5, at 382.
32. DEP’T OF THE INTERIOR, supra note 3.
33. THE CNMI GUIDE, A DEMOGRAPHIC AND GEOGRAPHIC PROFILE OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS POPULATION, at http://www.cnmi-guide.com/info/essays/population/6.html (last modified June 24, 2003). This is despite the fact that the CNMI is a relatively expensive place to live. The cost of living in the CNMI is estimated to be twenty-five percent to thirty percent higher than in the U.S. mainland. The U.S. Commonwealth of the Northern Mariana Islands Helpful Facts and Information, at http://net.saipan.com/personal/vanlanen/info/info_pg1.htm#sec21 (last visited July 5, 2005).
The factory workers usually arrive in the CNMI through the “assistance” of recruiters, who have lured them from their homes in Asia with tales of a better American life. The workers pay their recruiters thousands of dollars in fees with loans from factory owners at interest rates of up to thirty-five percent, which results in virtual indentured servitude as the laborers are unable to pay off the loans with their minimum wage. The workers are also forced to sign “shadow contracts . . . waiving basic human rights, including the freedom to join unions, attend religious services, quit or marry.” Furthermore, the workers live and work in unsafe and unsanitary conditions, working up to twelve hours per day, seven days per week at $3.05 an hour, often without overtime pay. The plight of garment workers in sweatshops is nothing new, but it is made all the more deplorable by the fact that it is occurring for the benefit of American garment manufacturers and retailers, under the American government’s watch, on American soil.

2. The Archipelago’s Dilemma

Despite awareness of the plight of the garment industry workers in the CNMI, both the CNMI government and the U.S. government have been slow to react in any effective manner. As a U.N. Trust Territory under U.S. administrative authority, the U.S. was responsible for promoting economic development. After the CNMI achieved status as a commonwealth in political union with the United States, the federal government was still responsible for assisting the commonwealth to attain higher standards of living and to develop the economic resources necessary to sustain its population.

The economic viability of the CNMI, and consequently the welfare of


36. Recruiting fees have ranged from $1,500 to $12,000. Smith, supra note 5, at 390.
37. Id.
39. Id.
40. Smith, supra note 5, at 384.
41. The Covenant, 48 U.S.C. § 1801 note, art. VII, § 701 (2000) (“The Government of the United States will assist the Government of the Northern Mariana Islands in its efforts to achieve a progressively higher standard of living for its people as part of the American community and to develop the economic resources needed to meet the financial responsibilities of local self-government. To this end, the United States will provide direct multi-year financial support . . . .”).
the territory, has since come to depend upon the garment industry. But it is within this garment industry that labor abuses and human rights violations against the factory workers have proliferated. This tropical U.S. paradise is facing a dilemma between protecting the welfare of the workforce and protecting the economic viability of the commonwealth.

II. TESTED METHODS

As the world became aware of the plight of garment workers through the efforts of human rights activists, labor rights groups, and the media, every conceivable method to remedy the situation was tested with the CNMI as the guinea pig. Yet, these attempts to rectify the abuses proved inadequate. The multibillion dollar American retail industry proved a formidable opponent to the poorly funded human rights advocates. The CNMI itself has been effective in enforcing its own applicable laws that could protect the factory workers. Furthermore, industry self-regulation has been inconsistent and inadequate. This is not to deny that each of these methods can play an important role in protecting workers’ rights. Rather, this discussion illustrates the fact that all of these methods are insufficient on their own, and that federal law enforcement action is necessary to fill the gap of any one method. The problem, thus far, has been that the federal government has failed in its duty to adequately enforce its own laws.

A. Class Action Litigation

1. Legal Strategy

The human rights violations suffered by the abused workers in the CNMI garment factories have not gone unchallenged. A popular reform approach taken by human rights activists is class action litigation. In 1999,


43. Democratic legislative efforts to address the situation have been repeatedly blocked by Republican members of Congress. Bas, supra note 38. For a discussion of the conflicting opinions held by the Democratic party and Republican party about the CNMI, see also W. John Moore, American Dream or Pacific Nightmare?, NATIONAL JOURNAL, Dec. 13, 1997, (finding that “Congressional Democrats and the Clinton Administration view the Marianas not as a libertarian Shangri-la but as a crackpot experiment that has created a nightmare in the middle of the South Pacific,” whereas “Republicans see a thriving free-market economy with growth rates that outpace their neighbors”.


