

Insights

DIVERSITY IN INTERNATIONAL ARBITRATION: A CALL TO ACTION

Mar 06, 2020

The 8th March is International Women's Day - a global day celebrating the social, economic, cultural and political achievements of women whilst at the same time marking a call to action to accelerate gender equality.

IWD's 2020 campaign theme is #EachforEqual - a theme drawn from a notion of "Collective Individualism".

As the IWD website explains:

"We are all parts of a whole. Our individual actions, conversations, behaviors and mindsets can have an impact on our larger society. Collectively, we can make change happen. Collectively, we can each help to create a gender equal world."

With this mind, this blog looks at gender diversity in international arbitration and the extent to which "Collective Individualism" has driven, and continues to drive, change in order to generate gender equality in this sector.

BCLP ARBITRATION SURVEY: DIVERSITY ON ARBITRAL TRIBUNALS

The results of our 2017 Annual Arbitration Survey "**Diversity on Arbitral Tribunals: Are we getting there?**" confirmed a clear wish to improve diversity, both in respect of gender and ethnicity, and that everyone involved in the arbitration process has a part to play.

84% of respondents thought that tribunals contained too many men. On the assumption that all potential candidates have the necessary level of expertise and experience, 50% of respondents thought it was desirable to have a gender balance on arbitral tribunals and 54% thought it was desirable that the tribunal should come from a diverse range of ethnic and national backgrounds. 70% of respondents thought that arbitral institutions should publish statistics on diversity (though interestingly only 28% said that the content of the statistics would influence their choice of arbitral institution in the future).

As regards responsibility for change, the clear message from respondents was that all participants can contribute to improving diversity on arbitral tribunals. 78% of respondents thought that arbitral institutions have a role to play, 65% thought that counsel for the parties also had an important role and 60% thought that arbitrators had a part to play.

ARE WE GETTING THERE?

Three years on, it's clear that a lot has been done to promote gender diversity in international arbitration – but it's also clear that more needs to be done if we are to achieve the goal of gender equality in arbitration.

EQUAL REPRESENTATION IN ARBITRATION PLEDGE

Sitting at the heart of the drive for diversity in arbitration is the [Equal Representation in Arbitration Pledge](#).

In 2015, in recognition of the under-representation of women on international arbitral tribunals, members of the arbitration community drew up a pledge to take action. The Pledge seeks to increase, on an equal opportunity basis, the number of women appointed as arbitrators, in order to achieve a fair representation as soon practically possible, and with the ultimate goal of full parity.

The Pledge establishes concrete and actionable steps that the arbitration community can take towards achieving these general objectives and the ultimate goal of full parity. Signatories to The Pledge commit to taking steps to ensure that, wherever possible:

- committees, governing bodies and conference panels in the field of arbitration include a fair representation of women;
- lists of potential arbitrators or tribunal chairs provided to or considered by parties, counsel, in-house counsel or otherwise include a fair representation of female candidates;
- states, arbitral institutions and national committees include a fair representation of female candidates on rosters and lists of potential arbitrator appointees, where maintained by them;
- where they have the power to do so, counsel, arbitrators, representatives of corporates, states and arbitral institutions appoint a fair representation of female arbitrators;
- gender statistics for appointments (split by party and other appointment) are collated and made publicly available; and
- senior and experienced arbitration practitioners support, mentor/sponsor and encourage women to pursue arbitrator appointments and otherwise enhance their profiles and practice.

- By 31 October 2018, The Pledge had reached 3,000 signatories – just under quarter of which were leading international arbitral institutions, including the ICC, LCIA, SCC, HKIAC and SIAC.

GENDER STATISTICS FOR ARBITRAL APPOINTMENTS

One of the actionable steps identified in The Pledge is that gender statistics for arbitral appointments be collated and made publicly available. Arbitral institutions have acted on that call and most of the major arbitral institutions now include gender statistics for arbitral appointments in their annual reports. Statistics for 2017 and 2018 are set out below.

