5 November 2019

Standing Committee on Finance

Mr. Allan Wicomb (Committee Secretary)

E-mail: awicomb@parliament.gov.za

Phone: (021) 403 3759/083 412 1475

Select Committee on Finance

Mr. Zolani Rento (Committee Secretary)

E-mail: zrento@parliament.gov.za

Phone: (021) 403 8071/083 707 2188

**SUBMISSION TO:**

**THE STANDING AND SELECT**

**COMMITTEES ON FINANCE**

**PROPOSED ENERGY INFRASTRUCTURE INVESTMENTS IN**

**THE MEDIUM TERM BUDGET POLICY STATEMENT 2019**

**Submitted by:**



**WoMin African Alliance**

9th Floor, South Point Corner

87 De Korte Street, Braamfontein, Johannesburg

Ph: 011 399 1027

Email: trusha.reddy@womin.org.za

NPO No: 164-976

**International Rivers**



F10 ProEquity Court

1250 Pretorius Street,Hatfield, Pretoria.

Ph: 012 430 2029

Email: rudo@internationalrivers.org

NPO No.: 126-560

Drafted with the assistance of:

**The Legal Resources Centre**

3rd Floor, 54 Shortmarket St, Cape Town

Ph: 021 481 3000

**Kirsten Pearson**

Research Fellow &

Steering committee member, Budget Justice Coalition

Ph: 082 936 1898

**EXECUTIVE SUMMARY AND RECOMMENDATIONS**

This submission by WoMin and International Rivers concerns Medium Term Budget Policy Statement allocation for the Department of Energy as it pertains to the Grand Inga Dam Project. This department’s budget does not mention the Grand Inga Dam Project specifically. However, it is reasonable to conclude that the Department of Energy will be incurring expenditure in the coming financial year and beyond that in the development of this project for three reasons:

1. The Treaty entered into between the RSA and the Democratic Republic of Congo committing this country to obtaining energy from the Grand Inga Dam Project
2. The 2011 Memorandum of Understanding between RSA and the Democratic Republic of Congo committing South Africa to obtaining energy from the Grand Inga Dam Project
3. The 2019 Integrated Resource Plan published by the Department of Energy
4. The Department of Energy budget Vote 26 allocation to Foreign Governments and International Organisations under programme 6: Clean Energy.

The Grand Inga Dam Project is not a least cost electricity generation, according to the IRP 2019. It is intended to be implemented by the South African government that undertakes to facilitate the mobilization of its financial resources required for the development of the project[[1]](#footnote-1) Power offtake agreements will be undertaken with Eskom. The project will entail significant public expenditure over many years. To date, concerns have been raised over governance issues regarding the project evident from the World Bank report supporting their withdrawal from the project in 2016.

The gravest concern we raise in this submission is that government has committed to this project without there being any independent South African project appraisal and risk assessment into the project. The Treaty requires a feasibility study meaning “a report regarding the technical, financial, legal and regulatory aspects of the project to facilitate decision making regarding the optimal options to be undertaken for its development.” Before the South African taxpayer can underwrite any aspect of the development of this project Parliament must ensure that a transparent and participatory process is undertaken in order to interrogate such feasibility, in order for any budget allocation to it is Constitutionally compliant. This would entail a comprehensive project appraisal and legal and financial risk assessment.

The economic context of the project is the dire state of South Africa’s debt and the potential for this project to significantly increase our debt levels. Eskom as procurer poses a further significant fiscal risk given that its current state of governance is not in a sound and sustainable condition as is clear from the pronouncements by the Minister of Public Enterprises, Pravin Gordhan on 29th October 2019. Once significant funds have been spent on the project it will be difficult for the government to justify backing out of it, even if it is not economically sustainable to be continuing with it. Our research indicates that the project, like many other large-scale energy procurement projects is likely to be subject to cost over runs. It is not the least cost option. Loss of electricity generated due to the long transmission lines will result in the expenditure on the project by South Africa being inefficient and wasteful.

*Parliament is required to promote effective financial management by the executive.* The constitution details the role of Parliament in ensuring transparency and efficiency in the oversight of public expenditure. In terms of Section 214 (2) of the Constitution an appropriations act of Parliament must provide for the equitable division of revenues to different spheres of government and must take into account, amongst other things, the “national interest” and “the needs and interests of the national government based on objective criteria.”[[2]](#footnote-2) Moreover, section 215 (1) of the Constitution states that national budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt and the public sector. Section 195 of the Constitution also mandates that public administration promote the “efficient, economic and effective use of resources”. The Money Bills Amendment Act, which elaborates on these constitutional duties, requires Parliament, when considering the Budget, to ensure that there is an appropriate balance between revenue, expenditure and borrowing; that the cost of recurrent spending is not deferred to future generations; and consider the short, medium and long term implications of the fiscal framework, division of revenue and national budget on the long-term growth potential of the economy and the development of the country.[[3]](#footnote-3)

Facts available at the current time, set out in this submission, indicate that regardless of the current cost of the Grand Inga project, obtaining of electricity from this source violates the requirements of cost effectiveness and effective financial management. Given the absence of comprehensive information in the IRP 2019 and otherwise about the feasibility and financial risk to the South African fiscus of the Grand Inga Dam Project Parliament will be unable to discharge this constitutional obligation as set out above.

Parliament is obligated to promote and ensure transparency in procurement, and in national, provincial and municipal budgetary processes. The Department of Energy’s current procurement process for the Grand Inga Project has not been conducted in a transparent manner. Parliament should take steps to make the process transparent, in line with its constitutional obligations outlined above.

In order to enable Parliament to discharge its constitutional obligations to ensure prudent and transparent financial management, the Committee should ensure that the Department of Energy provides information to Parliament as to exactly how much of its proposed budget it intends to spend on any aspect of the development of the Grand Inga Hydroelectric Power Project and associated infrastructure such as the transmission lines. The DoE needs to answer the questions posed in this submission so that Parliament can make the budget allocations in a manner compliant with its constitutional duty to protect the South African fiscus.

Secondly and in order to promote transparency as required by the constitution The Select and Standing Committee of Finance should recommend that the Department of Energy act in a more transparent manner, providing adequate information to the public and Parliament as to its intentions and the decisions being taken regarding proposed Grand Inga Dam Project. Only then can Parliament properly exercise its constitutionally mandated oversight role.

Thirdly we raise the concern that should Eskom be unable to meet its commitments to power purchase agreements with the DRC, it will have to be bailed out by further appropriations. Eskom’s risks and potentially significant future bail outs do not form part of the budget and budget debate process and are therefore do not fall to be scrutinized in this process by Parliament as required by the Constitution. This is all the more reason not to commit any further funding to this project until its financial feasibility has been scrutinized and assured and Eskom is confirmed to be a sustainable state owned enterprise.

*Our recommendations in summary are:*

A. The Committees should recommend to the National Assembly that the Department of Energy **disclose what part of its budget is to be spent on the development of the Grand Inga Dam Project**, before the funds related the Department of Energy budget are approved.

Parliament is required to promote effective financial management by the executive. Given the absence of comprehensive information about the expenditure on, and cost of the Grand Inga Dam Project Parliament will be unable to discharge this constitutional obligation.

B The Committees should recommend that the Budget Facility for Infrastructure (BFI) conduct a project appraisal and rigorously assess the feasibility, risks and proposed financing arrangements.

C Parliament is obligated to promote and ensure transparency in procurement, and in national, provincial and municipal budgetary processes. It should recommend that the Department of Energy act in a more transparent manner, providing adequate information to the public and Parliament as to its intentions and the decisions being taken regarding the proposed infrastructure investments. Only then can Parliament properly exercise its constitutionally mandated oversight role.

D No funds or loan guarantees should be approved for expenditure on the Grand Inga Dam Project until Eskom has demonstrated that it is a financially sustainable State Owned Enterprise.

