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How Has Female Participation at ICC Evolved?

ICC Arbitrators, Court Members and Court's Secretariat

I - ICC arbitrators gender statistics

1. Number of nominations and individuals nominated

2. Role of arbitrators

3. Nomination of arbitrators

4. Age of arbitrators

5. Geographical origin of women confirmed or appointed

6. Emergency arbitrators

7. Other factors to consider

8. Change of environment and new opportunities

II - ICC female Court members

1. Presidents and Court members

2. Female Court members

3. Summary table of female Court members 1980-2018

III - Female representation at ICC

1. ICC and Court chairmanship

2. Other leading positions at ICC

3. ICC Commissions

4. ICC Institute

5. ICC National Committees and Groups

6. Secretariat of the Court

7. Policy & Business Practices

8. ICC World Business Women

9. ICC diversity webpage

Conclusion – way forward

It is fascinating to see how rapidly minds have evolved in the last three to four years and how the gender issue, in addition to no longer being taboo, is an important issue that has been acknowledged by dispute resolution stakeholders. Addressing the issue of the dearth of women in dispute resolution is no longer an embarrassing matter to discuss. Quite to the contrary, the topic has become fashionable and is at the centre of discussions, whether in public forum throughout the world or in private groups, reflecting for instance on ways to improve the number of women on arbitration and conference panels. The business and legal communities are increasingly aware of gender imbalance which has lasted too long. To keep up with this progress, the dispute resolution community must continue raising awareness regarding under-representation of female dispute resolution practitioners and working towards change.

The international dispute resolution community is well aware of ArbitralWomen's efforts towards gender equality, mainly since 2000, and dedication in raising awareness on gender biases.¹ The Equal Representation in Arbitration Pledge (the 'Pledge') has boosted these efforts since 2015, before it was even officially launched in 2016, by engaging the business and the dispute resolution communities to increase the number of female arbitrators on an equal opportunity basis. These combined efforts, as well as efforts undertaken by other women lawyers associations namely in the United Kingdom and the United States, have progressively become more visible since 2010.

Dispute resolution organisations have also engaged by signing the Pledge. One of the steps signatories are encouraged to take is to publish gender statistics. The major organisations did so by revealing statistics on women appointments in 2015 and 2016. This demonstrates that these organisations are ready for the change. Their contribution is particularly valuable as they are authority figures in the dispute resolution community; the model they set is better than any speech.

Comparing numbers and facts remains the most accurate way to measure change.² Collating and publishing statistics year after year enables practitioners to examine the progress made and what needs to be further undertaken. In spite of the extremely slow progress of female representation in the last thirty years, as criticised by the author on various occasions,³ statistics reveal that progress has been increasingly noticeable in recent years. Although the dispute resolution arena remains mostly male dominated, many things have changed in recent years. Statistics have allowed a more accurate assessment of the progress made and they are encouraging.

In recent years, the ICC International Court of Arbitration ('Court') has been particularly attentive to gender, generational and regional diversity. The author first published numbers of female arbitrators in ICC arbitrations in 2013⁴, then published further statistical information for year 2014⁵ and more detailed information for year 2015⁶ and 2016⁷. This was not previously possible considering that no gender data exists among the criteria used to generate statistics from the Court case management system database. Why? Simply because gender was a non-issue in arbitration at the time, the dispute resolution arena was male dominated and this gap was not even questioned until twenty years ago. Even if calculating the number of women arbitrators is a task that is manually undertaken by ICC staff members as opposed to being recorded by an electronic tool, the end result is worth the time invested as this enables sharing numbers and measuring progress. Transparency being increasingly requested by arbitration users, it is important to share information on women arbitrators in ICC arbitration panels.

ICC registered a growth in the number of female arbitrators rising from 10.4% in 2015 to 14.8% in 2016.⁸ As a result of various efforts the statistics for 2016 show clear progress compared to previous years. However, the business and dispute resolution communities could achieve better numbers. Levelling the playing field and reducing the gap between male and female nominations with equal qualifications will be successful if all players join the process. The dispute resolution arena does not lack top-tier and new comers female arbitrators, but getting rid of old reflexes of nominating only male arbitrators seems hard to overcome yet. Infiltrating a male dominated business remains difficult although the noticeable improvements are encouraging.

The issue of gender equality is about offering equal opportunities to equally qualified women, which will necessarily lead to gender equality, hopefully faster than in the last decades.

Measuring the progress of gender diversity will first be discussed on the basis of statistics for ICC nominations between 2010 and 2016 (I). The increase in the number of ICC female Court members from several jurisdictions since the 1980s and the frequency of all-female Court sessions reveal further progress (II). Finally, an overview of female staff members and of ICC initiatives will help understanding the progress made at ICC over the last decades (III).

I - ICC arbitrators gender statistics

The ICC Court officially released annual statistics for the total percentage of female arbitrators in 2015⁹ and in 2016.¹⁰

Statistics for 2016 provided hereafter show clear progress compared to previous years.¹¹ The number of women arbitrators nominated by parties or co-arbitrators, or appointed by the Court, has doubled in the past seven years, starting at 7.2% in 2010 and reaching 14.8% in 2016. The proportion of women arbitrators has slowly but progressively increased from 2010 to 2015: it increased by 0.7% per year between 2013 and 2015, rising from 9.0% in 2013 to 9.7% in 2014 and to 10.4% in 2015. The most noticeable growth occurred last year, where the proportion of women arbitrators in ICC jumped from 10.4% in 2015 to 14.8% in 2016.

In 2015, women nominations represented 136 out of 1313 nominations. This number increased to 209 out of 1411 nominations in 2016. Therefore, an additional 98 arbitrators, of which 73 were women arbitrators, were confirmed or appointed in 2016. This increase in the number of women nominations in 2016 shows clear improvement in the nomination and appointment process.

Moreover, in 2016, 97 out of 411 appointments by the Court were women appointments, which represented 23.6% of total appointments. The arbitrators appointed by the Court include arbitrators proposed by ICC's National Committees, direct appointments by the Court and appointments made by other appointing authorities including the President of the Court when invited to do so.

The following tables provide detailed information about female and male arbitrators in ICC arbitrations from 2010 to 2016. While statistics reveal a minor increase, we observe a steady growth of women arbitrators.

1. Number of nominations and individuals nominated

The table below provides (i) the number of nominations, (ii) the number of individuals nominated, and (iii) the number of repeat nominations of the same individuals.