former and current garment workers, labor unions, and human rights
groups filed three separate class action lawsuits on behalf of the abused
CNMI garment workers against the Saipan factory owners and the U.S.
retail corporations. The plaintiffs brought claims under the Fair Labor
Standards Act (FLSA), the Racketeer Influenced and Corrupt
Organizations Act (RICO), the Alien Tort Claims Act (ATCA) and
CNMI criminal laws. These claims were supported by allegations of
forced peonage and indentured servitude, as well as violations of
international laws of universally recognized human rights. The complaint
cited factory owners for failing to pay workers for forced overtime work
and charged that the clothing companies falsely advertise their products
with the “Made in the U.S.A.” garment labels. The lawsuits aimed to end
the abuses affecting workers who labor for the $1 billion dollar Saipan
garment industry.

Under the FLSA, the plaintiffs alleged that their factory owner
employers had a pattern, practice, or policy of failing to pay the legally
required overtime, deducting excessive sums for unsanitary housing and
food, and failing to keep adequate records. The plaintiffs were ultimately
allowed to proceed with these claims, overcoming a motion to dismiss.

44. Deborah J. Karet, Comment, Privatizing Law on the Commonwealth of the
Northern Mariana Islands: Is Litigation the Best Channel for Reforming the Garment
Industry? 48 BUFF. L. REV. 1047, 1049–61. The first lawsuit was filed in U.S. District
Court in California, but then transferred to Hawaii, on behalf of the class of garment
workers against the U.S. retail corporations. The charges were separated under three causes
of action: RICO, ATCA, and U.S. treaty obligations. Id. at 1062. The second lawsuit was
brought in California state court, also on behalf of the workers against the retail
corporations. The complaint alleged that the retailers engaged in unlawful business
practices and false advertising by using the “Made in the U.S.A.” slogan and by violating
industry codes of conduct. Id. at 1072. The final lawsuit was filed in U.S. District Court for
the District of the Northern Mariana Islands by a class of workers against the factory
owners. The action alleged violations under FLSA and CNMI labor laws. Id. at 1078.

45. The retailers include: Abercrombie & Fitch, Brooks Brothers, Brylane L.P., Calvin
Gymboree Corp., J.C. Penney Company, Inc., Jones Apparel Group, Lane Bryant, Inc.,
Levis Strauss & Co., The Limited, Inc., The May Department Stores Company, Nordstrom,
Inc., Oshkosh B’Gosh Inc., Phillips-Van Heusen, Polo Ralph Lauren, Sears Roebuck and
Company, Talbots, Inc., Target Corp., Tommy Hilfiger USA Inc., Warnaco, Inc., Woolrich,
Inc. GLOBAL EXCHANGE, supra note 35.

49. GLOBAL EXCHANGE, supra note 35.
50. Does I Thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1063 (9th Cir.
2000).
51. In 2000, the Ninth Circuit Court of Appeals reversed the dismissal of this case, and
remanded it so that plaintiffs could proceed with their FLSA claims. Id. at 1073.
Plaintiffs also alleged seven claims under RICO, four of which were allowed to proceed.\(^{52}\) Plaintiffs’ claim of an agency relationship between the U.S. retailers and the CNMI manufacturers was also allowed to move forward.\(^{53}\) The claims of involuntary servitude and peonage, however, were dismissed.

Plaintiffs’ ATCA claims were also dismissed because the complaint had not adequately alleged a violation of international law, as the claim of involuntary servitude had been dismissed.\(^{54}\)

2. An Imperfect Settlement

In 2003, a U.S. District Court Judge approved a $20 million settlement in *Doe v. Gap*, one of the three lawsuits filed on behalf of the Saipan garment workers.\(^{55}\) The workers and labor advocates involved with the case declared victory.\(^{56}\) Michael Rubin, the lead plaintiffs’ attorney, announced, “[w]e expect this to be modeled throughout the world in the industry.”\(^{57}\) The $20 million settlement is the largest to date in an international human rights case.\(^{58}\) The award package includes up to $4,000 in back wages for 30,000 factory workers employed in the Saipan garment industry since 1989.\(^{59}\) More importantly, the settlement calls for a monitoring system, to be administered by a panel of three retired judges, which will have the power to investigate complaints, order back pay, and place manufacturers on probation based on a new code of conduct for the factories.\(^{60}\)

