

**Statement of Gerard M. Emanuel**  
**Delegate to the Fifth Constitutional Convention of the United States Virgin Islands**  
**to the Subcommittee on Insular Affairs, Oceans and wildlife**  
**Committee on Natural Resources**  
**United States House of Representatives**

**March 17, 2009**

Madam Chair and other distinguished members of the Subcommittee,

My name is Gerard Emanuel. I am a delegate to the Fifth Constitutional Convention of the Virgin Islands. I am honored to have this opportunity to appear before you on the proposed constitution of the U.S. Virgin Islands.

Our proposed constitution, on the whole, should be considered within the context of the unique position of the Virgin Islands as an unincorporated territory of the United States, similar to the status of our sister territories in American Samoa and Guam, and the commonwealths of the Northern Mariana Islands and Puerto Rico, respectively. While the nature of the constitutional arrangements in each of these territories varies, the commonalities which we all share are the applicability of the Territorial Clause of the United States Constitution and our status of un-incorporation.

In advance of Congressional consideration of the proposed constitution, the U.S. Justice Department was directed by President Barak Obama to provide its views on the proposed document. My testimony is intended to address several issues which were raised in the Justice Department review.

The first issue relates to the recognition of United States sovereignty. I wish to emphasize that the work of the Fifth Constitutional Convention of the Virgin Islands was not intended to suggest any alteration in the unincorporated territorial status, but rather to determine the parameters of the prevailing status. This has come some thirty years since the Virgin Islands last attempted to write a constitution. The proposed constitution before this body fully recognizes the sovereignty of the United States over the territory through its acknowledgement of the unincorporated territorial status.

Former Chair of the United States Senate Energy and Natural Resources Committee Lowell Weicker, during Congressional review of the 1980 proposed Virgin Islands constitution, observed that the phrase “unincorporated territory” was “an explicit statement of the sovereignty of the United States.” Such recognition is confirmed in the 2010 Justice Department memorandum which states that *“a number of provisions in the present proposed constitution considered together bring it into substantial compliance with the Enabling Act’s requirement that the proposed constitution recognize U.S. sovereignty and the supremacy of federal law.”*

Madam Chairman,

Another issue raised in the Justice Department memorandum was the provisions related to the recognition of ancestral Virgin Islanders and native Virgin Islanders. The rationale for the inclusion of these sections should be seen in the context of the unique socio-cultural and political history of the territory.

Prior to the transfer of jurisdiction from Denmark to the United States by the Treaty of Cession in 1917, the people of the Danish West Indies, who were largely of African descent, were enslaved for over two hundred years with all of the attendant abuses.

On July 3, 1848, the Danish government was forced to ratify the freedom of the enslaved African Ancestral Virgin Islanders due to a meticulously planned, nonviolent revolt by the enslaved. By this act, the newly freed Africans now considered themselves as full citizens equal to the Europeans for whom they still worked. However they were quickly disillusioned by the Labor Act of January 1849, a euphemism for a code of decrees that again virtually placed them into slave-like conditions. They were compensated for their labor, but were charged excessively for all their basic needs and at the end of the day had no money to invest or advance themselves economically, socially or politically.

Our ancestors resisted this recapitulation by Denmark for thirty years, which culminated in a laborers’ revolt in 1878 known as the “Firebun” staged in order to secure a living wage. After this, our ancestors believed they would be able to fully participate as citizens in their

homeland, but were once again disillusioned. In 1852, the Danish Colonial Laws were enacted and subsequently revised in 1863 and 1906. These laws established the guidelines for only limited native participation in the political process in the Danish colony.

The irrefutable impact of these laws on the majority of the native population was to continue to prevent their legitimate participation in the political process, and to deny them citizenship. Specifically, there were prohibitive income and property ownership requirements that precluded the laborers from voting and running for office. Therefore, whether during or after chattel slavery, whenever our ancestors sought to effectuate social and political reform, they had to do so violently, because there were no legal mechanisms available to them to attain their civil and human rights. Sadly, these discriminatory laws remained in effect for the first 20 years of American rule.