Nominations & Individuals	2010	2011	2012	2013	2014	2015	2016
Number of nominations							
Men & women	1331	1341	1301	1329	1327	1313	1411
Men	1235	1238	1199	1210	1198	1177	1202
Percentage	92.8%	92.3%	92.2%	91.0%	90.3%	89.6%	85.2%
Women	96	103	102	119	129	136	209
Percentage	7.2%	7.7%	7.8%	9.0%	9.7%	10.4%	14.8%
Number of individuals nominated once							
Men & women	866	900	847	919	908	907	927
Men	800	841	794	842	825	829	802
Percentage	92.4%	93.5%	93.8%	91.6%	90.9%	91.4%	86.5%
Women	66	59	53	77	83	78	125
Percentage	7.6%	6.5%	6.2%	8.4%	9.1%	8.6%	13.4%
Number of individuals nominated more than once							
Men	435	397	405	368	373	348	400
Percentage	35.2%	32%	33.7%	30.4%	31.1%	29.5%	33.3%
Women	30	44	49	42	46	58	84
Percentage	31.2%	42.7%	48%	35.2%	35.6%	42.6%	40%

The nominations reported above consist of confirmations and appointments of arbitrators, including repeat nominations of the same individuals.¹² The slight decrease of male arbitrators from 92.8% to 85.2% over the last seven years reflects the minor increase of female arbitrators from 7.2% to 14.8% over the same period. This growth shows a small but progressive increase, although last year's growth was more substantial.

The proportion of repeat nominations of women is higher than repeat nominations of men, respectively accounting for 40% and 33.3%. The pool of women arbitrators being currently smaller than the pool of men arbitrators, repeat nominations of women occur, proportionally, more frequently.

In 2016, the 84 repeat nominations concerned 36 women: 28 women nominated twice (56), seven women nominated three times (21) and one woman nominated seven times (7).

The composition of arbitral tribunals in ICC arbitrations started to be published on ICC website¹³ as from 2016. The publication of the arbitrators' names, their nationalities, their role within a tribunal, and information on the nomination process is significant in terms of transparency of the composition of the tribunals and with respect to gender and diversity. The publication of such information offers arbitration users a visibility on the arbitration panels which did not exist so far. The names published are those of arbitrators in cases registered as of 1st January 2016, where Terms of Reference have been established, and where no confidentiality requirements have been expressed by the parties in their arbitration agreement or subsequently. Several hundreds of names have so far been published. An author had a look at the first data published; he indicated that the list was surprisingly young and surprisingly female.¹⁴

The Court has indeed been making efforts towards appointing newcomers and young professionals, male and female, whenever their profiles meet the criteria required for the case.

2. Role of arbitrators

Last year, out of the 20.3% sole arbitrators, 4.9% were female, and out of the 25.5% presidents, 3.5% were female. The co-arbitrators accounted for 54.2% of the nominations, out of which 6.4% were female.

Out of the 209 female nominations in 2016, sole arbitrators and chairs accounted for 57% of the nominations and co-arbitrators for 43%.

3. Nomination of arbitrators

Role within the tribunal	2010	2011	2012	2013	2014	2015	2016
Men & women nominations	1331	1341	1301	1329	1327	1313	1411
Men sole arbitrators	195	224	184	190	178	207	217
Percentage	14.6%	16.7%	14.1%	14.3%	13.4%	15.8%	15.4%
Women sole arbitrators	31	28	31	50	42	44	69
Percentage	2.3%	2%	2.4%	3.8%	3.1%	3.3%	4.9%
Men presidents	342	333	304	338	323	299	311
Percentage	25.7%	24.8%	23.4%	25.4%	24.3%	22.8%	22%
Women presidents	25	26	31	17	34	34	50
Percentage	1.9%	1.9%	2.4%	1.3%	2.6%	2.6%	3.5%
Men co-arbitrators	698	681	711	682	697	671	674
Percentage	52.5%	50.8%	54.7%	51.3%	52.6%	51.1%	47.8%
Women co-arbitrators	40	49	40	52	53	58	90
Percentage	3%	3.8%	3%	3.9%	4%	4.4%	6.4%

The Court appointed 57 female arbitrators in 2016 upon proposal of ICC's National Committees and Groups, and made 38 direct appointments¹⁵. Two women were appointed by the President of the Court in accordance with arbitration agreements designating him as the appointing authority.

When ICC's National Committees and Groups propose arbitrators to be appointed by the Court, they are encouraged by the Court to observe generational and gender diversity, and diversity as to the various components of local arbitration communities.¹⁶ Therefore, they are contributing to the change. In recent cases, they were able to propose more women prospective arbitrators than men to be considered by the Court in a given case; in a very recent case, three of the four candidates proposed were women. Likewise, when ICC submits lists of arbitrators to the parties upon the parties' request, such lists include women, and on a few occasions, ICC succeeded in proposing a perfectly balanced list with half women and half men.

These statistics demonstrate that the Court continues to appoint more women than the parties and the co-arbitrators. A higher proportion of women were appointed by the Court, (46.5%), than by parties (41.1%) or by co-arbitrators (12.4%). Although a small disparity exists between the number of women nominated by the parties and the number of women appointed by the Court, it was observed that most of the arbitration centres nominate more women than parties do. Considering that ICC appoints arbitrators in approximately 25% of cases and that nominations of arbitrators, including women, lie in the hands of

