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Is the balance getting better? An update on the issue of gender diversity in international arbitration

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ABSTRACT

Since the publication of 'Getting a Better Balance on International Arbitration Tribunals' in Arbitration International Volume 28 Issue 4 in 2012, there has been increasing focus in the arbitration community on the issue of improving diversity among counsel and arbitrators alike, particularly in relation to gender diversity. In this article, Lucy Greenwood and Mark Baker update and expand upon the research which underpinned their original article. They demonstrate that greater diversity has been shown to improve the quality of decision-making within corporations. Increasing diversity of arbitral decision-makers may result in enhanced quality of deliberations and awards. The authors consider that responsibility lies with arbitral institutions to track and information about the gender of party- and institution-appointed arbitrators in arbitrations they administer. However, ultimate responsibility for meaningful change lies with those making the appointments. They must acknowledge the value of diversity in its own right and as a factor influencing the quality of decision-making processes.

1. INTRODUCTION

In July 2012, The Lawyer reported on a comprehensive survey by Inter Law into the composition of the profession and concluded: 'The data is stark, the conclusions are damning and the message is clear – diversity is still a problem in the law.' Later that year, in our article 'Getting a Better Balance on International Arbitration Tribunals', we stated our belief that 'international arbitration practitioners have become comfortable with the notion that women are a significant minority, if not a 'tiny fraction' of the international arbitration population'.[1] Since then, however, it is clear that the

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1 Lucy Greenwood and C Mark Baker, 'Getting a Better Balance on International Arbitration Tribunals' (2012) 28(4) Arbitration Int 653, 666.

international arbitration community is becoming less comfortable with this notion, and more willing to address the issue.[2] Increasingly, diversity is a subject of more open and frank debate at conferences and in online fora.[3] We have also noticed that corporate clients, in accordance with a general trend focusing on taking practical measures to address diversity, have begun insisting on diverse legal teams for their commercial disputes. Client demands, among other compelling reasons, mean that diversity is becoming more and more of a pressing issue for arbitration users.

This article updates and expands upon the research undertaken for our original article. In our original article, we expressed our belief that in appointing an arbitrator 'each individual must take personal responsibility for considering a diverse range of candidates'.[4] In this update, we consider in more detail where responsibility for addressing diversity issues really falls and reiterate our view that meaningful efforts to address this issue are largely a question of personal responsibility. Without information about an issue, however, it is impossible to address that issue. The problems with addressing the (lack of) diversity in the international field have always been two-fold: (i) the lack of transparency in relation to the manner in which arbitrators are appointed and (ii) the difficulty of identifying where, if anywhere, responsibility for addressing the issue lies.

2. CAPTURING THE INFORMATION

As Jacomijn Van Haersolte von Hof, Director General of the LCIA, put it in a recent interview with Global Arbitration Review, there is a 'dearth' of data in relation to diversity in the international arbitration field.[5] In researching this article, we sought to address this lack of information, with varying results.

Information on the composition of international arbitrator appointments is most likely to be available from: (i) the commercial arbitration institutions and (ii) International Centre for Settlement of Investment Dispute (ICSID). Of these, ICSID is the most transparent, as it publishes the names of all arbitrators appointed in ICSID case dating back to the first ICSID case registered on 13 January 1972.[6] In relation to the other arbitral institutions, there is significant divergence in practice between them in terms of how or if they record information on diversity.

2 And also willing to address other issues of diversity generally and not just gender diversity.

3 See, for example, the summary of discussions on this topic at the 2014 ICCA Miami Conference in 'ICCA 2014. Does "Male, Pale, and Stale" Threaten the Legitimacy of International Arbitration? Perhaps, but There's No Clear Path to Change' <http://kluwerarbitrationblog.com/blog/2014/04/10/icca-2014-does-male-pale-and-stale-threaten-the-legitimacy-of-international-arbitration-perhaps-but-theres-no-clear-path-to-change/> accessed 15 April 2015. Also note the video of the panel discussion from this conference's panel titled 'Justice Stream B1 Who Are the Arbitrators?' <http://www.arbitration-icca.org/conferences-and-congresses/ICCA_MIAMI_2014-video-coverage/ICCA_MIAMI_2014_B1.html> accessed 15 April 2015. Also note various online discussions on diversity in arbitration in the OGEMID forum, which are archived online at <http://www.transnational-dispute-management.com/ogemid/> accessed 15 April 2015.

