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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
KEN WIWA, et al.,

Plaintiffs,

-against-

ROYAL DUTCH PETROLEUM CO., et al.,

Defendants.
-----X

96 Civ. 8386 (KMW) (HBP)

KEN WIWA, et al.,

Plaintiffs,

-against-

BRIAN ANDERSON,

Defendant.
-----X

01 Civ. 1909 (KMW) (HBP)

ESTHER KIOBEL, et al.,

Plaintiffs,

-against-

ROYAL DUTCH PETROLEUM CO., et al.,

Defendants.
-----X

02 Civ. 7618 (KMW) (HBP)

ORDER

KIMBA M. WOOD, U.S.D.J.:

There are a number of outstanding discovery disputes pending before the Court in Wiwa v. Royal Dutch Shell Petroleum Co., 96 Civ. 8386, and Wiwa v. Anderson, 01 Civ. 1909 (collectively "Wiwa"); as well as Kiobel v. Royal Dutch Shell Petroleum Co., 02

Civ. 7618 ("Kiobel"). This order addresses disputes related to (1) Kiobel Plaintiffs' Third Request for Production of Documents; (2) Kiobel Plaintiffs' Fourth Request for Production of Documents; and (3) Wiwa Plaintiffs' Second Request for Production of Documents and 30(b)(6) Interrogatories.

In a May 28, 2004 letter to the Court, Plaintiffs request a discovery conference to address, inter alia, Defendants' failure to respond adequately to the aforementioned discovery requests ("Plaintiffs' May 2004 Letter").

In a December 7, 2004 letter to the Court, Defendants respond to Plaintiffs' allegations of Defendants' inadequate responses ("Defendants' December 2004 Letter").

Plaintiffs have not submitted a reply to Defendants' response.

At a conference held by the Court on October 7, 2008, all parties agreed that the Court may rule on these discovery disputes based solely on the aforementioned submissions. (Conf. Tr. 35:13-36:15 (Oct. 7, 2008).) The Court rules on each issue raised in Plaintiffs' May 2004 Letter in turn.

I. Kiobel Plaintiffs' Third Request for Production of Documents

A. Requests 2, 20, 21, 27, 30, 32, 35

Defendants assert that each of these requests is moot. Kiobel Plaintiffs have submitted no information to the contrary. Accordingly, the Court deems each of these requests fully

satisfied, except for Requests 32 and 35.

1. Request 2

Kiobel Plaintiffs request that Defendants produce "[a]ll visitor logs or 'routine diaries' for the Shell Industrial Area in Port Harcourt for the period from November 1992 to January 1996 and for those logs which contain the names of specified individuals." (Pls.' May 2004 Letter 5.)

Defendants state that there are no documents "logging visitors" to the Shell Petroleum Development Corporation ("SPDC") Industrial Area in Port Harcourt for that time period. (Defs.' Dec. 2004 Letter 2.)

The Court deems this request fully satisfied.

2. Requests 20, 21

Kiobel Plaintiffs request that Defendants produce "[a]ll security department diaries" and "[a]ll security department investigation reports" dated from 1990-1999 and "kept in Lagos as described in the Declaration of Nnaemeka Achebe dated October 4, 2003." (Pls.' May 2004 Letter 5-6.)

Defendants state that the security department in Lagos does not maintain diaries or investigation reports that relate to activities in the Eastern Division, the region where the events underlying Plaintiffs' allegations took place. Defendants also assert that at their May 25, 2004 meeting, Kiobel Plaintiffs stated that they would no longer be interested in these requests

if Defendants confirmed that no documents relating to activities in the Eastern Division were kept in Lagos. (Defs.' Dec. 2004 Letter 2-3.) Kiobel Plaintiffs have not objected to Defendants' representation of their agreement.

The Court deems these requests fully satisfied.

3. Request 27

Kiobel Plaintiffs request that Defendants produce "[a]ll arms and ammunition files dated 1990-1999 kept in Warri as described in the Achebe Declaration and relating to arms and ammunition that SPDC loaned to, gave to, or purchased for the security forces." (Pls.' May 2004 Letter 6.)

Defendants state that Warri does not maintain "arms and ammunition files" that relate to activities in the Eastern Division. Defendants also assert that at their May 25, 2004 meeting, Plaintiffs stated that they would no longer be interested in this request if Defendants confirmed that no documents relating to activities in the Eastern Division were kept in Warri. (Defs.' Dec. 2004 Letter 4.) Kiobel Plaintiffs have not objected to Defendants' representation of their agreement.

