

The Climate Show – Episode 31

Transcript

00:00:04 Linnéa Nordlander

Hi and welcome to the Climate Show, a podcast that explores the law and politics of climate change. This podcast is brought to you by the University of Copenhagen.

00:00:16 Beatriz Martinez Romera

Hi. We are Beatriz Martinez,

00:00:18 Linnéa Nordlander

And Linnéa Nordlander

00:00:19 Beatriz Martinez Romera

And we are your host at the Climate Show.

00:00:25 Beatriz Martinez Romera

In May 2025, a German court made climate litigation history, Lliuya against RWE. The case was brought by a Peruvian farmer against a German energy corporation for climate related damages.

00:00:37 Linnéa Nordlander

The judgement paved the way for holding major media corporations accountable for their contributions to climate change, and in today's episode we speak to the lawyer that litigated this claim. Dr. Roda Verheyen about this case, considering why this case has been hailed as a victory for climate justice, even though the claimant officially lost.

00:00:53 Linnéa Nordlander

Dr. Roda Verheyen is a partner at the law firm Günther in Hamburg, Germany, which specialises in environmental and energy law. Dr. Verheyen is an experienced litigator on climate change and environmental matters. She's previously worked with various environmental associations internationally and is an internationally recognised scholar, having written influential work on climate change loss and damage.

00:01:20 Linnéa Nordlander

We are joined today by Dr. Roda Verheyen who acted as legal counsel to the plaintiff in the case, Lliuya against RWE, which made headlines earlier this spring. Thank you so much for joining us on the Climate Show today, Dr. Roda Verheyen.

00:01:36 Roda Verheyen

Yes, thank you for having me.

00:01:38 Linnéa Nordlander

So can you tell us a little bit about the background of this case. How did a Peruvian farmer come to sue a German utility company, and what arguments did he put forward?

00:01:48 Roda Verheyen

Yes, this case is very much rooted in the climate justice discussion, and you have to now go back ten years. In 2014, there was a climate conference in Lima. One of those big gatherings of Heads of State and climate diplomats trying to come to an agreement, this is before the Paris Agreement.

00:02:07 Roda Verheyen

At the time, there was a lot of discussion already about how to feel the costs of climate change and how to protect those who are most vulnerable. And there was no solution insight. So many groups around the globe have been or were working on this issue, and one was German watch.

00:02:26 Roda Verheyen

Which is a German NGO to do with climate and development issues and others such as trade and they through acquaintances met the father of my client, my now friend. And what happened was that they discussed ways of actually trying to come to a legal strategy or to a legal yeah to options, let's put it that way. Because of the risk of glacial outburst flooding in the Peruvian Andes.

00:02:59 Roda Verheyen

This is something that, you know many people had already written about, including myself and my PhD, and then at some point I was put in contact with Saúl over Skype at the time, and we discussed options to actually somehow remedy his problem, which is essentially climate change, leading to a glacial retreating, which leads to a very large glacial Lake Laguna, which is called Palcacocha culture in this case.

00:03:26 Roda Verheyen

This lake is threatening an entire city, including his house, so we discussed this a couple of times and then at some point we decided to actually just try the legal route in Germany against one of the so-called carbon majors, which is RWE, which is the German coal electricity power utility essentially.

00:03:49 Roda Verheyen

And that we did, we filed in 2015, we were rejected in first instance and then went on appeal. And this is what's been going on for the you know, since 2017 we've been on appeal, in evidence stage in the Overland District in Hamm, which is a higher District Court.

00:04:11 Linnéa Nordlander

Interesting. So, what makes this case unique in the broader context of climate litigation?

00:04:16 Roda Verheyen

It was one of the first civil cases ever globally. The only other case that I was aware of at the time was the case of Kivalina, which is a village in the arctic circle in the US.