Nomination by	2010	2011	2012	2013	2014	2015	2016
Men & women nominations	1331	1341	1301	1329	1327	1313	1411
Men nominations by parties in any role	750	729	724	696	729	719	708
Percentage	56.3%	54.4%	55.7%	52.4%	55%	54.8%	50.2%
Women nominations by parties in any role	34	45	40	44	54	53	86
Percentage	2.6%	3.3%	3.1%	3.3%	4%	4%	6.1%
Men nominations by co-arbitrators	171	179	158	185	197	155	180
Percentage	12.9%	13.4%	12.1%	14%	14.9%	11.8%	12.8%
Women nominations by co-arbitrators	14	16	17	9	21	10	26
Percentage	1%	1.2%	1.3%	0.6%	1.6%	0.8%	1.9%
Men appointment by the Court in any role upon a National Committee's proposal	286	294	268	228	199	193	175
Percentage	21.5%	22%	20.6%	17.2%	15%	14.7%	12.4%
Women appointment by the Court in any role upon a National Committee's proposal	44	36	41	47	44	52	57
Percentage	3.3%	2.7%	3.2%	3.6%	3.3%	4%	4%
Men direct appointments by the Court	20	25	46	96	67	106	137
Percentage	1.5%	1.9%	3.6%	7.3%	5%	8%	9.7%
Women direct appointments by the Court	4	5	2	18	9	21	38
Percentage	0.3%	0.3%	0.1%	1.3%	0.7%	1.6%	2.7%
Men appointments by other appointing authorities	8	11	3	5	6	4	2
Percentage	0.6%	0.8%	0.2%	0.3%	0.5%	0.3%	0.1%
Women appointments by other appointing authorities	0	1	2	1	1	0	2
Percentage	0%	0%	0.1%	0%	%	%	0.1%

the parties and co-arbitrators in 75% of the cases, efforts towards nominating more women arbitrators with equal qualifications to those of their male counterparts is everyone's responsibility. Levelling the playing field can only be achieved with all players in the business and dispute resolution communities.

In a very recent case, the Court appointed each member of the arbitral tribunal pursuant to Article 12(8) of the Rules and constituted an all-female tribunal.

4. Age of arbitrators

The average age of women arbitrators remains ten years younger than male arbitrators. The average age is between 48 and 50 for women arbitrators and 58 for men. This is explained by the fact that women have generally started their careers in the field of dispute resolution in the last two decades and thus later than men, who have been in this field for a longer time.¹⁷

Age of arbitrators	2010	2011	2012	2013	2014	2015	2016
Average age of men & women	56.9	57.0	57.2	56.7	57.0	57.4	56.5
Average age of men	57.7	57.6	58.0	57.7	57.9	58.4	58.2
Average age of women	48.6	49.8	48.6	48.2	49.9	49.7	48.3
Age range by gender							
Men under 40 years	6.1%	8%	6.7%	8.6%	6.7%	5.9%	5.6%
Women under 40 years	23.6%	25.4%	23.2%	27.8%	22.3%	17.1%	22.3%
Men from 40 to 49	23.6%	21.9%	22.3%	19.6%	21.6%	20.2%	22.5%
Women from 40 to 49	36.1%	25.4%	40.6%	35.1%	32.0%	38.1%	40.8%
Men from 50 to 59	25.3%	26.2%	27.2%	27.8%	26.8%	27.7%	26.4%
Women from 50 to 59	26.4%	28.2%	20.3%	20.6%	21.4%	23.8%	19.1%
Men from 60 and over	45.1%	43.9%	43.8%	44%	44.8%	46.3%	45.4%
Women from 60 and over	13.9%	21.1%	15.9%	16.5%	24.3%	21.0%	17.8%

5. Geographical origin of women confirmed or appointed

Female arbitrators originated from 47 countries. Finding female practitioners in some regions is a true challenge; their local communities and the practitioners in the dispute resolution community may not know them.

The following table gives a breakdown of men and women arbitrators by region in 2016:

The majority of ICC arbitrations involved parties from the regions the most represented in the tables above, which explains the ratio of women from such regions. In 2016, the 966 arbitrations filed involved 3099 parties from 137 countries and independent territories. In some of these countries, which are poorly represented in ICC arbitration, arbitration practitioners, men and women, are hard to find.

Under-representation of women arbitrators remains critical in some regions, but some signs of progress are showing. In Dubai and Nigeria, female practitioners have become visible mainly thanks to annual conferences organised by ICC in

Geographical origin	2010	2011	2012	2013	2014	2015	2016
Total number of women	96	103	102	119	129	136	209
Total number of countries	25	29	31	33	29	40	47
Breakdown by region							
North and West Europe	58	46	51	63	78	67	103
Percentage	60.4%	44.7%	50%	52.9%	60.5%	49.3%	49.3%
Central & East Europe	12	12	12	15	9	16	27
Percentage	12.5%	11.7%	11.7%	12.6%	7%	11.8%	12.9%
North America (USA/Canada)	15	19	14	15	13	15	32
Percentage	15.6%	18.4%	13.7%	12.6%	10.1%	11%	15.3%
Latin America & Caribbean	6	6	9	15	8	16	19
Percentage	6.3%	5.8%	8.8%	12.6%	6.2%	11.8%	9.1%
Central & West Asia	2	10	5	6	6	8	9
Percentage	2.1%	9.7%	4.9%	5%	4.7%	5.9%	4.3%
South & East Asia	2	5	9	4	13	10	14
Percentage	1%	1%	2%	1.7%	5.4%	2.9%	3.8%
North Africa	1	3	1	1	1	4	3
Percentage	1%	2.9%	1%	0.8%	0.8%	2.9%	1.4%
Sub-Saharan Africa	0	2	1	0	1	0	2
Percentage	0%	1.9%	1%	0%	0.8%	0%	1%

Geographical origin	Men	%	Women	%	Total
North and West Europe	617	86%	103	14%	422
Central & East Europe	64	70%	27	30%	91
North America (USA/Canada)	193	86%	32	14%	225
Latin America & Caribbean	145	88%	19	12%	164
Central & West Asia	46	84%	9	16%	55
South & East Asia	109	89%	14	11%	123
North Africa	18	86%	3	14%	21
Sub-Saharan Africa	10	83%	2	17%	12

these regions, such as the ICC MENA conference which has been taking place in Dubai for the past five years. Africa is a rising and important market and we need to get to know the users and the practitioners better. Many lawyers from the Secretariat have been promoting ICC arbitration in the African region where a few conferences have been held in recent years. Their efforts in the local markets are essential to establish contacts with local users and practitioners.

6. Emergency arbitrators

The first two emergency arbitrator cases were filed in December 2012 almost a year after the entry into force of the ICC Emergency Arbitrator Rules on 1st January 2012. Over sixty cases have been filed since then. Women were appointed in one third of the emergency arbitrator cases, from various countries including Argentina, Brazil, Canada, Chile, Costa Rica, France, Iran, Latvia, Malaysia, Netherlands, Spain, United Kingdom, USA, and Venezuela.

7. Other factors to consider

Numbers alone are not the only element to take into account when analysing trends; some additional factors must be considered.