The Court deems this request fully satisfied.

4. Request 30

Kiobel Plaintiffs request that Defendants produce "[a]ll documents or correspondence with the other oil companies

operating in Nigeria relating to community disturbances, security, OPAPCO, the OMPADEC security sub-committee, OTS security sub-committee or the OPCC Executive Committee or security sub-committee, as described in the Achebe Declaration." (Pls.' May 2004 Letter 7.)

Defendants confirm that they have searched for and produced all responsive documents. (Defs.' Dec. 2004 Letter 5.)

The Court deems this request fully satisfied.

5. Request 32

Kiobel Plaintiffs request that Defendants produce "[a]ll public and governmental affairs department records referring to Steve Lawson-Jack and dated 1990-1999, kept in the Eastern Division files as described in the Achebe Declaration" and having to do with (1) land acquisition; (2) land compensation; and (3) SPDC seminars and workshops.¹ (Pls.' May 2004 Letter 7-8.)

Defendants confirm that they have produced public and government affairs documents having to do with (1) communications with Niger Delta communities; (2) land compensation documents (relating to payments along the Trans-Niger Pipeline); and (3) SPDC events for community groups and meetings of community stakeholders. (Defs.' Dec. 2004 Letter 5-6.)

¹ The Court reads Kiobel Plaintiffs' naming of the documents they hope to obtain through this request in their May 2004 Letter as a de facto narrowing of the original request. (Pls.' May 2004 Letter 7-8.) Defendants' objection to the narrowed request as unduly burdensome is unpersuasive.

Defendants' description of its production approximates but does not exactly mirror the documents specifically requested in Plaintiffs' May 2004 Letter.

The Court concludes that this request has not been fully satisfied. Defendants shall produce any additional documents responsive to Kiobel Plaintiffs' request. They shall do so by 5:00 p.m. Wednesday, November 5, 2008.

6. Request 35

Kiobel Plaintiffs request that Defendants produce "[a]ll documents referring or relating to the use of storage facilities (above or under ground) at SPDC's Demonstration Farm in Bori, Nigeria, during the period of 1990-1999." (Pls.' May 2004 Letter 8.)

Defendants object to this request as "vague, ambiguous, overly broad, unduly burdensome and not relevant to any causes of action in the complaint." In particular, Defendants argue that (1) the request is vague and ambiguous because the term "storage facilities" is undefined; and (2) the request is irrelevant because Plaintiffs have offered no evidence to support their allegation that "people arrested were taken to Shell's facilities and detained and brutalized there." (Defs.' Dec. 2004 Letter 7.)

Defendants' arguments as to vagueness and overbreadth are persuasive. First, the Court accepts Defendants' representation that the term "storage facilities," without definition, is

insufficiently descriptive to allow Defendants to effectively tailor their search. Second, Kiobel Plaintiffs' request for "all documents referring or relating to" the use of storage facilities is much too broad in light of Kiobel Plaintiffs' stated reasons for making this request, namely, to obtain information relevant to their allegations that people were "detained and brutalized" at Shell facilities. (Pls.' May 2004 Letter 8.)

Defendants' argument as to irrelevance, however, is not persuasive. For the purposes of discovery, Kiobel Plaintiffs' allegation that people were harmed at Defendants' facilities is sufficient to merit some inquiry into those facilities.

The Court concludes that this request must be narrowed before Defendants respond.

Kiobel Plaintiffs shall submit a revised request to Defendants that both defines the term "storage facility" and narrows the scope of the documents requested. They shall do so by October 28, 2008.

Defendants shall respond to Kiobel Plaintiffs' revised request. They shall do so by November 7, 2008.

B. Request 24

Kiobel Plaintiffs request "[a]ll security department registers dated 1990-1999 kept in the Eastern Division files as described in the Achebe Declaration." (Pls.' May 2004 Letter 6.)

Defendants object to this request on the grounds that it is (1) overbroad; (2) unduly burdensome; and (3) irrelevant. (Defs.' Dec. 2004 Letter 3-4.)

