

# ICSID annual report reveals record-breaking year



**Rob Harkavy - 18/10/2022 ([CDR](#))**

## **Energy disputes dominate largest ever number of cases administered**

The annual report of the **International Centre for the Settlement of International Disputes (ICSID)**, the World Bank's investor-state disputes body, has confirmed that, in the fiscal year ending 30 June 2022, the centre administered a record 346 cases, an increase of 14 on [last year](#)'s figure of 332, with 77 cases – another record – being concluded, the second annual increase in a row after 2020's pandemic-induced slump. A total of 50 new cases were registered.

## **NEW MEMBERS**

The report, which was approved by the ICSID Administrative Council at its annual meeting in Washington, DC, also [welcomed Ecuador](#) and the [Kyrgyz Republic](#) into the ICSID fold, announcing that both countries had ratified the ICSID Convention, bringing the total number of member states to 157.

Disputes involving the energy and environmental sectors made up more than half of all proceedings, with 24% of new cases relating to electric power and other energy sources, 22% involving the oil, gas and mining industries, and a further 8% of cases concerning, water, sanitation and flood protection.

## **DIVERSITY**

The centre's drive for greater gender diversity produced mixed results: women accounted for less than a quarter – just 24% – of all appointments, a reduction of the 31% figure reported the previous year, although that represents a significant increase on 2020's figure of 14%. The reduction in female appointments was chiefly down to the parties' appointments rather than to ICSID itself: ICSID appointed 55% of the female appointees, respondents appointed 14% and claimants appointed 9%. A further 16% of female appointment were made jointly by the parties and the remaining 6% were made by co-arbitrators.

## **REMOTE WORKING**

In common with several global judicial institutions, provisions for remote hearings implemented at the height of the Covid-19 pandemic have remained in force, with 91% of hearings held remotely. In the report, Secretary General **Meg Kinnear** confirmed that remote hearings would continue, writing: "While the impact

of the Covid-19 pandemic continues to adversely affect people worldwide, the ability to manage the challenges at ICSID – and emerge stronger as a result – has been undeniable. More than two years after making a sharp pivot to remote hearings and electronic filing in all ICSID cases, arbitrators, counsel, and the Secretariat have clearly demonstrated that even the largest, most complex hearings can be effectively conducted remotely. This has not only allowed ICSID cases to proceed without interruption. It has also led to greater efficiencies in time and costs and has reduced carbon footprints in ways that I am confident will be long lasting.”

Chair and President of the World Bank Group David Malpass also highlighted the benefits of operating remotely, writing that “safeguarding the health of staff and clients has meant harnessing new technologies and adopting innovative approaches to case management. The high number of hearings that ICSID has held over the past three years in virtual formats speaks to its effectiveness”.

**Lois Horne**, a partner with **Macfarlanes** in London, joined Malpass and Kinnear in welcoming the move away from in-person proceedings, telling *CDR*: “This is in line with a continuing trend, following the impact of the pandemic, for arbitral centres who deal with cross-border disputes, to look to efficiencies in time and costs and to reducing their carbon footprint. Procedural hearings in particular are well suited to a remote forum, with increased flexibility around the use of hybrid hearings for more substantive hearings, particularly where factual and expert evidence is being given.”

Horne continues: “It is thanks to initiatives such as the [Campaign for Greener Arbitrations](#) that we are seeing a real shift in attitudes in the arbitral community. Parties and arbitrators are thinking hard before boarding flights and printing thousands of pages of documents in a world where we have already shown we can do things fully on screen. Yes, there are advantages to in-person hearings but those advantages are frequently outweighed by the carbon cost.”

**Amy Frey**, an arbitration partner with **McDermott Will & Emery** in Paris is less sure about remote hearings superseding in-person proceedings, telling *CDR*: “It seems too soon to make lasting predictions about the permanence of virtual hearings, since many parts of the world were still battling travel restrictions and social distancing rules in 2021 and the first half of 2022 that made in-person hearings difficult if not impossible.”

She adds: “Personally, while I took part in a more than a half dozen virtual hearings last year, all of the hearings I’ve had since July 2022 have been in person. On the whole, I think we have learned that virtual hearings can work well and even may be desirable to accommodate shorter hearings or difficulties arising from conflicting schedules and to minimize travel, but I think that in-person hearings will continue to be the norm.”

The past year saw [a raft of amendments to the centre’s rules](#) following a five-year consultation – the most extensive set of updates since the ICSID rules were established. For the first time, the rules address funding, placing an obligation to disclose [third-party funding](#) – including the name and address of any funder – to avoid conflicts of interest that may arise out of such arrangements.

In September this year, speakers at the ICCA Congress in Edinburgh [discussed the prospects for growth](#) in the international arbitration sector.