

Equal Representation in Arbitration (ERA) Pledge: A Turning Point in the Arbitration History for Gender Equality

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Mirèze Philippe

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By Mirèze Philippe, Special Counsel at the Secretariat of the ICC International Court of Arbitration, and Founding Co-President ArbitralWomen

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 launch of the Equal Representation in Arbitration (ERA) Pledge on 18 May 2016 in London marks a historic moment in international arbitration. 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. All players involved in dispute resolution are encouraged to sign the Pledge online on www.arbitrationpledge.com. The Pledge has already been signed by over five hundred individuals and around 70 organisations. The number of signatories coming from all parts of the world is increasing every day.

The Pledge began with a suggestion made at ICCA 2014 by Jacomijn van Haersolte-van Hof, director general of LCIA, that concrete action should be taken in order to

see more women appointed as arbitrators. Sylvia Noury of Freshfields picked up on the idea and took it forward. Noury gathered a group of stakeholders at a dinner in London in April 2015 to discuss the under-representation of women arbitrators and potential solutions to cure this situation. Several dinners followed in various cities around the globe to discuss this issue and hear the views of the business and legal communities. Participants agreed that taking a pledge was the way forward. By signing a pledge and encouraging practitioners in dispute resolution to do the same, they would feel more committed to redressing the gender balance in arbitration. It was felt that without a joint commitment to change behaviours and to assess progress regularly, despite everyone's good will, gender equality would not be sufficiently prioritised.

The text of the Pledge was discussed by the practitioners who participated in the dinners. The Pledge requires that the signatories commit to improving the profile and representation of women in arbitration on an equal opportunity basis. Proposals were made to encourage signatories, whenever possible, to include a fair representation of women on committees, governing bodies, conference panels and lists of potential arbitrators. Experienced arbitration practitioners -men and women- are required to support, mentor, sponsor and encourage women to pursue arbitrator appointments (read the full text of the Pledge).

One of the steps recommended to measure progress is the tracking and publication of gender statistics for appointments of women arbitrators. Lucy Greenwood of Norton Rose Fulbright has been advocating for several years for transparency in relation to this information. The onus for addressing gender equality is on all players in their various roles. Therefore, collating and disclosing statistics will help analysing where the problem lies in case progress is not as fast as everyone expects it to be.

Although the use of quotas was considered, there was little appetite for this approach. It was felt that women should not be nominated simply to improve the statistics. Players should be ready to consider a variety of profiles including men and women and offer equal opportunities for equal qualifications.

Statistics have been published by some authors in the past, namely by Greenwood (see *Lucy Greenwood & Mark Baker "Getting a better balance on international arbitration tribunals", Arbitration International, vol. 28, n°4, 2012, page 653, and "Is the balance getting better? An update on the issue of gender diversity in*

international arbitration", *Arbitration International*, 2015, 0, 1-11 doi: 10.1093/arbint/aiv034), who has also compiled data on the appointment of women arbitrators published by GAR. The author likewise published statistics about women arbitrators in ICC arbitrations (see *Mirèze Philippe "When did the Doors to Dispute Resolution open for Women?"*, *TDM Special Issue on Diversity*, *TDM vol. 12, issue 4, July 2015*, and *"Speeding up the path for Gender Equality"*, (*TDM, ISSN 1875-4120*) *May 2016*). A number of arbitration institutions have recently begun to publish statistics and it is expected that statistics will be regularly published in the future.

In the article published in May on TDM, the author commented that one of the most significant changes in the recent years is the progressive mind-opening of practitioners in favour of diversity, women and young practitioners in international dispute resolution. There has been some progress in the recent years but the number of women in lead positions, on arbitral panels and speakers' panels remains insignificant. Since 2000, ArbitralWomen has been promoting women in dispute resolution as well as campaigning for gender equality. It has contributed in many ways to bringing more women on to the stage. The Pledge is thus fully supported by ArbitralWomen who signed a hard copy of the Pledge at an event organised at UNESCO on March 16 (see *ArbitralWomen's Newsletter for further information*). A Pledge steering committee co-chaired by Noury and Wendy Miles QC of Boies Schiller & Flexner, and composed of male and female practitioners, is in charge of spreading the word. ArbitralWomen is represented on the steering committee by Board members Lucy Greenwood of Norton Rose Fulbright, Gabrielle Nater-Bass of Homburg AG and by the author.

The author considers that the Pledge is an appropriate tool to achieve gender equality in international arbitration. It is fascinating to see the number of practitioners who have joined the debate on diversity and unconscious bias all across the board including men and women. This alone is a victory. It is one step further towards positive change and we must build on this momentum to level the playing field faster than in the past. Raising awareness and having all players rally the movement is powerful.

Diverse perspectives, knowledge, experiences and a wealth of variety of backgrounds and expertise provide benefit to all. Gender diversity contributes to reaching better results thanks to the wealth each of the talented practitioners, men and women, bring to the table. Furthermore, diversity is an economic reality

to be taken into account. The participation of all constituents adds value given that everyone contributes something different.

It is likewise important to encourage organisers to improve gender diversity on panels of speakers. ArbitralWomen has occasionally refused to publicise events or to participate in such events when organisers have not included women on the panels.

Rashda Rana, President of ArbitralWomen, said to GAR that *“(w)ith the Pledge, the arbitration community has moved beyond merely acknowledging the problem and articulating intent to do something about it. There is increasing recognition that the pace of change is unacceptable [...] not just in the world of arbitration [but] in the judiciary and on corporate boards”*.

ArbitralWomen is one important hub dedicated to women practitioners in dispute resolution in any role (*click here to find practitioners*), and there are other websites who feature women and men profiles, such as the International Arbitration Institute.

Change is possible, it is taking place, and the mission of everyone is to contribute to make it happen more quickly than in the past.