

## **ADEDOYIN RHODES VIVOUR KEYNOTE SPEECH: PROMOTING GENDER DIVERSITY IN ARBITRATION IN AFRICA WOMEN IN ARBITRATION CONFERENCE IN NAIROBI ON 23 MARCH 2018**

Distinguished Chair of the CIArb Kenya Branch, Ladies and Gentlemen, it gives me great pleasure to stand before you today to deliver the keynote address on the occasion of the inaugural Kenya Arbitral Women Conference. It is significant that this event is being held in collaboration with the Chartered Institute of Arbitrators. One of the core values of the Chartered Institute of Arbitrators is “Dignity and Respect; treating all individuals with respect, valuing their contribution, and recognising the importance of diversity by the inclusion of all.” Indeed in Chebett’s (Chebett Koske is the Chief Executive Officer of the Chartered Institute of Arbitrators, Kenya Branch) invitation I was informed that this event will be held on an annual basis with the aim of enhancing and promoting women participation in ADR. No doubt, the Kenyan Branch appreciates the importance of diversity to the future of International Arbitration. I do hope that at the end of this speech I would have successfully convinced any one of us here who still wonder “why the emphasis on promoting women participation in arbitration?” that gender diversity cannot be compromised.

Arbitral Women is an international non-governmental organisation with the primary objective of advancing the interests of women and promoting female practitioners in international dispute resolution. Arbitral Women is about gender diversity. Diversity is ‘the inclusion of different types of people (people of different races or cultures) in a group or organisation’.<sup>1</sup> Diversity means respect for and appreciation of differences in ethnicity, gender, age, national origin, disability, sexual orientation, race, education, and religion. If diversity is so wide why then the emphasis on women? Are women really disadvantaged? Why was it considered necessary to have an organisation solely devoted to the promotion of women in arbitration?

You will all agree with me that historically, the international arbitration arena was dominated by the proverbial ‘pale, male and stale’ or the ‘old, white, male.’ This is not altogether surprising as the first entrants into the field of international arbitration were predominantly white and from Europe or the United States.<sup>2</sup> A consequence of this is that the same crop of arbitrators were being appointed to resolve a larger percentage of international disputes. These repeated appointments began to raise concerns i.e. the likelihood of bias, partiality, less-availability, copy and paste awards, inefficiency of justice and delegation of arbitral duties.

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<sup>1</sup> <https://www.merriam-webster.com/dictionary/diversity>

<sup>2</sup> [https://www.blplaw.com/media/download/Diversity\\_on\\_arbitral\\_tri\\_bunals\\_-\\_background\\_note.pdf](https://www.blplaw.com/media/download/Diversity_on_arbitral_tri_bunals_-_background_note.pdf),  
<https://www.cpradr.org/newspublications/articles/2015-03-03--old-white-and-male-increasinggender-diversity-in-arbitration-panels>

**Michael D. Goldhaber**<sup>3</sup> in his article “Madame La Presidente” written as recently as 2004 stated that future of International arbitration is ‘dominated by a few aging men...pale, male and stale’ and “*a woman who sits as a president of a major arbitral tribunal is a rare creature*”.<sup>4</sup> He further stated that the main reason for the dearth of women in high stake cases is a bias in appointments.<sup>5</sup> For the doubting thomases let’s examine the international arbitration plane and available statistics.

## Statistics

**Louise Barrington**, ArbitralWomen co-founding member with **Mirèze Philippe** recalls that the notion of paying attention to women in arbitration first occurred to her when she attended her first international conference as Director of the ICC’s Institute of World Business Law in the 1990’s.<sup>6</sup> At that conference, an International Council for Commercial Arbitration (ICCA) conference of about 250 registered participants there were about half a dozen women. Louise recalls the women congregated together during a break and collectively recalled incidents, where they were the lone woman in a room of men, where the lead counsel was asked to bring coffee for her junior, and where some male counsel simply ignored their presence.<sup>7</sup> Sadly that was the state of affairs then. Little wonder both Louise and Mirèze were moved towards working on this great initiative: ArbitralWomen.

