

Gender diversity in international arbitration—five years on from the launch of the ERA Pledge

Arbitration analysis: The Equal Representation in Arbitration (ERA) Pledge (the Pledge) recently celebrated its five-year anniversary following its launch in May 2016. Ashley Jones, senior knowledge lawyer in disputes, litigation and arbitration at Freshfields Bruckhaus Deringer offers an overview of the initiative.

This analysis was first published on Lexis®PSL on 14/07/2021 and can be found [here](#) (subscription required).

What is the Pledge and what are its objectives?

The [Pledge](#) was drawn up by members of the arbitration community in recognition of the under-representation of women sitting on international arbitration tribunals. It has two main objectives: (i) to improve the profile and representation of women in arbitration; and (ii) to appoint women as arbitrators on an equal opportunity basis.

The Pledge itself includes various concrete steps that signatories commit to take insofar as they are reasonably available to them. These include, for example, ensuring that wherever possible:

- committees, governing bodies and conference panels in the field of arbitration include a fair representation of women
- lists of potential arbitrators or tribunal chairs provided to or considered by parties, counsel, in-house counsel or otherwise include a fair representation of female candidates
- states, arbitral institutions and national committees include a fair representation of female candidates on any rosters and lists of potential arbitrator appointees, that are maintained by them, and
- where they have the power to do so, counsel, arbitrators, representatives of corporates, states and arbitral institutions appoint a fair representation of female arbitrators

Ultimately, the goal of the Pledge is to increase the number of women appointed as arbitrators in order to achieve a fair representation as soon as practically possible, with the ultimate goal of full parity.

What are the origins of the Pledge and where does it stand today?

The idea for the Pledge originated from a dinner that took place in London convened by Sylvia Noury, founder of the Pledge and London head of the international arbitration team at Freshfields, in May 2015, in order to identify concrete action that could be taken to address the realisation that too many arbitral tribunals lacked female representation.

To ensure the Pledge had global buy-in and support, the draft text was debated and refined at further consultation dinners in nine other jurisdictions around the world with stakeholders from throughout the arbitration community (including representatives from law firms, arbitral institutions, corporates, judges and arbitrators). The formal launch of the Pledge took place in May 2016, with the initial support of 300 signatories and a diverse Steering Committee of around 50 senior individuals, men and women, involved in arbitration.

Since then, support for the Pledge has grown to over 4,670 signatories from 113 countries, including 850 organisations (law firms and barrister chambers, arbitral institutions, corporates, law schools/universities, as well as several government ministries).

The Pledge Global Steering Committee was initially co-chaired by Sylvia Noury and Wendy Miles QC. Following a three-year term, Wendy Miles stepped down and Samantha Bakstad, Senior Legal Counsel at BP, took over as the second co-chair. Additionally, the Pledge operates through its growing network of Subcommittees: the Latin America Subcommittee, the Africa Subcommittee, the India network, the Middle East Subcommittee, the Corporate Subcommittee and the Young Practitioner's Subcommittee as well as active groups in Asia, Canada, France and Italy. Further Subcommittees are in the process of being set up for the US and Asia Pacific regions.

The Pledge has maintained its inclusive and grass roots approach to growth, empowering members of the Steering Committee and Subcommittees to be ambassadors for the Pledge in their regions (or among a targeted groups of stakeholders in the case of the Corporate and Young Practitioners Subcommittees) and to take forth promotion and implementation initiatives involving local arbitration communities. The members of the Subcommittees regularly organise events and initiatives to further this goal.

Some recent examples of such initiatives include:

- multiple 'meet the female arbitrator' events in different continents to raise the profile of female arbitrators, including a seven-part 'meet the African female arbitrator' series
- the Corporate Subcommittee launched, in December 2020, some Pledge Corporate Guidelines to assist corporates wanting to implement the Pledge within their own organisations, and
- the Young Practitioners Subcommittee hosted the 'Push for Parity' series which focused on launching a career as an arbitrator and offered honest conversation, concrete advice and answers to the hardest questions about succeeding as an arbitrator (you can access the recordings of the webinars via the Pledge website here)

What progress has been made since the Pledge was launched on tribunal diversity in international arbitration? What are the barriers to further progress and how might they be overcome?

Before 2015, appointment data on gender was not published or tracked consistently by the main arbitral institutions. Based on data collated informally by Lucy Greenwood, it was estimated that only around 10% of tribunal members were female.

One of the key early successes of the Pledge was that, in response to signing the Pledge, many of the key arbitral institutions started publishing gender statistics in their annual reports, including the breakdown by appointee, making it much easier to track and monitor progress.