4 Greenwood and Baker (n 1).

5 She also drew on various sources including LCIA and ICC statistics to conclude that women currently make up between 6% and 11% of arbitrators—'a dismal rate' <http://globalarbitrationreview.com/news/article/32781/> accessed 15 April 2015.

6 It occasionally takes some additional research to match names with genders, but at least the information on the identity of arbitrators is captured and accessible.

In 2012, we relied on an analysis of the gender of arbitrators appointed in ICSID arbitrations together with limited information we gathered on LCIA and ICC administered arbitrations to reach our conclusion that a 'best estimate' of the percentage of women appointed to international arbitration tribunals was around 6% (5.63% for ICSID and approximately 6.5% for international commercial tribunals).[7] For this article we sought to gather more information from arbitration institutions, although the continued failure of many institutions to record this data complicated our analysis.

3. AN UPDATE ON THE STATISTICS

We draw a distinction between the number of women appointed to a panel from which arbitrators may be selected, such as the ICSID panel in the investment treaty world or the various panels of potential arbitrations maintained by arbitral institutions. In recent years, efforts have certainly been made to increase the representation of women on these panels, particularly by the American Arbitration Association's International Centre for Dispute Resolution (ICDR), who 'review the entire panel list [of ICDR arbitrators] each year to see if we have improved the numbers of women'.[8] However, the inclusion of women on arbitrator rosters does not appear to have resulted in greater number of women being appointed as arbitrators. In relation to the statistics, therefore, we focused on the number of women being appointed as arbitrators in either investment treaty or commercial disputes.

3.1 Investment treaty arbitration

Research was carried out into the constitution of ICSID tribunals as published on the 'concluded cases' section of the ICSID website as at 9 October 2014.[9] The population of this study comprised 267 concluded ICSID cases, from 13 January 1972 to 29 August 2014.[10] In these cases, 785 arbitrators were appointed,[11] of which 44 were of female arbitrators. In 2006, when Professor Franck undertook this exercise, she found that female arbitrators made up 3% of the total number of arbitrators appointed.[12] In 2012 when we last reviewed this issue, we found this had almost doubled, to 5.63%. Now, out of 785 appointed arbitrators, 44 were women, meaning that women still comprise roughly 5.61% of the appointed arbitrators in concluded ICSID cases.

7 Greenwood and Mark Baker (n 1) 653, 656.

8 Email from Steve Anderson 3 September 2014.

9 ICSID, 'List of Concluded Cases' <https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/AdvancedSearch.aspx?gE=s&cs=CD28> accessed 15 April 2015.

10 Concluded cases were defined as all awards (even where subsequently annulled), annulment decisions, resubmission decisions, and fully constituted tribunals in proceedings that were discontinued before an award was rendered. Rectification decisions, interpretation decisions, revision decisions, and conciliation proceedings were omitted. So defined, there was a total of 267 concluded cases: 259 three panel tribunals and 8 cases involving sole arbitrators.

11 This figure only includes the final composition of the tribunal, any prior appointees were omitted.

12 See Susan Franck, 'Empirically Evaluating Claims About Investment Treaty Arbitration' (2007) 86 NCL Rev 1.

3.2 International commercial arbitration

It is impossible to replicate the research into ICSID appointments with international commercial arbitration tribunals because information on the composition of tribunals is not routinely published. For our original article, we contacted the London Court of International Arbitration (LCIA), the Stockholm Chamber of Commerce (SCC), the International Centre for Dispute Resolution (ICDR), and the International Chamber of Commerce (ICC) requesting information on the gender of arbitrators appointed. At that time, the ICC provided no information to us, indicating that it did not monitor this type of information at all. The SCC indicated that 6.5% of all appointed arbitrators (both party appointed and appointed by the SCC) between 2003 and 2012 were female. The LCIA reported that 6.5% of arbitrators appointed in LCIA arbitrations in 2011 were female. The ICDR did not provide statistics to us.[13] From these limited statistics, coupled with data compiled by other commentators,[14] we arrived at our 'best estimate' of the percentage of women appointed to international commercial arbitration tribunals and concluded that this was in the region of 6%.

