

# WIP BULLETIN

## The Role of Women in Arbitration Practice, ADR and Other Forms of Litigation



GENDER EQUITY AND  
UNCONSCIOUS BIAS

CHALLENGES AND  
OPPORTUNITIES FOR WOMEN IN  
DISPUTE RESOLUTION

THE GENDER GAP IN  
ARBITRATION PRACTICE

PROFESSIONAL ETHICS OF  
TRIAL LAWYERS

WIP WORLDWIDE:  
CHAPTER ACTIVITIES

AND MORE...



EDITORIAL

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COORDINATING CHAPTER

WIP Ecuador

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# Content

3

## **WILL GENDER DIVERSITY EVER BE ACHIEVED?**

By Agustina Rodríguez

6

## **THE USE OF DISPUTE BOARDS TO PREVENT AND ADDRESS ISSUES OF GENDER-BASED VIOLENCE IN PROJECTS**

By Emilia Grijalva

9

## **EMPOWERING WOMEN IN ARBITRATION: THE JOURNEY CONTINUES**

By Estefanía Contreras & Mariana Tique Álvarez

12

## **THE ROLE OF WOMEN IN ARBITRATION PRACTICE, ADR AND OTHER FORMS OF LITIGATION**

By Gabriela Inés Vásquez López, María Montserrat Dorado Yero, & Selva del Carmen Quintero Marrone

14

## **CHALLENGES AND OPPORTUNITIES FOR WOMEN IN TAX DISPUTE RESOLUTION**

By Andrea Moya

16

## **THE EQUALITY CHALLENGE**

By María Gabriela Dávila C.

18

## **MODERNITY IN CONFLICT RESOLUTION**

By Eliana Vilchez

19

## **PROFESSIONAL ETHICS OF THE TRIAL LAWYER**

By Veronica Arroyo

21

## **WOMEN IN ARBITRATION: A PERSONAL PERSPECTIVE**

By Claribel Medina De León

23

## **GET OUT THE BIAS!**

By Chidimma Njoku-Fadare

25

## **THE ROLE OF WOMEN IN ARBITRATION PRACTICE: WHAT MORE CAN WE DO?**

By Vanessa Aguirre

20

## **WIP WORLDWIDE**

Chapter Updates from **Costa Rica, Ecuador and Ethopia**

# WILL GENDER DIVERSITY EVER BE ACHIEVED?

Agustina Rodríguez

**In recent years, significant attention has been given to ensuring gender diversity in international arbitration and mediation.**

Among several initiatives, the International Chamber of Commerce (“ICC”) signed the Equal Representation in Arbitration Pledge (“ERA Pledge”) in 2016, which has garnered over 5,700 signatories, calling for enhanced diversity in international arbitration.<sup>1</sup>

Almost eight years after this initiative, these efforts are reflected in the increased appointment of women as arbitrators and in the pool of arbitrators available at major arbitral institutions. Data show a slow but steady increase in the appointment of women compared to previous years:

- The ICC's dispute resolution statistics for 2023 indicate that women arbitrators represented 29.7% of total confirmations and appointments (up from 28.6% in 2022). The report also reveals that, of all women arbitrators confirmed or appointed in 2023, 47% were nominated by the parties, 37% were appointed by the ICC Court, and 16% were nominated by co-arbitrators.<sup>2</sup>
- The London Court of International Arbitration (“LCIA”) reports similar numbers, with the overall percentage of female appointments at 34% in 2023 (up from 28% in 2022).<sup>3</sup>

- According to the 2023 annual report of the International Center for Settlement of Investment Disputes (“ICSID”), women appointed to ICSID cases in 2023 represented 22% of all appointments. Almost half of these appointments (45%) were made by ICSID, while respondents appointed 18%, claimants appointed 5%, and 24% were made jointly by the parties. The remaining 8% were appointed by co-arbitrators.<sup>4</sup>

Other arbitral institutions in the region show slower improvement on gender diversity. In Uruguay, the Conciliation and Arbitration Center, under the Uruguayan Chamber of Commerce (Centro de Conciliación y Arbitraje de la Cámara de Comercio y Servicios del Uruguay) includes only 9 women out of 50 local arbitrators, compared to 41 men.<sup>5</sup> Similarly, the Centro de Arbitraje y Mediación (CAM) of the Chamber of Commerce in Santiago, Chile, reports that while the pool of women arbitrators



1. Available at: <https://www.arbitrationpledge.com/signatories>.

2. Available at: <https://iccwbo.org/news-publications/news/icc-dispute-resolution-statistics-2023/#single-hero-document>.