The 1917 Treaty of Cession made provisions for Danish citizens in the territory to either retain their citizenship, or to become United States citizens. No such choice was given to the majority native population. Their rights were to be determined by the United States Congress. The natives did not become U.S. citizens immediately, and for ten years they were devoid of citizenship. Accordingly, the 1927 and 1940 U.S. Citizenship and Nationality Acts defined them as “natives who are not citizens or subjects of any foreign country.” The territory was governed by the United States Navy from the transfer in 1917 until 1931 when civilian rule was instituted by way of governors appointed by Washington.

By the 1960s, the territory experienced an unprecedented growth in population, primarily through immigration to fill labor needs in the developing tourism and industrial sectors. Reliable estimates of new residents totaled 34,000 between 1960 – 1970 alone, exceeding the entire 1960 population of the territory. It was noted in the 2009 journal “Caribbean Perspectives” a publication of the University of the Virgin Islands that:

*“The temporary worker system which had been legislated by the U.S. Congress pursuant to U.S. immigration laws facilitated the movement of mainly African descendents from other parts of the Caribbean to the U.S. Virgin Islands to meet growing labour needs.*

*Concerned with the projected financial impact of the extension of public services to the new residents, the U.S. Virgin Islands legislature sought to use its local authority to regulate access to education, housing and other areas. This was later overturned by the U.S. courts and applicability of U.S. equal protection laws. A specific U.S. immigration measure enacted in 1981 also provided for a process of achieving permanent residency status in the territory, and ultimately U.S. citizenship.”*<sup>1</sup>

It is within this historical context that four constitutional conventions were held in the U.S. Virgin Islands between 1964 and 1980. As the same University of the Virgin Islands article pointed out:

*“Quite apart from the mandate to create/re-create structures of government through a local constitution to replace the U.S. Revised Organic Act of 1954 was the task of defining/re-defining a political and cultural identity amid changing demographics.”*<sup>2</sup>

The present Fifth Constitutional Convention has approved the proposed constitution before you within this historical framework. The provisions of recognition of native Virgin Islanders were included in the text in the wake of the continued decline of the native population, and the gradual disappearance of Virgin Islands culture and traditions. Similar provisions appear in laws and agreements protecting native populations in other United States territories.

The basis for the recognition of the ancestral and native Virgin Islander in the proposed constitution lies in the Treaty of Cession and in relevant federal statutes, and is intended for the protection and preservation of the culture and traditions of a people. The historical context, and the need for effective reparative action, represents the compelling state interest we strongly feel justifies the relevant provisions.

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<sup>1</sup> *Caribbean Perspectives*, A Journal of the Eastern Caribbean Center of the University of the Virgin Islands, January, 2009.

<sup>2</sup> *ibid*

## **Conclusion**

Madam Chair,

The Annex to this statement, which I am attaching for the record, contains the historical basis for a compelling state interest to justify the provisions for differential treatment for ancestral and native Virgin Islanders. I wish to thank this Subcommittee for this important opportunity to provide testimony on the proposed constitution of the US Virgin Islands.

## Annex

### Historical Background Utilized As Support for Differential Treatment Of Ancestral and Native Virgin Islanders

Africans who are the ancestors of Ancestral Natives and Natives, were enslaved for over two hundred years in the Virgin Islands. During this time they were subjected to multiple political, social, cultural, religious and economic abuses and were denied their inalienable human rights.

