



PAW2023: Diversity concerns in focus for arbitration's future



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One of arbitration's leading lights challenged the arbitral community to tackle problems with legitimacy and representation as the largest-ever Paris Arbitration Week began.

Paris Arbitration Week began this morning (27 March) with stern words from **Yas Banifatemi** about the lack of progress on improving the diversity of arbitration, but also some hopes for real change in the future.

Giving **the opening address** to the seventh edition of what has become one of the arbitration world's largest events, Banifatemi, who left her role as joint head of **Shearman & Sterling's** international arbitration group to **found boutique firm Gaillard Banifatemi Shelbaya Disputes** in 2021, was blunt about how little had changed when it came to the diversity of arbitral appointments between 2016 and 2023.

She turned to hard data from **the 2023 annual statistics of the International Centre for Settlement of Investment Disputes (ICSID)**, which revealed the worrying lack of change, despite much discussion of the issues over the past decade.

In 2016, 48% of ICSID arbitrators came from Western Europe and 21% came from North America. Those statistics now stand at 46% and 20%, respectively, and only South America of the other regions has improved its representation, by just 2%.

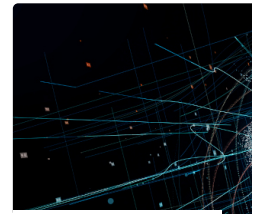
"The question is whether this geographic bias is baked into the arbitration system" asked Banifatemi, despite initiatives by arbitral institutions to improve representation among their appointments. The problem is that "the parties are ultimately responsible for the lack of diversity". Historically, parties have appointed 1095 Western European arbitrators, compared with just 396 by ICSID itself, and 549 from North America, compared with just 116 by the institution.

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Arbitration is rapidly growing in life sciences disputes, reflecting the impact of a pandemic, changing technology and a benefits which arbitration can offer



More encouraging was that there has been some improvement in gender diversity at ICSID, but still only two women are in the top 10 appointees in ICSID disputes, although one of them, **Brigitte Stern**, is the most-appointed arbitrator.

Part of the battle is working towards proper representation of seats and "diversity will be when the best seat is not in Paris, London, Geneva or Singapore" Banifatemi argued. The increasing number of arbitral institutions in **Africa**, Asia and Latin America, among others, indicates some desire for that, although those newer, smaller centres struggle to attract cases and clients away from the established centres in major cities.

In a speech which referenced a wide range of cultural touchstones, including the 2016 'Oscars so white' controversy, Star Trek and the paintings of Kandinsky, she considered **the promise made by the organisers at the opening of the 2022 conference** that diversity would remain the topic of every year's keynote until it was no longer an issue, asking how the community would know if and when this point has been reached.

One of the difficulties is that "diversity is a moving target" and that as society changes, the goals of representation change, but "the problem will be resolved when it is understood that diversity is a proxy for equality" and she said that real diversity will have been achieved only when the presence of racially and gender diverse groups is unremarkable.

"Without diversity, arbitration lacks... legitimacy", asserted Banifatemi, as she closed by calling for equal access, equal consideration and equal visibility in international arbitration.

The **ICC International Court of Arbitration** European Conference followed Banifatemi's speech, at which ICC Court secretary general **Alexander Fessas** echoed the call for representation because "parties need to trust the arbitral institution unreservedly" to be sensitive and authoritative regarding local laws, languages and cultures. "This is how the ICC will safeguard legitimacy."

Improving its **presence in Africa** and Asia is **high on the agenda for the ICC's leadership**, as the institution enters its second century.

Paris Arbitration Week continues until Friday. The conference has grown over the past six years, with the 2023 edition having 95 partner organisations and 145 events, according to organising committee co-chair **Marilyn Paralika** of **Fieldfisher**, while her fellow chair **Raphael Kaminsky** of **Teynier** opened the event with mention of wider justice issues, by making a statement of solidarity with the people of Ukraine and the women of Iran.

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