00:04:32 Roda Verheyen

They had put in a claim very early on for permafrost melting and they wanted to essentially recover costs of relocation of their whole village from carbon mages such as Exxon and others. And that case was dismissed very early on and ours wasn't. And that's what makes it really unique. We entered evidence stage and the court now just a month ago confirmed that climate change can be dealt with in civil courts and that. Large metals have a duty to bear some of the costs of climate change damage, and that is of course. Yeah, that's the first ever court judgement like that.

00:05:19 Linnéa Nordlander

Yeah. So, as you note here, the case is really groundbreaking in many ways, but also in the types of arguments that you made in the case. So, what were some of the challenges that you faced in terms of constructing your arguments as Council for the plaintiff, considering the novelty of this kind of case.

00:05:37 Roda Verheyen

Yes, when you are an environment lawyer, as I have been for now almost 20 years, you always have to explain facts to the court and sometimes very complicated case facts. So, this is not the novelty. What was really novel about this case was that I was trying to capture or we were trying to capture a global problem, climate change in a very small picture, which is one large entity as a defendant who emits very much and one house owner whose house is threatened to be destroyed due to a glacial upper flood, and we used a very old provision in our civil law, which is essentially nuisance.

00:06:26 Roda Verheyen

And I am told that many, many jurisdictions around the world have such a, you know, such a provision in their civil codes and essentially says, you know, you should not disturb somebody by using your own property, it's very, you know, it's simple and we use that simple provision. And of course there was no precedent, no application of climate change science import ever. It has a transboundary aspect in that we're essentially saying in the context of climate change.

00:06:59 Roda Verheyen

With those people who are then affected, and so all of these issues were completely untested and untried. There were a lot of challenges and a lot of discussions that bordered on political I think in court.

00:07:15 Roda Verheyen

Because essentially what the defendant raised was, you know, why do you sue me? There are so many emitters. And how come you do this in a civil court? If what we have done for decades is actually legal?

00:07:29 Roda Verheyen

Which means yes, they had permits under our Clean Air Act, which is now the same in all of Europe and all the European Member States you need a permit to emit.

00:07:43 Roda Verheyen

From a coal plant to a fire power plant, obviously, and they had those permits. So, what they did was in terms of statutory environmental law legal. But we said, well, yeah, that's fine. But that doesn't mean that somebody else has to bear the impacts if they are actually unbearable. So that's what the Court essentially confirmed to be true in law that you can be held liable even if you exercise legal activities with respect to climate change in this particular matter.

00:08:18 Linnéa Nordlander

So, we'll come back to the substance of the judgement, but since you touched on climate science, that's of course been sort of a unique aspect of this case. So, what role did scientific evidence play in these proceedings?

00:08:32 Roda Verheyen

Yes, climate science is the backbone of all climate cases, especially those aimed at getting states to adopt higher climate targets. Against states to enforce them, be it against all kinds of companies, on greenwashing claims or on corporate responsibility like this one, climate science has evolved immensely in the last 10 years. So go back again when we filed this case in 2015, the only evidence that we could actually really use at the time wise, the IPCC report, which had come out in 2014 and that report

contained a graph which showed that climate change impacts are shown with very, very high likelihood in the tropical mountains and the tropical glaciers, so that means in the andes the sense essentially and we used that graph and we used IPCC statements to say, look, this is just traumatised complete consensus. And that that's what the whole case was based on.

00:09:39 Roda Verheyen

And then of course later when we got into the nitty gritty, which is what you always do when you go to court, you don't you know this is not a policy arena broad statements don't get you very far. You need to actually make sure that you get your facts right.

00:09:54 Roda Verheyen

And at the at that point in time at some point we also talked about attribution science, which is exact science with the help of climate models linking specific impacts to emissions, human emissions, man-made climate change. So, we submitted a specific attribution study in 2021 already. Which was not done by us, but independently.

00:10:20 Roda Verheyen

Yeah. And then of course, the whole case very much centred on whether there's high risk and risk is also a scientific determinant. Let's put it that way, or criterion that was then determined scientifically by a court appointed expert in the end. Yeah, who looks at specifically will this flood actually hit my client?