Defendants' argument as to overbreadth is persuasive. Kiobel Plaintiffs defend the relevancy of this request on the ground that responsive documents will provide evidence of sabotage specifically in Ogoni. The Court agrees with Defendants that to the extent this request asks for documents not relating to Ogoni, the request is overly broad.²

Defendants' arguments as to burdensomeness and irrelevance, however, are unpersuasive. First, Defendants' statement that "each register...contains hundreds of entries" is insufficient to show undue burden. Second, Defendants' argument that sabotage is irrelevant to Kiobel Plaintiffs' allegations misapprehends the logical underpinnings of Kiobel Plaintiffs' request. Kiobel Plaintiffs do not argue that sabotage in and of itself is relevant, but rather that the handling of alleged acts of sabotage by Defendants' and/or SPDC is relevant because such

² Defendants claim that Magistrate Judge Pitman ruled that any production not relating to Ogoni was overbroad and/or irrelevant at a January 21, 2004 discovery conference ("January 2004 Conference").

The Court disagrees with Defendants' representation of Magistrate Judge Pitman's ruling. At the January 2004 Conference, Magistrate Judge Pitman ruled on the relevancy of production not relating to Ogoni solely with regards to the discrete discovery dispute then before the Court. Conf. Tr. 39:03-39:08 (Jan. 21, 2004.)

The Court will decide whether production relating to areas other than Ogoni is appropriate in the context of each specific discovery request.

evidence might provide insight into Defendants' relationship with SPDC and the Nigerian military. The Court agrees with Kiobel Plaintiffs that the requested information is relevant.

The Court concludes that this request has not been fully satisfied.

Defendants shall produce all responsive documents relating to the Ogoni region. They shall do so by 5:00 PM on November 7, 2008.

C. Request 25

Kiobel Plaintiffs request "[a]ll security department daily orders dated January 1992 to December 1996, inclusive, and kept in the Eastern Division files as described in the Achebe Declaration." (Pls.' May 2004 Letter 6.)

Defendants object to this request on the grounds that it is (1) overbroad; (2) unduly burdensome; and (3) irrelevant. (Defs.' Dec. 2004 Letter 4.)

Defendants' objections are unpersuasive. First, the request is not overly broad. Kiobel Plaintiffs' request is confined to a reasonably limited time frame in relation to the scope of their allegations. Second, Defendants have failed to establish that the request is unduly burdensome. Defendants provide no evidence for their claim of undue burden except to note that the orders requested are created daily, seven days a week. Third, Defendants' attempt to characterize the requested documents as

factually irrelevant is unconvincing. Defendants assert that Kiobel Plaintiffs are "wrong" in hoping to discover evidence of a "campaign to cover-up SPDC's misdeeds" among these documents because the orders are limited to more mundane issues. Kiobel Plaintiffs are entitled to determine for themselves whether these documents contain the evidence they seek.

The Court concludes that this request has not been fully satisfied.

Defendants shall produce all documents that are responsive to this request. They shall do so by 5:00 PM on November 7, 2008.

D. Request 29

Kiobel Plaintiffs request "[a]ll documents concerning defalcation committee proceedings from 1990-1999 in the Eastern division, as described in the Achebe Declaration, relating to SPDC's purchase of Humanitex weapons as well as those relating to the theft of SPDC property by SPDC personnel."³ (Pls.' May 2004 Letter 6-7.)

Defendants object to this request on the grounds that it is (1) overbroad; (2) unduly burdensome; and (3) irrelevant. (Def.' Dec. 2004 Letter 4-5.)

Defendants' objections are unpersuasive. First, Kiobel

³ The Court notes that this request, as stated in Plaintiffs' May 2004 Letter, is substantially more narrow than when first made.

Plaintiffs' request as narrowed is not overly broad. Kiobel Plaintiffs request only those documents that bear on specific subjects. Second, Defendants' objections as to undue burden relate only to the original request, not to the request as narrowed. Defendants have not shown that the request as narrowed would create the same undue burden. Third, the Court has already ruled that Defendants' arguments attempting to bar as irrelevant all discovery relating to "sabotage" or to areas outside the Ogoni region are unconvincing.

The Court concludes that this request has not been fully satisfied.

Defendants shall respond to Kiobel Plaintiffs' request. They shall do so by 5:00 p.m. on November 7, 2008.

E. Request 34

Kiobel Plaintiffs request "[a]ll internal audits, special audits and investigation reports dated 1990-1999 kept in the Audit Department in Warri as described in the Achebe Declaration (Pls.' May 2004 Letter 8.)