3. Available at: <https://www.lcia.com/2023-annual-report>.

4. Available at: [https://icsid.worldbank.org/sites/default/files/publications/ICSID\\_AR2023\\_ENGLISH\\_web\\_spread.pdf](https://icsid.worldbank.org/sites/default/files/publications/ICSID_AR2023_ENGLISH_web_spread.pdf)

5. See list available at: <https://www.arbitraje.com.uy/referees/view-arbitros-nacionales>.



**“The gender disparity extends beyond arbitrator nominations;  
it also includes appointment of expert witnesses..**

increased from 2022 to 2023, it remains significantly smaller than that of men (19.8% women in 2022 and 21.5% in 2023).<sup>6</sup>

The numbers show progress, but there is still a long way to go. Data confirm that appointments of women by co-arbitrators and parties are still very scarce. Parties and co-arbitrators tend to appoint experienced arbitrators—primarily men—which impedes the promotion of more diverse candidates on arbitral tribunals. A 2022 update to the International Council for Commercial Arbitration’s (“ICCA”) Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings found that the proportion of women appointed by parties (as opposed to arbitral institutions or co-arbitrators) decreased by an average of 1.5 percentage points (from 19.4% in 2020 to 17.9% in 2021).<sup>7</sup>

The gender disparity extends beyond arbitrator nominations; it also includes appointment of expert witnesses. This issue has led to a similar commitment to the ERA Pledge with the introduction in 2022 of the Equal Representation for Expert Witnesses (“ERE Pledge”). The ERE Pledge, which has gained more than 1,626 signatories, addresses gender disparity in appointment of experts in dispute resolution proceedings. A 2020 survey conducted by AlixPartners revealed that 56% of surveyed arbitrators and lawyers had not seen women serving as expert witnesses in the preceding three years, and only 1% had seen four or more women acting as experts during the same period.<sup>9</sup>

In June 2023, the Equal Representation for Expert Witnesses initiative published a report detailing the challenges in increasing female expert witness representation and potential solutions for driving change. The report showed that in 2022, women were appointed or testified as the sole expert witness in just 10% of cases, and 64% of lawyers had not seen any female experts that year. The report identified several key reasons for these figures, notably: (a) lawyers’ preference for experts they know or have used previously; (b) a lack of women reaching senior levels in their professions; (c) insufficient experience of female experts in an expert witness role; and (d) a lack of encouragement or promotion by colleagues.<sup>10</sup>



6. Available at: <https://www.camsantiago.cl/wp-content/uploads/2024/03/Reporte-Anual-Estadistico-del-CAM-Santiago-2023-vf-27-03-2024.pdf>.

7. Reflecting 392 out of 2,195 appointments in 2021 from different arbitral institutions such as ICC, SIAC, LCIA, among others. Available at: [https://cdn.arbitration-icca.org/s3fs-public/document/media\\_document/ICCA-Report-Bu2-electronic3.pdf](https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-Bu2-electronic3.pdf).

8. Available at: <https://www.expertwitnesspledge.com/signatories/>.

9. Available at: <https://www.alixpartners.com/insights/102i0kp/real-representation-for-expert-witnesses-means-looking-at-the-whole-team/>.

10. Available at: <https://www.expertwitnesspledge.com/media/y2bp1nz4/ere-2023-survey.pdf>.



One of the main challenges for the ERE Pledge going forward will be establishing a method to measure progress, as there is currently no systematic reporting or recording of the number of women appointed as expert witnesses in dispute resolution proceedings. Therefore, arbitral institutions will play a crucial role in determining whether the initiative has made any progress. It is essential that they continue publishing data on the number of women who have served as experts, as well as engaging with major organizations providing expert witness services in litigation, arbitration, and other dispute resolution areas to build a team of experts with fair representation of women.

Initiatives like the ERA and ERE Pledges alone cannot drive substantial change without the collective effort of all arbitration practitioners, including law firms and other organizations involved in dispute resolution. When appointing arbitrators and experts, law firms have a critical role to play. They should collaborate to promote diversity and encourage parties—who typically have the final say—to consider diverse appointments.

To address unconscious or implicit bias, those of us working in the legal profession should focus on taking action at both the personal and professional levels. We have various measures to pursue, such as encouraging institutions and law firms to make public commitments to diversity and to submit reports on their progress toward gender parity; urging parties in arbitral proceedings to make diverse appointments (even general counsel in corporations can assist by encouraging outside counsel to appoint women); developing mentorship programs to support and guide women arbitrators and experts; establishing networking platforms to enhance the visibility of women; and attracting and retaining female talent in professional organizations.