There are various statistics which confirm the state of affairs existing at that time. **Lucy Greenwood** in her article ‘Diversity and Inclusion’ indicated that from data collated as recent as 1990 the percentage of females appointed as arbitrators was less than 5% up until 2010. In 2010 the numbers increased minimally to about 6% increasing gradually to 10% in 2012 and 15% in 2016. I am sure you will agree that the statement that women are largely under-represented and under-utilized in international arbitration is an understatement. Underrepresented and under-utilized because the percentage of very well qualified and competent women who are actively involved in international arbitration is comparatively low when compared to the actual number of women who are available and competent. Indeed the very few women who are involved are even involved at lower strata than the men who are their contemporaries; particularly with respect to high profile cases.

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<sup>3</sup> Michael D. Goldhaber serves as U.S. Correspondent for the International Bar Association, IBAnet.org, and IBA Global Insight magazine. He previously served for 16 years as international correspondent for American Lawyer Media, where he wrote "The Global Lawyer" column, while launching Arbitration Scorecard and the Global Legal Awards. The recipient of numerous business media awards, Mr. Goldhaber writes widely on international human rights and complex business dispute. He is the author of A People's History of the European Court of Human Rights (2nd ed., 2009), and Crude Awakening: Chevron in Ecuador (Kindle Single 2014). Mr. Goldhaber clerked for First Circuit Judge Bruce Selya and U.S. District Judge Patti Saris. He is a graduate of Harvard College (summa cum laude, 1990), Columbia University Graduate School of Journalism (1997), and Yale Law School (1993), where he served as book reviews Editor for the Yale Law Journal.

<sup>4</sup> M.D. Goldhaber; "Madame La Presidente - A woman who sits as president of a major arbitral tribunal is a rare creature. Why?" TDM3(2004),[www.transnational-dispute-management.com](http://www.transnational-dispute-management.com)  
[www.transnational-disputemanagement.com/article.asp?key=158](http://www.transnational-disputemanagement.com/article.asp?key=158)

<sup>5</sup> *ibid*

<sup>6</sup> Formerly known as ICC’s Institute of International Business Law and Practice

<sup>7</sup> Louise Barrington ,Then and Now – A quarter Century of women in arbitration

According to a 2010 report from American Arbitration Association (AAA), women were appointed in only 15% of cases involving large monetary claims, represented only 25% of the prestigious “National Roster”, and were selected only 13% of the time.<sup>8</sup> Investment treaty arbitrations involve similarly grim statistics – in one study of nearly 250 well known investment-treaty arbitrations, only about 6% of appointments<sup>9</sup> were women, and the majority of these appointments were to the same two well-known women.

What are the reasons for this? Various factors are responsible including; implicit and/or explicit bias, Lack of transparency in the arbitrator selection process, preference of parties for selected few arbitrators, the pipeline leak and women not promoting themselves as much as they should nor taking enough care of each other professionally. Men largely do this.

Explicit Bias is the attitudes and beliefs we have about a person or group on a conscious level and is described as stereotypes and attitudes that we expressly self-report on surveys, recognize and embrace.<sup>10</sup> Michael Goldhaber recounted a story told by **Lucy Reed**, co-head of Freshfields’ International Arbitration Group, of a client being ‘openly worried as to how the arbitrators on the panel would regard his nominee if he chose a woman. He ultimately chose a ‘usual (male) suspect.’

Implicit Bias is an unconscious bias and is based on the idea that individuals develop an embedded, unconscious belief and response system through repeated experiences and messaging. This results in us making automatic judgments about what category a particular person fits within and we often act on those judgments which often leaves us making unconscious assumptions which then affect our decision making<sup>11</sup>. For instance, unconsciously amongst a crowd we tend to like people who look like us, think like us, come from backgrounds similar to ours and thus gravitate towards them.