**TABLE OF CONTENTS**

1. **INTRODUCTION**

1. **PARLIAMENTS OVERSIGHT ROLE**
2. **FACTUAL BACKGROUND**

1. **RISKS ASSOCIATED WITH THE GRAND INGA PROJECT**
2. **FINANCING THE GRAND INGA DAM PROJECT AND THE ABSENCE OF FEASIBLITITY AND RISK ASSESSMENTS**
3. **LESSONS FROM THE ARMS DEAL**
4. **RECOMMENDATIONS REGARDING PARLIAMENTARY OVERSIGHT**
5. **CONCLUSION AND RECOMMENDATIONS**
6. **INTRODUCTION**

This submission by WoMin and International Rivers to the Standing and Select Committees on Finance in response to the tabling on 30th October 2019 by the Minister of Finance of the Medium Term Budget Policy Statement (“MTBPS”). The country’s energy future and the financial implications of energy planning is a focal point in this Medium Term Budget Policy Statement, and indeed a critical issue for this country.

Following the tabling of the MTBPS, the Standing and Select Committees on Finance are tasked to review and report thereon to the National Assembly with recommendations regarding the proposed fiscal framework. This submission to these committees addresses proposed energy infrastructure investments envisaged in the recently promulgated Integrated Resource Plan 2019, in particular the Grand Inga Hydropower Project and Associated Transmission lines (Grand Inga Project). We request the Committees to include in the report the concerns set out in this submission with respect to the proposed allocation of funds to the procurement of energy from the proposed Grand Inga power hydroelectric power station.

This submission specifically highlights the fiscal risks attached to the Grand Inga Project in the form of contingent liabilities that arise out of loan guarantees that will be provided for the financing of South Africa’s contribution to the project. It also addresses the impact of the Grand Inga project in terms of both revenue and expenditure implications.

Although proposed expenditures on the Grand Inga Project are not specifically and separately indicated in the budget for the Department of Energy it is assumed until stated otherwise by this Department or Treasury that its budget includes funding for the development of this project, given the signing of a treaty and memorandum of understanding between South Africa and the Democratic Republic of Congo (DRC) committing this country to receiving electricity from this project, followed by the publication of the 2019 Integrated Resource Plan which commits South Africa to receiving 2500 megawatts of electricity from this hydroelectric power project.

Also, it should be noted that in the Department of Energy’s 2017/2018 Annual Financial statement, strategic objective 1.4 was listed as strategic support of energy security. The five year targets from the 2015–2020 Strategic Plan included 50 bilateral inter-governmental engagements or visits with African states regarding hydro-power and 90 bilateral inter-governmental engagements or visits hosted in the energy sector excluding African countries regarding the Nuclear Programme.



The MTBPS 2019 has confirmed the allocation of R27915m towards Foreign Governments and International Organisations under section 6: clean energy. **The above activities are clearly preparatory to and are integrally linked to the Department of Energy plan to purchase and transmit electricity from the Grand Inga project to provide approximately 2500MW of electricity.**

The proposed expenditure on the Grand Inga Dam Project is not the least cost option. Procurement of energy from this source violates the requirements of cost-effectiveness and effective financial management. It will impact the national economy over the coming decades, subsequently constraining the State’s expenditures in other areas. Indeed, if the project costs are more than budgeted for, this project will likely increase the nation’s budget deficit and national debt. The current situation in regard to South African national debt makes it essential that it takes all reasonable steps to prevent this situation being exacerbated by further expenditure on energy that is not a least cost option.

South Africa and Eskom are in a state of fiscal crisis and the approval of further expenditure on projects that are not least cost options, and feasibility and risk assessed, falls foul of the Constitutional requirements for sustainable financial management.

***General Submission recommendations***

A. The Committees should recommend to the National Assembly that the Department of Energy **disclose what part of its budget is to be spend on the development of the Grand Inga Dam Project**, before the funds related the Department of Energy budget are approved.

.

 Parliament is required to promote effective financial management by the executive. Given the absence of comprehensive information about the expenditure on, and cost of the Grand Inga Dam Project parliament will be unable to discharge this constitutional obligation.

B The Committee should recommend that the Budget facility for Infrastructure undertakes a comprehensive and independent cost, feasibility and risk assessment according to international best practice, and subject to public participation and parliamentary and Treasury[[4]](#footnote-4) oversight before any funds are approved for allocation to the **Grand Inga Dam Project.**

C Parliament is obligated to promote and ensure transparency in procurement, and in national, provincial and municipal budgetary processes. It should recommend that the Department of Energy act in a more transparent manner, providing adequate information to the public and Parliament as to its intentions and the decisions being taken regarding proposed infrastructure investments. Only then can Parliament properly exercise its Constitutionally mandated oversight role.

D No funds or loan guarantees should be approved for expenditure on the Grand Inga Dam Project until Eskom has demonstrated that it is a financially sustainable State Owned Enterprise.

1. **PARLIAMENT’S OVERSIGHT ROLE**

The Constitution requires the National Assembly of Parliament to oversee and scrutinize the exercise of national executive authority and to provide mechanisms to ensure that all executive organs are accountable to Parliament.[[5]](#footnote-5) With respect to the Budget, the National Assembly is required to exercise oversight over the passing of money bills, and may amend them if necessary.[[6]](#footnote-6) Section 214 (2) of the Constitution requires an appropriations act of Parliament to provide for the equitable division of revenues to different spheres of government and must take into account, amongst other things, the “national interest” and “the needs and interests of the national government based on objective criteria.”[[7]](#footnote-7) Moreover, section 215 (1) of the Constitution states that national budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt and the public sector. Section 195 of the Constitution also mandates that public administration promote the “efficient, economic and effective use of resources”.

The Money Bills Amendment Act, which elaborates on these constitutional duties, requires Parliament, when considering the Budget, to:

1. ensure that there is an appropriate balance between revenue, expenditure and borrowing;
2. ensure that the cost of recurrent spending is not deferred to future generations; and
3. consider the short, medium and long-term implications of the fiscal framework, division of revenue and national budget on the long-term growth potential of the economy and the development of the country.[[8]](#footnote-8)

The Grand Inga Project is at its inception, but its full costs, risks and benefits for the economy have not been adequately determined by the South African Government. Any study conducted by the World Bank (2012) or other agencies or governments have not been subject to scrutiny by Parliament or the South African public so as to enable Parliament to discharge the above constitutional obligations for a portion of the budget that may well be spent on developing this project. There is no publicly available official analysis to determine whether the further development of this project is a reasonable objective for the Department of Energy given the fiscal risks that it might pose for the country. We have requested the feasibility study from the DoE and Treasury but have not been provided with it.

By the Minister of Energy’s own admission in the IRP, the feasibility has been determined by the project developer.

Eskom is currently in debt in the amount of over R450 million.[[9]](#footnote-9) Yet, despite escalating debt and load shedding, it has not been made clear how Eskom and South Africa will raise the necessary financing or absorb the risks of importing power from DRC. The risks are considerable, including differing strategic visions, governance risks, technology risks, security of the transmission lines, delays and cost overruns, externalized job creation, and tariff hikes.

The risks of the project have been described in a World Bank study and the World Bank does not support the project. (see further comments below). This alone should indicate that a full risk analysis of this project is required before Parliament can agree to further expenditure in a constitutionally compliant manner. Without this information Parliament will also not be in a position to promote effective financial management by the executive through the budget process, as required by section 215(1) of the Constitution.

Without having before it all the relevant, up-to-date and accurate information, Parliament cannot fulfill its fundamental constitutional duty set out in section 214(2) (a) and (c) of the Constitution, which is to pass legislation equitably dividing the State’s revenues after taking into account the national interest, and the needs and interests of the national government on objective criteria. Similarly, Parliament cannot ensure effective use of resources, balanced revenue, expenditure and borrowing, the short, medium and long term implications of the expenditure and its impact on future generations without having sufficient costing information.

It is submitted that Parliament should take all the necessary steps to improve South Africa’s energy security and generation trajectory by asking the right the questions regarding the costs risks and feasibility of importing energy from the Grand Inga Project before allocating any funds to this project.

