

Kluwer Arbitration Blog

The Missing Link in Progress to Greater Diversity: YOUR Feedback about Diverse Arbitrators - Arbitrator Intelligence 2021 Diversity Campaign

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In recent years, a range of organizations have sprung up to challenge the existing hegemony in arbitrator appointments. As an opening gambit, [ArbitralWomen](#) pushed to have arbitral institutions publish statistics regarding the gender of arbitrators sitting in their cases. Then, with clearer understanding of gender deficits, ArbitralWomen together with the [ERA Pledge](#) urged parties and counsel to work toward fair gender representation in appointments. Numerous other organizations and initiatives soon followed, including [R.E.A.L](#), the [Rising Arbitrators Initiative](#), and numerous other regional initiatives, too many to count.¹⁾ With these new organizations and initiatives came calls to commit to a more comprehensive diversity that includes not only gender, but also race, ethnicity, nationality, age, and more recently LGBTQ and disability rights.

These groups and initiatives have brought tremendous energy and creativity to the diversity challenges in international arbitration. They are to be credited with three major accomplishments.

First, they have raised awareness about the nature of the diversity problem and its causes.

Second, they have boosted diverse arbitrators and would-be arbitrators by giving them better resources and tools, such as speaking opportunities, training, publicity, mentors, sponsors, and other resources.

Third, they have appealed to and indeed created palpable pressure on parties, counsel, and institutions to “do the right thing” by appointing more diverse arbitrators.

The missing link between good intentions and actual appointments of diverse arbitrators is the kind of information counsel and parties consider most crucial—objective feedback and data from parties and counsel regarding the arbitrators’ past rulings and decisionmaking. This information is what propels

arbitrators off a short list and onto a tribunal.

From the Shortlist to the Tribunal

To illustrate the importance of party and counsel feedback, let's take a hypothetical.

It is often said that getting the first appointment is the hardest. To address this problem, and thanks to many of the organizations identified above, we have witnessed impressive efforts by institutions to give rising stars their first appointments.

These first appointments are often based on arbitrators' CVs, their reputations in the field mostly through experience as counsel, but most importantly because they are on the radar of the relevant institutions.

For example, imagine a young Ghanaian woman has been appointed as a co-arbitrator by an arbitral institution in a sizable and complex arbitration. And imagine she was simply **AWESOME**. The parties were wowed. Her co-arbitrators were impressed. And the institution was of course delighted. The institution may appoint her again, precisely because it now has specific information about how well she performed as an arbitrator in an actual arbitration.

But outside the institution, her performance is a well-kept secret. Outside the institution, only about the dozen lawyers and parties involved in that case know anything about her performance as an arbitrator.

Now flash forward a year or two and imagine that that Ghanaian arbitrator has made a party's shortlist in a new case. In other words, she was picked to be on a long list, perhaps with the aid of lists available through ArbitralWomen, R.E.A.L. - Racial Equality for Arbitration Lawyers, the Rising Arbitrators Initiative, or others.

Our Ghanaian arbitrator made it to the parties' short list as they found some well written book chapters, an article, and a few blog posts - but certainly not the award she wrote or excerpts of it. Now, to evaluate their shortlist and determine which of the finalists to appoint, the parties want feedback from parties and counsel who actually had her as an arbitrator. They want to know about her soft skills, her decisional proclivities, and her actual performance.

Take that example and amplify it significantly for highly reputable female arbitrators who have handled hundreds of arbitrations but simply do not have publicly available information on their performance.

Without that feedback, counsel report having a much harder time convincing even progressive minded parties let alone their own counsel teams to appoint a diverse or newer arbitrator, especially if they have significant feedback regarding another non-diverse arbitrator. In our discussions with leading arbitral institutions, we heard from them that appointing diverse arbitrators is "really hard work" as they are also limited to the same sources of information when appointing a chairperson or members of the tribunal. Because institutions are appointing the amazing "diverse" arbitrators that

they know, as one institutional representative put it, “the same ‘diverse arbitrators’ are continually appointed”.

In sum, if we want to close the diversity gap, we need to change the way we share objective feedback and data about arbitrators.

Facilitated Exchange of Feedback

More feedback about diverse arbitrators means more diverse arbitrators getting off well-meaning shortlists and onto tribunals. To make this crucial information both more plentiful and more readily available, the traditional person-to-person referral process must be replaced with a broad-based, technology-facilitated exchange of information. An online platform can facilitate the exchange of such information with a broad range of strangers, but with protections for confidentiality and reliability that ensure the value of the information.

Consider other industries where online platforms have facilitated similar types of exchange.

UBER connects people who need a ride with people who have cars, even though they are otherwise strangers on the road who would otherwise not share a ride. Airbnb connects people who need a room with people who have space to rent, even though they would not ordinarily be able to find each other just by knocking on doors. In a similar vein, our feedback questionnaire --the Arbitrator Intelligence Questionnaire or AIQ--connects people who have information about arbitrators with people who need information about arbitrators. The benefit of such a community of persons seeking and providing information is that, sooner or later, the information is there when parties need concrete feedback on an arbitrator.