Lack of transparency in the arbitrator selection process – as the most valuable information tends to be controlled by a small number of people – partners, large law firms, and very occasionally highly sophisticated clients or maybe the appointment committees of various arbitration organisations<sup>12</sup>. Oft times parties appear to prefer the selected few arbitrators they are familiar with (or friendly with) leading to continuously repeated appointments for these few individuals leaving out equally qualified and competent others. The Pipeline Leak has been attributed to the dearth of women at the top end of most careers. Though a good number of women enter into professions a fewer number reach the peak of their careers. A study by PwC UK indicated that,

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<sup>8</sup> See Deborah Rothman, Gender Diversity in Arbitrator Selection <http://c.ymcdn.com/sites/www.wlala.org/resource/resmgr/imported/rothman.pdf>. Additionally, the AAA reports that in 2010 it conducted only 3 arbitrations in which the panel was comprised entirely of women.

<sup>9</sup> Ibid; see also Lucy Greenwood, Unblocking the Pipeline: Achieving Greater Gender Diversity on International Arbitration Tribunals, 42 No. 2 INT’L LAW NEWS (Spring 2013)

<sup>10</sup> Davis, Benjamin, American Diversity in International Arbitration 2003 – 2013 (Pre-Publication Draft) (December 13, 2013). University of Toledo Legal Studies Research Paper No. 2014-03

<sup>11</sup> See <http://perception.org/wpcontent/uploads/2014/11/Transforming-Perception.pdf> and Lucy Greenwood & C. Mark Baker, Getting a Better Balance on international Arbitration Tribunals’ in Arbitration International 2012 Volume 28 Issue 4

<sup>12</sup> Gary Born <http://www.arbitratorintelligence.org/gary-bornuniversity-pennsylvania>

in most 'first world' countries, entry-level men and women in the professional service sector are hired at an equal rate. Women were lost from the pipeline through voluntary termination at a rate two or three times faster than men once they reached mid-career level. Reasons for the pipeline leak included: lack of female role models; lack of mentoring opportunities; work/life challenges and perceived lack of flexibility; gender stereotyping; lack of opportunities; lack of clear career path; perceived lack of skills/experience.<sup>13</sup>

An arbitrator Margaret Leibowitz once noted that “a lot of arbitrators are chosen through the ‘old boy network’ in which men have traditionally taken care of each other professionally”<sup>14</sup>. To what extent do we women take care of each other professionally needs to be carefully thought through. All these factors have in one way or the other contributed to the lack of enough women being considered for arbitral appointments. From my personal experience whilst women have contributed a lot in terms of service to the promotion of arbitration and ADR, giving of their time and resources they have not been commensurately given their due space nor recognition in the amount of arbitral work going on.

### Does Diversity Matter?

Diversity in international arbitration is essential to the longevity and legitimacy of the process. Where the same arbitrators are chosen over and over again, it may lead to lack of availability of time to devote to the arbitration process. Lack of diversity increases conflict of interest cases making panels harder to constitute and where there is no disclosure, the resulting award may be set aside. Arbitration is self-regulated and the proceedings are confidential therefore there is a need for diversity of thinking on the panel to ensure the credibility of the outcomes. Thus, lack of diversity may affect the quality of arbitral awards leading to a “more narrowly informed body of doctrine”<sup>15</sup>. International arbitration involves parties from different jurisdictions, different cultures and different legal backgrounds. A more diverse panel is best equipped to deal with such disputes. The Tribunal should be a representation of the whole society and should be made up of persons who are part of or understand the business, social, economic and cultural environment of the parties. Caley Turner notes that “high-profile white men” may be very effective arbitrators in most circumstances, they are not representative of society as a whole, and they cannot be expected to fully understand and effectively resolve disputes between individuals whose lives are not reflective of the traditional white male experience<sup>16</sup>.