For this article, we approached more institutions and asked them more targeted questions in order not only to improve upon our 'best estimate' figure but also to seek to understand the approaches a variety of arbitration institutions took to diversity and to see if they had amended or changed their practices of recording information about the arbitrators appointed in relation to the institutions' cases.

We initially contacted the LCIA, the SCC, the Hong Kong International Arbitration Centre (HKIAC), the Judicial Arbitration and Mediation Services (JAMS), the ICC, the Swiss Arbitration Association, the Arbitration Institute of the Finland Chamber of Commerce, the Milan Chamber of Commerce, the Netherlands Arbitration Institute, the German Institution of Arbitration (DIS), the Belgian Centre for Arbitration and Mediation, the Dublin Dispute Resolution Centre, the Court of Arbitration at the Polish Chamber of Commerce, the ICDR, the Singapore International Arbitration Centre (SIAC), the Australian Centre for International Commercial Arbitration, the Indian Institute of Arbitration and Mediation, the Trinidad and Tobago Chamber of Industry, the Dubai International Arbitration Centre, the Cairo Regional Centre for International and Commercial Arbitration and the China International Economic and Trade Arbitration Commission (CIETAC).[15]

13 For our original article, we subsequently contacted the Arbitration Institute of the Finland Chamber of Commerce who stated that 27% of the arbitrators appointed by the FCC in 2011 were women, but indicated that 'very few' of the party-appointed arbitrators were female, email to Lucy Greenwood dated 20 June 2012.

14 Such as Michael Goldhaber, 'Madame La Presidente' (2004) 1(3) TDM.

15 All contacted by email only on 20 June 2014 and followed up by email only on 7 July 2014. We asked the following questions: '1. Do you maintain diversity statistics in relation to the arbitrators appointed in arbitrations you administer? If you do not maintain diversity statistics, please indicate why not. 2. Since when have you maintained these statistics? 3. Would you share these statistics? –4. What do you use these statistics for? 5. Do you provide diversity training to your arbitrators?' This was not a formal survey, but simply a sampling of a reasonably wide selection of arbitral institutions through email, using contacts where appropriate, otherwise using the email addresses provided by the various institutions on their websites. We are very grateful to the institutions who responded to our queries. Although a number of institutions (listed in fn 22) did not respond to either the initial or the follow-up email, this does not imply that these

Responses to our requests were mixed. The Australian Centre for International Commercial Arbitration confirmed that it did not maintain statistics on gender, as did the Swiss Arbitration Association.[16] The DIS also indicated that it does not maintain statistics on gender, nor does it provide diversity training to its arbitrators.[17] The HKIAC indicated that it 'maintains detailed and thorough statistics on all cases it administers, as well as in relation to all arbitrators it confirms and appointments it makes, it does not specifically maintain diversity statistics'.[18] SIAC also confirmed that it did not record diversity information but indicated that this was something 'it may consider in the future'.[19] Nine of the arbitration institutions contacted did not respond.[20]

A number of institutions indicated that they did not formally maintain statistics on gender, but were nevertheless able to provide information on the composition of tribunals on an informal basis. The ICC confirmed that it still does not maintain any statistics relating to gender, apparently because at the time its database was constructed, it did not foresee that this would be information that it should capture. Apparently, this may change in the future.[21] On an informal basis, the ICC confirmed that in 2011, the ICC Court appointed 318 arbitrators, of which 36 were women (around 11%).[22] It was unable to provide more recent statistics. The SCC also did not formally maintain information on gender, but was able to informally confirm that in 2013 the SCC board appointed a total of 123 arbitrators of which 19 were women (15%) and the SCC board and the parties together appointed 234 arbitrators of which 33 were women (12%). In 2012, 51 women were appointed (out of 293 total appointments) as arbitrators in SCC cases (17%).

