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NGOs urge SA to extradite Dutch arms dealer after SCA blows

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03 OCTOBER 2021 - 16:09 by ERIN BATES



Guus Kouwenhoven, a convicted Dutch arms dealer, outside the Cape Town magistrate's court on the day of an extradition hearing in February 2018. Picture: AFP/GETTY IMAGES/ RODGER BOSCH

Dutch arms dealer and fugitive Guus Kouwenhoven faces fresh calls for extradition from SA to the Netherlands after two losses in the Supreme Court of Appeal (SCA) in September.

Kouwenhoven lost two cases that, on different grounds, challenged his extradition. The SCA heard arguments in late August and dismissed both appeals on September 22.

Now, human rights organisations in the Netherlands, SA and the UK are urging SA authorities to urgently extradite Kouwenhoven. He was tried in connection with crimes committed during Liberia's civil war between 2000 and 2002 and faces almost 20 years behind bars.

PAX, a Dutch peace organisation; Stop Wapenhandel, a research unit against arms trade; Shadow World Investigations, which runs investigations, including into global weapons sales; and the Southern

African Litigation Centre (SALC), a legal organisation challenging impunity, welcomed the SCA's rulings.

"We hope Kouwenhoven is sent to the Netherlands as soon as possible," said Wendela de Vries, a researcher at Stop Wapenhandel.

Frank Slijper, who leads PAX's research on the arms trade, said "after so many years back and forth", Kouwenhoven's extradition should be effected as soon as possible.

Shadow World Investigations executive director Andrew Feinstein called Kouwenhoven, whom he researched for his book on arms trafficking, "the most egregious type of arms dealer that we come across in the world".

Found guilty

He called Kouwenhoven the "key arms dealer" to convicted war criminal Charles Taylor. "The weapons Kouwenhoven sourced [...] effectively fuelled the Sierra Leone war and the war crimes," said Feinstein

In 2012 the International Criminal Court (ICC) found former Liberian president and warlord Taylor guilty of "aiding and abetting, as well as planning, some of the most heinous and brutal crimes recorded in human history" in Sierra Leone.

Five years later, a Dutch court found Kouwenhoven guilty "of the illegal supply of weapons to the regime of Charles Taylor in Liberia and Guinea and of participating in war crimes in those countries". Kouwenhoven, who once directed Liberia's largest timber business, maintains his innocence.

After years of court cases, after his arrest in Rotterdam in 2005, Kouwenhoven was convicted by the Dutch court of appeal in 2017. He was sentenced to 19 years in jail. An Interpol red notice was soon issued for his arrest.

By then he was living in a multistorey property on the Atlantic seaboard in Cape Town and owned several luxury vehicles.

"The fact that he was let into SA at all is a cause of huge concern and probably should be investigated," said Feinstein.

Revoked visa

After the Dutch conviction, he has fought extradition from SA for almost four years. In 2017, his attorney told an investigator for Interpol in SA that Kouwenhoven planned to remain in SA.

“The decision of the Dutch court was clear. Nobody should get away with arms trade,” said De Vries.

In 2018, he unsuccessfully challenged the guilty conviction in the Netherlands. Atilla Kislá, a legal consultant at SALC, said: “We are speaking here of a convicted person. Not like in other extradition cases, where you have a suspect. The case here is even clearer.”

In December 2019, SALC launched a case pressing for the revocation of Kouwenhoven’s SA visa. In November 2020, before the court’s ruling, the department of home affairs, in terms of the provisions of the Immigration Act regarding fugitives, declared Kouwenhoven an undesirable person and revoked his visa.

As both Kouwenhoven’s recent SCA cases concerned many of the same events, the court heard them in tandem. He launched one of his appeals against the police minister, the Western Cape director of public prosecutions and the justice minister.

Some of the judges in the appeals court, notably Malcolm Wallis, bristled at the challenge to his December 2017 arrest at a plush Cape Town home. He called Kouwenhoven’s arguments “ridiculous” and doubted an arrest by daylight in summer could be deemed a raid at dawn, as claimed by the applicant’s lawyers.

Kouwenhoven’s counsel insisted they were not seeking to ensure a safe haven for war criminals in SA. They argued Kouwenhoven’s case raised vital questions of law, concerning what constituted “jurisdiction” and the onus on SA authorities when a country sought a fugitive’s extradition but the final request was pending.

‘Safe haven’

Kouwenhoven’s heads of argument in one of the SCA appeals began: “This case is about holding public officials to their word, and to account.”

His lawyers tackled an SA warrant of arrest, founded on a provisional plea from the Netherlands for his extradition from SA. “[W]e submit the warrant was invalid and unconstitutional and should have been set aside,” they argued. The SCA was unconvinced.

Kouwenhoven remains at large, despite the double blow in the appeals court in September.

“The extradition should – after so many years – take place at the earliest possible occasion [...] this has been a very difficult and extremely long legal process,” said Slijper.

“That’s an important step in ensuring that SA doesn’t become a safe haven for these perpetrators of international crimes [...] now, finally, extradition proceedings can continue,” said Kislá.

The department of justice in the Netherlands said via the embassy in Pretoria that Dutch authorities are “observing the SA procedures in this matter with great interest, and are in close contact with relevant SA authorities”.

De Vries said both governments must take responsibility. “If somebody like Kouwenhoven could walk [...] we really should ask ourselves where our justice systems fail,” said De Vries.

The latest developments mean the only remaining legal avenue available to Kouwenhoven in SA is to tackle the SCA’s rulings in the Constitutional Court. Kouwenhoven’s legal representatives did not respond to a question on whether he intends to appeal the SCA rulings.

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