Policy Forum Guyana

DRAFT COMMENTS ON NRF ACT (AMENDMENT BILL) #20 OF 2021

INTRODUCTION

This *Comment* should be viewed as a work in progress which aims in the first instance to make some thoughts available ahead of the Second Reading of the Natural Resources Fund Act (Amendment) Bill #20 of 2021 in Parliament. It has been prepared in the few days available over the Christmas holidays and incorporates the work of a number of individuals and organizations both in Guyana and abroad committed to a principled approach to the use of natura resources.

The first section of this *Comment* is a summary discussion of key principles and issues which should create the framework for the renovation of the existing NRF Act. The *Second* section addresses specific amendments to the proposed Act that are unacceptable in their current formulation.

The Bill 20 of 2021 provides an opportunity to generate a national consensus on how the discovery of oil should shape national society. Rather than correct evident weaknesses of the current Act and encourage a broad national consensus around the amended Act, the proposed Bill will simply replace one Act approved by half of parliament with another Act approved by the other half of Parliament, in both cases with a single seat majority.

SECTION 1 Framework Issues for Natural Resources Legislation

1.1 Why Creation of a Sovereign Wealth Fund (SWF) or Natural Resources Fund (NRF) is Critical

A dedicated Fund is the most efficient way of ensuring preservation of the value of inherited assets when sold. Unlike other forms of wealth, future generations have a claim on natural resources as a shared inheritance passed from time immemorial to the next generation.

1) *Inter-generational Fairness*
   All natural resources including sub-sea and sub-soil minerals are a shared inheritance. They belong in common to all citizens (present and future) for whom the State acts as the trustee (Public Trust Doctrine).
2) *Zero Loss of Value*
   All the value from the sale of assets must be preserved in a new inheritable asset of equal value, ensuring zero loss to all citizens and future generations (Preservation of Value Principle).
3) The benefits are to be enjoyed equally by all citizens, likewise any loss is a loss to everyone equally (Principle of Cooperative Dividend).

1.2 Understanding Natural Resources as Natural Capital

'Revenue' is an increase in wealth resulting from an economic transaction. If a watch worth $100 is sold for $125 income (revenue) is increased by $25. If sold for $60 there is no revenue, there is a loss of $40. Moreover, since natural resources are inherited assets, the transaction should be recorded as a 'diminution of assets' since such transactions almost always involve a loss. it almost always involves a loss. This confused thinking is reinforced by use of the phrase 'windfall profits' as if natural resources are ownerless, have no inherent value and can be disposed of by whoever finds them. This narrative is encouraged by extractive companies, since it disguises the enormous losses taking place in the extractive sector.

According to official sources, a total of 11.1 million ounces of gold have been extracted from Guyana in the forty-year period from 1980-2019. Based on yearly average prices over this period, the total value of the gold extracted was valued at USD7.4 billion, or G$1.5 trillion dollars. This amounts to USD 9,500 per person of inherited wealth lost to every Guyanese.

Moreover, such losses are routine. Australia lost 82% of the value of its mineral assets extracted over a 10-year period. Calculations show that in Goa, the state lost over 95% of the value of its iron ore extracted over the period 2004-2012. Similarly, for the minerals extracted in Australia over the decade 2000-2010, the state lost 82% of the value of its minerals. A total loss for future generations. This is looting economics which is not addressed by the NRF Amendment Bill

1.3 Models of SWF from which Guyana Can Learn

During a dialogue with the 'diaspora' in the United States earlier this year President Ali and VP Jagdeo noted that the Norway approach to SWF was not suited to Guyana, since Norway was already developed by the time it began to earn from North Sea oil. While, indeed, Norway may not be the best model for Guyana, the main reason has to do with the decrepit state of Guyana's governance arrangements not Norway' economics. Norway's success is rooted in sound social democratic values and a tradition of independent governance of the Fund.