Through our platform, parties and counsel submit detailed, non-confidential information about an arbitrator’s procedural decisions and case management in a recent past case. We then process that information, distilling feedback into easy-to-use Reports that are available to anyone. Our Reports, in other words, give parties and counsel seeking to appoint newer and more diverse arbitrators ready access to actual feedback about newer and more diverse arbitrators that can otherwise be difficult if not impossible to find.

Parties or counsel who provide feedback through our questionnaire have seen the

arbitrators “in action” and the information they provide can help fill in the information gaps that remain after examining case summaries or the CV of the arbitrator.

In addition to feedback, Arbitrator Intelligence is also developing a library of video interviews of arbitrators. In these video interviews, our talented Ambassadors ask arbitrators the kinds of questions parties and counsel might want to ask during the appointment process, but that would be prohibited if asked by parties and counsel during the selection process for a particular case.

We will also soon be launching our new Survey for Arbitrators. This specially-designed survey will enable arbitrators to themselves identify their procedural approaches and case management preferences.

All these sources of information come together in our unique Reports on individual arbitrators.

We build our Reports from the “bottom up,” meaning we start with feedback provided by counsel and parties, we add interviews, and (soon) survey responses by arbitrators. We do not pick the arbitrators for our Reports or predetermine how extensive or detailed their Reports should be. In this respect, our Reports can be a great equalizer—the most robust, detailed Reports are not necessarily on the most experienced arbitrators. Our most robust Reports are on those arbitrators for whom we have the most information, and that brings us to our request to YOU!

A Call to Action

From **September 12 through October 4**, our Campaign aims to collect feedback that will make it easier for parties, counsel, and institutions to appoint diverse and newer arbitrators. Our goal is to collect **100 AIQs** on newer and diverse arbitrators!

We are asking YOU to contribute YOUR feedback from your experiences through our **AIQ**. It only takes about 15 minutes. Enough good intentions. Do something concrete!

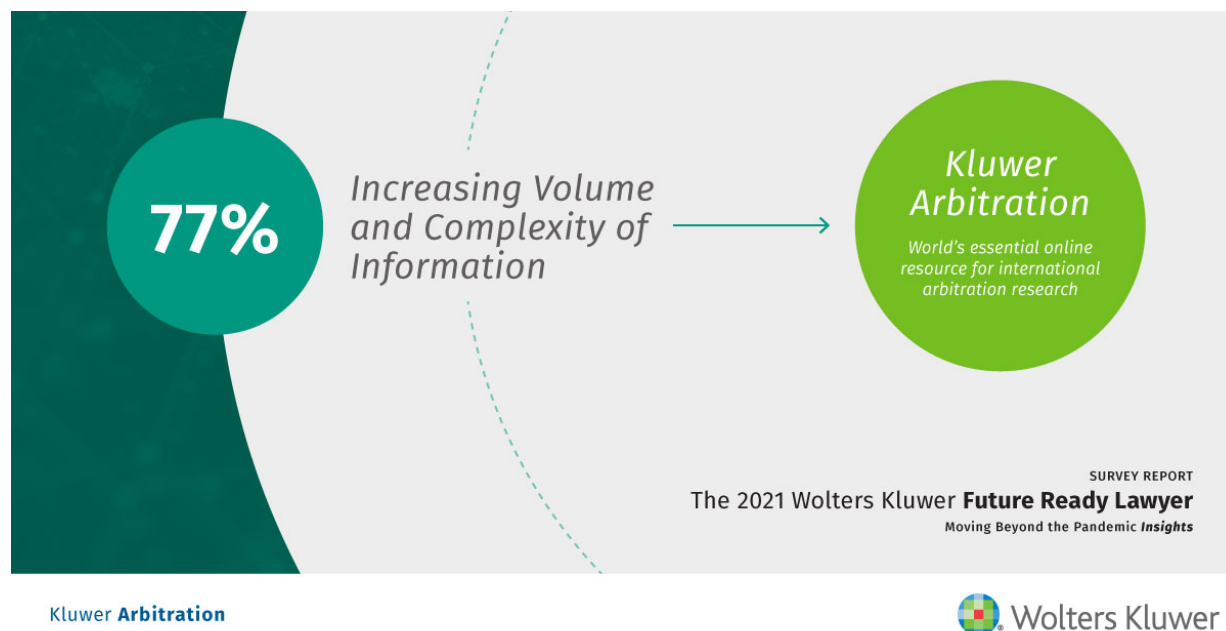
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References

Beyond those mentioned, there are: [Careers in Arbitration](#), [Mute-Off Thursdays](#), the [Diversity Checklist](#), [Women Way in Arbitration LATAM](#), Victoria Pernt's [myArbitration](#), [breaking.through](#), the [African Promise](#), [SWAN \(the Swedish Women in Arbitration Network\)](#), the [Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings](#), the [African Arbitration Association](#) and many more.

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