**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 1380**

**DATE OF QUESTION: 21 MAY 2021**

**DATE OF QUESTION: 04 JUNE 2021**

**Ms T P Msane (EFF) to ask the Minister of Justice and Correctional Services: [*Interdepartmentally transferred from International Relations and Cooperation with effect 21 May 2021*]**

Whether the Government has any intention to withdraw South Africa from the International Criminal Court (ICC); if not, what is the position in this regard; if so, by what date will the Government formally sever ties with the ICC?

**NW1573E**

**REPLY:**

(a) In October 2016, the 5th administration of South Africa took a decision to withdraw from the Rome Statute of the International Criminal Court (“Rome Statute”). Following this decision, South Africa sent a written notice to withdraw from the Rome Statute to the Secretary General of the United Nations. In January 2017, the African Union (AU) took a decision followed by a resolution issued in February 2017 encouraging member nations to withdraw from the International Criminal Court (ICC). In addition to South Africa, two other AU members, Burundi and Gambia, also indicated their intentions to withdraw from the Rome Statute in 2016. However, Gambia reversed its decision immediately after a newly elected government assumed power in February 2017. Burundi, on the other hand, has become the first country to withdraw its membership from the ICC.

(b) In February 2017, the North Gauteng High Court unanimously ruled that the withdrawal notification sent by South Africa to the United Nations was unconstitutional and invalid without prior parliamentary approval, and ordered the Government to rescind the notice with immediate effect. In line with the court decision, the South African government revoked its notice of withdrawal from the Rome Statute in March 2017.

(c) The International Crimes Bill, introduced in Parliament in 2017, whose purpose was to withdraw South Africa from the ICC by repealing the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002, is still with the Portfolio Committee in Parliament.

(d) Since that time, numerous developments within the ICC have taken place, including the adoption of the “Understanding with respect to article 97(c) consultations” by the Assembly of State Parties in December 2017. This Understanding, which was adopted as a result of concerns raised by South Africa, provides for a process for States to consult with the ICC in relation to a request for cooperation. In addition, the African Union’s resolve to reform or transform the ICC from within rather than through withdrawals and the failure to provide an African alternative court to the ICC are some of the notable developments.

(e) As a result of these developments, there are ongoing discussion between the Department of Justice and Constitutional Development and the Department of International Relations and Cooperation with a view to develop proposals on South Africa’s membership of the ICC. These proposals will be submitted to Cabinet, and once approved, will provide a way forward on the matter.

(f) In terms of International law, South Africa remains a full member of the ICC with all the rights and obligations that accrue to all members of the Rome Statute. The Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002 remains in full effect.