To address these concerns, we request that the Committees make the following recommendations, to ensure that Parliament has discharged its constitutional obligations and to avoid a possible future constitutional challenge to any appropriations Acts:

1. The Department of Energy should be required to disclose what funds – allocated in the Medium Term Budget - it plans to spend on any aspect of the development of the Grand Inga Project.
2. In the event that it requires a budget for such project development, such funds should not be approved unless it has completed an accurate cost and economic risk analysis of proposed future Grand Inga Project that takes account of all relevant information and is open to public comment.
3. Further the basis, including data referred to, given in the Integrated Resource Plan (“IRP”) 2019 for including the Grand Inga Dam Project should be fully disclosed to Parliament and the public for public comment as well as the reasons for deviation from the least cost option.
4. The Department of Energy should be required to act in a more transparent manner, providing adequate information to the public and Parliament as to its intentions and the decisions being taken regarding the planned off take financing that will be provided by the South African government for this project as planned.
5. Any money budgeted for large-scale energy projects should be conditional on greater Parliamentary oversight.
6. No funds should be approved for expenditure on the Grand Inga Dam Project including the transmission lines, until Eskom has demonstrated that it is a financially sustainable State Owned Enterprise.

**III. FACTUAL BACKGROUND**

The financing risks associated with the Grand Inga project are particularly concerning due to South Africa being the anchor offtaker for the project, meaning that South Africa through Eskom will be first to commit financing to the project.[[10]](#footnote-10) Eskom’s budget does not get tabled in the Estimates of National Expenditure, because it is a State Owned Entity not a National Department. The undertaking that **Eskom will enter into power purchase agreements to procure energy from the project is a concern as it creates a potential contingent liability for the State which is not scrutinized in the budget process.**

As the sole shareholder of Eskom the state will ultimately be responsible to underwrite the liabilities incurred by Eskom in the project. In 2014, the SA government approved the ratification of the Grand Inga Treaty with the DRC. Under the treaty SA will buy more than half the power generated by the first phase of one of the world’s biggest hydroelectric projects.[[11]](#footnote-11)

In May 2012, Minister of Energy, Minister Dipuo Peters delivered the 2012 Budget vote speech for energy in Parliament and referred to the Grand Inga Memorandum of Understanding (MoU), signed in November 2011[[12]](#footnote-12). This document indicates that the DRC has invited the RSA to consider its participation in such development, with the expectation that **Eskom and SNEL** will be the primary participants in the project and entitled to a portion of the output from the Project pursuant to Power Purchase Agreements with the applicable Project Companies and, if so agreed, with any additional power output being sold to other parties."[[13]](#footnote-13)

The MoU goes on to say "the Parties are also willing to consider for each such Project as may be appropriate, the equity investment by Eskom and SNEL (or their affiliates in the Project and the provision of various services to the Project by Eskom and SNEL (or their affiliates), all as may be agreed from time to time."

In addition, it confirmed that "South Africa has committed itself to serve as the first off-taker of the project and that any party wishing to play a role in equity ownership and/or operations will be subjected to protocols to be concluded by the Joint Commission".

The MoU indicates that South Africa and the DRC intended to adopt and ratify a bilateral agreement (treaty) with respect to the cooperation on and development of the Grand Inga project, consisting of consisting of approximately 40,000 MW of hydroelectric power generation on the Congo River. It also outlined that “each Party shall designate agents to a Joint Commission, which will operate at Ministerial and Technical level and will be responsible for the negotiation, preparation and implementation of the Treaty”.

In terms of the responsibilities of the parties, the MoU provided that “*The South African Government will facilitate the mobilization of financial resources required for the Project through, but not limited to, its financial institutions.*” In 2013, South Africa signed the Grand Inga Treaty which was ratified in 2014. The treaty designated South Africa as the principal buyer of 2,500 MW of electricity from the Democratic Republic of Congo’s (DRC) proposed Inga 3 Dam. The dam’s construction costs are estimated at US$18 billion; South Africa is responsible for over 1,600 km of transmission lines from the DRC/Zambia border and related costs, estimated at $4 billion.[[14]](#footnote-14)

**Current energy situation**

South Africa’s energy security and generation is vulnerable. Eskom debt, at R450 billion has been described in dire terms by the Minister of Finance:

“We are facing an extremely serious financial situation,” Mboweni told legislators in Cape Town. “Eskom is not financially sustainable based on its current high levels of debt and its inability to generate sufficient revenue to meet its operational and capital obligations, which exposes the entity to high levels of liquidity and balance-sheet risks.”[[15]](#footnote-15)

At such a critical time, South African energy planners and policymakers must pursue secure, affordable, sustainable and climate-friendly solutions which can be easily implemented and connected to the grid. However, the current administration has committed South Africa’s scarce resources and time to a burdensome treaty and a costly project that likely will not come online until after the year 2030 at best.

**Costs**

# According to a Budgetary Review and Recommendation Report of the Portfolio Committee on Mineral Resources and Energy (Vote 26) dated 22 October 2019,[[16]](#footnote-16) the next phase of the Grand Inga project, Inga 3, is expected to cost in the region of US$12-billion and produce around 4 800 MW of electricity. At an exchange rate of R15 to the US dollar, this equates to R180 billion. It is not clear whether this cost includes the cost of transmission lines.

# In the 2013 Budget Review, National Treasury listed the cost of the Grand Inga hydroelectric project as being R200bn.[[17]](#footnote-17)

# A 2015 McKinsey report[[18]](#footnote-18) entitled ‘Brighter Africa: The growth potential of the sub-Saharan electricity sector’ outlined that “There are various estimates of Grand Inga’s cost, but one that is accepted is about $80 billion. This amount comprises roughly $40 billion for generation and $40 billion for transmission.”

# On 15 March 2016, Department of Energy Deputy Director General: Policy, Planning and Clean Energy, Mr Ompi Aphane, presented to Parliament’s Portfolio Committee on Energy to provide the committee with an update on the Grand Inga project.[[19]](#footnote-19) The presentation highlighted that the DRC had given South Africa the right of first refusal (RoFR) for both equity and off-take in respect of any and all future phases of the project or any related hydroelectric development of the Congo River in and around the Inga complex, if South Africa proceeded with Phase 1 (“lock-in”). In terms of the Right of First Refusal, the committee heard that South Africa was guaranteed a minimum of 20% of generated power equal to 9 640MW and a maximum of 13 060MW, and anything beyond this could still be negotiated. In return for the Right of First Refusal, the DRC required South Africa to pay a commitment fee of $10m into an escrow account. It is not clear whether this amount has been paid into an escrow account or not.

In the Department of Energy’s 2017/2018 Annual Financial statement,[[20]](#footnote-20) strategic objective 1.4 was listed as strategic support of energy security. The five-year targets from the 2015–2020 Strategic Plan included 50 bilateral inter-governmental engagements or visits with African states regarding hydro-power and 90 bilateral inter-governmental engagements or visits hosted in the energy sector excluding African countries regarding the Nuclear Programme.



 **IV. RISKS ASSOCIATED WITH THE GRAND INGA PROJECT**

**Offtaker risks**

The financing risks associated with the Grand Inga project are particularly concerning due to South Africa being the anchor offtaker for the power produced, meaning that South Africa through Eskom will be first to commit financing to the project.[[21]](#footnote-21) The offtaker bears risks that are more severe than the risks that later financiers bear. With offtake agreements signed by the public administration, a remarkable part of market risk is actually transferred to the public entities.[[22]](#footnote-22)

Due to South Africa’s current high debt levels, it arguable that South Africa should not be willing to be the anchor off-taker, because the risks on the Grand Inga Project are so great.

The Grand Inga Dam is a project that carries a significant number of risks including the risks of project delays, cost overruns and political instability. Political risk is higher in developing economies due to political instability, succession or change of law. The gap between the DRC, Iran, Iraq, North Korea, Somalia and Zimbabwe and other high-risk countries has led to the creation of a very-high-risk category. [[23]](#footnote-23) Such risks increase the costs of financing, which is also affected by South Africa’s credit ratings.

**Cost overruns**

Large hydropower projects are usually associated with cost overruns: Three out of four large dams suffer cost overruns, which can balloon expenses. “Actual costs are on average 96% higher than estimated costs – they double for 2 out of every 10 large dams, and triple for 1 out of every 10 dams.”[[24]](#footnote-24)

Delays in the completion of the Grand Inga Dam Project may result in an increase of construction costs and a concomitant increase in its debt service costs as well. Therefore it is vital to know, in terms of delay in completion and **legal** risks, which party would be willing to control this risk. The constructor of the Grand Inga dam has to have “experience of a fully-linked critical path network being used to manage the sequence and timing of the work” to avoid the delay in completion.[[25]](#footnote-25)

**Climate change risks**

To expand on other risks, climate change and drought are risks in terms of energy generation from hydroelectric plants. Water scarcity that affects how much water is flowing in a river impacts on the generation of electricity. This is an issue that does not receive a lot of attention as a risk, but which can have a profound impact in suppressing the amount of electricity being generated.