From our review, it appears that only the LCIA, JAMS, the Finland Chamber of Commerce, the Netherlands Arbitration Institute, and the ICDR formally record and maintain information on diversity.

In 2013, 19.8% of the 162 arbitrator appointees selected by the LCIA and 6.9% of the 160 arbitrators selected by the parties were women, giving a blended rate of 13%.[23]

JAMS indicated that as an institution it has 'long maintained' statistics on the diversity of its mediators and arbitrators.[24] JAMS estimated that women received

institutions do not have diversity policies, or were unwilling to respond, but is more likely to reflect the fact that the initial email and follow up may not have reached the appropriate department at the institutions.

16 Email from Deborah Tomkinson, 4 July 2014. Email from Reiner Fueg, 8 October 2014.

17 Phone call on 3 June 2014.

18 Email from Ruth Stackpool Moore dated 20 July 2014.

19 Email from Kevin Nash, 8 October 2014.

20 No response to the original email or follow-up emails was received by the date of publication from the Milan Chamber of Commerce, the Belgian Centre for Arbitration and Mediation (CEPANI), the Dublin Dispute Resolution Centre, the Court of Arbitration at the Polish Chamber of Commerce, the Indian Institute of Arbitration and Mediation, the Trinidad and Tobago Chamber of Industry, the Dubai International Arbitration Centre, CIETAC, and the Cairo Regional Centre for International and Commercial Arbitration.

21 Email from Mireze Philippe, Special Counsel, ICC, 26 June 2014.

22 ibid.

23 Alison Ross, 'Institutions Should Lead Way On Diversity, Says van Haersolte-van Hof' (2014) Global Arbitration Review <http://globalarbitrationreview.com/news/article/32781/> accessed 15 April 2015.

24 Email from Matthew Rushton dated 16 July 2014.

approximately 24% of arbitration appointments annually. JAMS also stated that it provided annual training on diversity for arbitrators and JAMS employees and that it monitored trends in the selection process to assess whether women are receiving appointments proportional to their representation on the JAMS panel.[25]

The Finland Chamber of Commerce (FCC) has maintained statistics on gender since 2007 and states that it uses the information to pursue its overall goal that the best person is appointed to companies' leadership positions or to an arbitral tribunal, regardless of that person's gender. The same applies to the arbitrators it appoints. The institution indicated that '[i]t has been acknowledged that the arbitrators' talent pool is too limited if only men are considered suitable arbitrators'.[26] In 2012, 19% of the arbitrators appointed by the FCC were female, with 0% of the arbitrators appointed by the parties being female, giving a blended rate of 15% for 2012. In 2013, 18% of the arbitrators appointed by the FCC were females, once more none of the arbitrators appointed by the parties were female, giving a blended rate of 15%.

The Netherlands Arbitration Institute (NAI) began capturing information on diversity in 2013. The percentage of female arbitrators appointed in 2013 was 12%. It stated that its goal in capturing the information was 'to make sure that more female arbitrators shall be appointed in the future'.[27]

The ICDR indicated that 10% of all appointments in its arbitrations in 2013 were of female arbitrators[28] and stated:

> [w]e have an organization wide diversity policy, for both ICDR and AAA. In terms of statistics ICDR reviews the entire panel list each year to see if we have improved the numbers of women. In addition we actively recruit to have more women available for listing. But the numbers of women on ICDR panels lists is not particularly relevant. The real goal is to have more cases in which women serve as arbitrators.[29]

So, what can we conclude from the limited information provided by the institutions? First, it is clear that awareness of diversity is increasing among the institutions, in particular the LCIA, JAMS, FCC, ICDR, and the NAI. However, it is also clear that our 'best estimate' should probably be revised upward, to around 10%. Given the paucity of information, it is not possible to ascertain whether our previous 'best estimate' was too low,[30] or whether we are starting to see real change in the frequency with which women are appointed to international arbitration tribunals.

