

The Int'l Arbitration Diversity Landscape By The Numbers

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Promoting diversity in international arbitration enhances the quality, legitimacy and relevancy of the arbitral process and the resulting awards. This article explores the current statistical data on participants' gender, geographic origin or nationality, and age in the international arbitration community; recent diversity initiatives; and strategies for fostering diversity.

Importance of Diversity in International Arbitration

The international arbitration community shares a general consensus on the core benefits of diversity in the field.

Diversity in international arbitration can enhance the legitimacy of the arbitration process. In fact, as scholars Kabir Dugal and Amanda Lee note in a Columbia Law International Arbitration Review article, "perceptions about fairness and bias [are] most evidently weakened by a lack of diversity and inclusiveness in the pool of Investor-state dispute settlement ('ISDS') arbitrators."^[1]

A diverse pool of arbitrators and practitioners can help ensure that different perspectives and experiences are considered in the decision-making process. This, in turn, can bolster the legitimacy and credibility of the arbitration process, as well as the enforceability of the resulting awards.

Diversity also promotes cultural sensitivity and understanding when handling international disputes. Duggal and Lee suggest that "greater representation during the deliberation process may produce better awards as diverse perspectives may better equip the tribunal to obtain a comprehensive understanding of parties' positions and related evidence."^[2]

Given the very nature of international arbitration, disputes involve parties from different cultures and legal systems. A diverse group of arbitrators and practitioners is better equipped to navigate these differences and foster more efficient and harmonious dispute resolution.

Statistical Data

Data for 2023, published this summer, shows sustained or increased diversity among arbitrators across



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international arbitral institutions, including gender, geographic origin or nationality, and age diversity. Of the institutions this article explores, the London Court of International Arbitration, a signatory of the Equal Representation in Arbitration Pledge, reported the highest percentage of women appointed as arbitrators in 2023 at 48%.

While the increased transparency and trends reflected in these statistics are a promising start, change remains slow. Statistics, such as those from the International Centre for Settlement of Investment Disputes, below, show that much of this progress has been achieved through the efforts of the arbitration institutions; efforts of parties to diversify arbitral appointments are still lacking.

Across all reported statistics, where parties and arbitrators were responsible for nominations, the percentage of women appointed was significantly lower. Further complicating the promising start is the statistical impact of frequently appointed arbitrators. For example, ICSID statistics on arbitrators indicate that one woman arbitrator has been appointed to 102 cases over the course of her career — over 12% of all reported ICSID cases — which increased the reported percentage of women appointed.[3]

Yearly institutional reports on gender diversity, however, do not distinguish between the number of times the same woman was appointed as arbitrator versus the number of times different women are appointed; as a result, reports may offer a more optimistic view of overall gender representation in international arbitration than is actually the case.

Further, gender diversity reports focus on men and women, without including arbitrators who are nonbinary or identify differently.

Lastly, while geographic diversity improved, it appears that the decrease in European appointments was offset with an increase in North American appointments.

Gender and region are only two measures of diversity. One of the ongoing challenges is to broaden reporting of different types of diversity to increase our understanding of where more must be done.

The International Chamber of Commerce's International Court of Arbitration began releasing statistics on gender appointments as recently as 2016, and other institutions soon followed. ICC dispute resolution 2023 statistics[4] highlight an increase in female arbitrator representation. The statistics also explore diversity in geographic origin and age range, which was similar to previous years.

Women arbitrators represented 29.7% (or 398) of the total confirmations and appointments (up from 28.6% in 2022). Women were 41% (or 147) of all confirmations and appointments by the ICC Court.

The ICC expanded further on its gender breakdown, documenting the number of men and women confirmed or appointed from 2013 through 2023. In 2013, approximately 9% of confirmations and appointments were women. Notably, in 2023, the number of women confirmed and appointed rose to 29.7%.

Additionally, the ICC released statistics on percentages of women in each ICC leadership role in 2023:

- 35% of presidents;
- 39% of arbitrators;
- 24% of co-arbitrators; and
- 39% of emergency arbitrators.

Almost 60% of arbitrators were from Europe, 24% were from the Americas, 12% were from Asia and the Pacific, and 4% were from Africa. Meanwhile, the average arbitrator age was 55 years old. Similar to prior years, 38% of arbitrators were under the age of 50. Men averaged 57 years old, and women averaged 50 years old.