A diverse tribunal should be better prepared, more task-orientated, and more attentive to the parties' arguments than a non-diverse tribunal. Researchers have shown that teams with equal numbers of men and women, or with more women than men, performed a simulated

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<sup>13</sup> 13 [https://www.pwc.com/gx/en/women-atpwc/assets/leaking\\_pipeline.pdf](https://www.pwc.com/gx/en/women-atpwc/assets/leaking_pipeline.pdf)

<sup>14</sup> 4 Caley Turner, “Old White Male”: Increasing Gender Diversity in Arbitration Panels, Student paper from Pepperdine Law School (2014). See also, Jane Byeff Korn, Institutional Sexism: Responsibility and Intent, 4 TEX. J. WOMEN & L. 83, 118 – 19 (1995)

<sup>15</sup> Berwin Leighton Paisner's report on International Arbitration Survey: Diversity on arbitral tribunals, Background note, [https://www.blplaw.com/media/download/Diversity\\_on\\_arbitral\\_tribunals\\_-\\_background\\_note.pdf](https://www.blplaw.com/media/download/Diversity_on_arbitral_tribunals_-_background_note.pdf)

<sup>16</sup> Caley Turner, “Old White Male”: Increasing Gender Diversity in Arbitration Panels, Student paper from Pepperdine Law School (2014)

management task better than all-male teams because of more cooperation and more variety in team members' approaches to communications. It is also been proven that women have the ability to reduce gender biases and group-think problems and also possess a number of other gender specific traits that are highly compatible with arbitration including communication and decision-making styles, ability to multi-task, abilities to recognize other people's emotions and perspectives and to detect deception<sup>17</sup>. Gender-balanced leadership improves corporate governance and lessens unnecessary risk-taking<sup>18</sup>. Men as we know are more versatile at taking risks. Arbitration can be a very stressful assignment. In a recent study analyzing the effect of stress on the male and female performance it was found that while stress undermines empathic abilities in men, including the abilities to recognize other people's emotions and perspectives and to detect deception, it increases all of these abilities in women. It was found that male subjects when stressed become "more self-centered and less able to distinguish their own emotions and intentions from those of other people". Indeed, these results are relevant to the arbitration process as it seems that including more women in the arbitration process could increase empathy and understanding amongst parties thus increasing the chances of coming to an arbitral decision that satisfies the parties involved in the process including the arbitrator<sup>19</sup>.

The ability of men on the other hand to be less emotional than women has its advantages in arbitration process, arbitration being a judicial process with no room for emotions. Though it's been argued that in view of the empathetic abilities in women including more women in high stake arbitrations increases empathy and understanding amongst the parties and increases the chance of coming to a resolution that satisfies all of the parties and not just the arbitrators<sup>20</sup>.

Gender Diversity enables different strengths and qualities to be brought to the table. It assures us of the optimal use of available resources, enables relevant and competing considerations, creates an environment of unbiased decision making and enables the continuous availability of a wide variety of quality arbitrators, arbitrators who have been well trained and not just a select crop of arbitrators.

### **Initiatives To Improve Diversity In The Interest Of Arbitration.**

ArbitralWomen, a non-profit organisation officially registered in 2005 was formed in 1993 and expanded mainly since 2000. The names of Louise and Mirèze can never be ignored when talking about the work of ArbitralWomen likewise the efforts of the various other women<sup>21</sup> who have now joined this vibrant organisation dedicated to fostering the role of women in

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<sup>17</sup> <https://www.cpradr.org/news-publications/articles/2015-03-03--old-white-and-male-increasing-gender-diversity-in-arbitration-panels>

<sup>18</sup> 8 Lucy Greenwood, C. Mark Baker, Is the balance getting better? An update on the issue of gender diversity in international arbitration, *Arbitration International* (2015) Vol 31 Issue 3 page 413-423.