4. REVISITING THE PIPELINE ISSUE

As we previously noted, the lack of balance on international arbitration tribunals is often attributed to 'pipeline leak', namely that there are not sufficient numbers of women at the top end of the profession. Pipeline leak is certainly a serious issue in

25 ibid.
26 Email dated 8 July 2014.
27 Email from Fredy von Hombracht, 26 August 2014.
28 Email from Sasha Carbone, 27 October 2014.
29 Email from Steve Anderson, 3 September 2014.
30 Although we doubt this, as it was very much in line with assessments made by other commentators.

large law firms in particular, despite the efforts that have been made to address the issue in recent years.[31] It still remains the case that women are in a significant minority at the higher end of the profession, and that, as we noted in our original article, the gender balance shifts dramatically over time.[32] As a generalization, law firms in the UK recruit around 60% female and 40% male law school graduates each year.[33] In 2014, Freshfields reported that women made up only 12% of its partnership, despite making up 55% of its trainees.[34] In a diversity report published in 2014, Linklaters indicated that 17% of its partners are women.[35] Since the mid-1980s, women have comprised more than 40% of law school graduates, yet less than 20% of equity partners in a typical US law firm are women.[36] In 2010, there were almost twice as many male practising barristers in the UK than there were females.[37] In 2014, it is clear that, despite efforts to address it and improvements that have resulted from these efforts, pipeline leak remains a real issue, but we continue to believe that the lack of diversity on international arbitration tribunals is attributable to more than just pipeline leak, namely that women face additional hurdles in being appointed as arbitrators once they reach the senior ranks of the legal profession.

In our original article, we concluded that one of these additional factors was implicit bias against appointing a female arbitrator. One of the finest examples of successfully addressing implicit bias is demonstrated by the actions taken in the 1970s in relation to the under-representation of women in professional orchestras. At that time, roughly 10% of professional orchestra members were women. Once a screen was placed in front of the person auditioning, so judges could not see whether the musician was male or female, women were 50% more likely to pass the first round and 300% more likely to pass the final rounds, and the result of this simple action was that the representation of women in orchestras increased from 10% to around 35%.[38] Although impossible to replicate this across the board in selecting international arbitrators, it would be possible for institutions, when providing parties with lists of arbitrators in order to identify their preferred choices, to remove names from the initial list in order to eliminate any such bias.[39] Similarly, when providing corporate counsel with suggestions for

31 See, for example, the various initiatives implemented by the major law firms, eg <http://womensinitiative.whitecase.com/committee/> accessed 15 April 2015.

32 See HBR Blog Network at 1 (noting that '[w]ithin two years . . . female[s] begin to leave [large law firms]'). <http://hbr.org/2014/05/how-one-law-firm-maintains-gender-balance/> accessed 15 April 2015

33 ibid.

34 <http://www.freshfields.com/uploadedFiles/Locations/Global/Who_we_are_new/CR_Reporting/Freshfields%20CR%20Report%202014.pdf> accessed 15 April 2015.

35 <http://www.linklaters.com/pdfs/mkt/london/Linklaters_Diversity_Statistics%202014.pdf> accessed 15 April 2015.

36 ibid.

37 <http://www.arbitralwomen.org/files%5Cfounder%5C00041729572427.pdf> accessed 15 April 2015

38 As reported in Margaret Heffernan, *Willful Blindness: Why We Ignore the Obvious at Our Peril* (Walker & Co 2011).

39 As discussed by Edna Sussman and Lucy Greenwood at the panel discussion 'Addressing the internal challenges that affect diversity in the international legal field' International Law Weekend, 25 October 2014.

potential appointees, external counsel could simply remove the names from the arbitrators' CVs before sending them on for discussion.[40]

5. CHALLENGING ASSUMPTIONS

There continues to be a troubling link made between efforts to enhance diversity and a perceived dilution of quality. We highlighted this issue in our original article[41] and also noted this approach in some of the responses we received from the institutions in researching this article, for example, the response from HKIAC asserted '[w]hen making appointments HKIAC's primary objective is to nominate the best person for the job. A secondary objective is to nominate a diverse range of people where that is consistent with the primary objective'.[42] As we noted previously, comments such as this, and such as the anonymous comment posted on the OGEMID forum 'when asked by a client to select an arbitrator, the desirability of promoting diversity is the last feature on anyone's mind. We are not being asked to make a statement. We are asked to pick the best person for the job'[43] perpetuate the notion that appointing diverse candidates will result in the appointment of less skilled tribunals, when, in fact, there is significant support for the belief that diverse groups produce better outcomes.