These efforts will all be essential if we hope to drive meaningful change. We need real and active commitment from all individuals involved to demonstrate that change is possible, and take the achievement of gender parity from a goal to a reality.

**“Initiatives like the ERA and ERE Pledges alone cannot drive substantial change without the collective effort of all arbitration practitioners.”**

# THE USE OF DISPUTE BOARDS TO PREVENT AND ADDRESS ISSUES OF GENDER-BASED VIOLENCE IN PROJECTS

Emilia Grijalva

Dispute Boards (DBs) are an alternative dispute resolution mechanism that involves the referral of one or more technical disputes to a collegial body (usually three members) for a decision or recommendation, depending on the type of DB.

This mechanism has been used in Construction; Design-Build; Engineering, Procurement and Construction (EPC) contracts; and, since its origin in the 1970s, its use has expanded significantly. According to expert Christopher Koch, the first DB was implemented in 1975 in the Eisenhower Tunnel Project in Colorado and the first international use of a DB took place at the El Cajon Dam project in Honduras in 1981.<sup>1</sup>

There are several institutions that offer this service and regulations that regulate its procedure and operation, as is the case for the International Chamber of Commerce. Some Latin American

centers also have this service regulated, such as the Lima Chamber of Commerce, CARD Ankawa International, and the Santiago de Chile Chamber of Commerce. The Dispute Resolution Board Foundation, on the other hand, has published guides that gather the best practices and procedures in the implementation of DBs.

In Ecuador, Article 190 of the Constitution recognizes arbitration, mediation and "other" alternative dispute resolution procedures. The principle of alternability of ADR has been reflected in several resolutions of the Constitutional Court, which emphasize the conventional and alternative nature of arbitration and others, whose ultimate purpose is to provide effective protection to the parties who avail themselves of them. The alternative nature of ADR not only lies in its distinction from ordinary jurisdiction, but also in the fact that it is governed by its own rules and

procedures, by agreement between the parties in use of the principle of party autonomy.

With the issuance of Executive Decree 788 on June 26, 2023, the concept of dispute boards to resolve technical disputes in contracts signed under public-private partnerships was included for the first time in Ecuadorian legislation. Currently, such a mechanism is contained in the Law of Economic Efficiency and Employment Generation (hereinafter and for the purposes of this article, PPP Law) and its Regulations. Notwithstanding the foregoing, the dispute boards had already been agreed and activated in infrastructure contracts signed by the Ecuadorian State in previous years, as is the case of the Coca Codo Sinclair Hydroelectric Power Plant and the Quito metro system.

Dispute boards in PPP contracts under Ecuadorian law are inserted in the contract through staggered clauses. Article 347 of the

1. Chern, Cyril and Koch, Christopher. "Efficient Dispute Resolution in the Maritime Construction Industry: Dispute Boards in Maritime Construction," 2005. Available at: <https://www.landoltandkoch.com/medias/dispute-boards-in-maritime-construction-1.pdf>



Regulations to the PPP Law states that the composition, form of meetings, activation and other provisions necessary for its operation will be regulated in the PPP Contract.

In infrastructure projects, it is essential to have a conflict prevention and resolution mechanism that does not paralyze the works, which in turn translates into significant savings of time and money for the parties and for the final beneficiaries of the service.

Now, I must confess that I started this article thinking of combining what the Ecuadorian experience and legal framework establishes about dispute boards and at the same time generate a "call to action" to the various initiatives on gender equity to apply these good practices of parity in ADR other than arbitration and mediation. As mentioned above, the disputes that are submitted to DBs are of a technical nature, mostly related to infrastructure contracts, and therefore the boards tend to be made up mostly of men.

On this point, the 2030 Agenda for Sustainable Development places the areas of science, technology, engineering and mathematics (STEM) as spaces that drive the construction of more inclusive and sustainable societies. The incorporation of girls and women in these areas is imperative to reduce the gender gap; by 2050, it is expected that 75% of jobs will be related to STEM areas. However, the UN has pointed out that at the current rate, gender parity in STEM will not be achieved before the year 2100.