<sup>19</sup> Caley Turner, "Old White Male": Increasing Gender Diversity in Arbitration Panels, Student paper from Pepperdine Law School (2014)

<sup>20</sup> *ibid*

<sup>21</sup> Past Presidents of ArbitralWomen; Louise Barrington (Founding CoPresident), Mirèze Philippe (Founding Co-President), Dominique Brown Berset (Past President), Rashda Rana SC (Past President), Asoid Garcia-Marquez (Interim President until 30 June 2018) <https://www.arbitralwomen.org/About-Us/AW-Board>

international dispute resolution through networking, communications and trainings<sup>22</sup>. ArbitralWomen is composed of a network of women from diverse backgrounds and legal cultures active in international dispute resolution in any role, including inter alia, arbitrator, mediator, expert, adjudicator, surveyor, facilitator, lawyer, neutral, ombudswoman, forensic consultant. The group has grown to nearly a thousand members from over 40 countries. In order to increase the active participation of women, ArbitralWomen has put in place a number of initiatives including a mentoring programme, a website where women members have the opportunity to upload their curriculum vitae and provide information on events around the world for its members and guests. Each year ArbitralWomen gives a number of grants to teams competing in the Vis Arbitration Moot in Vienna or Vis East subject to those teams having at least 50% women. Men who have supported the goals and values of ArbitralWomen are recognised and awarded the Champion for Change award (previously known as the Honorable men award)<sup>23</sup>.

The Equal Representation in Arbitration (ERA) Pledge<sup>24</sup> is a global initiative and a call to action for the arbitral community, with the simple objective of improving the profile of women in arbitration with the view to secure appointments of more women as arbitrators on an equal opportunity basis. The Pledge was formally launched in London in May 2016 and has attracted 2642<sup>25</sup> signatories from many arbitral institutions, law firms, arbitrators and clients. In a bid to promote appointment of women on an equal opportunity basis the ERA Pledge website has an arbitrator search tool on its website.

Various other initiatives on diversity include initiatives of various organisations aimed at highlighting the need of diversity in international arbitration<sup>26</sup>. Arbitral Institutions including the

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<sup>22</sup> See Then and Now – A quarter Century of women in arbitration by Louise Barrington NYSBA New York Dispute Resolution Lawyer Spring 2012 Vol. 5 No. 1

<sup>23</sup> Some of the recipients of the Champion for Change award include: Michael McIlwrath, Global Chief Litigation Counsel for GE Oil & Gas (2017); Arthur Marriott Q. C. and Geoffrey M. Beresford Hartwell, Eur Ing Professor (2014); Mark Kantor, Professor at Georgetown Law Centre in Washington, D. C. (2011); Donald Francis Donovan, Partner, Debevoise & Plimpton LLP and Klaus Reichert SC, Senior Counsel practicing from Dublin and Brick Court Chambers, London (2010). <http://www.arbitralwomen.org/Cooperation/Honourable-Men>

<sup>24</sup> The Pledge began with a suggestion made at ICCA 2014 by Jacomijn van Haersolte-van Hof, director general of LCIA, that concrete action should be taken in order to see more women appointed as arbitrators. Sylvia Noury of Freshfields picked up on the idea and took it forward. Noury gathered a group of stakeholders at a dinner in London in April 2015 to discuss the under-representation of women arbitrators and potential solutions to cure this situation. Several dinners followed in various cities around the globe to discuss this issue and hear the views of the business and legal communities. Participants agreed that taking a pledge was the way forward. By signing a pledge and encouraging practitioners in dispute resolution to do the same, they would feel more committed to redressing the gender balance in arbitration. It was felt that without a joint commitment to change behaviours and to assess progress regularly, despite everyone's good will, gender equality would not be sufficiently prioritised.

<sup>25</sup> Signatories at 19th March 2018 <http://www.arbitrationpledge.com>

<sup>26</sup> Example of Initiatives highlighting the need of diversity in international arbitration include; (1) a search facility on the ArbitralWomen website; a tool introduced by Global Arbitration Review that provides information about arbitrators to arbitration users. (2) CPR (International Institute for Conflict Prevention & Resolution) National Task Force on Diversity in ADR chaired by Hon. Timothy K. Lewis of Schnaeder, Harrison, Segal & Lewis LLP and Hon. Shira A. Scheindlin tasked with the responsibility of devising practical strategies to increase the participation of women and minorities in mediation, arbitration and other ADR processes. See <https://www.cpradr.org/strategy/committees/diversity-task-forceadr>

