

One Step Further after the Launch of the ERA Pledge: A Search Service for Female Arbitrators Appointments

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The views expressed in this article are those of the author alone and should not be regarded as representative of, or binding upon ArbitralWomen and/or the author's institution.

The Equal Representation in Arbitration (ERA) Pledge ("Pledge") launched on 18 May 2016 in London had the effect of a snowball that grew bigger and bigger since Sylvia Noury and her colleagues at Freshfields organised dinners around the world, to discuss the under-representation of women arbitrators and the need for a pledge as a potential solution to cure this situation. By now the readers probably know that the Pledge is a call to the international dispute resolution community to commit to increase the number of female arbitrators on an equal opportunity basis with the hope to achieve a fair representation of women. One of the key steps to achieving this, as indicated in the Pledge, is to ensure that wherever possible lists of potential arbitrators or tribunal chairs provided to or considered by the parties, counsel, in-house counsel or otherwise include a fair representation of female candidates.

Before the Pledge was launched some 300 practitioners and organisations had signed it. The first organisation that took the Pledge was ArbitralWomen, followed by the SCC, the ICC, the DIS and a few others. Three months after the official launch, over a thousand signatories have joined the players committing to improve numbers. A Pledge **Steering Committee** was constituted with the objective of spreading the word and ensuring that the Pledge is not a collection of signatories, but a commitment followed by concrete actions to increase the number of female representation.

The Steering Committee has met for the first time the next day of the launch and decided a number of actions to undertake. One of the issues discussed concerned the answer commonly given by practitioners who allege that no female were added on their arbitrators' list because they do not know any or they have found none responding to certain criteria. It was thus considered that, despite the existence of some platforms offering assistance to find female arbitrators, such as ArbitralWomen which is a hub for finding women practitioners in dispute resolution in any role, the existing platforms may not be enough and additional assistance may be helpful.

Debates about pros and cons for offering such assistance through a search function took place among the Steering Committee members. It was suggested to constitute a committee with volunteers who could assist in locating potential female arbitrators on the basis of criteria provided by practitioners seeking assistance. A concern was raised over potential conflicts for law firms in receiving information about potential disputes. For that reason, it was agreed that the Steering Committee members from law firms will have no role in the committee to be constituted for proposal of arbitrators, which would be limited to members from arbitral institutions because they are not potential candidates and run no risk of conflicts. Furthermore, members from arbitral institutions are better placed to fill this role and are often called on an informal basis to suggest arbitrators, so there should be nothing controversial about such assistance.

Some members considered that having a female arbitrators list on the Pledge website would be helpful. However, it was noted that a list would either have to be open to all applicants, or would need to be vetted by the Steering Committee. The former would be unwieldy and risk undermining the quality of candidates, the latter ran the risk that the Steering Committee would be seen as endorsing certain individuals, which may give rise to a risk of conflicts. Furthermore, a list would take some time to be compiled, whereas a search service is easy to implement immediately to capitalise on the current momentum behind the Pledge.

The Steering Committee therefore decided to launch a pilot project to offer assistance through an **'Arbitrator Search'** page on the Pledge website dedicated to submitting requests by completing an online form and providing helpful information for the search process. A **Search Committee** was constituted with volunteers from arbitral institutions, who joined the Search Committee either in their own name or in their role as arbitral institution. Although the Search Committee is a sub-committee of the Steering Committee and composed of members from the latter, the Search Committee is independent from the Steering Committee.

The members of the Search Committee will remain anonymous and the answer to the requests submitted will be sent through an email address dedicated to this service. The group of volunteers will exchange names about potential candidates to be proposed on the basis of the criteria provided by the person seeking assistance, and the exchange will be and remain confidential; no discussions will take place with the Steering Committee and no information will be provided to that Committee.

The **Search for Female Arbitrators** page built for that purpose clearly highlights from the outset that the assistance provided to any person searching for female arbitrators is made without any commitment or liability whatsoever for ERA, that it is made to facilitate the search for potential female arbitrators, and that proposals are made only to provide ideas of potential profiles and by no means constitute official recommendations. The disclaimer further clarifies that the suggested female arbitrators will not be contacted and that they will not be aware that their names were proposed. The persons seeking assistance will only be provided with names of potential profiles together with their emails.

Any person seeking assistance is required to provide the information requested in the online form and any information such person deems necessary, in order to enable the Search Committee to propose female arbitrator candidates that may respond to the query. The basic information requested in the online form are: the field of expertise, other relevant information about the dispute, the applicable law, the language of arbitration and potential other languages need for the case, the place of arbitration, an estimation of the amount in dispute if possible, and any nationality that should not be considered for the given dispute.

The Search Committee will make every effort to respond to the queries as soon as practicable. If the consultation among the members of the Search Committee is successful, potential names will be

provided. In case the Search Committee is unaware of potential female arbitrators who may match the search criteria provided, the person seeking assistance will be invited to call on other sources to assist in this specific search.

The results of the pilot project will be examined after a while to assess whether such service is helpful and whether it should be maintained and potentially improved.

The need for assistance was recently confirmed by James Rowland in a comment on Kluwer Arbitration Blog following the paper posted by the author (see [Equal Representation in Arbitration \(ERA\) Pledge: A Turning Point in the Arbitration History for Gender Equality](#), 2 June 2016). Rowland wrote about his understanding of the Pledge that for every male candidate, practitioners must search *“and find a similarly suitable female candidate (in terms of expertise, experience, language, seniority, gravitas, cultural appropriateness etc.)”*, and if the practitioners cannot establish a list with fair representation of male and female candidates *“they need to reach out to someone, e.g. ArbitralWomen”*.

The author answered to Rowland that his understanding is “indeed in line with the actions expected from stakeholders, i.e. make sure women practitioners with equal qualifications are listed among potential arbitrators to be considered by the parties, their representatives, the co-arbitrators entrusted with the selection of the chair and by arbitration institutions. Networks exist to assist in finding profiles, whether online or offline. For example, International Arbitrators Institute gathers a significant number of arbitrators’ profiles including women on www.iaiparis.com, and likewise the Who’s Who <http://whoswholegal.com>. ArbitralWomen is willing to assist and is a unique hub for finding female practitioners through its ‘Find Practitioners’ feature on its website www.arbitralwomen.org. Practitioners also have their personal contacts to whom they may reach out to ask for recommendations”.

As the international dispute resolution community has in general acknowledged the dearth of women representation on arbitrators and speakers panels and is committing to nominating more women, it would be a pity if practitioners are discouraged in case they do not find potential profiles and if they have no alternative. It is therefore essential to offer assistance for searching potential female arbitrators, now available via the ‘Arbitrator Search’ tab on the Era Pledge website at www.arbitrationpledge.com.