While Norway may be the poster child for most an analysts and commentators on SWF, the country which needs urgently bringing into the Guyana conversation is Botswana. Botswana set up its Pula Fund in 1967 when they started extracting diamonds, and are considered like Norway to be extremely successful in managing their economy. While starting off as one of the poorest African countries, Botswana has out-performed almost the entire planet since.

Alaska has developed the model of a Citizens' Dividend, with every citizen of Alaska receiving a cheque at the beginning of the year from the portion of the Fund's earnings. The fundamental difference between a Citizens' Dividend and the various direct cash payments welfare schemes is that the Dividend is paid to all citizens as common owners of natural resources. They are not linked to other income or poverty index. Such Dividends can also be taxed in a manner that is fair, open and efficient.

Barbados announced in mid-year its intention of paying a Citizens' Dividend from the earnings of a SWF it is establishing.

Guyanese ruling politicians prompt the suspicion that they are not looking for the best-performing fund, but the Fund they can best control. In the 'diaspora' conversation referred to earlier the President and Vice-President lauded Kazakhstan as their favoured model. The Kazakh SWF is run by Presidential decree, its President being responsible for every decision on the use of the Fund, in keeping with the autocratic manner in which Kazakhstan is generally governed. "In 2020, Freedom House, an international human rights monitor, rated Kazakhstan as a "consolidated authoritarian regime'', stating that freedom of speech is not respected and "Kazakhstan's electoral laws do not provide for free and fair elections."

1.4 SWF As a Substitute for Taxation

Money taken from the Fund by politicians for budget support is a form of per head taxation on all citizens. Such monies, that belong to both current and future generations are being used as a substitute for raising taxes. The Government of Guyana over the past year has progressively increased the categories of citizens exempt from taxes and duties - the Joint Services being the most recent, the commercial and extractive sectors being earlier beneficiaries. All of these exemptions raise pressure to seek money elsewhere and the NRF is a very easy target.

1.5 Ecological Considerations

The proposed Act has nothing to say about the unjust geographic and inter-generational transfers of non-renewable resource wealth on either a local or global scale. The vast majority of Guyana's natural resource wealth, as with other resource dependent regions, has been transferred to the global North**.** This spatial, shift of wealth is accompanied by a similar process of impoverishment over time. The Future generations which have had no part whatever to play in creating the climate crisis that will bear the brunt of fossil fuel consumption in the 'loss and damage' caused by acidification of oceans, floods and forest fires.

Nothing in the NRF Act speaks to natural capital accounting, how reparations for natural resource asset depreciation will be provided for the next generation, or how limits to fossil fuel exploitation will be addressed. Rather subservience of local political leaderships to multi-national companies dominates the resource sectors

1.6 Civil Society Oversight

Policy Forum Guyana (PFG) and others strongly criticized the Sections of the NRF Act addressing the Public Oversight and Accountability Committee (POAC) of the NRF Act passed in 2018. Our criticisms spoke to the selection processes and the lack of powers of the POAC. The proposers of the Amendment Bill have both dismissed the original version of the POAC– because of its size – and proposed replacing it with an insultingly vague POAC, bereft of purpose, powers, selection process or any function other than to receive Reports from other bodies.

A POAC elected directly by civil society is needed to compensate for the absence of any independent social or political directions being available to the proposed NRF Act. With the proposed Act answerable only to the President via the Minister of Finance, the need for a well-structured POAC is urgent. The over-all purpose of a well-structured, independent POAC is to generate and sustain a broad-based political dialogue on the relationship of the NRF promoting equity, environmental and climate policy issues for which currently no oversight mechanisms exists.The case for independent oversight and accountability should be greater.

1.6 Civil Society Oversight

Policy Forum Guyana (PFG) and other bodies strongly criticized the Sections of the NRF Act addressing the Public Oversight and Accountability Committee (POAC) of the NRF Act passed in 2018. Criticisms spoke to the selection processes and the lack of powers of the POAC. The proposers of the Amendment Bill have both dismissed the original version of the POAC- because of its size - and proposed replacing it with an insultingly vague POAC, bereft of purpose, powers, selection process or any function other than to receive Reports from other bodies.