The selection of arbitrators is a multifaceted process and may entail difficulties in finding the appropriate arbitrators in given cases. Arbitration users want experienced and efficient arbitrators but also independent, impartial and available arbitrators. These criteria are among some of the expectations of the parties, but represent a few facets involved in the process of selecting arbitrators, which may at first sight seem straightforward. Other factors may complexify the selection process.

In some cases, the requirements of the parties, whether defined in the arbitration agreement or agreed subsequently, constitute further constraints to be considered by the Court when appointing arbitrators.

By way of example, a few years ago, parties had included the following requirement in their arbitration agreement:

[A]ny arbitrator(s) must be attorneys-at-law with at least 40 hours of certified arbitration training, have arbitrated or mediated or a combination of both 50 disputes, and be experienced in international transactions of goods.

These requirements make it difficult to find appropriate profiles, whether men or women. It may potentially be easier to find a man responding to such criteria considering that the number of men arbitrators is still nowadays greater than the number of women arbitrators, and that they have been in the field longer

than women as explained above. In addition to these requirements, the language of the arbitration, the applicable law, the expertise in a given industry sector are yet further criteria to keep in mind.

Another example is the case where parties object in their arbitration agreement to the appointment of a national of a specific country. This may seem futile if other elements, such as the knowledge of the language of arbitration and/or the law applicable to the merits, had not been added to the nationality constraint. It recently occurred that parties required the appointment of a non-Romanian arbitrator who spoke Romanian; such a candidate was hard to find as this language is not usually spoken by non-Romanians.

Several elements are taken into account when the Court confirms or appoints arbitrators.

Prospective arbitrators must complete a statement of acceptance, availability, impartiality and independence (article 11(2) of the ICC Arbitration Rules). Depending on whether they disclose facts or circumstances which may be of such a nature as to call into question their independence in the eyes of the parties, and/or on whether a party objects to an arbitrator's nomination, such arbitrator may be confirmed by the Secretary General, or his/her confirmation may be submitted to the Court.

The sole arbitrator or the president must also be of a nationality other than that of the parties (article 13(5) of the ICC Arbitration Rules), unless the parties have agreed otherwise.

Moreover, in appointing arbitrators the Court must consider the prospective arbitrators' nationality, residence and other relationships with the countries of which the parties or related entities are nationals. The Court must also consider the arbitrators' availability and ability to conduct the arbitration in accordance with the Rules (article 13(1) of the ICC Arbitration Rules). On a few occasions, the Court has refused to confirm arbitrators whose availability was unlikely to enable them to devote appropriate time to the arbitration in which they were proposed. The residence of the arbitrators will be considered from a financial aspect especially where the amount in dispute does not warrant arbitrators flying to the place of arbitration. In some instances, the Court has refused to

appoint prospective arbitrators in cases where they were not able to hear the parties in the language of the arbitration and/or to draft the award in such language.

Finally, the Court will take into consideration the profile of the prospective president who will sit with the co-arbitrators appointed by the parties. On occasions, and for the time being, mainly because female practitioners are not sufficiently visible, it may be difficult, to find women with confirmed experience in certain industries, such as in satellites-related disputes, or who would satisfy further specific requirements agreed to by the parties.

When considering all these elements together, it can be concluded that appointing arbitrators is far from being a straightforward matter and that the process can be time consuming. In addition, the Court may face difficulties in finding appropriate profiles while trying to take diversity, young generations and gender into consideration.

8. Change of environment and new opportunities

The world of arbitration has changed since the 1980s. The dispute resolution community was much smaller back then with very few practitioners from emerging economies until the 1990s. The population of dispute resolution practitioners has now grown significantly, mostly as a result of post-graduate dispute resolution education programmes and various arbitration and mediation practice moots, which contributed to training several hundreds of young women and men. These new generations have gained experience through the years and increased the number of practitioners throughout the world, although in some countries the community of practitioners remains presently small or very small.

The age of the dispute resolution practitioners is younger. In the 1980s and 1990s, the average age of the arbitrators was approximately 65-70 years. This average has dropped to 55-60 years since year 2000. Women arbitrators are ten years younger than men as indicated above.

Exposure of young practitioners, women and men, has increased tremendously through the young arbitrators groups founded in the last decade by various organisations, including ICC. Young practitioners are being given the opportunity to speak on panels and become visible. Exposure is also facilitated

through the numerous newsletters published by organisations and law firms and news published on blogs to which young practitioners contribute. This increased exposure has helped young women and men to become involved at higher levels and be appointed as arbitrators much sooner than previous generations.

This global change is also visible in terms of diversity and of gender.

While diversity has emerged slowly, the change is more visible in some countries, such as in the UK, as opposed to others. For instance, in Asia, where it was in general more difficult for occidental practitioners –and even more so for women– to be accepted by local communities, women professionals have progressively become more visible since the year 2000.

Until recently, only few women practitioners in dispute resolution with proven experience could be considered for arbitrator appointments. This situation has changed mainly towards the end of the 1990s, even if the number of appointments remains scarce. In the past, women more often held positions as paralegals or administrative secretaries to arbitral tribunals or, when they worked on arbitration cases, they would remain back-stage and their names would not be listed among the lawyers representing a party in a case. In recent years, female lawyers representing the parties have become visible and are more often appointed as co-arbitrators, but also as sole arbitrators and presidents of arbitral tribunals. Unlike older times, women now represent parties in one out of three to four ICC arbitrations. Sometimes there are several women on each side, although it is difficult for the Secretariat to know if and how many of them are lead counsel; the number is probably tiny. In a few cases, women sit as arbitrators in addition to the women acting as counsel on both sides, but this remains a minority.

The same progress has fortunately impacted panels of speakers where more women are invited to speak. ICC is attentive to ensuring as much as possible that women are represented on panels of speakers.

II - ICC female Court members

The progress in the number of female Court members over the last forty years and the expansion of the jurisdictions represented will be reported in this section. The author relied on the only records available as from 1980.

For the benefit of history, it is the author's practice to mention the names of practitioners, predecessors, female pioneers, presidents, Court members, colleagues, and any other person to whom tribute is hereby paid.

1. Presidents and Court members

Court members are appointed by the World Council on the proposal of ICC local offices known as National Committees and Groups, with alternate members appointed by the World Council upon proposal of the President of the Court.

