

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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KEN WIWA, et al.,

Plaintiffs,

-against-

ROYAL DUTCH PETROLEUM CO., et a

Defendants.

96 Civ. 8386 (KMW) (HBP)

KEN WIWA, et al.,

Plaintiffs,

-against-

BRIAN ANDERSON,

Defendant.

01 Civ. 1909 (KMW) (HBP)

ESTHER KIOBEL, et al.,

Plaintiffs,

-against-

ROYAL DUTCH PETROLEUM CO., et al.,

Defendants.

02 Civ. 7618 (KMW) (HBP)

OPINION & ORDER

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

This order addresses a discovery dispute between plaintiffs in one of the three above-captioned actions ("Plaintiffs"), Kiobel v. Royal Dutch Shell Petroleum Co., 02 Civ. 7618 ("Kiobel"), and defendants in Kiobel ("Defendants") regarding the

responsiveness, for discovery purposes, of a report titled "Peace and Security in the Niger Delta" (the "Niger Delta Report"). (Conf. Tr. 43:1-45:21, Oct. 7, 2008.)

Plaintiffs contend that the Niger Delta Report is responsive to their timely discovery requests, but that Defendants have thus far failed to produce the report as well as documents related to its preparation.

Defendants contend that the Niger Delta Report is not responsive because the report (1) was published in 2003, four years after the final events Plaintiffs allege in their complaint, (2) provides prospective policy recommendations; and (3) does not have "anything to do with any operations in the Ogoni," the region of the Niger Delta in which the human rights abuses Plaintiffs allege occurred.

Defendants' arguments regarding responsiveness are not persuasive. Although the Niger Delta Report was published in 2003 and develops prospective policy recommendations, it discusses the history of the Niger Delta region, and specifically describes trends during the 1990s, the period of the Plaintiffs' allegations. (Niger Delta Report 23, 33) The report's references to the 1990s are not necessarily relevant to Plaintiffs' allegations, but they indicate that the preparation of the report involved at least some research into the period of Plaintiffs' allegations.

In addition, other references, including those to Shell's use of Nigerian police and Nigerian Mobile Police, which are relevant to Plaintiffs' claims, are vague as to the period of time in which Shell used these security services. Given the retrospective research conducted in preparing other aspects of the report, the sources for the report's references to these relevant subjects may be responsive. Thus, the report's date of publication and prospective policy focus do not establish that the report, and especially documents used in preparing the report, is unresponsive.

In addition, Defendants' contention that the report is not responsive because it does not discuss Shell operations in Ogoni is unpersuasive. First, the report refers to conflict assessments that were reviewed in designing the report and a workshop on localized conflicts that was held in preparing the report. (Niger Delta Report 3, 5.) Ogoniland is listed as one area where localized conflict occurred and as one of the areas discussed at the workshop. (Id. 52.) Although the period of time the conflict assessments and workshop address is unclear, given the other retrospective references in the report, these sources, to the extent that they involve discussions of Ogoniland, may be responsive.

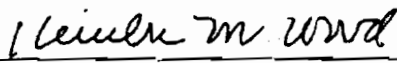
In addition, as the Court has already found, information about Shell companies' relationship with the Nigerian government

is responsive, even if it is not limited to events that occurred in Ogoni. (See Order 12, Oct. 24, 2008, 96 Civ. 8386 D.E. 255.) Thus, the report's limited mention of Ogoni does not, on its own, make it unresponsive.

Accordingly, Defendants shall produce the Niger Delta Report, and any responsive documents related to its preparation, to Plaintiffs. They shall do so by February 24, 2009.

SO ORDERED.

Dated: New York, New York  
February 15, 2009

  
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Kimba M. Wood  
United States District Judge