With regard to gender equity in the formation of lists of adjudicators, we see, for example, that the ANKAWA INTERNATIONAL Arbitration and Dispute Resolution Center has a list of national adjudicators of 148 professionals, of which 37 are women, while the list of national adjudicators has 29 professionals, of which 5 are women. The Lima Chamber of Commerce's Arbitration Center has 61 professionals on its list of national adjudicators, of which 14 are women, and 37 international adjudicators, of which 8 are women.

Hence the importance of de-masculinizing technical careers, encouraging women to freely choose to pursue these professions and to eliminate the absurd and unfounded biases and prejudices that widen the gender gap in the professional field in schools and universities. It is also imperative that gender equity and parity initiatives also join this cause.

In the field of arbitration, the International Chamber of Commerce vigorously promotes the ERA Pledge (Equal Representation in Arbitration) initiative, which encourages the incorporation of women arbitrators to the lists and to the parity composition of arbitral tribunals and even in panels of speakers in academic forums.

Additionally, reports from various arbitration institutions for the year 2023 yielded the following data:

- ICSID: 32% of all appointments were women.
- SIAC: 37% of the arbitrators appointed by SIAC in 2023 were women.
- HKIAC: 26.8% of all appointments were women.

Unfortunately, no statistics were found on the composition of the dispute boards in the various institutions and cases.

In my search for "hard data" that could support this editorial, I came across the article "*World Bank uses DAABs to address Gender Based Violence*,"<sup>2</sup> by Sam Thyne, an associate at Fenwick Elliott LLP, which prompted me to give this piece a twist.

As I delved into Thyne's article, I decided to rescue this versatility of ADRs and mainly of DBs and share with readers this important World Bank initiative. The World Bank has considered that DBs can expand their functions by addressing gender-based violence disputes arising from projects for which the World Bank provides funding.

2. Thyne, Sam. World Bank uses DAABs to address Gender Based Violence. Available at: <https://www.fenwickelliott.com/research-insight/newsletters/international-quarterly/daabs-world-bank-gender-based-violence>



The article notes that financing for several World Bank projects—not only in developing countries—has been canceled due to the discovery of endemic gender-based violence in and arising from the projects. The author cites as an example a 2015 case in which the World Bank cancelled funding for a road project in Uganda, where numerous allegations were made of adverse environmental and social impacts arising from the project's construction work, including serious allegations that road workers engaged in sexual relations with underage girls in the community and sexual harassment of female employees.

These incidents prompted the World Bank to form a working group to strengthen the institution's project response to issues related to sexual exploitation and abuse. In its report, the Task Force made numerous recommendations, including that projects identified as high risk for sexual exploitation, harassment and abuse should be subject to a set of mandatory requirement.

The World Bank's approach to implementing the recommendations and addressing the aforementioned problems was precisely to resort to Dispute Adjudication Boards (DAAB), which was announced in November 2020 and applies to projects that the World Bank considers to have a high risk for situations of sexual harassment, exploitation and abuse. Thus, the contracts for these projects include specific provisions on the prevention of these cases.

The functions of the DAAB with respect to the aforementioned issues entail holding periodic meetings and site visits to monitor compliance with the obligations of prevention and response to these types of risks and cases of sexual harassment, exploitation and abuse and to decide whether there is non-compliance with contractual obligations with respect to these issues.

It is important to note that the DAAB does not determine the factual aspects nor does it participate in the evaluation of the merits of any allegations of harassment, exploitation, and sexual abuse, but as in the case of technical disputes, it is limited to determining issues of contractual compliance.

The World Bank's initiative is worthy of recognition, as it has tried to contribute valid mechanisms to limit the occurrence of and sanction issues of gender-based violence, within the limitations of the World Bank as a financing provider, and of the DAABs as a figure to prevent and resolve conflicts in a timely manner, aware that the members of the DAABs must adhere to their functions and attributions; and also aware that the DAABs cannot assume roles other than those of their nature, so that their actions remain linked to the determination of compliance or non-compliance with the contract.

However, the effectiveness of DBs in general will depend on (i) a clear regulatory and contractual framework that makes their application viable; (ii) making the decisions adopted by the dispute board binding for the parties; (iii) avoiding the rotation of the members of the dispute boards; and, (iv) strengthening the knowledge of the DB mechanism in both the public and private sectors, as well as analyzing and understanding its implications and adopting the best practices for its proper operation.

I agree with Thyne that these types of initiatives, which undoubtedly have great benefits for society in general, should not be limited only to those projects classified as "high risk" for this category of situations, since gender-based violence is unacceptable in any project. And I would add that this type of initiatives and good practices should be replicated in other forums and organizations, as proof that from our spaces we can contribute to the construction of a more equitable, peaceful and egalitarian society.

