

Extradition Treaty with China, 2021

IT is hereby notified that the Minister of Home Affairs and Cultural Heritage has, in terms of section 3(3) of the Extradition Treaty Act [*Chapter 9:08*], made the following Treaty—

1. This Treaty may be cited as the Extradition Treaty with China, 2021.

2. This Extradition Treaty was entered into with the Republic of China on the 5th of September, 2018, and shall come into effect from the day of its publication.

3. The extradition treaty set out in the Schedule shall have force of law subject to the provisions of the Act.

SCHEDULE

TREATY BETWEEN THE REPUBLIC OF ZIMBABWE AND
THE REPUBLIC OF CHINA ON EXTRADITION

Preamble

The Republic of Zimbabwe and the People’s Republic of China (hereinafter referred to as “the Parties” and individually as “the Party”);

DESIROUS to promote the effective cooperation between the two countries in the suppression of crime on the basis of mutual respect for sovereignty, equality and mutual benefit;

INTENDING to facilitate relations in the area of extradition by concluding a Treaty on Extradition.

Have agreed as follows—

ARTICLE 1

Definitions

“Requesting Party” means the Party requesting extradition in terms of this Treaty;

“Requested Party” means a Party which is requested to extradite in terms of this Treaty.

ARTICLE 2

Obligation to extradite

Each Party undertakes to extradite to the other, in accordance with the provisions of this Treaty, and at the Requesting Party, persons found in its territory and wanted by the other Party for the purposes of conducting criminal proceedings against or executing sentence imposed on such fines.

ARTICLE 3

Extraditable Offences

1. Extradition shall not be granted unless the conduct for which the extradition is sought constitutes an offence under the laws of both Parties and meets one of the following conditions:

- (a) where the request for extradition is made for the purpose of conducting criminal proceedings, the offence is punishable under the laws of both Parties by the penalty of imprisonment for a period of at least one (1) year or by any heavier penalty; or
- (b) where the request for extradition is made for the purpose of executing a sentence of imprisonment, a period of sentence that remains to be served by the person sought is at least six (6) months at the time when the request for extradition is made.

2. In determining whether a conduct constitutes an offence under the laws of both Parties in accordance with Paragraph 1 of this Article, it shall not matter whether the laws of the both Parties place the conduct within the same category of offence or denominate the offence by the same terminology.

3. If the request for extradition concerns two or more conducts each of which constitutes offence under the laws of both Parties and at least one of which fulfils the conditions provided for in Paragraph 1 of this Article, the requested Party may grant extradition for all of those conducts.

ARTICLE 4

Mandatory Grounds for Refusal

Extradition shall be refused if:

- (a) the Requested Party considers that the offence for which the extradition is requested is a political offence, or that the Requested Party has granted asylum to the person sought. But terrorism offence or the offence which is not regarded as a political offence under any international convention to which both Parties are parties shall not be considered as political offences;
- (b) the Requested Party has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing the person sought on account of that person's race, sex, religion, nationality or political opinion, or that that person's position in judicial proceedings may be prejudiced for any of those reasons;
- (c) the offence for which the extradition is requested only constitutes a military offence;
- (d) the person sought has become, under the laws of either Party, immune from prosecution or execution of sentence for any reason, including lapse of time or pardon;

- (e) the Requested Party has already rendered a final judgment or terminated that criminal proceedings against the person sought in respect of the offence for which the extradition is requested;
- (f) the person sought has been or would possibly be subjected to torture or other cruel, inhuman or degrading treatment or punishment in the Requesting Party; or
- (g) the request for extradition is made by the requesting pursuant to a judgement rendered in *absentia* unless the Requesting Party guarantees that the person sought has the opportunity to have the case retried in his or her presence.

ARTICLE 5

Discretionary Grounds for Refusal

Extradition may be refused if:

- (a) the Requested Party has criminal jurisdiction over the offence for which the extradition is requested in accordance with its national law, and is conducting or contemplates to institute a criminal proceeding against the person sought for that offence; or
- (b) the Requested Party, while taking into account the seriousness of the offence and the interests of the Requesting Party, considers that the extradition would be incompatible with humanitarian considerations in view of that person's age, health or other personal circumstances.

ARTICLE 6

Refusal of Extradition of Nationals

1. Each Party has discretion to refuse extradition of its nationals.

2. If extradition is not granted pursuant to Paragraph 1 of this Article, the Requested Party shall, if the Requesting Party so requests, submit the case to its competent authorities with a view to instituting criminal proceedings against the person under its national law. For this purpose, the Requesting Party shall provide the Requested Party with documents and evidence relating to the case.