Presidents and Court members are usually nominated for a mandate of three years, often calendar years. In the recent years, mandates have started in July and have ended in June. Court members may be renewed for additional three-year mandates. From time to time, new members are nominated during a mandate. Thus, the number of Court members fluctuates depending on the period considered. The female Court members are listed below by three-year mandates, although the exact dates of beginning or end of mandates for a particular Court member may be different.

Since 1980, French, Swiss and British practitioners have chaired the ICC Court. Michel Gaudet, French Honorary State Councillor, presided the Court from 1977 to 1988 and Alain Plantey, another French State Councillor, from 1989 to 1996. They were followed by two Swiss practitioners, Robert Briner, lawyer and arbitrator, who presided from 1997 to 2006, and Pierre Tercier, professor and arbitrator, who filled the president's position from 2006 to 2008. During a short period of six months Carl Salans, lawyer and arbitrator from the United States, held the interim until a new President was appointed. John Beechey, a British lawyer and arbitrator, took over the presidency from 2009 to 2015 and was replaced by Alexis Mourre, French lawyer and arbitrator, who took office in July 2015.

2. Female Court members

Women were greatly under-represented among Court members and during some periods hardly represented. The women one could see every now and then at Court sessions until 1995, were the deputy counsel; at that time, team counsel at the Secretariat were only men. Nomination of female Court members was unsurprisingly slow.

From the beginning of the 1980s until the end of 2002, the number of female Court members fluctuated between one to six members, representing between 1% and 4% of Court members depending on the year. Luckily, nominations have evolved in recent years and will continue to evolve thanks to a change of mind-set and behaviour of the business and legal communities.

Names of female Court members will be mentioned in alphabetical order for each mandate reported.

According to the records, the first female Court members, nominated between 1980 and 1982, or earlier, were Ulla Gylling (Finland) and Madeleine Rosalis (Portugal).

Between 1982 and 1984, the only female Court member out of 47 Court members was Maria Clara Betancur de Helo (Colombia). Her mandate was renewed for another period going **from 1985 to 1987**, during which a second woman was nominated among the 45 Court members, Yolaine Anta Rakotomanga (Madagascar). Her mandate was renewed for the period running **from 1988 to 1990**, and 3 other women were nominated, Sueli Avellar Fonseca (Brazil), Blanca Delgado (Colombia) and Antonias Dimolitsa (Greece). During this period the Court was apparently composed of 55 members. Only the Brazilian and the Greek members were renewed for two other mandates, from 1991 to 1993 and from 1994 to 1996; thus during six years 2 female members served on the Court. From 1997 to 1999 the number dropped to 1, as only the Greek female member was renewed. The Court counted between 60 and 80 members during the three mandates **between 1991 and 1999**.

Quite surprisingly, the women nominated were from countries not known as arbitration users or frequent arbitration users at that time.

The number of female Court members started slowly increasing for the mandate **from 2000 to 2002**, with 6 nominations of new profiles: Jana Duskova (Czech Republic), Géraldine Gazo (Monaco), Loretta Malintoppi (Italy), Karyl Nairn (Australia), Maria-Mercedes Tarrazón Rodón (Spain) and Nina Vilкова (Russian Federation). The Court counted then approximately 115 members.

The number of female Court members was rather steady **between 2003 and 2012**. In 2003, 15 female Court members were nominated: Cheikha Haya Rashed Al-Khalifa (Bahrain), Dashdorj Altantsetseg (Mongolia), Mary Concilia Anchang (Cameroon), Jana Duskova (Czech Republic), Sally Fitzgerald (New Zealand), Géraldine Gazo (Monaco), Gabrielle Kaufmann-Kohler (Switzerland), Akua Kunyehia (Ghana), Loretta Malintoppi (Italy), Anna Mantakou (Greece), Olga Maria Miranda Bravo (Cuba), Karyl Nairn (Australia), Chaiyasuta Siriporn (Thailand), Mercedes Tarrazón Rodón (Spain), Nina Vilкова (Russian Federation).

For the mandate of **January 2006 to June 2009**, most of the former members were renewed amounting again to 15 female members: Cheikha Haya Rashed Al-Khalifa (Bahrain), Mary Concilia Anchang (Cameroon), Jana Duskova (Czech Republic), Géraldine Gazo (Monaco), Gabrielle Kaufmann-Kohler (Switzerland), Loretta Malintoppi (Italy), Anna Mantakou (Greece), Fabiola Medina Garnes (Dominican Republic), Karyl Nairn (Australia), Chaiyasuta Siriporn (Thailand), Mercedes Tarrazón Rodón (Spain), Dorothy Ufot (Nigeria), Vilija Vaitkutė Pavan (Lithuania), Nina Vilкова (Russian Federation), Nina Wang (Norway).

Finally, for the mandate running **from July 2009 to June 2012**, 14 members were nominated, including new comers and renewals: Cheikha Haya Rashed Al-Khalifa (Bahrain), Teresa Cheng (China), Selma Ferreira Lemes (Brazil), Géraldine Gazo (Monaco), Loretta Malintoppi (Italy), Anna Mantakou (Greece), Fabiola Medina Garnes (Dominican Republic), Karyl Nairn (Australia), Chaiyasuta Siriporn (Thailand), Mercedes Tarrazón Rodón (Spain), Dorothy Ufot (Nigeria), Vilija Vaitkutė Pavan (Lithuania), Vera van Houtte (Belgium), Nina Vilкова (Russian Federation).

The first time vice-presidency included female Court members was during that last mandate, where four women were nominated: Teresa Cheng (China), Karyl Nairn (Australia), Vera van Houtte (Belgium) and Loretta Malintoppi (Italy).

Visible change started during the next mandate running, **from July 2012 to June 2015**, where 24 women were appointed, hence representing 16% of the 144 Court members. Some of the previous members were renewed and new profiles joined: Zeenat Al Mansoori (Bahrain), Teresa Cheng (China), Diana Droulers (Venezuela), Selma Ferreira Lemes (Brazil), Géraldine Gazo (Monaco), Inka Hanefeld (Germany), Lubna Katbeh (Palestine), Crenguta Leaua (Romania), Samia Maktouf (Tunisia), Loretta Malintoppi (Italy), Anna Mantakou (Greece), Wendy Miles (New Zealand), Wassila Mouzai (Algeria), Karyl Nairn (Australia), Irina Nazarova (Ukraine), Sabina Sacco (Chile), Vanina Sucharitkul (Thailand), Mercedes Tarrazón Rodón (Spain), Dorothy Ufot (Nigeria), Vilija Vaitkutė Pavan (Lithuania), Marieke van Hooijdonk (Netherlands), Vera van Houtte (Belgium), Nina Vilko (Russian Federation), Carita Wallgren-Lindholm (Finland).