# Empowering Women in Arbitration: The Journey Continues

Estefanía Contreras & Mariana Tique Álvarez



*“Women belong in all places where decisions are being made. It shouldn’t be that women are the exception.”*

**- Ruth Bader Ginsburg**

In 1993, women in international arbitration united to form ArbitralWomen (AW), an organization that promotes gender equality. They created a global network of dispute-resolution practitioners advocating for female professionals' representation and visibility in this legal field.<sup>1</sup> Over the decades, more practitioners joined forces to launch initiatives emphasizing the importance of increased gender representation in international arbitration and the legal profession. The Pledge for Equal Representation in Arbitration, created in 2015, exemplifies this by taking action to improve the profile and representation of women in arbitration and appointing them as arbitrators on an equal opportunity basis.

Several prominent institutions in international arbitration have established task forces to address gender representation in arbitration. In 2019, the International Council for Commercial Arbitration (ICCA) Governing Board, established the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings, which

published a report in 2020 analyzing statistics on the appointment of women arbitrators, and identified opportunities and best practices to promote and improve diversity in the international arbitration community.<sup>2</sup> The International Chamber of Commerce (ICC) issued its Declaration on Dispute Prevention and Resolution, making diversity, equity, and inclusion in all aspects of dispute prevention and resolution one of its main priorities.<sup>3</sup>

Different regions around the world have also launched initiatives to enhance gender representation. In 2018, Kenya inaugurated the Kenya Arbitral Women Conference to promote gender diversity in arbitration.<sup>4</sup> The East Africa Law Society Women Lawyers Forum has made significant efforts to enhance women's participation in international arbitration.<sup>5</sup> In the Middle East, initiatives like The Women Lawyers Group Middle East aim to improve the professional development of women in the legal field.<sup>6</sup> In Asia, arbitration institutions have created groups to promote the role of women in arbitration, such as the Women's Interest Committee from the Korean Commercial Arbitration Board and Women In Arbitration powered by the Hong Kong International Arbitration Centre.<sup>7</sup>

1. ArbitralWomen. “About ArbitralWomen: uniting and promoting women in dispute resolution”. November 15, 2023. Available at: <https://www.arbitralwomen.org/aw-outline/>

2. ICCA Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings. Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings, 2022 Update, P. XI.

3. International Chamber of Commerce. ICC Centenary Declaration on Dispute Prevention and Resolution. March 27, 2023. Available at: <https://iccwbo.org/news-publications/arbitration-adr-rules-and-tools/icc-centenary-declaration-on-dispute-prevention-and-resolution/>

4. Rhodes Vivour, A. Adedoyin Rhodes Vivour keynote speech: promoting gender diversity in arbitration in Africa Women in Arbitration Conference, Nairobi, March 23, 2018. Available at: <https://drvlawplace.com/wp-content/uploads/2020/09/ADEDYOIN-RHODES-VIVOUR-KEYNOTE-SPEECH.pdf>

5. International Senior Lawyers Project. “ISLP arbitration training for East African women lawyers”. August 31, 2023. Available at: ISLP - International Senior Lawyers Project Web site: <https://islp.org/islp-arbitration-training-for-east-african-women-lawyers/>

6. Women Lawyers Group – WLG Middle East. Enhancing the Professional Development of Women in the Legal Field in the Middle East. Available at: <https://wlgme.com/aboutus/#:~:text=The%20Women%20Lawyers%20Group%20Middle,betterment%20of%20society%20and%20the>

7. Hong Kong International Arbitration Centre (HKIAC). About WIA. Available at: <https://www.hkiac.org/women-arbitration-wia>



In Europe, women have formed groups to promote gender equality and women's participation in arbitration. In Spain, the Club Español e Iberoamericano del Arbitraje (CEIA) created a women's commission called CEIA Mujeres, which aims to increase the visibility of women in arbitration and improve their profile and representation in the field.<sup>8</sup> Greek women practitioners founded The Greek Women in Arbitration Group (GreekWIAG), to serve as a platform to support arbitration professionals, and to connect Greek women in the arbitration community worldwide.<sup>9</sup> In the USA, the American Arbitration Association-International Center for Dispute Resolution (AAA-ICDR) has launched a Women Panelist Resource Group. This initiative aims to elevate the participation of women in alternative dispute resolution and to offer training, mentorship, and networking opportunities for current and aspiring women panelist.<sup>10</sup>