Despite these laudable gains from the settlement, the resolution of the three lawsuits leaves much to be desired. None of the defendants admitted any wrong doing, and in fact view the settlement as a victory of their own.\(^{61}\)

\(^{52}\) The district court allowed the following RICO allegations of associations-in-fact to stand: 1) Individual retailers with individual manufacturers; 2) all manufacturers; 3) each group of commonly owned manufacturers; and 4) each retailer and all their manufacturers. The court dismissed the following three RICO claims alleging associations-in-fact for: 1) all retailers and all manufacturers; 2) all retailers; and 3) each retailer and all of the Saipan Garment Manufacturers Association members. *Id.*

\(^{53}\) *Id.*

\(^{54}\) *Id.*

\(^{55}\) Jenny Strasburg, *Saipan Lawsuit Terms OK’d: Garment Workers to Get $20 Million*, *San Francisco Chronicle*, Apr. 25, 2003, at B1. The other two lawsuits were dismissed as a part of the settlement. All of the defendants agreed to the settlement except Levi Strauss & Co. Plaintiffs voluntarily dismissed their claims against Levi Strauss & Co. after they reached a settlement agreement with the other defendants.

\(^{56}\) Bas, *supra* note 38.


\(^{58}\) Bas, *supra* note 38.


\(^{60}\) *Id.*

\(^{61}\) Bas, *supra* note 38.
First, all parties to the settlement had initially agreed to use the International Labour Organization (ILO) as the independent monitor, but then the Bush Administration said it would not support such involvement of the ILO. The parties then agreed on two monitors, Verite and Pricewaterhouse Cooper’s Global Social Compliance. This was despite the fact that reports show that Global Social Compliance is incapable of adequately performing the function of monitoring garment factories. Furthermore, based on the history of industry codes, there is little evidence that the new codes under the new monitoring system will be more successful at protecting the workers. Although the settlement gives the monitors the power to place a factory on probation, that is neither a civil nor criminal penalty. The bad reputation associated with being placed on probation may deter some retailers from doing business with such a factory, but it does not guarantee it or even forbid it.

The economic penalty to the defendants is also really more of a victory for the defendants than for the plaintiffs. Although back pay of up to $4,000 per employee may appear adequate in comparison to the worker’s minimum wage, a $20 million payment split between 26 multi-million and multi-billion dollar companies is hardly a punishment. Furthermore, the $4 million initially agreed to for the cost of the monitoring has decreased because some of the factory-defendants have declared bankruptcy and can no longer contribute to the fund.

The limited success of the adversarial litigation strategy could be bolstered by adequate federal labor law enforcement. With federal law enforcement, the weakness in the non-criminal penalties attached to the settlement agreement’s monitoring system can be countered by criminal sanctions for failing to comply with federal labor laws.

B. Local CNMI Law Enforcement

1. CNMI Laws Are Not Inherently Flawed

An alternative method to the adversarial class action litigation for solving the problem of worker abuse in the CNMI is the proactive approach of enforcing existing local CNMI laws. Many of the abuses suffered by the garment workers are brutal forms of control, such as assault, rape, and

62. See id. (discussing the Bush Administration’s insistence that a private entity be the independent monitor).
63. Id.
64. See Steven Greenhouse, Report Says Global Accounting Firm Overlooks Factory Abuses, N.Y. TIMES, Sept. 28, 2000, at A12 (discussing M.I.T. Professor Dara O’Rourke’s opinion that “PWC’s monitoring efforts are significantly flawed.”).
65. Bas, supra note 38.
coercion. These actions are all illegal in the CNMI. Title Six of the CNMI Commonwealth Code covers homicide, assault, sexual offenses, robbery, kidnapping, criminal coercion, and other crimes.\(^{66}\) Penalties for each of these crimes can include incarceration and fines.\(^{67}\) Furthermore, the CNMI's Non-Resident Workers Act prohibits the summary deportation of foreign workers upon termination from employment.\(^{68}\) The problem is clearly in the lack of enforcement of existing laws, not in the lack of appropriate laws.

