

Kluwer Arbitration Blog

Cross-Institutional Task Force Releases Groundbreaking Report on Gender Diversity in Arbitral Appointments and Proceedings

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On 28 July 2020, the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings released its long-awaited [Report](#) in the eighth volume of the International Council for Commercial Arbitration (ICCA) Reports Series.

Established in 2019, the Task Force brings together 17 leading international arbitration institutions, law firms and gender diversity initiatives to publish and analyze recent statistics on the appointment of female arbitrators, as well as to identify opportunities and best practices to promote gender diversity in international arbitration. The Report draws on data provided or published by members of the Task Force (DIS, HKIAC, ICC, ICDR, ICSID, LCIA, SCC and VIAC), as well as publicly available data published by the PCA and CAS, and surveys conducted by the Task Force with a range of female arbitrators.

As detailed below, the Report (i) identifies key trends in the statistics on arbitral appointments; (ii) considers the barriers to achieving greater arbitrator diversity; and (iii) compiles concrete suggestions for how various actors in the international arbitration community – ranging from counsel to clients to arbitration funders and institutions – can take steps to improve gender diversity in arbitral appointments and proceedings.

Current trends in arbitral appointments

The statistics published in the Report show that, over the past four years, the proportion of female arbitrators has almost doubled. Whereas in 2015, an average of 12.2% of arbitrator appointees were female, that figure increased to 16.3% in 2017 and again to 21.3% in 2019. This increase is not solely a reflection of an increase in the number of arbitrations being administered over the past four years. Thus, while the total number of arbitrator appointments in 2015 and 2019 was roughly the same for the institutions considered by the Task Force (3942 and 3930, respectively), the total number of female arbitrator appointments increased from 490 in 2015 to 879 in 2019. However, with just over a fifth of newly appointed arbitrators in 2019 being female, there is room for improvement.

As the Report notes, there may be a number of factors influencing this positive trend. For example, the apparent increase in the number of female arbitrator appointees may be the result of improvements in tracking and reporting data and/or the result of increased awareness following the launch of diversity campaigns like the [Equal Representation in Arbitration Pledge](#) and the work of organizations like [ArbitralWomen](#). A number of commentaries in recent years have also sought to increase awareness of why [diversity in arbitral tribunals is a valid concern](#) and [why it matters](#). Other factors that may affect the trends in the data published by the Task Force include the fact that current records of female arbitrator appointments do not disaggregate the effect of repeat appointments, which would have the effect of lowering the true diversity of arbitral appointees.¹⁾

The data collected by the Task Force has also made it possible to identify the influence of appointments by arbitral institutions, co-arbitrators and parties. We highlight three trends identified in the Report:

- The proportion of female institutional appointees exceeds the proportion of female co-arbitrator or party appointments. Over the past four years, approximately a third of all institutional appointees have been female (32.5% of appointments made by institutions in 2015, and 34% of all appointments in 2019). Over this same period, some institutions have seen a marked increase in the proportion of female institutional appointees. For example, in 2015, 28.2% of appointees by the LCIA were female. By 2019, that figure rose to 48%. Similarly, in 2015, only 5.9% of ICSID appointees were female, whereas 25.8% were female in 2019.
- The proportion of female co-arbitrator appointments appears to be catching up with the institutional appointments, with 21.5% of co-arbitrator appointees being female in 2019 (up from 9.6% in 2015). The actual number of female co-arbitrator appointees is, however, very low, with one institution recording no female co-arbitrator appointments in 2019 at all. Given the small sample sizes involved, there has been significant year on year variation in the proportion of female co-arbitrator appointments.
- The proportion of female party-appointments has increased more slowly over the last four years, from 8.5% in 2015 to 13.9% in 2019. Given the wealth of female arbitrator talent available to parties, this number is low and suggests that the greatest opportunities for increasing gender diversity in arbitral tribunals lie with parties and the counsel that represent them. This observation is consistent with the findings of [prior studies using publicly available data](#).