International Chamber of Commerce (ICC), Stockholm Chamber of Commerce (SCC), Swiss Chambers' Arbitration Institution have started publishing data and disclosing the statistics on the number of female arbitrators appointed in their cases unlike in the early days. The Board of the Swiss Arbitration Association (ASA) decided to include "gender" as a criteria on the search tool of its website and app along with an explanation on the reasons for including the new criteria<sup>27</sup>. The International Chamber of Commerce (ICC) and Milan Chamber of Commerce are now publishing on their website the names of arbitrators sitting in their cases. This was done in the hope that in addition to demonstrating the quality of their tribunals, the information will provide further incentive to promote regional, generational and gender diversity in the appointment of arbitrators expressed to be an utmost priority for ICC. ICC is also amongst the institutions that has pledged support for equal representation of women in Arbitration, joining a range of institutions and prominent members of the international dispute resolution community, as a signatory of the Equal Representation in Arbitration Pledge<sup>28</sup>.

The increase in the number of institutions that publish diversity-related statistics is a positive and essential first step given that without such statistics it is difficult to gauge how serious gender inequality in arbitration is and whether steps to improve matters have made any difference<sup>29</sup>.

Statistics confirm the new focus on gender inequality due to the efforts to highlight the problem. Various institutions are now publishing names of female arbitrators that are appointed. In a recent 2016 survey the London Court of International Arbitration (LCIA) took the lead. Compared to 2015, LCIA made more appointments of more individuals, with a notable upward trend in the appointment of female arbitrators from 16% in 2015 to 20.6% in 2016. This was largely as a result of direct appointments by the LCIA, and of candidates not previously appointed<sup>30</sup>. The Vienna International Arbitration Centre had an appreciable increase from 14.3% in 2015 to 17.1% in 2016. The International Centre for Dispute Resolution remained at 16% in 2015 and 2016. The International Chamber of Commerce recorded a 4.4% increase from its 2015 statistics (10.4%) to 14.8% in 2016<sup>31</sup>. Other arbitral institutions such as the German Institution of Arbitration and the Hong Kong International Arbitration Centre had a ratio of female arbitrator appointment of 13.2% and 11.5% respectively in 2016.

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<sup>27</sup> On the 3 February 2017 the ASA – the Swiss Arbitration Association, released a new version of its ASA Profiles tool which allows anyone to search for an arbitrator, counsel or expert with the right combination of skills and experience according to a number of predefined criteria, including specific industry experience, legal background, nationality, age and gender. In 2016 ASA signed the Pledge for Equal Representation in Arbitration. ASA Executive Director Alex McLin explained that "We felt strongly about translating our support for the Pledge into a concrete action that could address the underlying issue". He further explained that "By including a gender search field in our arbitrator selection tool, we allow practitioners consciously to address any subconscious selection bias that may be present." ASA President Elliott Geisinger believes that "the ability to search by gender contributes to awareness of the desirability of diversity on arbitral tribunals, and positively informs the selection process." See <http://www.arbitrationch.org/en/asa/asa-news/details/994.new-asa-profiles-tool-reflectsarbitration-pledge-objectives.html>

<sup>28</sup> <https://iccwbo.org/global-issues-trends/diversity/>

<sup>29</sup> Berwin Leighton Paisner's report on International Arbitration Survey: Diversity on arbitral tribunals, Background note; [https://www.blplaw.com/media/download/Diversity\\_on\\_arbitral\\_tribunals\\_-\\_background\\_note.pdf](https://www.blplaw.com/media/download/Diversity_on_arbitral_tribunals_-_background_note.pdf)

<sup>30</sup> <http://www.lcia.org/News/lcia-facts-and-figures-2016-a-robustcaseload.aspx>

<sup>31</sup> Mirèze Philippe: How Has Female Participation at ICC Evolved? ICC Arbitrators, Court Members and Court's Secretariat Pg 38 :ICC Dispute Resolution Bulletin2017 Issue 3

ICCA, for several decades had one female among its 40 members governing board. In 2012 there were 3 women including one vice-president. Today there are sixteen women, including three vice-presidents representing 40% of the governing board membership<sup>32</sup>.