- After slavery officially ended on July 3, 1848, each planter was compensated at \$50.00 per ex-slave, while the ex-slaves received nothing for hundreds of years of forced labor.<sup>1</sup>
- A Labor Act of January 26, 1849 was instituted by the planters to keep the newly freed laborers in slave-like conditions. This lasted for 30 years until the “Firebun” of 1878 forced its demise.<sup>2</sup>
- In the late 1800’s “...judges, prison officials, planters and police banded together against the laborer to capitalize on his labor. The judge would imprison a laborer on the basis of a complaint from the employer. Once in jail, as punishment, the prisoner would be sentenced to work on one of the estates without compensation. The prison officials and police would be responsible for enforcing the judge’s decree.”<sup>3</sup>
- The Colonial Council on St. Croix passed laws “...in an attempt to control the laborers and to try to revert the economic and social conditions of the laborer to pre-emancipation and pre-labor riot days.”<sup>4</sup>
- Two of the above laws were 1) life imprisonment for stealing sugar cane; and 2) imprisonment for debt.
- When land was provided to the laborers, the worst land was sold to those who wanted to farm. For example, agricultural depleted estates that were a financial loss and which the government was anxious to dispose of, were sold to the laborers.<sup>5</sup>
- Steam Ship Operators paid female coal workers worthless silver coins. In 1892, Queen Coziah had to lead a protest to stop this illegal discriminatory practice against the African female laborers.<sup>6</sup>
- Due to hard economic times in the late 1800’s and early 1900’s laborers were forced to migrate to other areas in the region such as Panama to make a living where they were paid slave-like wages. “Meanwhile, all the economic benefits and the white collar jobs were reserved for white Americans.”<sup>7</sup>

- Many Virgin Islanders lost their lives in Panama from malaria and job related accidents.<sup>8</sup>
- A 1902 Commission observed that Denmark spent “...too much on government officials and soldiers and not enough on schools and hospitals...More attention should be paid to agriculture.”<sup>9</sup>
- The planters were assisted but not the laborers.
- Several homesteading attempts were instituted; however, the majority of the best agricultural land was used for growing sugar cane, and thus the island of St. Croix was retained as virtually a mono-economy with little if any economic diversification that could have benefited the laborers, many of whom were experiencing starvation.
- From the end of slavery until 1936, most laborers were prevented from voting or running for any elected office due to the lack of emphasis on proper education as noted by a Danish Commission in 1902, and restrictive income and land qualifications imposed by Colonial Laws from 1852 up to 1906. These remained in effect for the first 19 years of U.S. rule of the Virgin Islands.
- In 1917 only 5.5% of the population could vote. The vast majority of the eligible voters were conservative white male landowners.) The majority of those deemed ineligible were natives.<sup>10</sup>
- For 88 years after slavery, the majority of native Virgin Islanders were disenfranchised. Natives have only been enfranchised for 73 years, and have only had the right to elect a governor for 38 years.
- In the Treaty of Cession between Denmark and the United States, no provisions were made to redress the long history of injustices and discriminatory practices perpetrated on the natives, which occurred under Danish rule.
- Preferential treatment was specifically accorded to the Danish Citizens in the treaty. Only Congress was given the authority to determine the civil rights and political status for the majority of the native population who had no citizenship status whatsoever. Natives were not given any rights to choose their status or civil rights.
- The Virgin Islands was made an unincorporated territory of the U.S. they were owned by, but were not fully a part of the U.S. Natives were not made full U.S. citizens. Only fundamental protections of the U.S. Constitution were extended to them. Only Congress could determine what additional provisions of the U.S. constitution would apply. This was totally unlike the pattern of political development used for the mainly white residents in other U.S. territories before the Spanish American War.

