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## Research Report Two: Lliuya v. RWE AG

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## Research Report Two: Lliuya v. RWE AG

### Abstract

The case of Lliuya v. RWE AG first starts with Saúl Luciano Lliuya, of Huaraz Peru. Lliuya, a small-scale farmer and mountain guide in the flood path of Lake Palcacocha in the Peruvian Andes, decided to file a lawsuit against German energy giant Rheinisch-Westfälisches Elektrizitätswerk Aktiengesellschaft (RWE AG; Reeves et al. 2019). Due to rising temperatures from global warming, the glacial melt is increasing the lake's size and threatening the people of Huaraz city. Lliuya decided to take action, and with the help of environmental advocacy groups such as Stiftung Zukunftsfähigkeit (Foundation for Sustainability), he was able to get the lawsuit into the German court system. Ultimately, he began a massive climate action movement in pushing for legal systems to hold independent companies responsible for their emissions and how they affect the people of the world (Germanwatch 2021). Lliuya credits his motivation for advocating and acting on climate change to the visibility he has of the environment getting worse and worse in his home, saying, "Every day, I see the glaciers melting and the lakes in the mountains growing. For us in the valley, the threat is immense. We cannot simply wait and see what happens. For me, RWE AG is partly responsible for the risks that threaten us in Huaraz." (Baldrich 2021).

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### Introduction

The case of Lliuya v. RWE AG first starts with Saúl Luciano Lliuya, of Huaraz Peru. Lliuya, a small-scale farmer and mountain guide in the flood path of Lake Palcacocha in the Peruvian Andes, decided to file a lawsuit against German energy giant Rheinisch-Westfälisches Elektrizitätswerk Aktiengesellschaft (RWE AG; Reeves et al. 2019). Due to rising temperatures from global warming, the glacial melt is increasing the lake's size and threatening the people of Huaraz city. Lliuya decided to take action, and with the help of environmental advocacy groups such as Stiftung Zukunftsfähigkeit (Foundation for Sustainability), he was able to get the lawsuit into the German court system. Ultimately, he began a massive climate action movement in pushing for legal systems to hold independent companies responsible for their emissions and how they affect the people of the world (Germanwatch 2021). Lliuya credits his motivation for advocating and acting on climate change to the visibility he has of the environment getting worse and worse in his home, saying, "Every day, I see the glaciers melting and the lakes in the mountains growing. For us in the valley, the threat is immense. We cannot simply wait and see what happens. For me, RWE AG is partly responsible for the risks that threaten us in Huaraz." (Baldrich 2021).

### The Case

On November 24, 2015, Lliuya filed a lawsuit in the District Court of Essen. At the time, the magnitude of the case was not yet understood. The District Court of Essen eventually dismissed the lawsuit against RWE AG (Germanwatch 2021). The grounds for the District Court of Essen's dismissal was that there was no causal link between GreenHouse Gas emissions and

RWE AG to the potential flood risk imposed on the Lliuya's land. The court ruled that there would still be a flood risk even without the emissions from RWE AG (Reeves et al. 2019). Lliuya and his team, now grabbing national headlines in Germany, would not stop with the dismissal of the case that quick, in response to the dismissal, they filed an appeal at The Higher District Court of Hamm in January 2017. By November, The Higher District Court of Hamm would decide to enter the evidentiary stage of the case (German watch 2021).

The Higher District Court of Hamm cited paragraph 1004 of German Civil Law in order to move forward with the case, "If a neighbor interferes with the quiet enjoyment of one's property, either by creating smells, sounds, pollution or any other hazard[s]..." (Baldrich 2021). This decision by the court would be historical, as people being affected by climate change the most could eventually see the company be held responsible for their actions in killing the planet. This case and the precedent it could set is very important in the battle against climate change and global warming. Lliuya and his lawyer intended for the case to be easily replicable in other global jurisdictions in order to bring the fight against GHG emissions to those responsible (Baldrich 2021). Although Lliuya knew the RWE AG emissions were not solely responsible for the potential flooding of his property, he believed they should be held accountable for their contribution. He cited the Urgenda case, which maintains that greenhouse gas emissions are causing climate change, and in total, causing glacial retreat and increasing flood risks that could potentially affect about 120,000 people in Huaraz (Reeves et al. 2021, Stuart-Smith et al. 2021).

The plaintiff wished to hold RWE AG responsible for the cost of new climate adaptation in proportion to the amount of emissions RWE AG is responsible for emitting. Lliuya recognizes that RWE AG is not the sole perpetrator responsible for putting the city of Huaraz in danger. Lliuya's legal team maintains that RWE AG is responsible for .47 percent of the GHG emissions

in relation to the entire world from 1751-2010, ranking RWE AG the 23<sup>rd</sup> largest emitter in the world (Grasso et al. 2020). Lliuya does not dispute the claim that without RWE AG's emissions, there would still be a flood risk. However, Lliuya argues that the flood risk would be reduced significantly without their contributions. Another relevant fact to the case is that RWE AG is one of the largest single emitters of carbon dioxide in Europe and RWE AG even emits more annually than some nations such as the Netherlands (Reeves et al. 2021). RWE AG spokesperson Guido Steffen stated, "that an individual body cannot be made liable for climate events where millions of different factors have been contributing for many many years." he continues to say that if RWE AG is held liable, it would not just affect the company, but the consumers as well (Farmer in Peru, 2018). It seems as if the two sides can only agree on the importance of this case and how it will shape the future of climate change litigation globally for decades to come. In 2018, The Higher District Court of Hamm rejected statements made by RWE AG's legal team, stating climate damages can lead to the liability falling on the hands of the company or corporation responsible (Germanwatch, 2021). Unfortunately, the court proceedings have come to a halt; after The Higher District Court of Hamm ordered inspectors to travel to Huaraz to inspect the land and determine the viability of the claims Lliuya and his legal team have made. The process has only been made more strenuous due to the COVID-19 pandemic, which halted all travel around the world for almost a year, preventing the team of inspectors from going to Peru (Germanwatch, 2021).

### **What Has Changed**

Though the lawsuit is ongoing, the effects have already started to occur; RWE AG has made a move towards becoming more environmentally friendly and plans to invest 5 billion dollars into renewable energy by 2022 and achieve carbon neutrality by 2040 (RWE, 2021). Although the courts are not enforcing the commitments now made by RWE AG, it is an excellent

sign that civilians can create positive change worldwide by coming forward when injustices are found, specifically by raising awareness of not just climate change, but by using the courts to promote change within large companies around the world. The new direction RWE AG is moving in also shows how important it is for companies to maintain favorability in the eyes of the public. For Lliuya, there has been a significant change in his life. He was once a humble farmer and guide in Peru; now, he is known as a major climate activist-influencer and has spoken at two COP events, COP 21 in Paris, and COP 25 in Madrid (Climate Justice, 2019, Gage, 2015). Overall, the world's change from the lawsuit entering the legal process alone has moved the needle in the right direction, yet much more can come from the lawsuit if The Higher District Court of Hamm rules in Lliuya's favor. Assuming that the ruling comes out favorable for Lliuya, the world may find it possible to implement a carbon tax on GHG emitters and possibly find a new way to fund climate mitigation and adaptation worldwide and in the places that need it most.

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