2. CNMI Law Enforcement Unlikely As A First Step

Enforcement of CNMI criminal laws is a necessary piece of any effective remedy to the worker abuse problem in the CNMI. However, it is not likely to succeed as the first step. There are two main obstacles to aggressive prosecution of abusive employers in the CNMI garment industry: political apathy and economic infeasibility.

The CNMI government may not have the political incentive to aggressively combat crimes against the foreign workers. Political decisions are frequently reduced to a numbers game in virtually every jurisdiction. It is rare in any political environment for non-voting members of society to be given priority. The same is true of the non-voting foreign workers who constitute the majority of the garment industry's labor force in the CNMI. Furthermore, it is a large political risk for the CNMI politicians to alienate the factory owners of a $1 billion dollar industry.

More importantly, as a practical matter, the CNMI does not have the resources necessary to effectively enforce its own laws.\(^{69}\) In fact, the CNMI claims that the problem is due partly to a lack of genuine commitment on the part of the federal government.\(^{70}\) Juan Babauta, CNMI Governor, explained that, "ironically, [the CNMI is] unable to proceed with deportations [of criminals involved with the garment industry] under [its] own law because [the CNMI] deportation fund was exhausted paying the expenses of the U.S. [Immigration and Nationality Services] [which the U.S. has yet to repay]."\(^{71}\) Furthermore, the CNMI officials were initially not trained in labor law enforcement, but the federal officials were not exerting the necessary effort to train them.\(^{72}\) Again, the shortcomings of

\(^{69}\) Smith, supra note 5, at 392.
\(^{71}\) Id.
\(^{72}\) See WILLENS, supra note 8, at 371 (stating that "Northern Marianas officials were
local law enforcement in protecting workers can be strengthened by active federal labor law enforcement.

C. Industry Self-Regulation

1. Commendable Moves Toward Corporate Responsibility

The garment industry has not been oblivious to the need to improve conditions for its workers. In fact, it has attempted to adopt “Codes of Conduct” in an effort to increase corporate responsibility. In 1994, industry-wide standards were first presented to the Saipan Garment Manufacturers’ Association (NSGMA). Standards were then adopted by the SGMA in 1998. Furthermore, in 1999 the SGMA independently elected to hire Price Waterhouse Coopers to monitor compliance with the “standards for the treatment of workers and working conditions and standards for living” set forth in the SGMA Code of Conduct.

2. Proven Ineffectiveness of Industry Codes

Despite this history of voluntary codes and self-imposed monitoring, CNMI garment workers suffered extensive abuse. Perhaps the actual commitment of the industry to improve its conditions should be questioned. For example, although industry standards were first introduced to the CNMI in 1994, no action was taken on the codes until 1997 and they were not adopted by the SGMA until 1998. Furthermore, even before the CNMI adopted its own code of conduct, many factories were already operating under their retailer’s codes of conduct. Yet despite the presence of these codes, the workers were far from protected. It appears that the industry was only motivated into action by bad publicity. But public pressure is inconsistent, and thus it alone is insufficient to guarantee the initially inexperienced in dealing with such matters; the more experienced federal officials in the Labor and justice departments were slow in responding to a familiar range of labor complaints involving relatively few workers on small islands some 8,500 miles from Washington.”).

73. Industry Report, supra note 42.
75. Id. (describing how the current SGMA Code of Conduct prohibits the use of forced labor, child labor, harassment or abuse of employees. It requires non-discrimination, adequate health and safety standards, and freedom of association and collective bargaining. It further requires compliance with the basic labor standards, such as payment of minimum wage and payment for overtime work.).
76. Industry Report, supra note 42.
77. Id.
rights of laborers. Effective federal labor law enforcement, however, can provide a constant pressure on the industry to prompt it to sincerely attempt self-regulation, or risk sanctions under federal laws.