There are numerous additional studies showing that gender-balanced leadership: (i) improves corporate governance, (ii) lessens unnecessary risk-taking, and (iii) reduces so-called 'group-think'. A McKinsey study reviewed 101 companies which published the composition of their governing bodies and found that companies with three or more women in senior management functions scored more highly for each organizational criterion (such as direction, motivation, leadership, work environment) than companies with no women in senior positions. McKinsey then

40 Although this would not address the implicit bias that may have operated in the initial selection of the arbitrators by external counsel.

41 As we noted in our original article, a link is often made between experience and quality. As the majority of experienced international arbitrators are male, this leads to a tendency to qualify discussions of diversity with references to maintaining standards. The view that diversity may somehow dilute the quality of the tribunal or lead to discord within the tribunal percolates through a number of the sporadic online discussions on the subject. See, for example, the anonymous comment 'I think too much is made of women in arbitration. My view is that you select the best arbitrator for the job, man or woman. It just so happens that in current circumstances there are more good men than good women. That is the result of historical circumstance, not of any innate difference between men and women. But I would ask those who say that the current situation is a disgrace: What would they do to remedy the situation? Would they risk a client's arbitration by selecting an inexperienced arbitrator just to promote diversity? I think that would border on malpractice'. Anonymous posting to OGEMID@mailtalk.ac.uk (30 June 2009, 07.56 am CST). Note the implicit suggestion in this posting that appointing a woman would not be appointing the best arbitrator for the job and the coy reference to 'inexperienced arbitrator' rather than woman. See also comments such as 'I recall an esteemed colleague, who acts as both counsel and arbitrator, stating at a conference that, when asked by a client to select an arbitrator, the desirability of promoting diversity is the last feature on anyone's mind. 'We are not being asked to make a statement' he said, 'we are asked to pick the best person for the job' (anonymous posting to OGEMID@mailtalk.ac.uk (9 February 2012, 03.27 CST)), such comments perpetuate the notion that gender diversity will result in the appointment of less skilled arbitrators.

42 Email from Ruth Stackpool-Moore 20 July 2014.

43 Posting to OGEMID 9 February 2012. Members of OGEMID can review the various discussion threads on diversity, which are archived online at <http://www.transnational-dispute-management.com/ogemid/> accessed 15 April 2015.

conducted a further study, into the 89 European listed companies with the highest level of gender diversity in top management posts and concluded that there was 'no doubt' that the companies with greater gender diversity in leadership outperformed their sector in terms of return on equity and stock price growth.[44] According to a study done by the White House Project, when women's presence is significant, the 'bottom line' improves. This bottom line includes 'financial profits to the quality and scope of decision making'.[45] Researchers at the MIT Sloan School and Carnegie Mellon's School of Business concluded that 'teams with more women tended to perform better than those with fewer women'.[46] Failure to address a lack of balance on the workforce, 'cannot help but increase turnover, impair recruiting, [and] compromise performance'.[47] There is significant additional value in diversity, as corporations have known for years. The same is true for the legal profession and for international arbitration. According to the American Bar Association 'a diverse legal profession is more just, productive and intelligent because diversity, both cognitive and cultural, often leads to better questions, analyses, solutions and processes'.[48] The Director General of the LCIA firmly believes '[a]n inclusive panel ensures the optimal use of resources, of potential arbitrators and guarantees that relevant and competing considerations are brought to the table resulting in unbiased decision making.'[49]

6. WHOSE RESPONSIBILITY IS IT ANYWAY?

In 2015, it must be unarguable that institutions have a responsibility to record diversity information in relation to the arbitrators appointed in cases which they administer. Only the institutions have the tools to capture this information and they have a responsibility not only to do so, but to make the information available to the public, so that this information can be monitored.