The vice-presidents who served on the previous mandate were renewed except one, Teresa Cheng.

Finally, for the current mandate running **from 2015 until 2018**, the number of female Court members has almost doubled: 43 female members amounting to 23% of the 184 current Court members from 110 countries. 9 female vice-presidents were nominated equaling 50% of the vice-presidency. New Court members were appointed in June 2017 to serve terms as from 1 July 2017 until 30 June 2018. On that date, new members will be appointed and current members may have their mandate renewed.

The 9 current female vice presidents are: Funke Adekoya (Nigeria), Yas Banifatemi (Iran), Inka Hanefeld (Germany), Vera van Houtte (Belgium), Crenguta Leaua (Romania), Wendy Miles (New Zealand), Yoshimi Ohara (Japan), Lucy Reed (United States), and Anne Véronique Schlaepfer (Switzerland).

The 34 female Court members are: Elham Ali Hassan (Bahrain), Danela Arsovska (Macedonia), Cecilia Carrara (Italy), Lillian Chu (Chinese Taipei), Helena Dandenell (Sweden), Nadine Dossou Sakponou (Benin), Diana Droulers (Venezuela), Monica Fernandez-Fonseca (Costa Rica), Géraldine Gazo (Monaco), Beata Gessel Kalisz (Poland), Teresa Giovannini (Switzerland), Zinka Grbo (Bosnia and Herzegovina), Christine Guerrier and Isabelle Hautot (France), Marieke van Hooijdonk (Netherlands), Aigoul Kenjebayeva (Kazakhstan), Sophie Lamb (United Kingdom), Anna Mantakou (Greece), Wassila Mouzai (Algeria), Irina Nazarova (Ukraine), Diana Paraguacuto-Mahéo (Venezuela), Marily Paralika (Greece), Tanja

Planinic (Montenegro), Rose Rameau (Haiti), Kim Rooney (Hong Kong), Claudia Salomon (United States), Mahlape Sello (South Africa), Helen (Hong) Shi (China), Vanina Sucharitkul (Thailand), Mercedes Tarrazón Rodón (Spain), Dorothy Ufot (Nigeria), Vilija Vaitkutė Pavan (Lituania), Carita Wallgren-Lindholm (Finland), Galina Zukova (Latvia).

Representation of women on the Court is an undeniable progress. As Alexis Moure, President of the ICC Court, declared following the announcement of the new nominations in June 2017:

The diversity of new Court members underscores our commitment to ensure the Court draws on the full range of expertise and experience found in our global network.¹⁸

It is interesting to note that nearly 40% of Committee meetings are constituted by female members. Moreover, there have been several instances of all-female Committee meetings over the last couple of years as compared to previous years where all-female Committee meetings were rather unusual.

3. Summary table of female Court members 1980-2018

On the basis of the information available since 1980, the table below summarises the increasing number of female Court members and their origin. The countries mentioned in the table demonstrate the diversity of jurisdictions represented by female Court members, as for all members in general.

III - Female representation at ICC

1. ICC and Court chairmanship

Since ICC was founded in 1919, no woman was ever appointed as chair or vice-chair. Karien van Gennip, the first woman vice-chair, was elected at the 2017 meeting of the ICC World Council on 6 June 2017.¹⁹

No woman has so far held the position of President of the ICC Court.

2. Other leading positions at ICC

Period	Women Court members	Countries represented
Between 1980 & 1982	2	Finland, Portugal
January 1982 - December 1984	1	Colombia
January 1985 - December 1987	2	Colombia, Madagascar
January 1988 - December 1990	4	Brazil, Colombia, Greece, Madagascar
January 1991 - December 1993	2	Brazil, Greece
January 1994 - December 1996	2	Brazil, Greece
January 1997 - December 1999	1	Greece
January 2000 - December 2002	6	Australia, Czech Republic, Italy, Monaco, Russian Federation, Spain
January 2003 - December 2005	15	Australia, Bahrain, Cameroon, Czech Republic, Cuba, Ghana, Greece, Italy, Monaco, Mongolia, New Zealand, Russian Federation, Spain, Switzerland, Thailand
January 2006 - June 2009	15	Australia, Bahrain, Cameroon, Czech Republic, Dominican Republic, Greece, Italy, Lithuania, Monaco, Nigeria, Norway, Russian Federation, Spain, Switzerland, Thailand
July 2009 - June 2012	14	Bahrain, Belgium, Brazil, China, Czech Republic, Dominican Republic, Greece, Italy, Lithuania, Monaco, Nigeria, Russian Federation, Spain, Thailand
July 2012 - June 2015	24	Algeria, Australia, Bahrain, Belgium, Brazil, Chile, China, Finland, Germany, Greece, Italy, Lithuania, Monaco, Netherlands, New Zealand, Nigeria, Palestine, Romania, Russian Federation, Spain, Thailand, Tunisia, Ukraine, Venezuela
July 2015 - June 2018	43	Algeria, Bahrain, Belgium, Benin, Bosnia and Herzegovina, China, Chinese Taipei, Costa Rica, Finland, two from France, Germany, two Greece, <u>Haïti</u> , Hong Kong, Iran, Italy, Japan, Kazakhstan, Latvia, Lithuania, Macedonia, Monaco, Montenegro, Netherlands, New Zealand, two from Nigeria, Poland, Romania, Spain, South Africa, Sweden, two from Switzerland, Thailand, Ukraine, United Kingdom, two from United States, two from Venezuela

The ICC was not only a pioneer in dispute resolution, but also in appointing women to major positions since the 1960s where Marie-Constance Psiménos de Metz-Noblat held the position of First Director of the ICC for several decades. In 1982, Tila Maria de Hancock was appointed Director of the Secretariat of the ICC

Court and held this position until 1985. In 1996, the ICC appointed Maria Livanos Cattai as Secretary General of the ICC, and finally in 2001, Anne-Marie Whitesell was at the head of the Secretariat until 2007.

3. ICC Commissions

As another welcome progress and for the first time ever, the ICC Commission on Arbitration and ADR will be chaired by a woman. The nomination of Carita Wallgren-Lindholm as chair of the Commission was announced on 7 October 2017 in Sydney²⁰. She will take the leadership of the Commission as of January 2018.