- It took Congress ten years to provide a limited version of U.S. citizenship by statute to V.I. natives. During that ten year period, natives were treated in a subhuman fashion and were not accorded the full protections or privileges of the U.S. Constitution.
- Up until today Virgin Islanders are prevented from obtaining the full protections and rights in the Virgin Islands that all other U.S. citizens living in a state obtain at birth or after being naturalized.
- The U.S. citizenship status of V.I. natives is not guaranteed by the 14<sup>th</sup> amendment of the U.S. Constitution as it is for all naturalized citizens or for persons born in a state or on a military base.).<sup>11</sup>
- For the first 10 years of U.S. rule, V.I. natives had no right to trial by jury in civil cases, no locally written constitution, no right to vote for president, no voting or non-voting representatives in either house of Congress, could not elect a Governor, the vast majority could not vote for their local representatives, or run for any office due to income and property ownership restrictions, and they were not properly educated.
- Native Virgin Islanders were the victims of racist acts by Naval governors, who were specifically chosen from southern states where racist acts towards Blacks were commonplace. The following is a direct quote from one of the governors, namely Sumner Kittelle. “I cannot too strongly urge that there be no change made in the organic law until a full generation has elapsed... and above all the white element must remain in the lead and in supreme control.”<sup>12</sup>
- Even other government officials and soldiers performed racist acts during military rule, which lasted for the 14 years after the transfer from Denmark. Any attempts by natives to change their conditions were met with fierce resistance by these U.S. appointed officials.
- The best jobs were reserved for whites or light-skinned persons. Local women felt compelled to copulate with white men to produce lighter-skinned offspring, who they hoped would not be subjected to the abuses and other atrocities that they faced, (*the piel clara syndrome*).<sup>13</sup>
- Natives were shot at, or forced to perform normally private acts in public. Native leaders such as David Hamilton Jackson, Randolph Innis, Octavius Granady, Charles Emanuel, James Roberts, August Burnet and Rothschild Francis were maliciously discredited, and vilified by U.S. appointed Governors and other officials for writing about and otherwise trying to stop the innumerable abuses against natives.
- The laborers were paid starvation wages such as 20 cents a day immediately prior to the Transfer to U.S. rule. They formed a labor union and staged a six-week strike, which placed tremendous<sup>14</sup> additional hardships on them in order to receive a reasonable wage. They were forced to leave their homes due to lack of money.<sup>15</sup>



- Naval Governors had “...military, legislative, civil and judicial powers and the power to abolish the colonial councils.” Therefore, under U.S. rule the presidentially appointed Governor was virtually a dictator, and in many instances performed as such to the detriment of natives. The locals had little or no recourse when they took their fight to court. Even there they were discriminated against by the lack of the application of certain parts of the U.S. Constitution to the Virgin Islands, (*such as trial by jury in civil cases*), and by the racist rulings of judges appointed by the Naval Governors.
- Judges were elected under Danish rule, but as indicated before not by the majority of the population due to the prohibitive voting restrictions.
- The Naval Government resisted providing civil rights to the natives, such as Universal Suffrage, an elected governor, local representation in Washington, a constitution and civil government. Thus natives were denied most of these rights for almost 20 years under U.S. rule, (*and some rights are still being withheld by the federal government*). This continued the disenfranchisement pattern that had existed under Danish rule from 1848 after slavery had ended. Hispanic natives were denied the right to vote even with the passage of the 1936 Organic Act because of an English literacy requirement. <sup>16</sup>
- Before granting Virgin Islanders U.S. citizenship en masse and by statute in the 1920’s, Congress even considered and actually attempted “annexing the Virgin Islands to Puerto Rico”, without even seeking to obtain the permission of Virgin Islanders. It was only due to massive local protests by natives, that this was not done. <sup>17</sup>
- Local leaders and Virgin Islanders abroad agitated for civil government, a local constitution and land grants for locals in the early 1920’s. However their pleas fell on the deaf ears of both local and national officials.
- Naval governors appointed judges who were assigned to persecute any natives who sought to implement changes for the improvement of government for locals. Governor Philip Williams appointed George Washington Williams in 1924 for this express purpose despite protests from natives.)
- The Naval government intimidated the local press. Native editors were imprisoned allegedly on charges of libel.
- Government employees were intimidated and some fired for standing up for changes that would help Virgin Islanders.
- Taxation without representation occurred in the 1920’s. Sugar imported into the U.S. was taxed, which caused layoffs. Since locals had no representation in either house

of congress and could not vote for president, they had little or no viable way of getting their plight heard by federal officials.