The most comprehensive source of gender appointment data is now the [Report of the International Council for Commercial Arbitration's Task Force for Gender Diversity](#) (the ICCA Task Force Report) published in July 2020, which sets out and analyses the available data for many of the main arbitral institutions for the period 2015 to 2019. This reveals a steady positive trend over the five-year period from an average of around 12% female arbitrators in 2015 to 21.3% in 2019.

While this demonstrates progress, it is clear that further improvement is still needed to reach fair representation and ultimately parity.

Although the general trend is a steady increase of female arbitrators being appointed across all the institutions, there are some anomalies. For example, the number of female appointments made by the International Centre for Settlement of Investment Disputes (ICSID) increased from 13.2% in 2016 to

23.8% in 2018 but has subsequently declined for the last two years and only 14% of appointments were female in 2020.

There are also gaps in the data, which make it difficult to fully understand the general trends. Information on ad hoc arbitrations, repeat appointments and first-time appointees, as well as data about the type and value of cases and the role of the female arbitrator (whether sole, co-arbitrator or chair) would help provide a more complete picture on female appointments. Some of the institutions have started publishing data on repeat appointments, including the London Court of International Arbitration (LCIA), the International Court of Arbitration of the International Chamber of Commerce (ICC) (the ICC Court) and the ICSID, but more comprehensive data would be valuable to understand how these missing metrics play into the overall rising trend of female appointments.

Looking at the breakdown of statistics in the ICCA Task Force Report, it is evident that the arbitral institutions appoint the most female arbitrators and progress is much slower among the party and co-arbitrator appointments. In 2019, parties appointed female arbitrators in 13.9% of appointments compared to 34% by the institutions. The ICSID's statistics for 2020 reveal that claimants only appointed 2% female arbitrators compared to 22% by respondent states (ignoring repeat appointments). Further progress is needed by parties and their counsel to improve the number of women being appointed by parties, in particular by investors in investor-state disputes.

The Pledge has sought to address this issue through the creation of a Corporate Subcommittee in May 2019 consisting of representatives of 15 corporate users of arbitration from AECOM, Airbus, Anglo American, Barclays, BP, Burford, Chevron, ConocoPhillips, Coty, ENEL, Omni Bridgeway, Rio Tinto, Shell, Standard Chartered Bank, Total, Vannin and Veolia. In December 2020, the Corporate Subcommittee published a set of [Pledge Corporate Guidelines](#), which provide specific steps and factors that corporate counsel can consider when involved in appointing arbitrators, selecting counsel for arbitration matters and when in the workplace more generally.

One of the most commonly cited reasons for failing to include more female candidates in arbitrator lists and/or appoint them is that there are no or fewer female candidates with the requisite criteria known by those putting the names together. Many more databases and resources are available now to assist with finding female candidates. One such resource offered by the Pledge is the [Arbitrator Search](#) tool, through which users can submit a request to the Pledge Search Committee (consisting of members of arbitral institutions who provide this service voluntarily to assist with promoting diversity). The Search Committee will respond within 48 hours of a request being made and provide a list of names meeting the requisite criteria provided in the request. The service is completely confidential and is open to practitioners in-house, in private practice and even arbitrators themselves looking for suitable co-arbitrator candidates.

Another interesting initiative that aims to improve party appointments is [the DIS-ERA Pledge Gender Champion Initiative](#), which was launched in January 2020. This initiative run by the German Arbitration Institute (DIS) brings together 25 designated Gender Champions from across law firms and corporates in Germany to share best practices with respect to gender diversity in their arbitrator appointment process, including statistical self-monitoring.

What progress has been made on improving the profile and representation of women in arbitration since 2015? Again, what are the barriers to further progress and how might they be overcome?

In addition to the statistics mentioned above, progress in relation to improving the profile and representation of women can also be seen anecdotally. For example, it is now rare to see an all-male panel (or 'manel') at arbitration conferences or events. This has been highlighted as something worthy of note and criticism, in the efforts to ensure that female panel speakers are given equal opportunities to male counterparts. The proliferation of virtual events during lockdown may also have contributed to more speaking opportunities for female practitioners, especially when no travel is required (although the lockdown may have held them back in other ways). It also appears to be the case that clients and law firms have become more alive to the fact that arbitrator candidate lists should not solely contain male candidates and that diversity is an important factor to take into account when preparing such lists.

Women are more visible in prominent positions within arbitral institutions, task forces, and committees than previously. The appointment of Claudia Salomon, as the first female president of the ICC Court, is a particular milestone—indeed this appointment was awarded the Best Development of 2020 at the GAR Awards on 1 July 2021. The ICC had already achieved gender parity in respect of its ICC Court members in 2018.

