

## Withdrawal from the Rome Statute by the Confederation of Sahel States: legal and institutional implications

### Introduction

On 22 September 2025, the governments of Burkina Faso, the Republic of Mali, and the Republic of Niger, acting together through the Confederation of Sahel States (AES<sup>1</sup>), issued a public statement declaring their “sovereign decision to withdraw from the Rome Statute of the International Criminal Court (ICC) with immediate effect,” criticising the Court as selective and “an instrument of neo-colonial repression.”<sup>2</sup> The joint statement also signals an intention to rely on “endogenous mechanisms” including a proposed Sahelian/Regional Criminal Court for Human Rights, while pledging continued engagement with oversight mechanisms other than the ICC.

**This brief sets out the process for withdrawal under Article 127 of the Rome Statute and explains the likely implications.**

### Background

Burkina Faso, Mali, and Niger, are States Parties to the Rome Statute. Mali and Niger were among the earliest African states to ratify the Rome Statute (and founding States Parties when the Statute entered into force in 2002). Burkina Faso joined two years later, in 2004. Mali has been an ICC situation under investigation since 2013 following a 2012 self-referral by the Malian authorities in relation to crimes committed during the armed conflict in the north. The ICC has recognised a non-international armed conflict (NIAC) in northern Mali, triggering the applicability of international humanitarian law (IHL). Two cases have since reached conviction : Ahmad Al-Faqi Al Mahdi (2016) for the war crime of intentionally directing attacks against cultural and religious heritage in Timbuktu, and Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (2024) for war crimes and crimes against humanity, including torture, rape, and persecution on religious and gender grounds. A warrant of arrest also remains outstanding against Iyad Ag Ghaly, alleged leader of Ansar al-Dine armed group.<sup>3</sup> There are currently no ICC investigations concerning Burkina Faso or Niger.

## Analysis

### 1. *The withdrawal*

Under Article 127 of the Rome Statute, a State Party may withdraw by written notification to the UN Secretary-General.<sup>4</sup> Withdrawal takes legal effect one year after receipt, unless a later date is specified. A collective political declaration by a regional bloc has no legal effect under the Statute: each State must transmit its own notification, and the one-year period runs individually from the date of deposit.<sup>5</sup>

Article 127(2) confirms that, even after withdrawal takes effect, the Court may continue any matter already before it, and the withdrawing State remains bound to cooperate with investigations and proceedings that had begun. This means that if Mali does decide to individually withdraw from the Statute, it remains bound to cooperate with ongoing ICC proceedings and reparations processes stemming from crimes that have occurred during the referral period.<sup>6</sup> More specifically, it must cooperate with the ICC Trust Fund for Victims and Reparation Orders in relation to the convictions of Al Mahdi and Al Hassan and is obliged to arrest and surrender Iyad Ag Ghaly (the leader of Ansar Dine) if he comes within the state's jurisdiction.

### 2. *Complementarity and regional mechanisms*

The AES statement refers to the possible establishment of a regional Sahelian court or other endogenous mechanisms. Such measures are contemplated—and positively encouraged—by the Rome Statute's complementarity regime: the ICC is a court of last resort designed to complement and not replace national (or regional) investigations and prosecutions. It is important to note that States do not need to withdraw from the ICC in order to develop endogenous justice mechanisms. Both systems can coexist, with the ICC exercising jurisdiction only when domestic or regional efforts are demonstrably unwilling or unable to ensure genuine accountability.

For example, in the Central African Republic, the ICC and a nationally established Special Criminal Court<sup>7</sup> operate in parallel, illustrating how international and endogenous mechanisms can coexist under the complementarity framework.

Although each comes with its own complications and concerns, there are examples in which ICC jurisdiction was effectively ousted due to domestic investigations and prosecutions of international crimes:

- Colombia: the ICC closed a two-decade preliminary examination in 2021 on the strength of national justice reforms and a cooperation framework with the Prosecutor.<sup>8</sup>
- The United Kingdom: the Prosecutor closed the Iraq/UK preliminary examination in 2020 having determined that the same personnel were being investigated by the UK for the same alleged conduct.<sup>9</sup>
- Guinea: the long-delayed stadium-massacre trial opened in 2022 and culminated in convictions in 2024 in part owing to the support of the Office of the Prosecutor under complementarity.<sup>10</sup>
- Australia: domestic authorities brought the country's first war-crimes charge related to Afghanistan in 2023, with committal for trial in 2025.<sup>11</sup>

The complementarity regime of the ICC is designed to respect state sovereignty by prioritising domestic prosecutions. In this sense, the proposed endogenous courts could operate consistently with the Rome Statute framework, provided they are able to genuinely investigate and prosecute alleged international crimes.

## Causes and consequences of leaving the ICC

### 1. *The Sahel context*

Across Mali, Niger, and Burkina Faso, severe armed violence exposes civilians to grave risk.<sup>12</sup> Where that violence amounts to an armed conflict, IHL applies to protect civilians and regulate hostilities; serious violations may constitute war crimes, while widespread or systematic attacks against civilians may amount to crimes against humanity – both of which can be prosecuted before the ICC. If these countries leave the ICC, it can weaken the deterrent and expressive functions of international criminal accountability and may weaken pathways to justice and reparations for victims.

### 2. *Other withdrawals and attempts*

Recent withdrawals and attempted withdrawals may suggest that legal and political dynamics favour continuity. Burundi was the first State to have completed a withdrawal, which took effect in October 2017 following the ICC's preliminary examination into crimes committed during the country's 2015 political crisis<sup>13</sup>. It was followed by the Philippines which formally withdrew from the Rome Statute in March 2019 after the [ICC opened a preliminary examination](#) into [President](#)

[Rodrigo Duterte's "War on Drugs"](#), but Duterte was subsequently surrendered to the Court in 2025 after a change of government.

In South Africa, the High Court ruled in 2017 that an executive notice of withdrawal was unconstitutional without prior parliamentary approval, prompting withdrawal of the notice.<sup>14</sup> The same year, Gambia also rescinded its notice of withdrawal after a democratic transition.<sup>15</sup> These reversals are often cited as evidence of the legal and policy benefits of remaining within a unified system of international criminal law, including access to an impartial forum of last resort, predictable cooperation frameworks, and victim-centred reparative mechanisms.

## Conclusion

The decision by Burkina Faso, Mali, and Niger to withdraw from the Rome Statute comes at a time when victims of international crimes in the Sahel continue to face immense challenges in securing justice, truth, and reparation. Previous reversals of withdrawal decisions by other States highlight the recognition that remaining within the ICC system offers practical benefits, particularly for victims: access to an impartial forum of last resort, established cooperation frameworks, and reparative mechanisms through the Court and the Trust Fund for Victims. By contrast, withdrawals risk narrowing these avenues and fragmenting international efforts to ensure accountability. A central challenge for international criminal justice remains finding effective ways to strengthen complementarity so that national, regional, and international mechanisms can work together to uphold the rights of victims and combat impunity.

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