III. CRITICAL COMPONENT: FEDERAL LABOR LAW ENFORCEMENT

A. Additional Federal Regulations Contrary to Covenant

It has been suggested that the problem of worker abuse in the CNMI can be solved by additional federal regulations in the areas of wage and immigration, as loopholes in those laws make abuse of the foreign garment workers easier.78

Other commentators have argued to the contrary, that this is not allowed by the Covenant and its general principle of self-government for the islands.79 However, the Covenant's language provides that the federal wage and immigration laws will not apply to the CNMI "except in the manner and to the extent made applicable to them by Congress by law."80 Thus, the federal government conceivably has the power to divest the CNMI of control over wage and immigration laws. Nonetheless, such an act by Congress would violate the Covenant's overall goal of establishing a "self-governing commonwealth."81

B. Duties Under The Covenant

The protection of the CNMI garment workers depends on the enforcement of existing federal laws. The federal government has a duty in the CNMI, as it does in all of its states and territories, to ensure the welfare of people within its jurisdiction. The Covenant is mutually binding on both the United States and the CNMI,82 and the "Covenant . . . together with those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, will be the supreme law of the Northern Mariana Islands."83 All provisions of the U.S. Constitution, treaties, and laws are applicable in the CNMI, except those that were explicitly excluded by the Covenant.84 The applicability of new legislation

78. Smith, supra note 5, at 383.
82. Id.
84. Under the Covenant, the following laws of the U.S. are not applicable in the CNMI: Trial by jury, nor indictment by grand jury shall be required in any civil or criminal prosecution based on the CNMI laws, except where required by local law, section 501(a); immigration laws, section 503(a); coastwise laws regarding foreign vessels landing fish,
passed by the U.S. Congress after the enactment of the Covenant is also provided for by the Covenant, so long as such legislation is applicable to the fifty states or if the CNMI is specifically named in the new legislation.  

Furthermore, the laws of the CNMI must be consistent with the laws of the United States that are applicable in the CNMI.  

Article VII of the Covenant dictates that the U.S. government "will assist [the CNMI] in its efforts to achieve a progressively higher standard of living . . . and to develop the economic resources needed to meet the financial responsibilities of local self-government."  

The garment industry was touted as the means of achieving the economy necessary for local self-government. But any economic growth that the industry has achieved for the archipelago has been at the expense of basic rights protected by federal laws. Furthermore, efforts to achieve a progressively higher standard of living cannot be directed only at financial gain. Such efforts must include a higher quality of life, which itself necessitates the protection of rights for peoples within its territory. Nonetheless, the federal government has thus far failed to fulfill its responsibilities under the Covenant.

C. Federal Laws Applicable to the CNMI

The CNMI government has acknowledged the problem of worker abuse in the garment industry, and has concluded that heightened cooperation between federal and local government would be the most effective means of remedying the situation. Juan Babauta noted in a statement to the U.S. Congress that the United States already imposes laws to protect the workers but has failed to enforce those laws.

section 503(b); or minimum wage laws, section 503(c). Also, the CNMI is not included in the customs territory of the United States, section 603.

85. The Covenant, 48 U.S.C. § 1801 note, art. I, § 105 (2003). The only limit to this ability of the U.S. Congress to pass legislation regarding the CNMI is that if the new legislation would modify the political relationship of the CNMI to the U.S., the constitution of the CNMI, the right of CNMI citizens to be U.S. citizens, the applicability of certain U.S. Constitution provisions, or the ownership of property on the CNMI, then the CNMI government must also agree to such modifications. Id.


88. Smith, supra note 5, at 400–01.

89. Babauta Statement, supra note 70, at 55.
1. Fair Labor Standards Act

   a. Violations of Applicable Standards

Although the Covenant exempts the CNMI from U.S. minimum wage laws, it does not exempt the CNMI from other provisions within the Fair Labor Standards Act (FLSA).\(^9\) Included in these applicable federal laws are the federal overtime laws under the FLSA.\(^9\) The FLSA prohibits employers from requiring employees to work more than forty hours per week, unless the employees are compensated by a wage equal to at least one and one-half their normal rate.\(^9\) Violation of the FLSA is not only the liability of the individual employer, but also of any entity that transports or sells in commerce the goods produced in violation of the Act.\(^9\) Thus, in the case of the CNMI garment workers, not only are the factory owners liable under the Act for abuse against the workers, but the U.S. retail corporations are likewise liable if they had knowledge of such violations.\(^9\) Furthermore, the FLSA's prohibitions against the discrimination of any employee who has filed a complaint under the FLSA\(^9\) is also applicable in the CNMI. Yet despite the applicability of these FLSA standards in the CNMI, there has been a documented pattern, practice or policy of failing to pay overtime, deducting excessive sums for unsanitary housing and food, and failing to keep adequate records in the garment industry.\(^9\)