**Transmission risks**

South Africa is responsible for the construction of the transmission infrastructure from the delivery point at Kolwezi, in the DRC, to SA. When electricity is transmitted over such a long distance, it is certain that the amount arriving at the destination will be less than what was generated at source, due to losses during transmission.

The Budgetary Review and Recommendation Report of the Portfolio Committee on Mineral Resources and Energy (Vote 26) dated 22 October 2019[[26]](#footnote-26) indicated that a key area of programme underperformance was that the Final Memorandum of Understanding (MoU) on Transmission Infrastructure solution on the Grand Inga Hydro Power Project was not achieved. The target was to conclude the Inter-Governmental MoU with transition line transit countries.

# Technology risks also feature as a risk with the Grand Inga project. Electricity from Grand Inga will need to be transmitted over a long distance from the DRC to South Africa. On 15 March 2016, a technology risk was raised during an Energy Committee meeting in Parliament.[[27]](#footnote-27) Hydropower is direct current (DC). The presentation indicated a preference for two separate point-to-point high voltage direct current (HVDC) systems with no alternating current (AC) wheeling arrangement in the Southern African Power Pool (SAPP).  The conversion from DC to AC current, requires step up generators. It appears that the HVDC link option was favoured because it bypasses issues of where substations would need to be located, given political instability in certain countries through which the electricity would need to be transmitted. The technology however is relatively new which adds a factor of risk.[[28]](#footnote-28)

The assumptions relating to the costs of the Grand Inga Project are concerning, given that estimates of $80 billion were made in 2004. The estimated cost of $14 billion for Inga 3 was also set more than 10 years ago. Issues of inflation, and changes in equipment increases would need to be revisited. Overly optimistic cost estimates will pose a long term risk to the consumer and the South African fiscus.

**Increased electricity tariff hikes**

The South African commitment to the Grand Inga Dam Project could lead to increased electricity tariffs in South Africa. According to a study carried out by Tim Jones, ‘*In Debt and In the Dark: Unpacking the Economics of DRC’s Proposed Inga 3 Dam*’,[[29]](#footnote-29) there is no reasonable economic basis for pursuing the Grand Inga Dam Project. In fact, quite the opposite: The DRC is overwhelmed with debt from previous development projects, and an unsustainable mega-hydropower project will economically prejudice the country, forcing it to rely heavily on South Africa to relieve its debt servicing pressure. The already existing Inga 1 and Inga 2 dams are performing well below 40% of their potential energy-generating capacity; It has yet to be demonstrated that Inga 3 will perform any differently. With serious economic losses projected, both countries will try to recover costs from the end user. South African citizens will endure increasing tariff hikes from an unreliable and unmaintainable power source, without enjoying the benefit of new construction jobs. They will pay for the costs of the Grand Inga Treaty, including the security of a power source located in a country vulnerable to rebel groups, violence and conflict, a country without the experience and capacity to handle such a huge project.

**Job externalization**

The construction phase of Grand Inga Dam Project is expected to create approximately 3,000 – 7,000 jobs, with an average of 1,200 indirect jobs and 1,700 induced jobs – all in the DRC.[[30]](#footnote-30) The few permanent jobs will also accrue to the DRC. In other words, no job creation is expected for South Africa. This comes at a time when South African workers are facing redundancy and unemployment as the country decommissions coal power plants. Importation will also leave South Africa vulnerable to political instability, conflict and militarization; the fluctuation of currency exchange rates and the lack of control over a major power source.

**Contingent liabilities –ESKOM**

The fiscal risks attached to the Grand Inga Project include contingent liabilities that arise out of loan guarantees that will need to be provided to Eskom for the financing of South Africa’s contribution to the project. A contingent liability is a potential liability that may occur, if some future event comes to pass and as a result of which a potential liability becomes an actual liability. If Eskom is unable to repay its loans when due, National Treasury will need to step in and do so, as we have seen on so many occasions in recent years.

As Eskom is the anchor offtaker for the project, the project should be shown on Eskom's balance sheet. As Eskom is in the process of being unbundled into three entities, it is also not clear which of the entities is going to bear the risks related to the Grand Inga project and its financing.

In February 2019, following the budget speech, two of the major ratings agencies, S&P Global and Fitch, highlighted growing government debt and sizeable contingent liabilities among causes for concern.[[31]](#footnote-31)

Challenges to Eskom’s financial sustainability, governance issues and inability to collect revenue have come under the spotlight recently in a meeting of the National Council of Provinces Economic and Business Development meeting[[32]](#footnote-32) NERSA[[33]](#footnote-33) was asked why monitoring mechanisms were not put in place to prevent Eskom from spending more than it should, the need for legislation in this regard, whether Eskom had acceded to guidelines set by NERSA and how Eskom would be able to service its debt. Members pointed out problems when municipalities started using revenue collected from electricity to fund their own operations and emphasized the need for greater accountability by Eskom. Members were concerned about Eskom having recurring revenue shortfalls and overspending.[[34]](#footnote-34)

Most recently, in a speech on 29th October 2019 by Minister of State-Owned Enterprises, Pravin Gordhan, presenting the plan for Eskom, described the state of its current governance in dire terms. Describing the damage caused to Eskom by state capture as “huge” and “systemic” he stated that “disciplined and systematic” change was required to meet our future electricity requirements. He cautioned that this would take many years to achieve. It is not clear how Eskom can be seized with a massive commitment to obtain energy from the Grand Inga Dam Project when its internal governance and management is still far from sustainable.

In these parlous circumstances, and in the context of ballooning public debt caused principally by Eskom, any future commitments to large scale projects which have not been stress tested for feasibility and are not the least cost option should be avoided. The imperative to cut expenditure that has arisen out of growing and significant state debt ultimately puts at risk social grant programs and employment within the State which could contribute to social and political instability in South Africa. Before such liabilities are incurred the State needs to engage in an independent, comprehensive feasibility and risk assessment of the Grand Inga Dam Project to prevent these potentially dire economic consequences from coming about.

Minister Gordhan, when referring to the IRP 2019 also mentioned that there will be changes to this document in the future, as there have been in the past. The commitments to the Grand Inga Project must be seen in that light.

**It is therefore recommended that there should be no further budgetary commitments to this project until Eskom has been proved to be a sustainable state owned enterprise.**

**V. FINANCING THE GRAND INGA DAM PROJECT AND THE ABSENCE OF FEASIBLITITY AND RISK ASSESSMENTS**

Apart from the issue of Eskom there are other concerns about the financing of the Grand Inga Dam Project. At this stage, it is not clear from official documents available in the public domain exactly how the South African financing arrangements will be made. This is one of the issues to which Parliament has a Constitutional oversight obligation to pay attention to, as there are significant risks associated with South Africa having agreed to be the offtaker.

As regards the financial feasibility of the project, there has been no publicly available independent South African feasibility study, which would state the costs and risks to South Africa of obtaining large scale energy from this project

**The Integrated Resource Plan 2019 (IRP 2019)**

The IRP 2019, which is South Africa’s central policy document for electricity planning commits South Africa to the Grand Inga Dam Project,[[35]](#footnote-35) but provides no data to justify doing so, in a context where there has been no transparent up to date and participatory feasibility and risk assessment for the project from the South African perspective. It refers to the Treaty entered into for the between SA and the DRC for Grand Inga Project, and then mentions the issue of transmission of the electricity from the DRC to South Africa as a significant impediment, stating that there is a need to finalise the technical solution for the evacuation of this power from the Grand Inga across the transit countries viz. DRC, Zambia, Zimbabwe/Botswana into South Africa.

Acknowledging that importing electricity from the DRC is not a least cost option, the Cabinet approved 2019 IRP says that “whereas the draft IRP 2018 was modelled by forcing the 2 500 MW from Inga, the IRP 2019 used the commercial parameters that were submitted by the project developers for Inga, and 2 500 MW (and even more beyond 2030) of hydropower was selected on its own merits”.