The ICSID's caseload 2023 statistics[5] show an increase in diverse gender representation. Diversity in geographic origin remained similar to previous years.

Women arbitrators represented 32% of all appointments to ICSID cases in 2023. As far as geographic origin:

- 45% of appointments of arbitrators, conciliators and ad hoc committee members came from Western Europe — a percentage that remains the same when looking at all ICSID cases;
- 16% were from South America;
- 15% were from North America (Canada, Mexico and the U.S.);
- 9% were from South and East Asia and the Pacific;
- 6% were from Central America and the Caribbean;
- 6% were from Africa; and
- 3% were from Eastern Europe and Central Asia.

The Singapore International Arbitration Center's annual 2023 report[6] states that gender diversity continues to "play an important role in SIAC's overall working framework," though the percentage of female arbitrator appointments and female representation in the SIAC Court of Arbitration dropped slightly compared to the SIAC's 2022 report.[7] Specifically, 37% (60) of arbitrator appointments were women in 2023, compared to 46.2% (67) of female arbitrator appointments in 2022. Further, 26% (9) of representatives were women in 2023, compared to 27% (10) in 2022.

The London Court of International Arbitration's annual casework 2023 report[8] also focuses on gender diversity, stating that "[a]ll stakeholders are improving in gender diversity in appointments, with the LCIA Court remaining the main driver and almost reaching gender parity in its selection of arbitrators."

In 2023, 48% of LCIA Court appointments were women in 2023 (compared to 45% in 2022). Thirty-nine percent of all co-arbitrator appointments, and 21% of all party appointments, were women in 2023 (compared to 23% and 19% percent, respectively, in 2022).

Though 82% of LCIA arbitrations are governed by English law, 42% (187) of appointments were non-British arbitrators in 2023 (compared to 40% in 2022)

The American Arbitration Association's International Centre for Dispute Resolution combined gender, racial and ethnic diversity in reporting its 2023 statistics.[9] Among the AAA-ICDR panel, 34% of active members and 49% of new additions to the roster were diverse. Further, the AAA-ICDR reports that in 2023, "the percentage of diverse appointments were at least 40%."

Recent Diversity Initiatives

Recent initiatives demonstrate that gender diversity is becoming an increasing priority in international arbitration, though it remains to be seen whether those initiatives substantially affect the number of diverse arbitrators who are appointed. For example, the statistics above highlight a steady increase in women arbitrators appointed across the main arbitral institutions; numerous and recent gender-focused initiatives may play an important role in the trend, but there are not yet statistics available to evaluate correlation.

There remains significant room for growth. To achieve the benefits of diversity, the arbitration community must be attuned to the complexities of diversity, to include race, culture, LGBTQ+ identity, disability and age.

Among these are initiatives promoting age diversity. In a field dominated by "experienced" and traditionally older arbitrators, age diversity is important to foster a new generation of legal thought. Considering the movement toward diversity is a relatively new development in the field, younger practitioners may be a driving force for a more diverse population in the long run.

The following diversity initiatives illustrate concerted efforts to promote general diversity and women arbitrators specifically, and include nascent efforts to uplift racial, cultural, LGBTQ+ and disability representation. Most recent initiatives are included, and while the list is not exhaustive, it highlights an array of existing initiatives in the international arbitration space. Some initiatives are not neatly categorized into a single group because they address multiple diverse identities that intersect with one another, such as women who are also racial minorities.

Diversity, Generally

International arbitral institutions have promoted general diversity initiatives in a variety of ways. For example, in 2023, the ICCA and IBA published its ICCA-IBA Arbitration Committee Conference Diversity Checklist, which aims to encourage and foster diversity, equity, and inclusion of speakers and delegates when conferences are organized globally.[10] In the same year, the SIAC proposed Draft Rule 19.5, which requires the SIAC president to consider "principles of diversity and inclusion" in the appointment of an arbitrator under the draft rules.[11]

Additionally, the AAA Diversity, Equity and Inclusion Initiative now "employs an algorithm in its case-management system to provide parties with a list that is at least 30% diverse." [12] The AAA further notes, "[s]hould hearings remain virtual or a hybrid of in-person and virtual, this could lead to the increased availability and appointment of diverse arbitrators and mediators, since location will not be a variable requiring consideration."

