**MINISTRY**

**INTERNATIONAL RELATIONS AND COOPERATION**

 REPUBLIC OF SOUTH AFRICA

NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

Date of Publication: 5 May 2023

Ministry: 12 May 2023

Reply date: 19 May 2023

**1433. Mr T Mogale (EFF) to ask the Minister of International Relations and Cooperation:**

Whether the Government intends to report (a) Mr Tony Blair, (b) Mr George W Bush and (c) Mr Barack Obama to the International Criminal Court for the (i) flagrant disregard of international law and (ii) invasion and bombardment of Iraq, Afghanistan and Pakistan which led to millions of lives being lost; if not, why not; if so, when? **NW1603E**

**REPLY:**

South Africa, like many other countries, continues to voice its concerns about perceived imbalances in the International Criminal Court's (ICC) prosecution strategy. Accountability and equal treatment are principles that South Africa continues to advance in the realm of international law, and international criminal justice in particular. In particular, the Court has the potential to hold the most powerful countries accountable for their unlawful actions in the international arena.

The ICC is a treaty body and operates within a legal framework defined by the Rome Statute. The investigations and prosecutions are guided by specific criteria and jurisdictional limitations. The ICC's jurisdiction is primarily based on crimes committed on the territory of States that are party to the Rome Statute or crimes committed by nationals of those States, in territories of other States.

Iraq is a not a State Party to the Rome Statute, however, the ICC has jurisdiction over alleged crimes committed on its territory by nationals of States Parties such as the United Kingdom which is a Rome Statute State Party. On 9 December 2020, the Prosecutor closed the preliminary examination into Iraq/UK and decided not to request the opening of an investigation, having concluded that none of the potential cases arising from the situation would be admissible before the ICC at the present time. This is without prejudice to a reconsideration based on new facts or evidence. The Court may in future, as new evidence comes to the fore, reopen its investigation into crimes committed on the territory of Iraq. However, as there is no statute of limitations in international law for atrocity crimes, this does not prevent the United Nations from establishing a special tribunal to investigate the crimes committed on the territory of Iraq.

Afghanistan deposited its instrument of accession to the Rome Statute on 10 February 2003. The ICC may therefore exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of Afghanistan or by its nationals from 1 May 2003 onwards. On 31 October 2022, the Pre-Trial Chamber II of the ICC authorised the prosecution to resume investigations into the situation in Afghanistan which remain ongoing.

The South African Government calls on the ICC to investigate fully and with equal priority, all atrocity crimes committed within the context of the Afghanistan and not to deprioritise any aspect thereof. In addition, South Africa will engage the Prosecutor on the progress of all preliminary examinations and situations, including investigations into all crimes committed on the territory of the State of Palestine.

Pakistan is one of those States, along with the United States and Russia, that have not ratified the Rome Statute or deposited a declaration which would grant the ICC jurisdiction over its territory. The Court therefore does not have jurisdiction over crimes committed on the territory of the Islamic Republic of Pakistan.

Ultimately, the ICC's ability to prosecute individuals from certain countries rests on various factors, including political will, international cooperation, and the evolving nature of international law.

Efforts are being made to address concerns about the impartiality of the ICC. South Africa as a State Party will continue to engage in dialogue and participate in discussions on potential reforms to enhance the Court's functioning and address perceived imbalances.