In advancing merits that overrode the cost considerations, the IRP notes that “the regional development drivers are compelling, especially given that currently there is very little energy trade between these countries, due to the lack of infrastructure. The potential for intra-SADC trade is huge as it could open up economic trade”. However, it goes on to highlight that “Naturally, concerns have to be addressed about the risks associated with a project of this nature. South Africa does not intend to import power from one source beyond its reserve margin, as a mechanism to de-risk the dependency on this generation option”. These general statements regarding risks and benefits are not backed up by facts or studies though.[[36]](#footnote-36)

|  |  |
| --- | --- |
|  |  |

The Minister of Mineral Resources and Energy’s initial blunder in releasing the incorrect version of the IRP also sheds light on the sustainability of this project.[[37]](#footnote-37) Notwithstanding the fact that the cabinet approved version was then gazetted, rectifying the issue, the substantive difference that existed between the two versions is cause for extreme concern.

The incorrect version stated:

*Policy Position 8: immediately commence the nuclear build programme to the extent of 2 500MW because it is a no-regret option in the long term and in case the Inga project does not materialize.*

One can infer from this debacle that the IRP authors were so doubtful as to the likelihood of the Grand Inga Project materializing that they included nuclear modular reactors as a backup. This reveals serious issues in the decision-making process that was employed in finalizing the IRP.

**History is in danger of repeating itself with the Eskom and the Department of Energy incurring massive fruitless and wasteful expenditure on energy projects**. When the decision was taken in 2010 to discontinue investment in the Pebble Bed Modular Reactor project after ten years had been spent on its development, it had already cost a total of R9.244 billion.[[38]](#footnote-38) Issues of financial feasibility and safety of the technology had still not been resolved at this stage even after this expenditure.[[39]](#footnote-39)

**Feasibility of the project and Treasury assessment by the Budget Facility for Infrastructure**

As regards the financial feasibility of the project, there has been no publicly available independent South African feasibility study, which would state the costs and risks to South Africa of procuring large scale energy from this project.

At the stage of signing of the Memorandum of Understanding, details on the financial feasibility were not included in the MoU and had not been contemplated. This is a problem in terms of South African practice. In 2013, in a single line in the infrastructure chapter in the budget review,[[40]](#footnote-40) Treasury listed the Grand Inga hydroelectric project as a major infrastructure project, at cost of R200bn. It was noted at that stage that the approach to the finance would be decided once the feasibility study was complete. The project status in 2013 was that a draft treaty had been approved by Cabinet and negotiations on a treaty of joint cooperation with DRC would begin soon. In other words, a draft treaty was signed prior to a feasibility study having been concluded.

The Minister of Energy, Tina Joemat-Pettersson then signed the Treaty on behalf of South Africa in 2013, and it was subsequently approved by Cabinet[[41]](#footnote-41) and ratified in Parliament.[[42]](#footnote-42)

The Department of Energy’s 2018/19 Annual Performance Plan[[43]](#footnote-43) outlines that “RSA has committed to procure 2500MW from the first phase of the project (NOTE: RSA will not build the project but is a Buyer, whereas the DRC takes the financing and construction risk of delivering the power at the border between DRC/Zambia)”.

In terms of the appetite of banks to lend money to Eskom for the Grand Inga project, it is submitted that it is unlikely that commercial banks will finance the project and it is more likely to be financed by development banks, such as the Development Bank of South Africa.

It is unlikely that South Africa has conducted a feasibility study given what was indicated in the 2019 IRP. Given the scale of the project and its potential risks for the South African fiscus, and the fact that South Africa has agreed to be the anchor offtaker, such due diligence, conducted in a transparent and participatory manner is a fundamental requirement. WoMin and International Rivers’ attempts to clarify with National Treasury via email whether a feasibility study had or had not been conducted were not answered, despite follow ups.

The recently released the Integrated Resource Plan for 2019 gives no data on feasibility. It states: “The IRP assumed costs are based on feasibility costs provided by the developers. It is the government view that the cost per kWh will be capped at the feasibility study cost, which is very attractive. Any cost above this level will result in ‘no deal’.”

In 2009, a World Bank and WESTCOR (Western Power Corridor) feasibility study concluded that damming the Congo River via a single dam, Inga 3, would inundate and flood the capitals of DRC (Kinshasa) and the Republic of the Congo (Brazzaville). Because of this, a different project approach was proposed, namely the Grand Inga dam Complex, consisting of six separate dams, instead of one.[[44]](#footnote-44)

According to National Treasury guideline on budget submissions for the large infrastructure projects,[[45]](#footnote-45) “the Budget Facility for Infrastructure (BFI) is a reform to the budget process that supports the execution of national priority projects by establishing specialised structures, procedures and criteria for committing fiscal resources to public infrastructure spending”. The guideline states that the aim of the BFI is to support quality public investments through robust project appraisal, effective project development and execution, and sustainable financing arrangements.

In the February 2019, Annexure D to the budget review,[[46]](#footnote-46) provided Eskom expenditure and estimates for infrastructure projects. However, no estimate for the Grand Inga Dam Project was provided. WoMin’s attempts to confirm with National Treasury whether the Grand Inga project has been appraised by the BFI were unsuccessful. Given the size of investment, if the Grand Inga project has not undergone rigorous appraisal by the BFI, it should be required to do so, and failing this to abandon the project.

**The National Planning Commission**

 The National Planning Commission (“NPC”) has identified a concern that there is inadequate institutional support for the investment plans needed to finance infrastructure on the required scale.[[47]](#footnote-47) By inference this would include the scale of the Grand Inga Dam Project. The NPC states that to realize South Africa’s vision for energy its energy system needs to be supported by effective policies, institutions, governance systems, regulation and where appropriate, competitive markets.[[48]](#footnote-48) The failure to ensure such institutional support puts the state at risk of being unable to comply with its duty as set out in section 195 of the Constitution, which mandates the public administration to promote “efficient, economic and effective use of resources”.

There are also concerns with respect to Eskom’s ability to raise the funds for future energy development and its impact generally on the nation’s economy. The utility’s debt is now over R450-billion as it has to pay for the Medupi, Kusile and Ingula coal fired power stations. That alone will cost R27-billion a year in interest for at least a decade to pay off.[[49]](#footnote-49) Eskom’s credit rating was downgraded by both Standard & Poor and Moody’s in 2012.[[50]](#footnote-50) Eskom has admitted that this downgrading will affect its ability to “access the cost-effective funding needed to ensure that Eskom and the industry can invest in the electricity infrastructure which South Africa needs.”[[51]](#footnote-51) This fact informs Parliament of the very real financial risks involved in any large-scale and long-term investments in energy infrastructure.

We acknowledge that the role of Parliament in the budgeting process is at the intersection of two roles, namely in the law-making process (passing revenue appropriation legislation), whilst simultaneously overseeing Executive action and ensuring effective financial management. Without an accurate, up-to-date and comprehensive understanding of the costs, feasibility risks and other associated matters identified by the National Planning Commission in regard to the Grand Inga project, Parliament cannot carry out these roles in a constitutionally compliant manner.

**The World Bank**

The project, driven by three construction giants from Spain and China and expected to be funded by the African Development Bank (AfDB) and the European Investment Bank, among others, has been embroiled in controversy over this project from the outset. This led to the withdrawal of the World Bank as a potential sponsor in 2016. The project is not expected to begin producing power until 2024 or 2025.

The announcement of the World Bank’s withdrawal from the project was cryptic, citing as a reason, only ‘the government of the DRC’s decision to take the project in a different strategic direction to that agreed between the World Bank and the Government in 2014.’

The statement also hinted the bank was concerned about lack of transparency and failure to observe ‘international good practice’ [[52]](#footnote-52), referring to the government of DRC.

However, a scorecard report on the project by the World Bank from 13 June offered more clues. It suggested that the ‘different strategic direction’ in which the DRC was taking Inga 3 BC – and which raised the World Bank’s concern – was to place ADEPI, the supervising authority, inside President Joseph Kabila’s presidency – rather than to have it function as an autonomous authority reporting to the prime minister, as was originally agreed in 2014.