Speaking at conferences exposes the potential of speakers. At an ICCA conference in the late 1980's referred to by Louise Barrington of about 250 participants there were less than half a dozen women in attendance. Now we see an appreciable number of improvement on the women allotted speaking slots at some international conferences. The upwards trend is no doubt due to increased awareness of the extent to which women were being marginalised –and I mean qualified and competent women. Numbers have risen up to 40% at some of these conferences. Conference organisers who reach the women speakers' mark of 40% indeed not only appreciate but show their commitment to gender diversity issues. That should be the least minimum standard required to maintain gender diversity, moving up to 50%.

Recent initiatives to improve diversity in arbitration include the Alliance for Equality in Dispute Resolution launched in January 2018<sup>33</sup>.

#### Africa In View

The challenges with Africa, apart from gender inequality, also includes the relatively low number of African arbitrators being appointed to resolve disputes even African disputes. As at May 2016, there were 71 Arbitral Institutions on record in Africa<sup>34</sup> and with the emergence of so many arbitration centres in Africa the expectation is that these centres would position themselves to resolve disputes originating within and outside the continent. However, the reality is that most African users nominate foreign arbitration institutions to administer their disputes. We must acknowledge that the international arbitral institutions have over the years built up a reputation in the dispute resolution field. Africa can only meet the expectations for setting up its centres through consistent efforts in the strive to achieve excellence, recognition for and confidence in its centres. Internationally recognized institutions did not build themselves up in one day, it takes time and years of sustained efforts. Africa's arbitration centers have the potential of becoming leading arbitral institutions if the focus is maintained.

Gender diverse appointments by African Institutions and in Africa generally should be positively impacted by an increase in the number of arbitrations held within the continent and a corresponding increase in the number of arbitrators of African origin appointed. An increase in the number of African lawyers representing disputants in such references should also have a positive effect as this would lead to exposure of African lawyers to the arbitration process. Many arbitrators commence their careers by being counsel in arbitration proceedings.

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<sup>32</sup> <http://www.arbitration-icca.org/about/governing-board.html>

<sup>33</sup> Alliance for Equality in Dispute Resolution launched in January 2018 is co-chaired by Rashda Rana SC and Lucy Greenwood. See [www.allianceequality.com](http://www.allianceequality.com)

<sup>34</sup> Dr. Emilia Onyema; List of Arbitration Institutions in Africa (May 2016)



Regrettably there appears to be no available statistics on gender diverse appointments by African centres. It appears that a lot of headway has been made by International/Foreign Arbitral institutions especially with the publication of statistics of female arbitrator appointments, conspicuously absent are the statistics on appointment from African arbitral institutions.

Thus, there is a dearth on information on the statistics of arbitrators appointed by African arbitral institutions. A number of these institutions do not publish annual reports and where they do, information on appointments is lacking. The Kigali International Arbitration Centre (KIAC) and Cairo Regional Center for International Commercial Arbitration (CRCICA) are one of the few to publish reports on their caseload. However, information on the profile of arbitrators appointed or nominated to handle these cases has not been published in past years.

Some African arbitration centres have signed on to the ERA Pledge including the Cairo Regional Center for International Arbitration, Lagos Court of Arbitration, ICC South Africa, International Centre for Arbitration and Mediation Abuja (ICAMA) and Janada International Centre for Arbitration and Mediation (JICAM). Some African law firms have also signed on to the Pledge. The ERA Pledge was successfully launched in Abuja Nigeria on 25 October 2017. The expectation is that other African countries would not only follow suit by the formal launch but also take concrete steps to actualise the Pledge. I must commend the efforts of Dr. Ismail Selim, Director of the Cairo Regional Center for International Commercial Arbitration (CRCICA) in the CRCICA Annual Report 2017 affirmed that CRCICA will play a major role in the coming years, in promoting and ensuring diversity in arbitration through encouraging young arbitrators and especially women<sup>35</sup>.