The Commission on Arbitration and ADR, as well as other ICC Commissions do count female vice-chairs but no woman had so far chaired one of the Commissions of ICC.

4. ICC Institute

The ICC Institute of World Business Law has so far never been chaired by women. Currently, Antonias Dimolitsa is vice-chair with Eric Schwartz and the first female vice-chair ever nominated. A few women are members of the Council of the Institute.

5. ICC National Committees and Groups

A few women have either chaired, vice-chaired or held the position of Secretary General of ICC's National Committees and Groups.

6. Secretariat of the Court

The Court is assisted by a Secretariat comprised of highly qualified staff; approximately a hundred members from 30 countries with as many languages spoken, and over half of the staff being constituted of lawyers. In the 1980s, the teams in charge of administering arbitration cases were composed of a Counsel, usually a man, and a Deputy Counsel and an Assistant, usually women. In 1995, a former Secretary General of the Court, Eric Schwartz, achieved a giant step towards change when appointing a woman as Counsel and promoting Anne Cambournac from the position of Deputy Counsel to Counsel. He was a pioneer

and succeeded in this double step which later allowed the appointment of few women in the next decade. In 2015, 8 out of the 9 teams of the Court's Secretariat were headed by women Counsel.

The number of female Counsel increased significantly in the last decade, and the number of women, including in managing positions, now outnumber men. The management of the Court comprises two female lawyers, Ana Serra e Moura, Deputy Secretary General, and Ziva Filipic, Managing Counsel. As of September 2017, five of the ten arbitration case management teams based in Paris, Hong Kong, New York and Sao Paulo, are headed by women. The teams in charge of Internal Practices, Documentation, Publications, ICC Arbitration & ADR Commission, and Promotion & Marketing are likewise managed by women. Female Deputy Counsel also stand out by their number.

Another change that occurred in the last decade was the appointment of male counterparts to the position of Deputy Counsel, which formerly was exclusively staffed by women. This evolution continued with the appointment of male assistants around 2010. True diversity is beneficial for women and men, who both now have the opportunity to advance to Counsel or even higher, on the basis of merit.

7. Policy & Business Practices

The ICC Policy & Business Practices Department which comprises several Commissions are also mostly managed by women. ICC commissions are specialized working bodies composed of business experts who examine major issues of interest to the business world. They prepare policy products, including statements to contribute to intergovernmental discussions, as well as rules and codes to facilitate international business transactions. Commission leaders are appointed by the ICC Chairman for a three-year period, renewable at the Chairman's discretion. The numerous Commissions include for example Commissions on banking, competition, taxation, transportation, customs and trade, e-business, intellectual property.

8. ICC World Business Women

The World Business Women (WBW), a staff driven initiative, was launched in 2012 on the occasion of the International Women's Day, to promote gender diversity and better gender balance. Elizabeth Thomas-Raynaud, ICC Senior Policy Manager who chaired the Steering Committee of WBW, said in an interview:

We are a young initiative with still much work to be done but the initiative has been a catalyst. Already, as a result of our efforts, recruitment of experts and executives at ICC are becoming more sensitized to the importance of ensuring qualified women candidates are identified and put forward for consideration wherever they are underrepresented.²¹

WBW aims at bringing the benefits of diversity and better gender balance to the world business organisation. WBW objectives include working to evolve ICC culture and practice and to ensure that ICC's internal policies, leadership and representative bodies better reflect the diversity of the business and professional world today.

WBW invites from time to time female role models, as well as female and non-female speakers to present initiatives supporting women development and gender parity. The latest presentation in a series took place on 5 October at ICC.²²

9. ICC diversity webpage

Finally, ICC renovated its website on 1st March 2017 and for the first time ever dedicated a specific section on diversity.²³ It highlights that ICC is committed to spreading best practice and showcasing self-regulation initiatives that successfully reduce inequalities and the gender gap. And as a global organisation, it recognises that those efforts will benefit its own practices too. This webpage is a welcome initiative and demonstrates efforts towards more diversity and transparency.

Conclusion – way forward

Queen Mary's survey of 2015 on 'Improvements and Innovations in International Arbitration' revealed improvements suggested by users including 'broadening the pool of arbitrators in number as well as in ethnic and gender diversity'.²⁴

Gaining parity for women in the international arbitration field, which recently opened up to women is not yet at the doorstep. Much remains to be done, although we can capitalise on this momentum where practitioners have understood that the under-representation of women is unfair, not justified and can no longer be accepted. The purpose is not to name and shame what has so far failed; we know that unconscious attitudes have been anchored in human beings and practitioners for centuries. The objective is rather to cooperate and contribute to change. The issue of gender equality is about offering equal opportunities to equally qualified women, which will necessarily result in equal representation, hopefully faster than in the last decades. Fortunately dispute resolution organisations have started contributing to this change.

It is essential to constantly raise awareness and make sure that practitioners think about a better representation. There is no need in the author's opinion to regulate or impose quotas, or otherwise, as this would be counter-productive. It is however indispensable to continue militating for better representation and for levelling the playing field. The best way to overcome gender biases is to address these issues and to continue campaigning against unfair situations which are detrimental to the entire society as talents are being wasted. This is not a campaign that calls for shouts and demonstrations, but one that must be addressed in a balanced yet persistent manner.

Oscar Wilde said that progress is the achievement of utopias. The author remains very positive about the future of gender equality in arbitration. The statistics published by dispute resolution organisations show positive signs of progress, which despite being quite low in numbers, are encouraging as mind-sets and practices have changed. Diversity and transparency are the centre stage in the business and legal communities and are being celebrated. Progress can thus only continue. We are living in a crucial period where change is happening. We can all contribute to building parity as this is everyone's responsibility. The more we campaign, the quicker we may get there.

1

ArbitralWomen was initiated by Louise Barrington in 1993 and co-founded by Louise Barrington and the author.

2

For the benefit of comprehensive data, the author has opted to include in this article some statistics previously published in 'Diversity & Transparency - ICC Gender Statistics', TDM, 24 April 2017, available at <https://www.transnational-dispute-management.com/journal-advance-publication-article.asp?key=1658>, as well as some comments previously published in 'Speeding Up the Path for Gender Equality', TDM, May 2016, available at http://www.arbitralwomen.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=267&Command=Core_Download&language=en-GB&PortalId=0&TabId=1117.