Defendants object to this request on the grounds that it is (1) overbroad; (2) unduly burdensome; and (3) irrelevant. (Defs.' Dec. 2004 Letter 6.)

Defendants' objections are unpersuasive. First, Kiobel Plaintiffs' request is not overly broad. Kiobel Plaintiffs' request is confined to a reasonably limited time frame in

relation to the scope of their allegations. Second, Defendants have failed to establish that the request is unduly burdensome. Merely stating that there are "hundreds of" audits and reports within the specified time frame does not show that retrieving those documents would be burdensome. Third, Defendants' argument that evidence showing shared corporate policies is "irrelevant to the corporate separateness question" is flawed. While evidence of shared policies alone might not establish that Defendants' exercised control over SPDC, such evidence is certainly relevant to the overall inquiry into the relationship between Defendants and SPDC. Defendants' argument that the request is irrelevant to the extent Kiobel Plaintiffs seek information not relating to Ogoni is similarly unconvincing. As noted above, the Court never ruled that discovery relating to areas outside Ogoni is always improper. Kiobel Plaintiffs make this request for the primary purpose of establishing a connection between Defendants and either SPDC or the Nigerian military. For this request, discovery as to regions beyond Ogoni is appropriate.

The Court concludes that this request has not been fully satisfied.

Defendants shall produce all documents that are responsive to this request. They shall do so by 5:00 PM on November 5, 2008.

II. Kiobel Plaintiffs' Fourth Request for Production of Documents

A. Requests 1-31

Kiobel Plaintiffs request "[a]ll documents concerning" thirty-one different individuals. (Kiobel Pls.' Fourth Req. Produc. 2-4.)

Defendants object to these requests as (1) overbroad; and (2) unduly burdensome. (Defs.' 2004 Letter 7-8.)

Defendants' objections are persuasive. Kiobel Plaintiffs ask for "all documents concerning" each individual and do not specify or limit in any way what categories of information about each individual are needed.

The Court concludes that these requests must be narrowed before Defendants respond.

Kiobel Plaintiffs shall submit revised requests to Defendants that specify what categories of information are requested for each individual. They shall do so by 5:00 p.m. on October 28, 2008.

Defendants shall respond to Plaintiffs' revised requests. They shall do so by 5:00 p.m. on November 7, 2008.

B. Request 32

Kiobel Plaintiffs request "[a]ll documents concerning the registration and use of the Shell Pectin in Nigeria." (Pls.' May 2004 Letter 9.)

Defendants object to this request as (1) overbroad; and (2) irrelevant. (Defs.' Dec. 2004 Letter 8.)

Defendants' arguments are unpersuasive. First, Kiobel Plaintiffs' request is not overly broad. Kiobel Plaintiffs have already clarified that they do not request every document bearing the Pectin logo, but instead only request those documents "concerning the use" of the Pectin in Nigeria. Second, Defendants again demand an inappropriately high showing of relevance for the purposes of discovery. While use of a logo by more than one company may not in and of itself constitute proof of a single enterprise, policies about how, when, and by whom a corporate logo should be used may nonetheless help establish that a single enterprise exists.

The Court concludes that this request has not been fully satisfied.

Defendants shall produce all responsive documents to this request. They shall do so by 5:00 p.m. Wednesday, November 5, 2008.

III. Wiwa Plaintiffs' Second Request for Production of Documents and 30(b)(6) Interrogatories

A. Requests Concerning Environmental Standards

Plaintiffs request "[a]ll documents reflecting, in whole or in part, communications between or among officers, agents, or employees of any Shell Entities referring to environmental

standards governing operations of any Shell entity in the Netherlands" and "in the North Sea." (Wiwa Pls.' Second Req. Produc. 16.)

Defendants interpret these requests to encompass only documents that state the environmental standards. They refuse to produce documents, such as audits, that discuss whether Defendants actually complied with those standards. (Defs.' Dec. 2004 Letter 8-9.)

Wiwa Plaintiffs, on the other hand, maintain that their request was intended to encompass any and all communications referring to standards, including not only documents that state the standards, but also to documents that discuss whether there was compliance with those standards.⁴ (Pls.' May 2004 Letter 10-

⁴ Both Wiwa Plaintiffs and Defendants also maintain that the Court has already ruled on the proper scope of these requests.