However, there is a clear distinction to be drawn between capturing the information and addressing the issue. We do not subscribe to others' views that the

44 McKinsey & Company, 'Women Matter: Gender Diversity, a Corporate Performance Driver' (2007) <http://www.mckinsey.com/features/women_matter> accessed 15 April 2015.

45 <http://tiaracoaching.com/wp-content/uploads/2014/08/Tiara_StrategicImperative_2014.pdf>, 5 (citing The White House Project Report, Benchmarking Women's Leadership, Fall 2009) accessed 15 April 2015.

46 *Science Daily*, 'Collective Intelligence: Number of Women in Group Linked to Effectiveness in Solving Difficult Problems' (2 October 2010) <http://www.sciencedaily.com/releases/2010/09/100930143339.htm> accessed 15 April 2015 (citing a new study co-authored by MIT, Carnegie Mellon University, and Union College researchers).

47 Deborah L Rhode, 'Gender and Professional Roles' (1994) 63 Fordham L Rev 39, 64.

48 American Bar Association, 'Diversity in the Legal Profession: The Next Steps' (2010), Executive Summary, available at <http://www.americanbar.org/content/dam/aba/administrative/diversity/next_steps_2011.authcheckdam.pdf> accessed 15 April 2015.

49 Alison Ross (n 23) 3 July 2014. We feel that the wider international arbitration community has now moved beyond the comment posted to OGEMID in 2009 which asserted 'I do not understand "the value and benefit of a diverse workforce (over and above any moral dimension)". I think that it is an easy thing to say, may make us all feel good about ourselves, make us think we are good, decent people, but the reality is that the point of a workforce is to get the job done. If diversity is a qualification for the job, then all well and good. But, if I were undergoing brain surgery, I do not see any additional value I the team being diverse. If I were putting together a baseball team, I see no additional value in diversity' (Anonymous comment posted to OEGMID@mailtalk.ac.uk, 30 June 2009, 10.49 CST).

institutions have sole responsibility for addressing the issue.[50] As many of the institutions we contacted noted, they are not involved in the selection of arbitrators in the vast majority of cases they administer. The ICC indicated that it selects arbitrators in around 25% of cases,[51] the ICDR said it carried out 'very few direct, administrative appointments on cases' but claimed that 'we can exert an influence, which we do'.[52] It is particularly instructive to look at the statistics from the Finland Chamber of Commerce, where in 2012 and 2013 the institution appointed women in over 18% of cases, and the parties did not appoint a single female arbitrator. In the absence of information it is simply impossible to track progress in this field. Although the institutions that do record this information are to be commended, we are concerned that a significant proportion of institutions do not. It is particularly concerning that the ICC, which, according to the 2010 Queen Mary International Arbitration Survey, was the preferred arbitration institution for 50% of corporations (far ahead of the second most popular institution, the LCIA, with 14%),[53] does not record information on the composition of tribunals appointed in its cases.

To repeat a business mantra, 'if you can't measure it, you can't manage it' and without significant effort on the part of the arbitral institutions to measure this information, it will be impossible for the international legal community to manage the issue of diversity and to achieve significant progress in this field.

It is clear that progress is what the corporations want. For example, corporations like Microsoft,[54] IBM,[55] Chevron,[56] ExxonMobil,[57] Duke Energy,[58] and Sempra Energy[59] all have explicit supplier diversity guidelines aimed at increasing business with minority-owned businesses providing them with goods and services.

50 See Melanie Willems, 'The Institutions Must Lead the Way in Working on the Situation. They are Uniquely Positioned To Do So' *ArbitralWomen Newsletter* No. 8, April 2013 <www.arbitralwomen.org>.

51 Email from Mirèze Philippe, Special Counsel, ICC, 26 June 2014. In her interview with Global Arbitration Review, Jacomijn van Haersolte-van Hof, Director General of the LCIA suggested that, 'while all users of arbitration have a role to play in increasing diversity, institutions are probably best placed to take the lead because they are in a position to provide transparency and have more insight than users of arbitration as to the availability and performance of potential arbitrators. They also have a long-term interest in ensuring a sustainable pool of candidates', Alison Ross (n 23) 3 July 2014.

