

# Kluwer Arbitration Blog

## 2022 Year in Review: Diversity in the Mainstream

Shreya Jain (Assistant Editor for South Asia) · Sunday, February 12th, 2023

In 2022, the international arbitration community took several further impactful steps towards building awareness of diversity challenges in the profession and towards improving existing disparities.

As previously discussed on this Blog [here](#) and [here](#), an intersectional analysis of diversity is important to evaluate how each minority is faring, individually and when intersected with each other. In 2022, while conversations around gender diversity firmly entered the mainstream, those around other aspects of diversity, such as racial, ethnic, geographic and professional diversity, continued to make strides.

This post reviews several key developments on diversity and sustainability in international arbitration during 2022, and looks forward to what lies in store for 2023.

### Gender Diversity Statistics

Perhaps the most talked about development in 2022 was the [ICCA's Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings](#), an update to the inaugural 2020 Report. The Task Force was chaired by Carolyn B. Lamm (White & Case LLP) and comprised 31 members, including academics, barristers, and practitioners at law firms and arbitral institutions. Building on the 2020 Report, the 2022 ICCA Report looks at detailed statistics on appointment of women arbitrators—including on important and unreported factors such as repeat and sole arbitrator appointments, tribunal chairs and all-women tribunals. This analysis was based on arbitral awards, data provided by arbitral institutions and questionnaires completed by over 70 women arbitrators about their experience with appointments.

These statistics show that while arbitral institutions have continued to lead the way in implementing this mandate, appointment by parties and co-arbitrators continue to lag. As per the HKIAC's [case statistics](#) for 2022, 27% of HKIAC's appointments were of female arbitrators (up from 21.8% in 2021). However, party appointments and co-arbitrator appointments stood low at 18.9% and 11.4% respectively (compared to 12.7% and 19.6% in 2021). In a [December 2022 post](#) on ICSID statistics, Agata Daszko noted that in [Fiscal Year 2022](#), female arbitrators accounted for 24% of all ICSID appointments – of which ICSID made 55% appointments, parties made 39% of appointments and co-arbitrators made 6% of appointments.

In order to address this disparity, we saw several notable measures last year. The 2022 ICCA Report (discussed above) provides a detailed road map, with advice aimed at different stakeholders, e.g. qualified women candidates, those who nominate/appoint arbitrators, in-house counsel, litigation funders, conference organisers, etc. The Report concludes with an important reminder that “[t]hose in the position of making appointments—primarily parties and their representatives, but also institutions and co-arbitrators—have the greatest influence on gender diversity in arbitral tribunals”.

Further, Mute Off Thursdays (which won the GAR ERA Pledge Award in 2021) released a first-of-its-kind ‘Compendium of Unicorns: A Global Guide to Women Arbitrators’. This [Compendium](#) contains data on 176 women arbitrators (based on a self-filled questionnaire), which includes details of their professional, cultural and ethnic backgrounds, procedural preferences, and approach to case management. By publicising this information on a free platform, the Compendium aims to “*dispel this myth that there is a supply deficit of women qualified to sit as arbitrators*”. Interestingly, the year also ended with the appointment of an all-women ICSID tribunal in *RTI Rotalin Gas Trading v. Republic of Moldova* in [December 2022](#)—hopefully, one of many to come.

## Diversity from a Broader Lens

Another important (and long due) marker of progress toward improved diversity representation in the international arbitration community is the increasing recognition of challenges associated with other kinds of diversity.

The need to view diversity from a broader lens was at the forefront of global and regional arbitration events and writings last year. As reported [here](#), several speakers at the ICCA Congress in Edinburgh, including Lucy Greenwood, Emilia Onyema and James Hope, called upon the arbitration community to take measures to improve diversity from the perspective of ethnicity, nationality, sexual orientation, language and race. Similarly, at the Young Arbitrators Sweden’s (YAS) [14th Annual Arbitration Day](#), a panel discussed the importance of diversity—from all angles—in reducing risks of group think, confirmation bias and the future legitimacy of arbitration as a whole. Both at the [CanArb Week](#) and the [India ADR Week](#), the panellists highlighted the importance of intentional and sustained efforts, noting that “*the results of efforts of this generation may not reflect until next generation*”.

