

**“SOVEREIGNTY VS SANCTITY OF  
CONTRACT  
BILLIONS AT STAKE FOR GUYANESE”**

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By

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# Introduction

Topic for today Sovereignty v Sanctity

Before exploring too deeply, a matinee show

# Our Political Leaders and the Agreement

- President Dr. Irfan Ali



# Our Political Leaders and the Agreement

- Vice President Bharat Jagdeo



# CHANGE OF TUNE

- ▶ *“Thinking in policy making is much more complex, it’s never a linear way*
- ▶ *Ring-fencing can save all the money in the world; ring-fencing could lead now too to us having nothing in the future.”*

# HOPE SPRINGS ETERNAL OR SMOKESCREEN

- ▶ Hammerhead Project and Produced Water
- ▶ VP's ambiguous Comment: here is an assumption that there will be a seventh project.
- ▶ Government will determine through two permits - one the licence and then the environmental permit - how it will deal with all of these issues.”

# Promises are made to be broken

The new mantra: Sanctity of Contract

While criticising the 2016 as unfair, Jagdeo has said the current administration will respect its sanctity: **Exxon mouthpiece Oil Now: August 26, 2023**

Sanctity simply means that contracts properly and freely made must be honoured

# SANCTITY OF CONTRACTS - EXCEPTIONS

Illegality

Duress

Unconscionable or Unfair

Against public policy

Unconstitutional



# Illegality

- Section 10 of the PEPA 1986
- The evil Bridging Deed - An artifice, a fiction, unlawful and only just short of a fraud.
- Treats the 1999 Agreement as if it never existed.
- Critical documents not available to the public.

## Duress

- Technical teams visit to Houston, Texas
- Inviter: Exxon
- Attendees: Exxon 18, GGMC 2.
- Purpose: Technical meeting
- Exxon “confronted GGMC on the matter of their **Contract and Licence**”.
- For Esso to start spending, the replacement petroleum licence and agreement is needed.

# Unconscionable or Unfair

	2019	2020	2021	2022	2023	Total
	GY\$ Mn	GY\$ Mn	GY\$ Mn	GY\$ Mn	GY\$ Mn	GY\$ Mn
<i>Oil Companies</i>						
Gross Profit/ (Loss) before Taxation	(39,672)	9,660	314,553	1,405,827	1,634,712	3,325,079
Taxation	12,681	(4,049)	(45,621)	(225,094)	(306,784)	(568,868)
<b>Net Profit/ (Loss) before Taxation</b>	<b>(26,991)</b>	<b>5,610</b>	<b>268,931</b>	<b>1,180,733</b>	<b>1,327,928</b>	<b>2,756,211</b>
Tax Certificate	-	4,049	45,621	225,094	306,784	581,549
<b>Actual Profit</b>	<b>(26,991)</b>	<b>9,660</b>	<b>314,553</b>	<b>1,405,827</b>	<b>1,634,712</b>	<b>3,337,760</b>
<i>Guyana</i>						
Royalties	-	2,694	10,841	32,350	45,472	91,357
Profit Oil	-	38,652	74,479	262,041	289,842	665,014
<b>Total</b>	<b>-</b>	<b>41,346</b>	<b>85,320</b>	<b>294,391</b>	<b>335,314</b>	<b>756,371</b>
<i>Oil Companies Revenue to Guyana Revenue</i>						
Inclusive of Royalty	-	0.23	3.69	4.78	4.88	4.41
Profit Oil Only	-	0.25	4.22	5.36	5.64	5.02

Source: Audit Financial Statements of Oil Companies and Financial Statement of Natural Resource Fund

# Against Public Policy

- Principle
- Fraud
- Ethics
- Fairness
- Legality

# Unconstitutional

Section 65. (1) Powers and Procedure of Parliament:

**Subject to the provisions of this Constitution,** Parliament may make laws for the peace, order and good government of Guyana.

Article 8 Supremacy of Constitution:

This Constitution is the supreme law of Guyana and, if any other law is inconsistent with it, that other law shall, to the extent of the inconsistency, be void.

# Sovereignty

- The concept of Sovereignty over natural resources is an important principle in international law.
- The 1962 UN General Assembly Resolution 1803 recognises all states to have Permanent Sovereignty over Natural Resources.
- Sovereignty over natural resources refers to the recognized right of a nation or state to exercise control, authority, and ownership over the natural resources within its territory.
- The petroleum activities act repeats what was stated in the original 1939 Petroleum Act: that the property of petroleum existing in its natural condition in strata in the national territory is vested in the state.

## The Tax Clause in Agreement

- Hands the Returns to the Minister to make payment out of Guyana's share of oil revenue.
- Receipt issued by GRA in name of the oil companies.
- Is there a major tax evasion enterprise at work?

# The Tax Clause in Agreement

Regulation 18 of regulation five of 1986 provides that a petroleum prospecting or production license must incorporate the conditions to which it is granted. It is clear therefore the Minister could have sent a range of conditions, including on ring, fencing, local content long before the local content act of 2022 and environmental issues.



# Easy Picking

The global minimum tax (GMT) is an internationally agreed-upon minimum rate of taxes that would be paid by large corporations. The new GMT sets a proposed rate of 15% on profits.

	<b>Total</b>	<b>New Revenue</b>
	<b>GY\$ Mn</b>	<b>GY\$ Mn</b>
<b>Profit before Taxation</b>	<b>1,634,712</b>	
Add back Exploration Expenses to Profit	77,989	38,995
<b>New Profit before Taxation</b>	<b>1,712,701</b>	<b>38,995</b>
<i>Taxation at 15%</i>	(256,905)	256,905
<b>Net Profit after Taxation</b>	<b>1,455,796</b>	<b>295,900</b>

# Our Political Leaders and the Agreement

## **Khemraj Ramjattan: Former Leader of AFC**

Originally strong defender of 2016 Agreement; has joined the call for a renegotiation of the deal.

**Raphael Trotman: Signer of Agreement:** Open to giving evidence before a Commission of Inquiry. Just been re-elected Chairman of the AFC.

## **Nigel Hughes' response to question on renegotiation:**

Unable to comment on re-negotiating; has other plans if elected; will set up committees and if we get into government, commissions that are specifically dedicated to dealing with oil, generally.”

# Our Political Leaders and the Agreement

## **Aubrey Norton: Leader of PNC/R**

- Advocates for using provisions within the existing contract to engage ExxonMobil for better terms without formally reopening negotiations.
- Respects the “sanctity of contracts”

# The Performance of the 2016 Agreement

- Guyana Oil Lifts Record

<b>Details</b>	<b>2020-2021 Actual</b>	<b>2022 Actual</b>	<b>2023 Actual</b>
No. of Lifts Reported	69	102	142
Guyana's Share	9	13	17
% of Share	13.04%	12.75%	11.97%

# The Petroleum Agreement

<b>Principal Features</b>	<b>2016</b>
Signing Date	June 27, 2016
Expiry Date	End of 2056
Actual Expiry Date	Not Applicable
Area	26,806 sq. km.
Signing Bonus	US\$18 Million
Royalty	2%
Maximum Cost Recovery	75%
Profit Share	50/50

# Conclusion

- Guyana giving away close to \$300 Billion annually by refusing to follow international and domestic law.
- Impose ringfencing
- Sign the Treaty which falls under the Centre for Tax Policy and Administration of the OECD
- Set up an independent Petroleum Commission, adequately resourced.
- Establish an accounting framework for accounting and reporting by the oil companies.