In terms of barriers to further progress, the ICCA Task Force Report identified the main barriers as being either ‘leaks’ or ‘plugs’ in the pipeline of female arbitrators. ‘Leaks’ include the impact of unconscious bias in female professional development, inadequate flexible working arrangements provided to female lawyers, and gender-based sexual harassment and bullying in the workplace. Barriers categorised as ‘plugs’ include the fact that selection of arbitrator candidates most commonly takes place through personal recommendation, meaning that users of arbitration do not proactively seek information about new and more diverse arbitrator candidates. This means that unconscious biases against women also come into play. For example, the ICCA Task Force Report notes that there can be a bias towards seeing male candidates as better than female, due to an implicit association of typically ‘male’ qualities such as ‘assertiveness’ with those of a successful arbitrator. Gender stereotyping has therefore been identified by commentators as a hugely powerful influence on whether female candidates are promoted. Further to this, the ICCA Task Force Report also highlights studies that have indicated that men tend to receive promotions based on their potential, whereas women tend to be promoted on experience. This is problematic due to the difficulty female candidates face in obtaining first-time appointments, preventing them from gaining experience.

The Pledge, Arbitral Women and other like-minded organisations regularly organise events and initiatives to assist female practitioners to raise their profile and challenge these gender stereotypes. For example, the Pledge’s ‘Meet the Female Arbitrator’ events mentioned above. Arbitral Women are proactive at promoting their members’ speaking events on social media platforms and celebrating their achievements.

One of the aims of the Pledge’s Young Practitioners Subcommittee (YPSC) is to help equip the next generation of female arbitrators with the tools they need to succeed as an arbitrator. Last year, the YPSC organised a four-part series of webinars entitled ‘Push for Parity’ (mentioned above) which offered candid discussion, concrete advice, and answers to questions about how to succeed as an arbitrator. The YPSC have also partnered with Chartered Institute of Arbitrators (CI Arb) to help ERA members access the arbitrator-training courses offered by CI Arb and to help them gain accreditation as CI Arb fellows. In doing so, it is hoped that they can support those launching their careers as arbitrators and to promote greater gender and other forms of diversity in arbitrator appointments.

The Pledge ‘model’ has been adopted by other organisations in the arbitration community seeking positive change (including with respect to other forms of diversity and addressing environmental concerns). How do you see these initiatives interacting (if at all)?

The Pledge is supportive of like-minded initiatives that share the collective goal of improving the diversity of international arbitration and arbitral tribunals. Where the opportunity arises, the Pledge is happy to collaborate with such organisations to further our common goals.

The Pledge African Subcommittee is part way through a seven-part ‘Meet the Female African Arbitrator’ series, organised in collaboration with An African Promise, an initiative modelled on the Pledge, which aims to tackle the under-representation of African people on international arbitration tribunals and in arbitrations connected to Africa. The events series is also supported by the Association of Young Arbitrators, an organisation based in Africa aimed at arbitration practitioners under the age of 40.

Similarly, the Push for Parity series run by the YPSC mentioned above was supported also by like-minded organisations, including Young Arbitral Women Practitioners, Women Way in Arbitration—WWA LATAM and the Rising Arbitrators Initiative.

What's next for the Pledge? Are there initiatives/ideas that you have seen work well in other industries/professions that could be influential in helping achieve the Pledge's objectives?

The statistics indicate that the proportion of female arbitrators being appointed is rising. However, there is still work to be done in order to achieve fair representation and the ultimate goal of full parity. As the global environment changes, the parameters of what can be considered to be 'fair representation' and 'parity' change with it, meaning that this is a continually evolving goal.

The Pledge introduced a rotating co-chair role to allow the Pledge to focus on different priorities. The current co-chair of the Steering Committee has been Samantha Bakstad (BP legal counsel) to help facilitate the corporate drive to improve party appointments. The intention is that rotating this role will enable new perspectives to shape the decisions made by the Steering Committee, so that the approach of the Pledge can continue to be dynamic, to facilitate its evolution alongside society.

The Pledge will continue to work through its network of Subcommittees at promoting and implementing the Pledge in different target regions and among certain groups. The Pledge is always exploring ideas for new Subcommittees or focus areas—currently two new Subcommittees are in the pipeline for the US and the Asia-Pacific region.

Continued collaboration with other like-minded organisations in pursuit of the Pledge's key objectives will continue to be key. The GAR Pledge Award introduced in 2019 seeks to recognise and give prominence to the many fantastic gender diversity initiatives that are happening within the arbitration community in addition to the work of the Pledge. It will be the combination of these collective efforts that will drive change.

How can individuals find out more about, and sign up to, the Pledge?

More information about the Pledge can be found on its [website](#). News and information about upcoming events and the work of its Subcommittees is regularly posted on [LinkedIn](#).

If you have not done so already, you and/or your organisation can sign the Pledge [here](#).

Interviewed by Elodie Fortin

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