ARTICLE 7

Channels of Communication

For the purpose of this Treaty, the Parties shall communicate with each other through diplomatic channels unless otherwise provided for in this treaty.

ARTICLE 8

Request for Extradition and Required Documents

1. The request for extradition shall be made in written form and shall include the following:

- (a) the name of the requesting authority;
- (b) the name, age, sex, nationality, number of identification documents,

occupation, domicile or residence of the person sought and other information that may help to establish that person's identity and possible location; and if available, the description of that person's appearance, the photographs and fingerprints of that person;

- (c) a statement of the facts of the offence, including the time, place, conduct and consequences of the offence;
- (d) the provisions of the laws relating to criminal jurisdiction, criminalization and penalty of the offence; and
- (e) the provisions of the laws relating to time limit on prosecution or execution of sentence.

2. In addition to the provisions of Paragraph 1 of the Article:

The request for extradition which is made for the purpose of conducting criminal proceedings against the person sought shall also be accompanied by a copy of final judgement and a description of period of sentence which has already been executed.

3. The letter of request for extradition and other relevant documents submitted by the requesting party in accordance with Paragraphs 1 and 2 of this Article shall be officially signed or sealed by the competent authority of the requesting Party and be accompanied by translations into the language of the Requested Party unless the Parties agreed otherwise.

ARTICLE 9

Additional Information

If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient, the Requested Party may request that additional information be furnished within thirty (30) days. If duly requested by the requesting Part, the time limit may be extended for fifteen (15) days. If the Requesting Party fails to submit additional information within that period, it shall be considered as having renounced its request voluntarily. However, the Requesting Party shall not be precluded from making a new request for extradition of the same person for the same offence.

ARTICLE 10

Provisional Arrest

1. In case of urgency, one Party may make a request to the other Party for the provisional arrest of the person sought before making a request for extradition. Such request may be submitted in writing through the channels provided for in Article 7 of this Treaty, the International Criminal Police Organisation (INTERPOL) or other channels agreed by both parties.

2. The request for provisional arrest shall contain the contents referred to in Paragraph 1 of Article 8 of this Treaty, a statement of the existence of documents referred to in Paragraph 2 of Article 8 and a statement that a formal request for extradition of the person sought will follow.

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3. The Requested Party shall, without delay, inform the Requesting Party of the results of its handling of the request.

4. Provisional arrest shall be terminated, if within a period of twenty eight (28) days after the arrest of the person sought, the Requested Party has not received the formal request for extradition. If duly requested by the Requested Party, such time limit may be extended for fifteen (15) days.

5. The termination of provisional arrest pursuant to Paragraph 4 of this Article shall not prejudice the extradition of the person sought if the Requested Party has subsequently received the formal request for extradition.

ARTICLE 11

Decision on the Request for Extradition

1. The Requested Party shall handle the request for extradition in accordance with the procedures provided for by its national law, and shall promptly inform the Requesting Party of its decision.

2. If the Requested Party refuses the whole or any part of the request for extradition, the reasons for refusal shall be notified to the Requesting Party.

ARTICLE 12

Surrender of the Person to be Extradited

1. If the extradition has been granted by the Requested Party, the parties shall agree on time, place and other relevant matter relating to the execution of the extradition. Meanwhile, the Requested party shall inform the Requesting Party of the period of time for which the person to be extradited has been detained prior to the surrender.

2. If the Requesting Party has not taken over the person to be extradited within fifteen (15) days after the date agreed for the execution of the extradition, the Requested Party shall release that person immediately and may refuse a new request by the Requesting Party for Extradition of that person for the same offence, unless otherwise provided for in Paragraph 3 of this Article.

3. If one Party fails to surrender or take over the person to be extradited within the agreed period for reasons beyond its control, the other party shall be notified promptly. The Parties shall once again agree on the relevant matters for the execution of the extradition, and the provisions of Paragraph 8 of this Treaty.

ARTICLE 13

Re-extradition

Where the person under extradition escapes back to the Requested Party before criminal proceedings are terminated or his sentence is served in the Requesting Party, that person may be re-extradited upon a new request for extradition made by the Requesting Party in respect of the same offence and the Requesting Party need not submit the documents and material provided for in Article 8 of this Treaty.

ARTICLE 14

Postponed Extradition and Temporary Extradition

1. If the person sought is being proceeded against or is serving a sentence in the Requested Party for an offence other than that for which the extradition is requested, the Requested Party may, after having made a decision to grant extradition, postpone the extradition until the conclusion of the proceeding or the completion of the sentence. The Requested Party shall inform the Requesting Party of the Postponement.