**The same scorecard report assessed that the risks of the project failing were high; especially the risks associated with politics and governance, fiduciary responsibilities, institutional capacity for implementation and technical design capacities.**

These conclusions were derived from a scorecard which found that the DRC had, by 31 May this year, reached none of the milestones it was supposed to have reached three years before. These included establishing ADEPI, making available bidding documents for the construction of Inga 3 BC infrastructure, and finalised environment and social impact studies; and negotiating and publicly disclosing power purchase agreements.

Where this leaves the project is unclear. The World Bank refused to answer questions put to it by *ISS Today* on 2016. The AfDB has been reported as saying it intends to go ahead with its part of the financing of the technical assistance programme, though that could not be confirmed[[53]](#footnote-53) and it did not have the funds to fill the gap left by the WB involvement.

**VI. LESSONS FROM THE ARMS DEAL**

Of relevance to the above concerns is the report of the Select Committee on Public Accounts (SCOPA) in 2000 reviewing the Arms Deal.[[54]](#footnote-54) In 1999, the State entered into a military procurement contract where the Executive had failed to inform Parliament of certain costing information. It is submitted that steps should be taken to prevent a repeat of this major shortcoming in financial governance.

SCOPA commissioned this report after the Auditor-General raised concerns relating to the Arms Deal. The following issues are relevant to the current submissions regarding the Grand Inga Dam Project:

1.SCOPA stated that when Cabinet entered into the arms procurement contract it had **not fully taken into account all the costs that the contract implicated**, such as unfavourable foreign exchange movements, the cost of servicing the loans taken to finance the package and price escalation conditions in the contracts.[[55]](#footnote-55)

2. The contract that was initially meant to cost R30,3 billion had risen to R43,8 billion a year after it was entered into.[[56]](#footnote-56) SCOPA expressed its concern that the overall cost of the package would increase further.[[57]](#footnote-57)

3. It also recommended that this information should have been made available to the public.[[58]](#footnote-58) Cabinet was aware of the risk of the greater costs of the contract, yet did not make the public aware of this.[[59]](#footnote-59)

4. SCOPA expressed doubts as to the suggested positive economic benefits of entry into this contract and suggested that these estimated benefits were not properly verified before being accepted.[[60]](#footnote-60)

Many of the concerns raised in the SCOPA report are very similar to the concerns we have raised in our submissions here. Moreover, it is not stated explicitly in the report, but it can be reasonably inferred that the decision to enter into arms contract was not made openly and transparently. Furthermore, as this information was kept within the Executive, one can also deduced that it was not made available to Parliament. This failure to provide relevant information to the Parliament and public was not only a failure by the Executive to carry out its functions in accordance with principles of open and democratic governance as established by the Constitution, but also a failure by Parliament to ensure that necessary processes were in place to oversee and scrutinise Executive action and promote transparency. This failure by both parties contributed to the controversy of the Arms Deal and the ill-use of public resources.

With respect to the current proposed Grand Inga Dam, these concerns raised by SCOPA should be borne in mind. Parliament should act to ensure that there will not be a repeat of these mistakes in any future procurement process, or commitment to large scale financing of foreign energy projects.

**VII. RECOMMENDATIONS REGARDING PARLIAMENTARY OVERSIGHT**

The Select and Standing Committee on Finance should recommend that any large-scale involvement in the Grand Inga Dam Project should be conditional upon greater Parliamentary and Treasury oversight.

1. **Proposed methods of increasing Parliamentary oversight**

In light of the above concerns arising from the Arms Deal, the deficiencies in costing in the IRP, and the scale of proposed Grand Inga Dam Project, Parliament should require greater oversight before approving expenditure on the program. More generally, Parliament should exercise **greater oversight over proposed large scale energy procurement** which is of such magnitude that it could impact adversely on the economy, poverty alleviation and job creation in future decades.

As discussed above, Parliament must exercise oversight over the Executive as part of its constitutional role. It is appropriate that this oversight take place from its very inception, that is, from the budgeting stage, and throughout the planning and implementation. The stakes of multi-billion rand project such as the Grand Inga Dam Project are too high for Parliament to approve expenditure based only upon Government to Government undertakings and the policy statements such as the IRP 2019, which are not based on independent, rigorous feasibility and risk assessment.

**(ii) Proposed methods of increasing Parliamentary oversight**

In this regard, there are a number of ways that Parliament could exercise its constitutionally mandated oversight role. Firstly, project appraisal should be conducted by Treasury Budget Facility for Infrastructure. Parliament, which could be responsible for approval of the feasibility study, recommending provision of any good or service from an external provider, as well as requiring approval of the final contract before it is signed.

Secondly, Parliament could create multi-stakeholder committees to oversee key aspects of the proposed project, which then report back to it Such committees could include members of the Department of Energy, the National Treasury (specifically its Budget Facility for Infrastructure), affected businesses and civil society. This approach is gaining approval internationally.[[61]](#footnote-61) This would enable reporting to Parliament at critical phases of the project feasibility assessment and would be done with the view of ensuring that the original objectives of the procurement were being adequately met and achieved within a reasonable timeframe and cost, and where any significant deviations from it were explained and accordingly mitigated by the procuring Department.

 **(iii) Asking the Right Questions**

Before committing any resources to the Grand Inga project the following questions need to be answered by the Department of Energy. The Grand Inga Project is not projected to come online before 2030. Eleven years is too long to wait for reliable electricity, especially considering South Africa’s need for power now and renewable energy potential. Details of the project have been veiled by secrecy leaving institutions and stakeholders to rely on public media or press statements for updated information, which typically frame the project in an unduly optimistic light. Parliament, as part of the above oversight role needs to require the executive to explain:

* Why are they pushing for the Grand Inga Dam Project ?
* Why should South Africa wait over a decade to solve a problem that can be resolved locally, securely, cheaply, and through renewable energy technologies?
* Why is the Government prioritizing the Grand Inga Project above local energy development and generation, considering the risks of importing power?
* Has the DRC or the joint Chinese-Spanish consortium indicated who is funding the development of Inga 3?
* Where will South Africa source funds for Grand Inga Project transmission lines in light of Eskom’s troubles?
* What is the projected return of investment for South Africa in the best and worst-case scenarios?
* Why is the Government of South Africa committed to a project that has not satisfied any projections or due diligence processes such as an Environmental and Social Impact Assessment?
* When will South Africa conduct an independent Environmental and Social Impact Assessment for the Inga 3 project?
* When is the Government of South Africa sending an independent Human Rights committee to assess the situation of Inga 3 communities, including possible resettlement plans and sites?

**VIII. CONCLUSION AND RECOMMENDATIONS**

**The Grand Inga Dam Project, if considered in its totality, will involve a level of investment unprecedented in South Africa, hence the urgency of this concern.** Such a program could potentially create an onerous financial burden on the State for many decades to come. There are significant uncertainties which need to be addressed. Importantly, the State is already facing a financial crisis caused by principally poor governance in the energy sector. Billions of Rands have already been wasted in the form of wasteful expenditure to develop questionable energy projects such as the Medupi and Kusile power stations and the Pebble Bed Modular Nuclear Reactor, due to the fact that the projects were well under way before its feasibility had been or could be demonstrated. A change of approach is needed in order for a sustainable and just energy transition to take place.

The State will be faced with a difficulty justifying not contributing significantly to the costs of building the Grand Inga Dam Project and associated infrastructure if it has sunk significant funds into the development of this project, even if this is not the best cost option. By constraining future energy choices in this way this course of action will in all likelihood have far reaching consequences for the energy configuration and the economy of the country as a whole.

It is necessary for the proposed budget to disclose exactly how much money will be allocated to the development of the Grand Inga Dam Project in the Department of Energy budget itself.

The allocation of any funds to the project should be conditional on the completion of the independent and transparent feasibility and risk assessments. An in-depth investigation into the cost of the proposed Grand Inga Dam Project and transmission lines becomes a matter of urgent and significant importance, before any funds are budgeted for any aspect of project development over and above such studies

It is submitted that an appraisal of the financial risks and benefits of this program must take place prior to its inception. We submit further that this has not taken place to a degree that is sufficient to justify the allocation of funds for this program, and it is incumbent on the Treasury to set out what funds it intends to spend on this program in the MTBPS. As is submitted herein, research shows that the Grand Inga will cost significantly more than has been estimated by the State to date.