3

Article by the author: 'When did the Doors to Dispute Resolution open for Women?', TDM Special Issue on Diversity, vol. 12, issue 4, July 2015, available at http://www.arbitralwomen.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=253&Command=Core_Download&language=en-GB&PortalId=0&TabId=1117.

4

See ArbitralWomen's Newsletter, issue 8, April 2013, available at http://www.arbitralwomen.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=191&Command=Core_Download&language=en-GB&PortalId=0&TabId=2129.

5

See *supra* note 3.

6

Article by the author: 'Speeding Up the Path for Gender Equality', TDM, May 2016, http://www.arbitralwomen.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=267&Command=Core_Download&language=en-GB&PortalId=0&TabId=1117.

7

Article by the author: 'Diversity & Transparency - ICC Gender Statistics', TDM, 24 April 2017, available at <https://www.transnational-dispute-management.com/journal-advance-publication-article.asp?key=1658>.

8

Likewise, the number of female arbitrators appointed by the London Court of International Arbitration (LCIA) rose from 16% in 2015 to 20.6% in 2016, and those appointed by the Vienna International Arbitration Centre (VIAC) rose from 14.3% to 17.1%. The International Centre for Dispute Resolution (ICDR) had a steady 16% in both 2015 and 2016. The International Institute for Conflict Prevention and Resolution (CPR) indicated in 2016 that roughly 15% of the neutrals were women, while the Milan Chamber of Arbitration nominated 14% of female arbitrators, the German Institute of Arbitration (DIS) 13.2%, and the Hong Kong International Arbitration Centre 11.5%. The Swiss Chambers' Arbitration Institution indicated in 2015 that 47% of the arbitrators appointed by the institution were women.

9

See ICC press-release on 'ICC Arbitration posts strong growth in 2015', dated 11 May 2016, available at <https://iccwbo.org/media-wall/news-speeches/icc-arbitration-posts-strong-growth-in-2015/>.

10

See ICC press-release on 'ICC Court sees marked progress on gender diversity', dated 31 May 2017, available at <https://iccwbo.org/media-wall/news-speeches/icc-court-sees-marked-progress-gender-diversity/>

11

For a commentary on ICC arbitral tribunals, see H. J. Samra & C. Azar, 'ICC Ushers in New Era of Transparency', ICC Dispute Resolution Bulletin 2017, issue 1, p.93.

12

Arbitrators are confirmed by the Secretary General of the Court or by the Court upon nomination by the parties or the co-arbitrators. They are appointed by the

Court either upon a proposal from an ICC National Committee or an ICC Group, or directly by the Court.

13

<https://iccwbo.org/dispute-resolution-services/arbitration/icc-arbitral-tribunals/>

14

Peter Bert 'ICC Arbitrator Appointments: A First Look at the Data', Kluwer Arbitration Blog, 13 September 2016, available at <http://kluwerarbitrationblog.com/2016/09/13/icc-arbitrator-appointments-a-first-look-at-the-data/>

15

Pursuant to Article 13(4) of the ICC Arbitration Rules, the Court makes direct appointments of arbitrators in any role where circumstances so require, i.e. where '(a) one or more of the parties is a state or may be considered to be a state entity, (b) the Court considers that it would be appropriate to appoint an arbitrator from a country or territory where there is no National Committee or ICC Group; or (c) where the President certifies to the Court that circumstances exist which in the President's opinion make a direct appointment necessary and appropriate'. It may happen for instance that a National Committee or an ICC Group invited to make a proposal is unavailable, does not respond timely or makes proposals which are not suitable to given cases. Sometimes a particular profile is requested or the matter is very urgent and the Court is invited to proceed with a direct appointment.

16

See the ICC Note to National Committees and Groups of the ICC on the Proposal of Arbitrators dated 10 May 2016, <https://iccwbo.org/dispute-resolution-services/arbitration/practice-notes-forms-checklists/>

17

Ibid supra note 3: the author had shared in her article of 2015 historical information about the entry of women in the arena of dispute resolution. The data showed that from the 1980s until the mid-1990s a small number of women were visible in arbitration as opposed to men.

18

<https://iccwbo.org/media-wall/news-speeches/icc-court-announces-new-members/>

19

<https://iccwbo.org/media-wall/news-speeches/karien-van-gennip-elected-icc-vice-chair/>.

20

See GAR press-release, available at

[http://globalarbitrationreview.com/article/1148644/wallgren-lindholm-to-take-icc-leadership-role?utm_source=Law Business](http://globalarbitrationreview.com/article/1148644/wallgren-lindholm-to-take-icc-leadership-role?utm_source=Law+Business+Research&utm_medium=email&utm_campaign=8761749_GAR+Headlines+09%2F10%2F2017&dm_i=1KSF,57SLX,9GPKLD,K2N5Z,1)

[Research&utm_medium=email&utm_campaign=8761749_GAR Headlines 09%2F10%2F2017&dm_i=1KSF,57SLX,9GPKLD,K2N5Z,1](http://globalarbitrationreview.com/article/1148644/wallgren-lindholm-to-take-icc-leadership-role?utm_source=Law+Business+Research&utm_medium=email&utm_campaign=8761749_GAR+Headlines+09%2F10%2F2017&dm_i=1KSF,57SLX,9GPKLD,K2N5Z,1).

21

See ICC press release dated 9 March 2012, available at

[http://www.iccwbo.org/News/Articles/2012/ICC-World-Business-Women-launched-by-staff-on-International-Women-s-Day\(2\)/](http://www.iccwbo.org/News/Articles/2012/ICC-World-Business-Women-launched-by-staff-on-International-Women-s-Day(2)/) .

22

<https://iccwbo.org/media-wall/news-speeches/abuse-empowerment-icc-hears-one-womans-story-entrepreneurship/>


23


<https://iccwbo.org/global-issues-trends/diversity/>.

24


Queen Mary University of London and White & Case 2015 International Arbitration Survey: 'Improvements and Innovations in International Arbitration', p.10, available at <http://www.arbitration.qmul.ac.uk/docs/164761.pdf>.

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/ICC Dispute Resolution Bulletin 2017 Issue 3

/53

/2017

/How Has Female Participation at ICC Evolved?

ICC Arbitrators, Court Members and Court's Secretariat

/[Gender bias; equality; women in arbitration]

/English