   b. Failed Federal Law Enforcement under FLSA

The FLSA provides that an employer may be fined up to $10,000 or imprisoned for up to six months for any willful violations of the FLSA.\(^9\) The forced overtime of the garment workers, as well as the intimidation and discrimination they suffer for attempting to file complaints, are clearly governed by these provisions of the FLSA. Yet the federal government’s ability to effectively enforce the Act has been far from adequate.

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\(^9\) Karet, \textit{supra} note 44, at 1074.
\(^9\) 29 U.S.C. § 215(a)(1) (providing that it shall be unlawful to transport or sell in commerce any good with the knowledge that such good was produced in violation of the Act).
\(^9\) 29 U.S.C. § 215(a)(3) ("[I]t shall be unlawful for any person . . . to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to [the Fair Labor Standards Act."]).
\(^9\) Does I Thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1063 (9th Cir. 2000).
2. Occupational Safety And Health Act

a. Violations of Applicable Standards

The Occupational Safety and Health Act (OSHA)\textsuperscript{98} is applicable to the CNMI, as provided by OSHA and the Covenant.\textsuperscript{99} OSHA creates a duty for 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.”\textsuperscript{100} Despite these OSHA regulations, the garment factories in the CNMI have repeatedly subjected workers to unsafe and unsanitary working and living conditions.\textsuperscript{101}

b. Failed Federal Law Enforcement under OSHA

OSHA requires OSHA inspectors to issue citations to employers who are in violation of the Act, and to dictate a reasonable time for abatement of the violation.\textsuperscript{102} OSHA creates a hierarchy of civil penalties that can be issued against employers who violate OSHA regulations: Willful or repeated violations of OSHA regulations can result in a civil fine to the employer of $5,000 to $70,000;\textsuperscript{103} serious and non-serious violations of OSHA, as well as failure to correct a violation, can result in fines of up to $7,000;\textsuperscript{104} the willful violation of any OSHA regulation that results in the death of an employee can be punished by up to $10,000 or six months imprisonment.\textsuperscript{105} Nonetheless, this elaborate system intended to protect workers has failed to achieve its objective in the CNMI garment industry.

The key for effective enforcement of these regulations under OSHA is inspections. Without a proactive approach from OSHA to inspect the

\begin{itemize}
\item \textsuperscript{98} Occupational Safety and Health Act (OSHA), 29 U.S.C. §§ 651–678 (2000).
\item \textsuperscript{99} 29 U.S.C. § 653. Subsection (a) explicitly states that the Fair Labor Standards Act “shall apply with respect to employment performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and the Canal Zone.” The Trust Territory of the Pacific Islands, as it was called at the time OSHA was passed in 1970, included what became the CNMI. Furthermore, section 502 of the Covenant provides that laws applicable to Guam and the States, as well as the laws applicable to the Trust Territory of the Pacific Islands, in existence at the time of the effective date of the Covenant (1975) shall apply to the CNMI.
\item \textsuperscript{100} 29 U.S.C. § 654.
\item \textsuperscript{101} \textit{Does I Thru XXIII}, 214 F.3d at 1063.
\item \textsuperscript{102} 29 U.S.C.A. § 658 (stating that if an inspector believes an employee has violated the Act, “[h]e shall with reasonable promptness issue a citation to the employer. . . . In addition, the citation shall fix a reasonable time for the abatement of the violation.”).
\item \textsuperscript{103} 29 U.S.C. § 666(a).
\item \textsuperscript{104} 29 U.S.C. § 666(b), (c) & (d).
\item \textsuperscript{105} 29 U.S.C. § 666(e).
\end{itemize}
garment factories in the CNMI in order to determine whether violations under OSHA have occurred, no enforcement can take place.\textsuperscript{106} Violations under OSHA are prosecuted by the U.S. Department of Justice, but such action is rarely taken in the CNMI.\textsuperscript{107} In a three year period, the U.S. Assistant Attorney General assigned to the CNMI filed only ninety-five cases, of which only forty-eight were won.\textsuperscript{108} OSHA does not preempt local law enforcement,\textsuperscript{109} but the fact that local authorities have the right to prosecute crimes in the workplace does not absolve the Department of Justice from its duty to perform enforcement under OSHA. If the federal government effectively enforced OSHA regulations in the CNMI, worker abuse would not persist as rampantly as it currently does in the CNMI garment industry.