The CRCICA has taken other steps to address diversity concerns. On 19 November 2016, CRCICA and the Stockholm Institute of Arbitration (SCC) organised the Equal Representation in Arbitration (ERA) Pledge Breakfast. At the Breakfast views and recommended actions to address the gender imbalance in arbitrator appointments were discussed<sup>36</sup>.

### The Nigerian Experience

Generally, it's considered that the female arbitrators in Nigeria are prominent with a number having built up their reputations and active in the service of promoting arbitration and ADR. A number are also prominent in the various arbitral organisations. The Chartered Institute of Arbitrators Nigeria Branch has had seven Chairs (past and present) of which three are females.

The Young Members Group has had four Chairs (past and present) of which two are females. Currently, of the fifteen Executive Committee members, seven are females. Our past two Conference Planning Committee Chairs were female whilst presently, our Chair for the 2018 Conference Planning Committee is male with a female vice-chair.

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<sup>35</sup> See page 3 CRCICA Annual Report 2017; [http://crcica.org/FilesEnglish/Annual%20Report\\_2017-05-31\\_11-51-17\\_0.pdf](http://crcica.org/FilesEnglish/Annual%20Report_2017-05-31_11-51-17_0.pdf)

<sup>36</sup> See page 23 CRCICA Annual Report 2017; [http://crcica.org/FilesEnglish/Annual%20Report\\_2017-05-31\\_11-51-17\\_0.pdf](http://crcica.org/FilesEnglish/Annual%20Report_2017-05-31_11-51-17_0.pdf)

A number of Nigerian female arbitrators are visible at conferences, domestic and international, are members of key arbitral organisations both local and international, they appreciate the importance of publishing and making themselves available for speaker slots at conferences and to invest in their career through continuous professional development training. However, due to the dearth of statistics, it cannot be said that the appointment of female arbitrators is at an encouraging level being gender sensitive.

## The Way Forward

Promoting gender diversity requires the effort of all stakeholders, arbitral institutions, users, and arbitration practitioners. The efforts thus far need to be consolidated upon. All of us being stakeholders in ensuring the continuing efficacy of Arbitration need to play our role. Users particularly need to be more conscious of gender diversity when making appointments. Indeed, studies have shown that women are much more likely to be appointed by institutions rather than by co-arbitrators or the parties. Yes, when parties are making appointments they are least concerned about gender their focus is on the efficiency of the arbitrator. However, a realisation that gender balanced tribunals may produce better outcomes should motivate them to ensure a more diverse panel.

Gender diversity is not about gender favoritism it's about appointment on an equal opportunity basis thus appointments of those who merit such appointments. Gender diversity does not connote an easy ride. We need to work hard and work smart. We need to be members of organisations involved in dispute resolution both at the regional and international level. We need to ensure a face is placed to our names. We need to take time to write articles, expose ourselves, give of our time to moot competitions and continue to build our networks. Continuous professional development is vital. We need to build and enhance our profiles. Women, we cannot afford to rest on our oars. We must be the best at what we do. We all have a duty to ensure the availability of quality arbitrators. We must be prepared to give our time to mentoring the younger ones, to be bold enough to take up responsibilities; and when we have been mentored, to carry on the flag of promoting gender equality. Ladies we must subject ourselves to exacting standards and focus on maintaining these standards. We cannot afford to compromise on excellence and professional integrity. Our words and deeds should not only reflect who and what we are but stand out as a generation of women arbitrators per excellence. However, remember that it is not how many appointments we get that truly matters most but how well we conduct the references we are involved in and the quality of our awards.

Men, be rest assured that we do not want to replace you. We want to work with you on an equal opportunity basis. We want our different strengths to be properly harnessed in the interest of the continuing efficacy of arbitration as the preferred mechanism for dispute resolution.

For the African men and women, we must all be pioneers in working towards regional collaboration and integration whilst striving to attain the standards of the Institutions who have initially laid the foundations for international institutional dispute resolution. We must learn from them.

Let's all pledge to make a difference, let's all commit to the ERA Pledge.

Thank you Ladies and Gentlemen.