**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 3042**

**DATE OF QUESTION: 26 OCTOBER 2018**

**DATE OF SUBMISSION: 9 NOVEMBER 2018**

**[Adv A de W Alberts (FF Plus) to ask the Minister of Justice and Correctional Services:†**

1. On what date does he intend to submit legislation that will make provision for the (a) Optional Protocol to the International Covenant on Civic and Political Rights and (b) Optional Protocol of the International Covenant on Economic, Social and Cultural Rights;
2. whether he will make a statement on the matter?

**NW3406E]**

**REPLY:**

1. In response to the question, it is best to consider each Protocol separately.
2. Optional Protocol to the International Covenant on Civic and Political Rights (ICCPR)

There are two Optional Protocols to the ICCPR, and South Africa has ratified both. The first Optional Protocol’s Preamble states,

“The State Parties to the present Protocol,

Considering that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up on part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.”

As such, the first Optional Protocol allows direct claims to be made by individuals who believe that rights they are guaranteed under the ICCPR have been violated by the State, to the ICCPR Committee, but only once all domestic remedies have been exhausted. Thus, by ratifying the first Optional Protocol, South Africa has accepted the jurisdiction of the Committee to accept direct claims from individuals who have exhausted their domestic remedies. No further legislative amendments are required to our domestic law. In fact, the Committee has heard direct claims from South African applicants, and South Africa has responded as required in the procedures of the first Optional Protocol.

With regards to the second Optional Protocol, this Optional Protocol is aimed at the abolition of the death penalty. Our Constitution and jurisprudence from the case of the State versus Makwanyane (1995), has abolished the death penalty. No further legislation is required to give effect to the second Protocol.

1. Optional Protocol of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

South Africa ratified the ICESCR on 12 January 2015 and has not ratified the Optional Protocol to the ICESCR.

This Optional Protocol allows the same type of direct access by individual claimants to the ICESCR Committee. South Africa is in the process of considering the Optional Protocol’s consistency with domestic and international law to which South Africa is obligated, with a view to ratifying the Optional Protocol. Any consideration of legislative changes, if any will be considered at the appropriate time

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1. No further statement is necessary at this stage.