52 Email from Steve Anderson 3 September 2014.

53 Queen Mary University of London—School of International Arbitration, '2010 International Arbitration Survey: Choices in International Arbitration' Chart 17 <http://www.whitecase.com/files/upload/fileRepository/2010International_Arbitration_Survey_Choices_In_International_Arbitration.pdf> accessed 15 April 2015.

54 In 2013, 19.8% of the 162 arbitrators selected by the LCIA and 6.9% of the 160 arbitrators selected by the parties were women. <http://globalarbitrationreview.com/news/article/32781/> accessed 15 April 2015; Microsoft, 'Microsoft Supplier Diversity' <http://www.microsoft.com/about/companyinformation/procurement/diversity/en/us/default.aspx> accessed 15 April 2015.

55 IBM, 'Supplier Diversity' <http://www-03.ibm.com/procurement/proweb.nsf/ContentDocsbyTitle/United+States~Supplier+Diversity> accessed 15 April 2015.

56 Chevron, 'Supplier Diversity: Reflecting Diversity in our Supplier Base' <http://www.chevron.com/productsservices/supplierinformation/supplierdiversity/> accessed 15 April 2015.

57 ExxonMobil, 'Supplier Diversity' <http://corporate.exxonmobil.com/en/company/contact-us/directory/supplier-diversity> accessed 15 April 2015.

58 Duke Energy, 'Supplier Diversity Program Overview' <http://www.duke-energy.com/suppliers/supplier-diversity-overview.asp> accessed 15 April 2015.

59 Sempra Energy, 'Supplier Diversity Overview' <http://www.sempra.com/about/supplier-diversity/> accessed 15 April 2015.

Increasingly corporate organizations are using their purchasing power to drive change and expect their suppliers to have a clear diversity and inclusion policy and strategy in place.[60] In international arbitration, the client is advised by counsel as to the selection of an appropriate arbitrator. This often results in an unsophisticated brainstorming session, which plays to unconscious bias against appointing diverse candidates.[61] All too often in this scenario, the priorities of the ultimate end user of arbitration—the corporations—are not taken into account by practitioners. The value being placed on good diversity and inclusion principles by the corporations is clear. It is only a matter of time before the approach adopted by the corporations will force counsel to re-evaluate their approach to diversity and inclusion, not only in relation to the legal teams appearing on a matter, but in the composition of the tribunal adjudicating upon the matter.[62]

7. CONCLUDING REMARKS

From analysing the data provided by certain institutions, it is apparent that there is an ongoing effort by the institutions to appoint more diverse candidates. There is also some support for an argument that our 'best estimate' of the percentage of women being appointed as arbitrators in 2012 should be revised upwards in 2015, but there is simply not enough information available to form a concluded view. To achieve make meaningful change, the first step needs to be improved data management and greater transparency. This will enable the international arbitration community to track the global efforts that are being made to address the issue of the lack of diversity in this field.

60 Law firms, among other suppliers, are often required to answer a set of questions when responding to competitive tenders and to demonstrate how they will deliver the services drawing on a diverse pool of talent.

61 A study conducted into implicit bias specifically in relation to the legal profession in 2010 found a diverse group of both male and female law students implicitly associated judges with men and also associated women with the home and family. See Justin D Levinson and Danielle Young, 'Implicit Gender Bias in the Legal Profession: An Empirical Study' (2010) 18(1) Duke J Gender L Policy. However, the study also found that participants were frequently able to resist their implicit biases and make decisions in gender neutral ways.

62 One way to address this in an arbitration context would be for law firms, who already maintain information on arbitrator selection in order to comply with the IBA Guidelines on Conflicts of Interest in International Arbitration, to record diversity information in their databases. See, for example, Guideline 3.3.7, which places the following relationship on the 'Orange List': 'The arbitrator has within the past three years received more than three appointments by the same counsel or the same law firm.'