	Number of Women Appointed	
	2017	2018
LCIA	24% of all appointments	23% of all appointments
	Party appointed: 17%	Party appointed: 6%
	LCIA appointed: 34%	LCIA appointed: 43%
ICC	16.7% of all appointments	[?]% of all appointments
	Party appointed: 41%	President: 32%
	ICC appointed: 45%	Sole: 30%
SCC	18% of all appointments	27% of all appointments
	Party appointed: 8%	Party appointed: 24%
		SCC appointed: 29%
HKIAC	16.5% of all appointments	17.6% of all appointments
	Party appointed: 15%	Party appointed: 10.1%
	Co-arbitrator appointed: 15.4%	Co-arbitrator appointed: 8.3%
SIAC	[?] % of all appointments	[?] % of all appointments
	SIAC appointed: 29.7%	SIAC appointed: 34.3%

The publication of statistics is definitely a step in the right direction, providing some meaningful data from which the arbitral community can measure the progress that is being made to improve gender diversity in arbitral tribunals.

However, the available statistics also demonstrate that there is some way to go in improving the representation of women on arbitral tribunals – let alone to achieve the ultimate goal of full parity.

The overall percentage of women appointed as arbitrators remains low. The LCIA and SCC led the way in 2018 with figures of 23% and 27% respectively and that percentage drops to 17.6% for the HKIAC.

Also, the available data is not as clear as it could be on the number of woman appointed in any given year.

Take, for example, the ICC, which disclosed statistics on the gender balance of ICC tribunals for the first time in 2016 as part of an increased drive for transparency. In 2017, the ICC reported that of 1,488 arbitrators nominated or appointed, 249 were women compared with 209 of 1,411 arbitrators in 2016. This represented an increase in the percentage of women arbitrators appointed by the parties, co-arbitrators or the ICC Court from 14.8% in 2016 to 16.7% in 2017.

However, in its 2018 report, the ICC does not reveal the number of women nominated or appointed in 2018. Instead it provides a number for women appointed and confirmed as arbitrators in the period to 2018 [a total of 273] and tells you what percentages of the women appointed as arbitrators in 2018 are acting as president (31%) and as sole arbitrators (30%).

SIAC adopts a similar approach. The SIAC statistics tell you what percentage of the women appointed as arbitrators in a given year were appointed by SIAC – but don't provide the underlying data on the number of women appointed.

The ICC does publish a chart on its web-site identifying all arbitrators appointed in cases registered after 1 January 2016. However, the chart is published in a format that doesn't offer any search tools – making it extremely difficult to extract data on the number of woman arbitrators appointed over any particular period.

In spite of these limitations, it is clear that arbitral institutions are doing better than parties in the drive to see a fairer representation of female arbitrators. The statistics show that a significantly higher percentage of female arbitrators are appointed by arbitral institutions than by parties.

Overall, the statistics indicate that the arbitral community as a whole still has some way to go in encouraging the nomination and appointment of female arbitrators and highlight the fact that we have a collective responsibility to promote gender diversity.

#EACHFOREQUAL

Which brings me back to The Pledge and to the Equal Representation in Arbitration Pledge award, now in its second year, which was created to recognise a person or organisation for outstanding commitment to gender diversity in the field of international arbitration.

Last year, the winner of the inaugural award - selected by The Pledge steering committee - was the Equity Project, an initiative led by Burford Capital to promote women in the law. This year, the

winner will be selected by a public vote.

The nominees are:

ArbitralWomen Diversity Toolkit™ training programmes.

JAMS for the introduction of an optional diversity and inclusion rider to its standard arbitration clauses and the appointment of a diversity programme manager.

WWA-LATAM initiative (Women Way in Arbitration Latin America) which was launched to promote women in arbitration in Latin America.

Lucy Greenwood for her continued efforts to collate data and report on female arbitrator appointment statistics.

LCIA encouraging the appointment of female arbitrators - 43% of LCIA appointments for 2018 were of female arbitrators.

AmCham Peru for appointing a majority of female court members.

Katherine Simpson who drew attention to the lack of diversity in the EU's proposed list of CETA arbitrators and provided CETA signatories with a list of 70 experienced women trade experts for inclusion in the CETA List of Arbitrators.

The International Commercial Arbitration Court (ICAC) at the Ukrainian Chamber of Commerce and Industry where all three Vice Presidents are female.

This blog post first appeared on Practical Law Arbitration Blog on 5 March 2020.

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MEET THE TEAM



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