00:10:46 Linnéa Nordlander

OK, so let's come back to the substance of the judgement. Of course, formally speaking, the plaintiff lost the case, but he's nevertheless hailed this judgement as a victory. You've touched on it a little bit already, but can you tell us what the court found and why you consider the case a success?

00:11:06 Roda Verheyen

Yes. Again, picture the actual facts of the case. There is a very large Laguna which is expanded due to climate change. It is very risky for a whole city. My client has a house which is not right by the river which would carry the flood, but a little bit higher up.

00:11:27 Roda Verheyen

In the first evidence question that the court composed in 2017, they asked, the court scientist, the court, the court appointed expert to determine whether or not my clients house was in, you know, for in layman's terms, sufficiently high risk of this glove actually hitting the house. Yeah. So very specific, very concrete and this expert to my mind, adopted a wrong method. I still think that, but the Court was convinced that expert actually did a good job.

00:12:02 Roda Verheyen

So essentially, the court appointed expert says there is a risk of a gloss occurring. Many parts of who are us, the city my client lives in is at high risk, but my clients house because it is a few metres higher, is only at a risk of 1 to 3% of being hit by a flood in the next 30 years and that legally wasn't enough for the court.

00:12:28 Roda Verheyen

So, when you look at it that way, you can already see that it is you know it is very specific, and it essentially means that other people would have probably won on this particular matter.

00:12:41 Roda Verheyen

But what the court then did was, and that's why we say we've successfully lost. The court went on to actually explain why, why did we even bother to go through all of this very lengthy evidence gathering and expert appointment and what not, and the way it explains this is by setting out the law and all the counter arguments in much detail in the judgement. The Court essentially addresses every single point and then says this is workable. This works in law. Generally, you can win such cases.

00:13:22 Roda Verheyen

For example, on causation, which was of course, one of the issues you know, can you even ever establish a causal link between emissions by generated in Germany from installations owned by RWE? Can you establish a causal chain to the melting of this glacier in the Andes and the court said yes, you can.

00:13:42 Roda Verheyen

It's nearly linear. They essentially just follow climate science at that point, and such things have never been stated as clearly by a court of law, which is also why I personally, yeah. I'm grateful to the court that it actually looked at this case, which with so much neutrality and just determined the law, because that will now help other people determine whether they have a claim or not.

00:14:12 Linnéa Nordlander

Yeah. So, you touch on this discussion of causation in the judgement, which is of course perhaps the most groundbreaking elements of it, because we haven't really seen this before. Can you maybe unpack what the implications of that might be for climate litigation, both in Germany and abroad?

00:14:28 Roda Verheyen

Yes, one of the main arguments that defendants around the globe raise when they are in court, be it states or private entities, is that things are so complicated with climate change. You know, there's emissions generated somewhere, then they go up into the atmosphere, they raise the density, they then raise temperature globally. Then there might not even be a local signal in temperature rise and you know if you then look at extreme events, everything is completely, you know chaotic, so you can never link emissions to a particular impact, that's what they say.

00:15:06 Roda Verheyen

The court rejected this and said that is untrue. It is, you know, it is essentially logical and determined by climate science that yes, every tonne counts. Every emission contributes to climate change and its impacts, and that is really, really important because it enables, communities worldwide to look at what they have in their own backyard and see whether or not there might be a case for them to claim protection costs and to actually address this issue for them. And if I may add, the other issue in this judgement that is really, really important in my mind is that the Court for the first time ever globally actually said, look, you know large emitters have known since 1958, or at least 1965 what they are doing.

00:16:01 Roda Verheyen

They should have known that they're actually causing damage to people, and this is of course legally very important. The statutory requirement is called foreseeability. But what it actually means is that if you know that you're doing harm, you have a duty to repair it, and you might also have a duty to stop admitting, and this is of course, something that people will now unpack and try and apply to their national laws.