- Workers were forced to leave their families and homeland to migrate to other countries such as Panama, Cuba and Puerto Rico to find work. <sup>18</sup>
- Naval Officials only viewed the problems of natives as economic ones and implemented some economic initiatives. The Native leaders pushed for political reform such as universal suffrage and locally-elected representatives. Their cries were ignored by local officials and those in Washington until almost an entire generation had passed amid discriminatory acts, flagrant and outright violations of the civil rights of natives by the whites under military rule in the 1920's.
- At one time in the 1930's, 29 white men owned 80% of St. Croix and controlled the colonial council. They resisted tax increases on their income and property, as well as homestead programs for the local natives.
- The federal government instituted homestead programs in the 1930's, which helped locals suffering from unemployment, but according to Willocks, "...whatever improvement was made in the unemployment situation was offset by increases in the non native population, due to immigration and a high birth rate." (*Locals had and still have no control over U.S. Immigration laws which are particularly injurious to their exercise of their political right to choose their leaders and approve constitutional or political status documents. When applied to the V.I. due to the small and easily affected population numbers and composition, the result can and has been detrimental to Native Self-Determination attempts such as ratifying two local constitutions in the late 1970's and early 1980's.*)
- Although the Fair Labor Standards Act was passed, an amendment to it in 1941 discriminated unfairly against native laborers because it prevented the favorable wage increase provision from being applicable to the V.I.
- Even though the CCC was brought to the V.I. and did provide training and benefits, the educational programs were not "...widened...to include the training which enrollees receive in the United States."
- St. Croix natives could not get a local 12<sup>th</sup> grade education until 1935, which was 18 years after being under U.S. rule. This affected their ability to obtain higher education and prepare themselves for assuming positions of leadership.
- Women were denied the right to vote until 1936 to prevent strengthening the black vote, since women made up the majority of the population.
- Military bases established in the V.I. before World War II, increased racism here. Some military personnel brought their racial attitudes and behavior with them. Many

confrontations occurred, and to not offend the white members of the military or lose their business, many local white businesses refused to serve native Blacks.

- Natives originally could not participate in the armed forces. Those who received permission had to volunteer after petitioning to have this privilege. Some Natives died as a result, but all experienced blatant racism in Puerto Rico and in the U.S. Some of them indicated that they were treated and got along better with the German prisoners of wars than they did with the White American servicemen.
- The Legislative Assembly passed a bill into law against discrimination because of the expected increase in tourism and white visitors to the territory beginning in the early 1950's. This was to offset the same kind of increase in racism that had occurred when the military came here during World War II. White business owners opposed the law arguing that "...such a bill would be bad for tourism, because tourists who were accustomed to segregation would be forced into integration. This would chase tourists from the Virgin Islands, which would result in the hotel and resort industry suffering considerable losses."
- Policies prejudicial to natives and favorable to persons from the U.S. by some appointed Governors even after military rule had ended in 1931 continued, especially under Governor Archie Alexander in the mid 1950's.
- Laurence Rockefeller bought 2/3's of St. John to turn it "into a millionaire's retreat."
- Even though he eventually turned the land over to the National Park, "natives soon found themselves victims of racial and economic discrimination. For example, the Caneel Bay Resort, a part of the national park, was opened to the public, but did not cater to the natives; the natives were being denied the opportunity to purchase land around the exclusive areas. In short, the national park was on the verge of taking over the island and turning it into a millionaire's club." This has occurred, and the Park constantly discriminates against natives. The most recent example is its refusal to grant land for public purposes, such as for a school for the native population to avoid them having to travel off-island to attend high school daily, while conversely allowing private businesses such as a hotel to occupy park land for over 40 years, for private benefit.
- The 1960's produced the greatest population growth primarily by immigration that the Virgin Islands had ever seen during American rule. By 1965, natives had become a minority in their homeland. Between 1950 and 1965, the population of every other ethnic group other than natives had more than trebled. Our relatives and friends from the other Caribbean islands went from 1,000 to 10,000. Puerto Ricans went from 3,000 to 9,700. Continentals went from 1,500 to 6,500. <sup>19</sup> Natives have still not recovered from the inordinate burdens placed on the infrastructure, such as roads, schools, social services, health care, water and power, etc.