\textbf{D. Potential Effectiveness of Enforcement}

Despite its failings, OSHA provides an example of the success federal labor law enforcement can have towards protecting workers when those laws are effectively enforced. For example, in 1998, partly in response to the public outcry surrounding the plight of the CNMI garment workers, the Saipan garment factories were inspected by OSHA more frequently than garment factories in the U.S. mainland. As a result, during that year, Saipan factories had a seventy percent better compliance rate than the mainland factories.\textsuperscript{110} Furthermore, in 2000, OSHA created the “Excellence 2000 Partnership” between the SGMA and OSHA.\textsuperscript{111} “The Partnership has been highly successful and [has resulted in] increased safety and health awareness in all areas of manufacturing operations [in the CNMI].”\textsuperscript{112} Following up on this success, in 2003 OSHA hosted the first

\textsuperscript{106} Yet, effective enforcement of OSHA is not occurring in the CNMI. Budget constraints are the most frequently cited reasons for this shortcoming in OSHA enforcement. See Greg Holloway, Comment, \textit{The Effort to Stop Abuse of Foreign Workers in the U.S. Commonwealth of the Northern Mariana Islands}, 6 PAC. RIM L. \& POL’Y J. 391, 403 (1997) (“Budget constraints and economic considerations prevent regular CO inspections and timely OSHRC adjudication of contested OSHA citations, thus hampering the Act's effectiveness in the NMI.”).

\textsuperscript{107} Karet, supra note 44, at 1050 (discussing the use of civil rather than criminal penalties under OSHA).

\textsuperscript{108} Babauta Statement, supra note 70.

\textsuperscript{109} See Thomas N. Boyd, Assistant Attorney General, \textit{Letter outlining the Justice Department’s response to U.S. House Committee on Government Operations, Dec. 9, 1988} (“As for the . . . issue as to whether the criminal penalty provisions of the OSH Act were intended to preempt criminal law enforcement in the workplace and preclude the States from enforcing against employers the criminal laws of general application. . . ”), cited in Holloway, supra note 106, at 404.

\textsuperscript{110} Independent Monitoring Set, supra note 74.

\textsuperscript{111} Industry Report, supra note 42.

\textsuperscript{112} Id.
annual Northern Marianas Alliance for Safety and Health conference in the CNMI.\textsuperscript{113} The federal government has also recently improved its record towards the CNMI garment industry in terms of enforcement of the FLSA, as it has begun actively levying fines against factories that violate the FLSA.\textsuperscript{114} The recent, though gradual, improvement of conditions in the CNMI clearly illustrates the potential effectiveness of federal law enforcement in protecting the rights of garment industry laborers.

IV. CONCLUSION

The future of the CNMI garment workers is not hopeless. In fact, since reports of their abuse were first widely publicized in the 1990s, notable improvements in their plight have been achieved. The abuses against the CNMI workers, and the gradual trend towards improved working conditions for them, provide a clear mandate for effective federal labor law enforcement in order to continue in this pattern of increased protections for workers.

The lessons learned from the CNMI garment industry tragedy are pertinent outside the Pacific archipelago and beyond the garment industry. Despite the well-intentioned efforts of industry reformers and labor advocates, and regardless of the merits of local law enforcement efforts, the protection of workers' rights in the United States must begin with sincere action from the federal government to enforce its own existing regulations. Without such a commitment on the part of the federal government, labor advocates will become adversaries rather than collaborators with the government, local law enforcement efforts will be left to handle labor abuse in a piecemeal manner, and industries will have little incentive to enforce their own codes. The federal government must become a dedicated and effective partner in the struggle to protect workers' rights. Without such a commitment, all other efforts to protect workers will fail.


\textsuperscript{114} See, Bas, \textit{supra} note 38 (discussing a 2002 $224,000 in back wages fines against one CNMI factory).