A POAC elected directly by civil society is needed to compensate for the absence of any independent social or political directions being available to the proposed NRF Act. With the proposed Act answerable only to the President via the Minister of Finance, the need for a well-structured POAC is urgent. The over-all purpose of a well-structured, independent POAC is to generate and sustain a broad-based political dialogue on the relationship of the NRF promoting equity, environmental and climate policy issues for which currently no oversight mechanisms exists. The case for independent oversight and accountability could not be greater.

For all of these reason adequate Parliamentary consideration of the reform of the Natural Resources Fund Act must be allowed.

SECTION 2:SPECIFIC COMMENTS ON NATURAL RESOURCE FUND ACT (AMENDMENT BILL 20 of 2021)

2.1 Summary of Desirable Elements for the Legislation

1. Acknowledgement of all mineral wealth as a shared inheritance, not 'windfall profits'.
2. Protection of the rights of future generations, by incorporation of Clause 149J (2) of the Guyana Constitution into the Act. *"The State shall protect the environment for the benefit of present and future generations through reasonable legislative and other measures (Clause 149J (2)".*
3. The primary goal of the Fund is intergenerational equity, i.e. maintaining the corpus of the inheritance.
4. Government is the Trustee, not proprietor, of inherited resources.
5. The entire proceeds of the sale of natural assets must be deposited in the Fund.
6. An independently elected Public Oversight & Accountability Committee is essential.
7. Replace use of the term "revenue" by 'sale proceeds'.
8. Invest overseas to avoid exchange rate appreciation i.e. 'dutch disease'.
9. Investments must earn income. Funds used for government projects should be structured as interest bearing, foreign currency denominated bonds.
10. No charges, liens or other forms of surety must be attached to the Act.
11. A Citizens Dividend, which may be taxable, should be incorporated into the Act.
12. The Fund must be radically independent of the Government of the day.

2.2 PART I Preliminary

There is no obvious reason to restrict this fund only to petroleum. It should be extended to all natural resources, or at least to all mineral resources. Consequential changes in other places in the Bill, such as 'petroleum licenses' would need to be made.

2.3 PART II Natural Resource Fund

The opening paragraph in the Explanatory Memorandum while a good start ought to be improved by the following amendment: "*This Bill seeks to establish the Natural Resource Fund to manage the shared inheritance of natural resource wealth held in trust for the current and future generations of the people of Guyana. It seeks to mandate the parties involved with managing the Fund to ensure that resource wealth benefits both current and future generations of the people*."

3(2) is good in general. However, it should be amended to read *"The purpose of the Fund is to manage the shared inheritance of natural resource wealth of Guyana held in trust for the benefit of present and future generations of the people in an effective and efficient manner by …"*.

3(2)(d) which reads: "*(d) using natural resource wealth to finance national development priorities including any initiative aimed at realising an inclusive green economy"* is dangerous, enabling spending for all kinds of mis-guided projects. Botswana, Norway and Alaska all set up their funds to prevent this.

3(3) The phrase should read '*on behalf of the people of Guyana'*, the phrase *"and of the* government" should be removed, the Government of Guyana does not own these assets.

3(4) Modify as per 3(3) above.

2.4 PART III Governance and Management of the Fund

The shortcomings of this Section are severe, appear to violate basic principles of accountability, are contradictory with respect to ownership and also to relationships between the Bank of Guyana and the Government.

5(1)&(2) The powers of the Minister of Finance and Government are unacceptable as is the ability of the Minister to issue directions to the Board (5(8).

8(1)(b The Investment Committee should not have "*a nominee of the Minister responsible for the administration of the petroleum sector*" Investment of wealth is a financial matter, and the Minister for the petroleum sector should be feeding information on likely inflows, but not participating in the actual investment decisions.