- Natives do not have any control over population growth by immigration, and thus their right to vote for their constitution and their final status is being threatened by immigrants from the U.S. and elsewhere, who have outnumbered them since the 1960's. This is a direct and flagrant infringement on the right of natives to self-determination as guaranteed by the United Nations Charter, the International Covenant on Civil and Political Rights, Resolutions, 1514 (XV), 1541 (XV) and 35/118.
- The application of U.S. immigration laws and the freedom of immigrants to buy land in the V.I., have also affected the ability of natives to purchase and retain land for homes and other enterprises in pursuance of the American dream in the V.I. This was specifically noted among other impacts of cultural tourism in a 1969 doctoral dissertation by Martin Garson Orlins. The homes built by immigrants from the U.S. in particular, (some of whom are rich retirees, who can afford to build extravagant mansions), in many instances have driven property values sky high, and thus increased property taxes to a point beyond which many natives who were fortunate to buy land, cannot afford to keep their property. Many have been forced to sell property they had wanted to keep in their family for their children, grandchildren, and other relatives.<sup>20</sup> Others who would like to purchase land cannot afford to do so. *There are also many stories about price reductions for land offered to whites that are being denied to natives.*
- Gentrification, which was predicted over 30 years ago by Dr. Marilyn F. Krigger, a native U.V.I. professor, is again threatening the realization of the compelling state interest of diversity and the right of natives to buy land and live where they choose on the islands. The islands are being divided into enclaves for the rich and famous on the one hand and enclaves for the poor natives on the other.<sup>21</sup>
- Furthermore, natives are being forced once again to relocate to other places and leave their homeland where their relatives and friends reside and where all of their fondest memories are. There is a cultural tie or relationship to the land that some migrants do not understand, and it is difficult for many natives to simply migrate and leave all they have worked for and built behind, as persons who migrate here voluntarily do.
- At the rate that immigration is occurring, many Natives are being forced to leave their homeland. They soon will become more and more of a marginalized minority in their homeland, and will not be able to elect their political officials such as senators or even their highest official, the Governor.
- Even writing their constitution has been criticized because of the protections placed therein to offset the adverse effects on natives caused by the historical discrimination by government officials in the V.I. under U.S. rule, the indiscriminate application of U.S. immigration and other laws to the territory, and the threat to the preservation of the traditional culture and way of life of the natives.

- Natives are not similarly situated with immigrants from the U.S. or from other countries. The right to U.S. Citizenship by natives is tenuous at best, because it is only guaranteed by a statute and not by the U.S. Constitution. Two federal officials even recommended granting natives U.S. Citizenship by the 14<sup>th</sup> Amendment to the U.S. Constitution in the early 1980's when the Fourth Draft Constitution was being considered by Congress. One of them pointed out an instance in the mid 1970's where congress passed a law that removed the right of V.I. natives to be U.S. citizens; however, it was caught in time, and no harm was inflicted. This could never happen to non-natives or U.S. citizens living in one of the states.
- If the status quo is allowed to continue, these islands will completely become an enclave for the rich and famous, and the natives along with the rich culture they have created, preserved and practiced, will disappear.

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Notes

<sup>1</sup> Willocks, Harold, "The Umbilical Cord," 1995. p. 193.

<sup>2</sup> *ibid.* p. 192.

<sup>3</sup> *ibid.* p. 220

<sup>4</sup> *ibid.*, p. 220

<sup>5</sup> *ibid.* p. 221

<sup>6</sup> *ibid.* pp.221-222

<sup>7</sup> *ibid.* p. 223

<sup>8</sup> *ibid.* p. 223

<sup>9</sup> *ibid.* p. 223

<sup>10</sup> *ibid.* p. 314

<sup>11</sup> Boyer, William. *America's Virgin Islands, A History of Human Rights and Wrongs.* 1983, pp. 115-116

<sup>13</sup> See Herman Marcuse' testimony at an October 21, 1981 Hearing of the Senate's Energy and Natural Resources committee regarding the Fourth Constitution of the United States Virgin Islands.

<sup>14</sup> Boyer *op. cit.* p. 253

<sup>15</sup> Willocks. *op. cit.* p. 229

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<sup>16</sup> *ibid*, p. 263

<sup>17</sup> *ibid*, p. 263

<sup>18</sup> Willocks, p. 269

<sup>19</sup> Boyer *op. cit.* pp. 255-256

<sup>20</sup> Orlins, Martin Garson in Boyer, *op. cit.* pp. 254-256