Barriers to gender diversity

There are a number of barriers to gender diversity in arbitral appointments and proceedings that have been well documented in literature and commentary. Lucy Greenwood, for example, distinguishes between “leaks” in the pipeline of sufficiently qualified arbitrator candidates, and, more significantly, “plugs” in the pipeline, preventing already-experienced female arbitrators from obtaining appointments.²⁾ Pipeline leaks may include issues driving poor retention of women in the legal profession; the impact of unconscious bias on female professional development; the difficulties that female lawyers may face as a result of a lack of flexible working arrangements; and issues relating to gender-based and sexual harassment and bullying in the workplace.

Pipeline plugs may include, amongst other factors, that the fact that [the most selected source of information about arbitrator candidates is through word-of-mouth](#). This, in turn, can mean that

arbitration users do not have access—or do not proactively access—information about new, more diverse arbitrator candidates who may be well qualified for the role of an arbitrator in a particular case. Unconscious bias can also impact on parties’ arbitrator choices. As the Report notes, unconscious bias “may influence the notion of the best candidate in favor of male candidates, because of an implicit association between ‘male’ qualities with those of a successful arbitrator, such as ‘gravitas,’ [or] ‘assertiveness.’” The impact of unconscious bias on arbitrator choices has been the subject of [recent debate and discussion](#), and has been described as “one of the single most influential factors for the disparity between male and female representation on international tribunals.”³⁾ The Report also notes that the best qualification for the role of an arbitrator may be prior experience, making it difficult for candidates to obtain first-time appointments. This may be particularly problematic for women, since studies have shown that men tend to be promoted on potential, whereas women tend to be promoted based on experience.⁴⁾

Recommendations for the future

A key feature of the Report is its recommendations on how to improve the representation both of female arbitrators on tribunals and of female lawyers in arbitral proceedings, including targeted suggestions for qualified arbitrator candidates, external and in-house counsel, parties who appoint arbitrators, and appointing authorities.

The Report highlights many useful tools and resources to address gender diversity in arbitral tribunals, including:

- Databases of qualified female candidates to serve as arbitrators;
- Tips for addressing unconscious bias;
- Recommendations on how parties and funders can require diversity in international arbitration;
- Opportunities for qualified women to promote and market their credentials;
- Guidance for less experienced female lawyers who wish to progress their careers; and
- Advice for employers on how to grow and promote their female talent.


The Report concludes by reaffirming its two key objectives. *First*, the Report is intended to provide a platform for publishing data on the appointment of female arbitrators in order to both inspire others to record and publish their own diversity statistics, as well as to facilitate more detailed analysis of the data. *Second*, the Report is intended to collate the various opportunities that exist for arbitration users to take positive and proactive action to address the lack of gender diversity in international arbitration. As the Report notes: “[t]here is a wealth of opportunities for all of us to promote women in arbitration, including as arbitrators, ranging from minor changes to our everyday actions, to implementing broader initiatives that allow women to succeed in this profession. Significantly, there are also many opportunities for women to take advantage of, and we hope that they do.”

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References

- ?1 On repeat appointments, the Report notes that some arbitral institutions have begun to track this information, including the HKIAC, ICSID, ICC and LCIA. The HKIAC, for example, provided the Task Force with data on repeat appointments dating back to 2016, which suggests that repeat appointments amongst female arbitrators have been increasing over the past three years.
- ?2 See Lucy Greenwood, *Unblocking the Pipeline: Achieving Greater Gender Diversity on International Arbitration Tribunals*, 42 ABA Int'l L. News (Spring 2013).
- ?3 Lucy Greenwood, *Could "Blind" Appointments Open Our Eyes to the Lack of Diversity in International Arbitration?*, TDM 12:4 (2015), at 4 (referring to research that shows that "[g]ender stereotyping has been identified as one of the most powerful influences on decision making, particularly when considering women for leadership positions").
- ?4 See discussion in Lucy Greenwood, *Moving Beyond Diversity Toward Inclusion in International Arbitration*, 2019 Stockholm Y.B. 93, 98 (2019).

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