00:16:35 Roda Verheyen

This is now really out of my hands. I'm not going to be the only one applying this or looking at this or interpreting this, you know, it's a judgement that is published that will be looked at by many, many lawyers worldwide.

00:16:53 Linnéa Nordlander

I think that's certainly true, and if we zoom out a little bit from the case and its sort of local context, what do you think the judgement shows with respect to the potential and limits of the law and remedying climate change harm?

00:17:08 Roda Verheyen

Well, you know, don't forget that I represented an individual, a person who has a problem. The whole city has a problem, and that problem hasn't gone away. You know, you can't work your way around that. On the one hand you could say we haven't actually helped my client which is, you know tragic. But on the other hand, you could say well it's actually empowering for others, and it might open a door. It might actually increase accountability for corporate actors to stop emitting, at least.

00:17:48 Roda Verheyen

We'll see what happens with the judgement, but I just think what it shows is that this argument of the corporate sectors is, say, everything we do, we do in a frame, in a framework set by policy and by the legislator and everything we do is legal. Even if the state fails to regulate climate change probably.

00:18:13 Roda Verheyen

That argument is now gone, and I think that is that's really an important building block for the next years. I mean, you know we only have a couple of more years to actually

transition to come to greenhouse gas neutrality. And if we fail there will be so much damage. I mean, it's unfathomable with it. So, I think it's this case and the judgement, you know, it's not a solution, but it's a step forward for me.

00:18:47 Linnéa Nordlander

And so, of course, some critics argue that litigation really isn't the right forum for addressing climate change impacts, in part because of what you're saying, the volume of damage that we're talking about. And they argue that we need more systemic responses. So, for example, through the loss and damage fund under the international climate change regime, what's your take on that?

00:19:07 Roda Verheyen

I agree, but as long as there is no diplomatic response, no national laws actually addressing adaptation costs and the impacts of climate change.

00:19:19 Roda Verheyen

What else, am I supposed to tell my clients who have been damaged or who are in risk? You know, I've represented people from Kenya in another case. I mean literally, there's nothing left to eat for them. The land is now barren they've experienced such drought. Unprecedented drought, which is clearly attributable to climate change. What do I tell them? Do I tell them? Oh, you know, go to Geneva and sit outside of some conference hall and petition governments. They're doing that as well.

00:19:58 Roda Verheyen

So, for me it's not an either-or situation. What we're in is a crisis and it would be, yeah, I mean, why would we not engage the courts? That is my question I posed back, and I entirely agree that the legislature should legislate on this. There should be a workable solution, a workable loss and damage fund, but there isn't. There isn't. There is no claims mechanism for anyone. So yeah, it's muted the argument is mute.

00:20:33 Linnéa Nordlander

Interesting. Okay, finally, is there anything else you would like to raise before we wrap up.

00:20:42 Roda Verheyen

I think what I would like to say is that for me, illegally, this case has been a first step, and if you compare it to the legal battles and other environmental fields. Just take asbestos or tobacco.

00:20:56 Roda Verheyen

You know, lawyers have claimed, I don't know many, many, many, many years to get to this point. So, I just think we need to be patient and just look at the law and climate litigation as it is. It's just a piece of the jigsaw and trying to come to grips with this huge crisis that we're also facing.

00:21:16 Roda Verheyen

And again, it's not an either-or situation. We have to do all of it, and we can't ignore the real people who have real problems. Yeah, that's it, I think.

00:21:27 Linnéa Nordlander

Thank you so much for a fascinating insight into this case and also a broader perspective on climate justice. It's been a pleasure to have you on the show.

00:21:34 Roda Verheyen

You're very welcome.

00:21:39 Beatriz Martinez Romera

Thank you for listening to this episode of the Climate Show. If you would like to read more about the Dr. Roda Verheyens work, check out the link in the show notes. Stay tuned for our next episode.