Before the nation commits to such a large and expensive project, we respectfully remind Parliament of its constitutional obligations to not only scrutinize and oversee executive action, but to also ensure that the proposed financial budgets are diligently examined with due regard to the national interest. Moreover, the budget and budgetary processes must “promote transparency, accountability and the effective financial management of the economy, debt and the public sector”. Since the funds required to develop the Grand Inga project will be intended for ultimately for large scale procurement projects Parliament must exercise its oversight role in a manner which fosters procurement of energy by the State that is “fair, equitable, transparent, competitive and cost-effective.”[[62]](#footnote-62) The Fiscal and Financial Committees of Parliament have the duty to take into account the national interest and the needs and interest of the national government determined by objective criteria when overseeing the budget process.[[63]](#footnote-63) It is submitted that this responsibility arises especially when a large expenditure is contemplated, even if not immediately, but that will be incurred over many decades, and where the nature of procurement contacts inevitably results in the state not being able to withdraw from them without massive costs, if more cost effective options become available.

These constitutional duties cannot be fulfilled if Parliament does not have all the relevant information as to what part of its budget the Department of Energy intends to spend on the development of the Grand Inga Dam Project, and the cost of the final project. Parliament cannot discharge these duties and act in compliance with its constitutional mandate without up to date information as to the expenditure that is being planned for the Grand Inga Dam hydroelectric power procurement program, and how much will be spent on the development of the program.

The failure of Parliament to properly exercise its oversight powers at this early stage would not only be in conflict with its constitutional duties,but could potentially constrain the State irrevocably. The implications are wide-ranging, constraining resources which could be utilized by other sectors and inhibiting the fiscal freedom of future generations.[[64]](#footnote-64)

**RECOMMENDATIONS**

We submit the following recommendations to assist Parliament to meet its obligations, with the intention that the recommendations will result in the production of a more comprehensive and current understanding of the financial impacts of the Grand Inga Dam project, and from which constitutionally compliant budgetary decisions can then be made.

1. The Committees should recommend to the National Assembly that the Department of Energy **disclose what part of its budget is to be spent on the development of the Grand Inga Dam Project**, before the funds related the Department of Energy budget are approved.

Parliament is required to promote effective financial management by the executive. Given the absence of comprehensive information about the expenditure on, and cost of the Grand Inga Dam Project parliament will be unable to discharge this constitutional obligation.

1. The Committees should recommend that the Budget Facility for Infrastructure conduct a project appraisal and rigorously assess the feasibility, risks and proposed financing arrangements.

1. Parliament is obligated to promote and ensure transparency in procurement, and in national, provincial and municipal budgetary processes. It should recommend that the Department of Energy act in a more transparent manner, providing adequate information to the public and Parliament as to its intentions and the decisions being taken regarding proposed infrastructure projects. Only then can Parliament properly exercise its constitutionally mandated oversight role.
2. No funds should be approved for expenditure on the Grand Inga Dam Project until Eskom has demonstrated that it is a financially sustainable State Owned Enterprise.

**5 November 2019**

1. Memorandum of Understanding between the RSA and DRC 2011 paragraph 4.1 [↑](#footnote-ref-1)
2. Sections 214 (2) (a) and (c) of the Constitution [↑](#footnote-ref-2)
3. Section 8 (5), Money Bills Amendment Act [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. Constitution section 55 10 Section 77 (3) of the Constitution; further effected by the Money Bills Amendment Procedure and Related Matters Act 2009 (“Money Bills Amendment Act”) [↑](#footnote-ref-5)
6. Section 77 (3) of the Constitution; further effected by the Money Bills Amendment Procedure and Related Matters Act 2009 (“Money Bills Amendment Act”) [↑](#footnote-ref-6)
7. Sections 214 (2) (a) and (c) of the Constitution [↑](#footnote-ref-7)
8. Section 8 (5), Money Bills Amendment Act [↑](#footnote-ref-8)
9. <https://www.fin24.com/Budget/from-eskoms-r450bn-debt-to-tax-shortfalls-what-to-watch-out-for-in-the-medium-term-budget-20191030>

 See also article in The Citizen 30.10.2019 *The good and bad about the budget speech that Moody’s will watch* – “ South Africa’s debt-to-GDP remains the highest among its peer countries. The ongoing support to debt-laden SOEs, mainly Eskom, is blowing the country’s debt profile to higher levels. Government has made provisional support to Eskom of R49 billion to be available in 2019/20, R56 billion in 2020/21 and R33 billion in 2021/22. With the financial support to Eskom, the country’s debt-to-GDP is expected to grow from the 2019 budget (presented in February) from 56.2% in 2019/2020 to 60.8%, 57.8% vs 64.9% in 2020/2021, and 58.9% vs 68.5% in 2021/2022.” https://citizen.co.za/news/south-africa/government/2198142/the-good-and-bad-about-the-budget-speech-that-moodys-will-watch/ [↑](#footnote-ref-9)
10. Treaty details

The Treaty makes Eskom the offtaker. Eskom’s budget does not get tabled in the Estimates of National Expenditure, because it is a State Owned Entity [↑](#footnote-ref-10)
11. DRC hydropower scheme will be an ‘indefensible cost’ for South Africans, Business Day 10 July 2019

(Asanzi said that in November 2018, parliament itself recommended that the Inga project was not worth including in the IRP due to excessive costs and the uncertainty about its viability.) [↑](#footnote-ref-11)
12. 2012 Budget Vote Speech for Energy by Ms Dipuo Peters, MP, Minister of Energy. P. 3. Available at: [↑](#footnote-ref-12)
13. MOU [↑](#footnote-ref-13)
14. Budgetary Review and Recommendation Report of the Portfolio Committee on Mineral Resources and Energy (Vote 26) dated 22 October 2019. Available at: <https://pmg.org.za/tabled-committee-report/3951/> [↑](#footnote-ref-14)
15. #  Eskom’s woes have become a national debt problem Business Day 24 July 2019 : https://www.businesslive.co.za/bd/economy/2019-07-24-eskoms-woes-have-become-a-national-debt-problem/

 [↑](#footnote-ref-15)
16. Budgetary Review and Recommendation Report of the Portfolio Committee on Mineral Resources and Energy (Vote 26) dated 22 October 2019. Available at: <https://pmg.org.za/tabled-committee-report/3951/> [↑](#footnote-ref-16)
17. National Treasury. 2013. Budget Review. Available at: <http://www.treasury.gov.za/documents/national%20budget/2013/review/chapter%207.pdf> [↑](#footnote-ref-17)
18. McKinsey and Company. 2015. Brighter Africa: The growth potential of the sub-Saharan electricity sector’. Available at: <https://www.mckinsey.com/~/media/McKinsey/dotcom/client_service/EPNG/PDFs/Brighter_Africa-The_growth_potential_of_the_sub-Saharan_electricity_sector.ashx> [↑](#footnote-ref-18)
19. Energy Portfolio Committee meeting: 15 March 2016. Available at: <https://pmg.org.za/committee-meeting/22204/> [↑](#footnote-ref-19)
20. Department of Energy Annual Report 2017-2018. Available at: <http://www.energy.gov.za/files/Annual%20Reports/DoE-Annual-Report-2017-18.pdf> [↑](#footnote-ref-20)
21. See *Offtake Contracts in the Power Sector*. Gatti, S. 2013 PAGE 65 *. Project Finance in Theory and Practice: Designing, Structuring, and Financing Private and Public Projects. California: Elsevier Inc*,. Available at: https://books.google.co.za/books?id=Nqb1WcI5xRUC&pg=PA64&lpg=PA64&dq=Risks+for+anchor+offtaker&source=bl&ots=iwuUaNXDTO&sig=ACfU3U2r5L5LvRUINLUhb66EKgQ4s7VNBg&hl=en&sa=X&ved=2ahUKEwjwsoLe2sHlAhUEVRUIHSB3Ckg4ChDoATAAegQICBAB#v=onepage&q=Risks%20for%20anchor%20offtaker&f=false [↑](#footnote-ref-21)
22. Id page 71 [↑](#footnote-ref-22)
23. See Sornarajah, M. (2010) The International Law Foreign Investment 3rd edition Cambridge University Press: Cambridge Steyn, H (2016) Project Management and Managing Legal Risks in Project Finance in the Democratic Republic of Congo: The Example of the Grand Inga Project – LLM thesis page 53 by By Nkita Nkongolo [↑](#footnote-ref-23)
24. Ansar, A., Flyvbjerg, B., Budzier, A. and Lunn, D., 2014. Should we build more large dams? The actual costs of hydropower megaproject development. *Energy Policy*, *69*, pp.43-56. [↑](#footnote-ref-24)
25. Managing Legal Risks in Project Finance in the Democratic Republic of Congo: The Example of the Grand Inga Project – LLM thesis , N Nkongolo page 57 -https://repository.up.ac.za/bitstream/handle/2263/58734/Nkongolo\_Managing\_2016.pdf?sequence=1 [↑](#footnote-ref-25)
26. Budgetary Review and Recommendation Report of the Portfolio Committee on Mineral Resources and Energy (Vote 26) dated 22 October 2019. Available at: <https://pmg.org.za/tabled-committee-report/3951/> [↑](#footnote-ref-26)
27. Energy Portfolio Committee meeting: 15 March 2016. Available at: <https://pmg.org.za/committee-meeting/22204/> [↑](#footnote-ref-27)
28. Explanation of the pros and cons of HVDC:

<https://www.engineering.com/DesignerEdge/DesignerEdgeArticles/ArticleID/9831/Why-You-Need-to-Know-About-HVDC-Systems.aspx>

<https://www.powermag.com/benefits-of-high-voltage-direct-current-transmission-systems/> [↑](#footnote-ref-28)
29. Published by International Rivers [↑](#footnote-ref-29)
30. Tim Jones (2017) *In Debt and In the Dark: Unpacking the Economics of DRC’s Proposed Inga 3 Dam*. [↑](#footnote-ref-30)
31. <https://city-press.news24.com/Business/ratings-agencies-concerned-over-sas-r69bn-eskom-bailout-20190222> [↑](#footnote-ref-31)
32. 24th April 2018 [↑](#footnote-ref-32)
33. National Electricity Regulator of South Africa [↑](#footnote-ref-33)
34. https://pmg.org.za/committee-meeting/26214/ [↑](#footnote-ref-34)
35. The IRP 2019 states in Decision 9:

*In support of regional electricity interconnection including hydropower and gas, South Africa will participate in strategic power projects that enable the development of cross-border infrastructure needed for the regional energy trading.* [↑](#footnote-ref-35)
36. The risks on the Grand Inga Project and the mitigations proposed in vague terms are as follows in the IRP:

|  |  |  |
| --- | --- | --- |
| **AREA OF RISK** | **RISK** | **MITIGATION** |
| **Import Hydro Options**  | The main risk associated with import hydro options are delays in the construction of both the power plants and the grid to evacuate the power. There is also generally a cost risk in that the assumptions used may change as the project development is finalised with developers. There is also a risk of security of supply as the power line may traverse multiple countries or be transmitted through a number of countries networks.  |
	* The Treaty spells out the various conditions for the project. Power purchase agreements will also contract the timelines with regard to first power and the associated penalties if either party does not keep its commitments. RSA does not have any payment obligations if there is no energy flowing from the project
	* The IRP assumed costs are based on feasibility costs provided by the developers. It is the government view that the cost per kWh will be capped at the feasibility study cost, which is very attractive. Any cost above this level will result in ‘no deal’.
	* As a principle South Africa does not import power from one source beyond its reserve margin, as a mechanism to de-risk the dependency on this generation option. |

 [↑](#footnote-ref-36)
37. <https://www.businesslive.co.za/bd/national/2019-10-18-the-government-published-the-wrong-version-of-the-energy-plan/> [↑](#footnote-ref-37)
38. Speech by Minister of Public Enterprises. Available at: https://web.archive.org/web/20130921060457/http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=13029&tid=18561 [↑](#footnote-ref-38)
39. #####  Storm over pebble bed modular reactor as Eskom ponders its resurrection – Mail and Guardian 27 May 2016 00:00Lynley Donnelly  https://mg.co.za/article/2016-05-27-00-storm-over-pebble-bed-modular-reactor-as-eskom-ponders-its-resurection

 [↑](#footnote-ref-39)
40. National Treasury. 2013. Budget Review. Available at: <http://www.treasury.gov.za/documents/national%20budget/2013/review/chapter%207.pdf>   [↑](#footnote-ref-40)
41. <https://www.gov.za/ratification-signed-grand-inga-treaty> [↑](#footnote-ref-41)
42. <https://pmg.org.za/tabled-committee-report/2028/>   [↑](#footnote-ref-42)
43. DoE Annual Performance Plan 2018-19. Available at: <http://www.energy.gov.za/files/aboutus/DoE-Annual-Performance-Plan-2018-19.pdf> [↑](#footnote-ref-43)
44. Warner, J, Jomantas, S, Jones, E, Ansari, S & de Vries, L. 2019. The Fantasy of the Grand Inga Hydroelectric Project on the River Congo. Water 2019, 11, 407; doi:10.3390/w11030407 [↑](#footnote-ref-44)
45. Treasury guideline on budget submissions for large infrastructure projects. Available at: www.treasury.gov.za › publications › guidelines › InfrastructureGuidelines [↑](#footnote-ref-45)
46. <http://www.treasury.gov.za/documents/National%20Budget/2019/review/Annexure%20D.pdf> [↑](#footnote-ref-46)
47. National Planning Commission, Report 2012, p. 160 [↑](#footnote-ref-47)
48. National Development Plan, Report 2012, Chapter 4, p. 163 [↑](#footnote-ref-48)
49. L. Donnely, “Eskom’s soaring energy costs questioned”, Mail and Guardian, 21 September 2012 [↑](#footnote-ref-49)
50. Independent Online, “S&P downgrades Eskom’s credit rating”, 17 October 2012, accessed at <http://www.iol.co.za/business/companies/s-p-downgrades-eskom-s-credit-rating-1.1404969#.UH-4aG9Fzpg>. [↑](#footnote-ref-50)
51. Independent Online, “S&P downgrades Eskom’s credit rating”, 17 October 2012, accessed at <http://www.iol.co.za/business/companies/s-p-downgrades-eskom-s-credit-rating-1.1404969#.UH-4aG9Fzpg>. [↑](#footnote-ref-51)
52. Institute for Security Studies 10 August 2016, Inga Dream Again Deferred - https://issafrica.org/iss-today/inga-dream-again-deferred [↑](#footnote-ref-52)
53. id [↑](#footnote-ref-53)
54. SCOPA, The Special Review of Strategic Arms Purchases, 14th Report, October 2000 [↑](#footnote-ref-54)
55. id p. 1 [↑](#footnote-ref-55)
56. Ibid. [↑](#footnote-ref-56)
57. Ibid. [↑](#footnote-ref-57)
58. Ibid. [↑](#footnote-ref-58)
59. Ibid. [↑](#footnote-ref-59)
60. Id p 2 [↑](#footnote-ref-60)
61. For example see: Global Organization of Parliamentarians against Corruption website on parliamentary oversight accessed at http://www.gopacnetwork.org/programs/parliamentary-oversight/ Parliamentary Oversight (GTF‐PO); Derrick V McRoy, “Parliamentary Oversight of the Executive Procurement: Lessons from Contractors-General of Jamaica and Belize.” University of the West Indies at Mona, Faculty of Law January 11 2007, accessed at Social Science Network http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=958098 [↑](#footnote-ref-61)
62. Constitution Section 217 (1) [↑](#footnote-ref-62)
63. Constitution Section 214(2)(a) [↑](#footnote-ref-63)
64. See also, Section 8 (5), Money Bills Amendment Procedure and Related Matters Act 9 of 2009 which requires Parliament when taking any decision in terms of this Act to consider the “cost of recurrent spending is not deferred to future generations” and the “short, medium and long term implications of the fiscal framework” are considered. [↑](#footnote-ref-64)