2. If the postponement of the extradition may seriously impede the criminal proceeding in the Requesting Party, the requested Party may, upon request and to the extent that its ongoing criminal proceedings are not hindered, temporarily extradite the person sought to the Requesting Party provided that the Requesting Party undertakes to return that person unconditionally and immediately upon conclusion of the relevant proceedings.

ARTICLE 15

Requests for Extradition made by Several States

Where requests are made by two or more States including one Party for extradition of the same person either for the same offence or for different offences, the Requested Party, in determining to which State the person is to be extradited, shall consider all the relevant circumstances, in particular:

- (a) whether the requests were made pursuant to a treaty;
- (b) the gravity of different offences;
- (c) the time and place of the commission of the offence;
- (d) the nationality and habitual residence of the person sought;
- (e) respective dates of the requests; and
- (f) the possibility of subsequent extradition to a third State.

ARTICLE 16

Rule of Specialty

The person extradited in accordance with this Treaty shall not be proceeded against or subject to the execution of sentence in the Requesting Party for an offence committed by that person before his extradition other than that for which the extradition is granted, nor shall that person be extradited to a third State, unless—

- (a) the Requested Party has consented in advance. For the purpose of such consent, the Requested Party may require the submission of the documents and information referred to in Article 8 of this Treaty, and a statement by the extradited person with respect to the offence concerned;
- (b) that person has not left the Requesting Party within thirty (30) days after having been free to do so. However, this period of time shall not

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- include the time during which that person fails to leave the requesting Party for reasons beyond his control; or
- (c) that person has voluntarily returned to the Requesting Party after leaving it.

ARTICLE 17

Handover of Property

1. If the Requesting Party so requests, the Requested Party shall, to the extent permitted by its national law, seize the proceeds and instrumentalities of the offence and other property which may serve as evidence found in its territory, and when extradition is granted, shall handover the property to the Requesting Party.

2. When the extradition is granted, the property referred to in Paragraph 1 of this Article may nevertheless be handed over even if the extradition cannot be carried out owing to the death, disappearance or escape of the person sought.

3. The Requested Party may, for conducting any other pending criminal proceedings, postpone the handover of the above-mentioned property until the conclusion of the proceedings, or temporarily hand over that property on condition that the Requesting Party undertakes to return it.

4. The handover of such property shall not prejudice any legitimate rights or interest of the Requested Party or of any third party to that property. Where these rights or interests exist, the Requesting Party shall return the handed over property without charge to the Requested party or the third Party as soon as possible after conclusion of the proceedings.

ARTICLE 18

Transit

1. When one Party is to extradite a person from a third State through the territory of the other Party, it shall request the other Party for the permission of such transit. No such request is required where air transportation is used and no landing in the territory of the other Party is scheduled.

2. The Requested Party shall, insofar as not contrary to its national law, grant the request for transit made by the Requesting Party.

ARTICLE 19

Notification of Result

The requesting Party shall, upon request of the requested Party, provide the Requested Party promptly with the information on the proceedings or the execution of sentence against the extradited person or information concerning the extradition of that person to a third State.

ARTICLE 20

Expenses

Expenses arising from the procedures for extradition in the Requested Party shall be borne by that Party. Expenses of transportation and the transit expenses

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in connection with the handover or takeover of the extradited person shall be borne by the Requesting Party.

ARTICLE 21

Relationship with Other Treaties

This Treaty shall not prevent the Parties from cooperating with each other on extradition in accordance with other treaties to which both Parties are parties.

ARTICLE 22

Settlement of Disputes

Any dispute arising from the interpretation or application of this Treaty shall be settled by consultation through diplomatic channels.

ARTICLE 23

Entry into Force, Amendment, Termination

1. Each party shall inform the other by diplomatic note that all necessary steps have been taken under its law for entry into force of this Treaty. This Treaty shall enter into force upon the thirtieth (30th) day from the day on which the later diplomatic note is received.

2. This treaty may be amended at any time by written agreement between Parties. Any such amendment will enter into force in accordance with the same procedure prescribed in Paragraph 1 of this Article and will form part of this Treaty.

3. Either party may terminate this Treaty by notice in writing through diplomatic channels at any time. Termination shall take effect on the one hundred and eightieth (180th) day after the date on which the notice is given. Termination of this Treaty shall not affect the extradition proceedings commenced prior to the termination.

4. This Treaty applies to any request presented after its entry into force even if the relevant offences occurred before the entry into force of this Treaty.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Treaty.

DONE in duplicate at Beijing on this 5th day of September, 2018, in the English and Chinese languages, both texts being equally authentic.

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For the Republic of Zimbabwe

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For the Republic of China