9(1)(f) The investment goal of 3% real return is a sound, conservative goal.

2.5 PART IV Deposits and Withdrawals

Deposits

15(4) There are exclusions in in what receipts from the petroleum industry go into the Fund. This leads to the possibility that the government raises VAT on crude or customs duty on inputs to indirectly capture some of the value. This game is played a lot in other places. Norway has a clear rule, anything from oil goes into the fund, no exceptions. That way, these games cannot be played.

Withdrawals

16(2) Payments should not be made into the Consolidated Fund. Payments should be made directly by the Bank on behalf of the government.

Section 3(2) sets out four objectives of the NRF. The four objectives were (a) reducing volatility in natural resource revenues; (b) ensuring no loss in national competitiveness; (c) transferring resource wealth across generations; and (d) financing national development priorities including inclusive green economy. Looking at the withdrawals section, it isn't clear how they are being met.

(a) Given the high percentages in Schedule 1, price volatility will definitely transmit through to the budget
(b) Given the high percentages in Schedule 1, it would seem there would be an increase in loss in national competitiveness. This is because there is already a loss in national competitiveness as a result of a lot of local spending that is eventually paid for by the oil. This is in effect a net injection of foreign exchange into Guyana, and will make the currency stronger, and other exporters weaker. Also, as already seen in Georgetown, the local spending causes a rise in local prices of all kinds that also impacts the competitiveness of other export industry. (Norway had a unique mechanism to deal with this. They first set wages for the non-oil export sector, and then those wage levels were used for both the non-export sector as well as the oil export sector. In this way,

wage levels at least were not distorted. And they kept the foreign exchange from oil away from the nation, ensuring the exchange rate did not appreciate.)

(c) Given that huge amounts can go to the budget, with zero accountability as to whether any non-wasting assets have been created for future generations to inherit, it is unlikely that this will be met.

(d) This objective may be met, but even here, it is more likely to be wasted. However, funding '"national development priorities" or funding a "major natural disaster", cannot be set aside entirely. Ideally there must be a requirement for a mechanism to make it good in subsequent years, including at the market rate of return in US Dollars, with a minimum of 3%. It can be structured as an interest bearing loan from the Fund to the government.

It is worth remembering that all these withdrawal restrictions (e.g. 16(1), 17(1) & 19) are in a law, and each year there's a finance bill which can amend this law. These limits in Sections 16-19 are more in the nature of floors, not ceilings.

Section 17(2): This is entirely unacceptable. The Guyana 2021 budget is G$307 billion (US$1.472 billion), of which G$266 billion (US$1.276 billion) is from current sources while G$41 billion (US$197 million) is from capital sources. The USD 534 million already in the Fund could simply be cleaned out as a 33% injection into the current budget for 2022, nearly a 33% increase over and above other normal increases in taxes.

Section 17(3) provides for a review of the withdrawal process. In the initial years, it should be much more frequent. Also, the scope of the review needs expanding to cover all aspects of the Act, especially whether the goals of the NRF are being met.

Section 18 on Emergency financing is extremely loose - 'disaster' may be any time up to previous two fiscal years. Unless it is an extraordinary disaster, funding is unlikely to be required. And the government has a normal budget as well with money set aside for disasters and the like. As proposed above, withdrawals of this nature should be on a loan basis at best.

Section 20(2) sets out a process for emergency financing, and includes a report why withdrawal for emergency financing is required, what it will be used to finance, and how it will ameliorate the impacts of the disaster. A similar provision should be included in Section 20(1) for normal withdrawals for "national development priorities" – why is it needed, what will be financed, and how it will help.

Section 25 is excellent, except the withdrawals section has rendered it meaningless.

2.6 Part VIII:

Ridiculously severe Penalties and Offences are proposed for certain offences, while leaving loopholes for corrupt officials and politicians to avoid them..

Policy Forum Guyana
28th. December, 2021