Defendants claim that at the May 30, 2003 discovery conference ("May 2003 Conference"), the Court directed Defendants to produce only those documents that state the environmental standards in the Netherlands and the North Sea.

Defendants are incorrect. While the Court posed the question "Why don't you narrow [the request] to documents that state the environmental standards governing operations at any point in time for the Netherlands and the North Sea?," the Court ultimately ordered production of "the documents requested," without ruling on the scope of the requests. Conf. Tr. 58:14-58:16; 59:20-59:23 (May 30, 2003).

In contrast, Wiwa Plaintiffs maintain that at the September 23, 2003 discovery conference ("September 2003 Conference"), Plaintiffs' attorney "verified" with Magistrate Judge Pitman that the Defendants should produce "documents relating to their conduct in the North Sea and the Netherlands" and not just "an abstract description of the legal standards applicable to those locales." (Pls.' May 2004 Letter 10.)

Plaintiffs are incorrect. Magistrate Judge Pitman indicated only that Defendants had begun to produce documents responsive to these requests and that "whether there's an issue in the future concerning completeness of production" should be addressed once all production

11.)

The Court agrees with Wiwa Plaintiffs. The requests clearly ask for all "communications . . . referring to environmental standards," and the Court sees no reason to exempt documents that refer to those standards in the context of compliance.

The Court concludes that the requests have not been fully satisfied.

Defendants shall produce all documents "referring" to environmental standards in the Netherlands and in the North Sea, whether those documents merely state the standards or whether they discuss compliance with the standards. They shall do so by 5:00 p.m. November 7, 2008.

B. Requests Concerning Employment Histories and Records

Wiwa Plaintiffs request (1) "[f]or each and every officer of SPDC between January 1, 1990 and December 31, 2000, all employment agreements, letters of assignment, and other documents, identifying the employer, and terms of conditions of employment for that employee during said period"; (2) "[f]or each and every person employed by SPDC between January 1, 1990 and December 31, 2000 who was previously and/or subsequently employed by any other Shell Entity, all documents reflecting their

was complete. (Conf. Tr. 20:18-20:22 (Sept. 23, 2003).)

The Court has never before fully considered nor addressed the scope of these requests. The Court rules on the issue for the first time here.

selection and transfer, all employment agreements, letters of assignment, and other documents, identifying the employer, and terms and conditions of employment for that employee during said period"; and (3) "[f]or the period [between] January 1, 1990 and December 31, 2000, all documents which identify or otherwise reflect each and every Shell Entity which has paid remuneration to" a list of 45 individuals. (Wiwa Pls.' Second Req. Produc. 8-9.)

Defendants object to these requests because they contend that Wiwa Plaintiffs have not acted in accordance with a Court order issued at the May 2003 Conference. Defendants argue that the Court directed Wiwa Plaintiffs to initially narrow these requests to a "few people for whom . . . the personnel file might be revealing," so that the Court could review those documents in camera, and on that basis, decide whether production of all documents for all individuals would be appropriate. According to Defendants, Wiwa Plaintiffs never provided them with a list naming the "few people" for whom the Defendants should provide responsive documents for in camera review. (Defs.' Dec. 2004 Letter 10.)

Wiwa Plaintiffs, on the other hand, maintain that they did respond to the Court's order in an April 29, 2004 letter to Defendants asking for the production of "copies of contracts of employment and personnel files for current or former Shell

employees who were deposed by Plaintiffs and for Victor Oteri's [sic]." (Pls.' May 2004 Letter 10.)

The Court agrees with Defendants. Wiwa Plaintiffs' April 29, 2004 letter names more than a "few people" and is insufficiently responsive to the Court's order.

The Court concludes that Wiwa Plaintiffs' must adhere to the Court's order before Defendants respond to these requests.

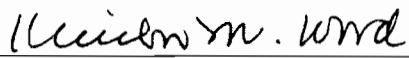
Wiwa Plaintiffs shall inform Defendants of the select "few people" for whom Defendants must provide responsive documents. They shall do so by 5:00 p.m. on October 28, 2008.

Defendants shall provide those documents to the Court for in camera review. They shall do so by 5:00 p.m. on November 7, 2008.

After in camera review of the documents, the Court will determine whether it is appropriate to order Defendants to respond more fully to these requests.

SO ORDERED.

Dated: New York, New York
October 24, 2008



Kimba M. Wood
United States District Judge