Most recently, in 2024, the Hong Kong International Arbitration Centre passed arbitration rules to encourage parties and tribunals to consider diversity when designating arbitrators and appointing arbitrators.[13] The new rules do not specify diversity criteria, such as age, experience, gender and nationality.

Gender Diversity

In 2021, the ICCA's Cross-Institutional Task Force on Gender Diversity published a report titled "Gender

Diversity in Arbitral Appointments and Proceedings,"[14] which explores recent statistics on the appointment of female arbitrators, and outlines opportunities and best practices to promote gender diversity in international dispute resolution.

In 2022, Kathryn Britten and Isabel Santos Kunsman, partner and managing director of AlixPartners, respectively, co-founded the Equal Representation for Expert Witnesses Pledge,[15] which aims to encourage action and advocacy to increase the number of women appearing as experts in international dispute resolution.

Most recently, in 2023, Niyati Ahuja, a senior associate at Reed Smith LLP, founded the Indian Women in International Arbitration,[16] a community of Indian women passionate about promoting and advancing the participation of Indian women in international arbitration.

Other developed gender diversity initiatives include Women Way in Arbitration,[17] the German Arbitration Institute's DIS-ERA Pledge Gender Champion Initiative,[18] the Equal Representation in Arbitration Pledge,[19] and ArbitralWomen.[20]

Racial and Cultural Diversity

In 2019, Onyema Arbitration passed its African Promise mandate, which tackles the underrepresentation of Africans on international arbitration tribunals and in arbitrations connected to Africa, and seeks to improve the profile of African arbitrators globally.[21]

In 2021, the Racial Equality for Arbitration Lawyers group was established, promoting racial equality for global arbitration lawyers.[22] REAL offers opportunities for mentorship, hosts diversity-related events, and collaborates with institutions and law firms to promote the representation of underrepresented groups in international arbitration.

In 2022, four international arbitration practitioners, including a Crowell & Moring partner, founded ArabArb, an independent network that aims to unite, promote, and serve the international arbitration community with roots, affinity or interest in the Arab world.[23] ArabArb aims to connect and increase the visibility of diverse and qualified counsel, arbitrators, and experts in this space.

LGBTQIA Diversity

In 2021, the ICC launched its LGBTQIA network,[24] which seeks to support the personal and professional development of LGBTQIA members of the ICC Court. The network is open to all members of the ICC Court. Objectives include supporting personal development, enabling best practice sharing, building understanding and ensuring accountability.

In 2023, King & Wood Mallesons partners James McKenzie and Wilson Antoon, and independent arbitrator Tim Robbins, launched a "grassroots network" for LGBTQIA+ people and allies in the arbitration community called "Open Arbitration." [25] This network aims to build connections, increase visibility, and promote diversity and inclusion in arbitration.

Disability Inclusion

In 2021, the ICC launched its Task Force on Disability Inclusion and International Arbitration,[26] which seeks to acknowledge and remove barriers individuals in the community may face due to specific

personal characteristics.

Key Takeaways

As scholars Dugal and Lee aptly put it: "Diversity is kaleidoscopic. Any commitment to address the lack of diversity in the field must go hand in hand with a commitment by stakeholders to address structural issues present at every level of the profession."^[27]

This includes promotion of diversity at every level: arbitral institutions and co-arbitrators that play a role in arbitrator appointments, law firms that ensure diverse lawyers have equal opportunity for development and promotion, and law schools that provide all of their students with equal mentorship and internship opportunities.

Despite significant strides in diversity in international arbitration within the past several years, there is ample room for further progress. As international arbitration continues to evolve and adapt to new challenges, a diverse group of practitioners is crucial for the quality of international arbitral decisions and the field's legitimacy.

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[1] See Kabir Dugal & Amanda Lee, A 360-Degree, Kaleidoscopic View of Diversity and Inclusion (or Lack Thereof) in International Arbitration, 33 Am. Rev. Int'l Arb. 1 (2022).

[2] Id.

[3] See Arbitrators, Conciliators and Ad Hoc Committee Members, Int'l Ctr. for Settlement of Investment Disputes (ICSID), <https://icsid.worldbank.org/resources/databases/arbitrators-conciliators-ad-hoc-committee-members> (last visited Aug. 14, 2024).

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