In an [April 2022 post](#) on this Blog and in their contribution to a volume of essays titled ‘[Diversity in International Arbitration](#)’ published last year, Nobumichi Teramura, Luke Nottage and James Tana made a strong empirical case for improving professional diversity in arbitration. They noted that non-lawyer participation could “*significantly reduce the persistent formalisation in IA*” and “*lead to other benefits, including indeed more gender diversity, given that academia does not have the same non-linear remuneration structures for lawyers that disadvantage career progression for many women*”.

This broader outlook of diversity has been recognised in several policy initiatives last year. On 1 January 2022, the ICC released its [Note to National Committees and Groups on the proposal of Arbitrators](#) (“**Note**”), which states that: “*When proposing arbitrators, Committees and Groups are encouraged to consider diversity, broadly defined, including but not limited to racial, ethnic, cultural, generational, and gender diversity*”. It also encourages the creation of ‘nomination

commissions' for proposing arbitrators to the ICC Court and notes that “[n]ominations Commission membership should reflect the diversity, broadly defined, of the arbitration community in the Committee’s country or in the Group’s territory, including but not limited to racial, ethnic, cultural, generational, and gender diversity. Committees and Groups should make best efforts to achieve and maintain gender parity in their Nominations Commissions”. Building on this policy, in November 2022, the ICC also announced that it has updated its [model letters](#) to parties, co-arbitrators, appointing authorities and ICC national committees to add the same language as noted above, encouraging them to consider diversity when proposing arbitrators.

In May 2022, the ICCA also published its first formal [policy](#) on diversity and inclusion, which considers diversity as “inclusive of age, colour, disability, ethnicity, gender, indigenous origin, nationality, national origin, race, religion, sexual orientation and socioeconomic status”. As part of its implementation [plan](#), ICCA has committed to developing a best practices guide for diversity and inclusion addressing three areas of activity: conferences and events, publications, and working groups and project committees.

Significant strides were also taken by new institutions, such as the Scottish Arbitration Centre. The Centre launched its new [Rules of the Scottish Arbitration Centre 2022](#), which contain specific provisions on ‘Equality, Diversity and Neutrality’. Article 8.1 provides that “[i]n proposing or appointing any arbitrator under the Rules, the parties, their counsel, any appointed arbitrator and the Centre shall have regard to the Equal Representation in Arbitration Pledge and R.E.A.L. (Racial Equality for Arbitration Lawyers)”.

## Looking Ahead

As we move further into 2023, the future continues to look promising. In January 2023, the ICC released its [Centenary Declaration](#), which pledges diversity, equity and inclusion for all stakeholders in dispute resolution as one of its ten main objectives for the next century. Like the Scottish Arbitration Centre, the Belgian Centre for Arbitration and Mediation (CEPANI) has also included in its new [Arbitration Rules](#) (effective as of 1 January 2023) an express requirement in Article 15 to consider “*diversity and inclusion*” when appointing arbitrators.

As of this writing, the [ERE Pledge](#) or the Pledge for Equal Representation for Expert Witnesses had over 830 signatories globally, comprising individuals, law firms and expert firms—a substantial number, given that it was just launched a year earlier in 2021. Given the immense impact that its sister ERA pledge had on arbitral appointments, the ERE Pledge holds great potential for improving diversity in expert witness appointments.

These developments promise to pave the way for another impactful year ahead. As optimistically noted by Lucy Reed, the President of the SIAC Court, in an [interview](#) for this blog last year, “*there is still a long way to go, but we are on the right path. I measure the marked gains by women in international arbitration by looking around rooms—or, recently, on screens—and seeing so many talented women I have not yet met*”.

*The author would like to thank Mr Rishab Gupta (Barrister, Twenty Essex) for his inputs.*

*This post is part of Kluwer Arbitration Blog's 2022 in Review series. Other posts in the series can be seen [here](#).*

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