Latin America is no exception. Several organizations have been created to promote gender diversity in arbitration and the legal profession. Women in the Profession, created by the Cyrus R. Vance Center for International Justice, promotes the advancement of women in the legal field, with an emphasis on individual leadership and within the profession, and has created multiple chapters, such as Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Uruguay, and Venezuela.<sup>11</sup> Women Way in Arbitration – WWA LATAM was also launched with the aim of promoting greater participation of women lawyers in international arbitration proceedings, fostering gender diversity for a more inclusive justice system.<sup>12</sup> Other groups, such as CIAC Mujeres from the Interamerican Commission of Commercial Arbitration (CIAC), currently work to promote and make more visible the talent of women practitioners in arbitration<sup>13</sup>, and are present in most countries in the region.<sup>14</sup>

**“Despite the different initiatives promoting women's participation in arbitration, gender-diversity and caseload statistics... show that women's representation in international arbitration remains low.”**

8. Club Español e Iberoamericano del Arbitraje, CEIA Mujeres. ¿Quiénes somos?. Available at: <https://www.clubarbitraje.com/grupos/cea-mujeres/quienes-somos-cea-mujeres/>

9. Global Arbitration Review. “Greeks women's group launches”, March 21, 2024. Available at: <https://globalarbitrationreview.com/article/greek-womens-group-launches>

10. American Arbitration Association - Empowering Women in ADR: Launch of the AAA-ICDR Women Panelist Resource Group. Available at: <https://www.adr.org/blog/AAA-Women-Panelist-Resource-Group>

11. Cyrus R. Vance Center for International Justice. Initiatives: Women in the Profession. Available at: <https://www.vancecenter.org/initiatives/women-in-the-profession/>

12. Women Way in Arbitration - WWA LATAM. Sobre WWA. Obtenido de Women Way in Arbitration - WWA LATAM. Available at: <https://wwarb.org/quienes.php>

13. Comisión Interamericana de Arbitraje Comercial. CIAC Mujeres. Available at: <https://www.ciac-iacac.org/ciac-mujeres/>

14. Comisión Interamericana de Arbitraje Comercial. Secciones Nacionales y Asociadas. Available at: <https://www.ciac-iacac.org/secciones-nacionales-y-asociadas-2/>

Despite the different initiatives promoting women's participation in arbitration, gender-diversity and caseload statistics released by the Singapore International Arbitration Centre<sup>15</sup>, the London Court of International Arbitration<sup>16</sup>, the ICC<sup>17</sup>, and the International Centre for Settlement of Investment Disputes (ICSID) show that women's representation in international arbitration remains low. According to the ICSID Caseload-Statistics, women represent only 29% of the appointments made in ICSID cases in 2023, and 15% in all ICSID cases.<sup>18</sup> ICC statistics indicate that women represented 29.7% of arbitrators in ICC cases in 2023, with only 31.7% of these women serving as president.

Specifically in Latin America, in 2023, the Institute for Transnational Arbitration (ITA) published a Guide and Scoreboard of Latin American Arbitral Institutions, highlighting that in 10% of the institutions, female arbitrators account for 10% of the arbitrators on the lists.<sup>19</sup> In 2022, the ICCA's Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings revealed that 20.2% of arbitrators appointed in Latin America and the Caribbean in 2021 were women.<sup>20</sup>

Women have made significant advancements in the legal profession, and several initiatives are actively promoting their participation in arbitration and alternative dispute resolution. While progress is still being made, the visibility of female practitioners' strategies to minimize gender bias is still not at the desired level. Continuing these strategies is crucial in enhancing women's participation in the field. However, it is essential for women to support each other. A first step is to nominate and designate more women arbitrators. This collective effort can significantly enhance the visibility and representation of female professionals in arbitration. Equally important is the need to include more women in legal teams, as it is another vital step towards achieving gender equality in arbitration. By actively seeking to include women in these teams, the legal profession can foster a more inclusive environment.

Finally, the role of senior practitioners as mentors for junior female practitioners is essential. Many senior practitioners have reflected on how other female practitioners encouraged them and provided professional opportunities. These gendered experiences motivate female practitioners to rally together and challenge gendered institutions within international arbitration. By working together and supporting one another, women in arbitration can drive meaningful change and create a more equitable future for the entire field.

15. Singapore International Arbitration Centre (SIAC). *Annual Report 2023*, April 1, 2024. Available at: [https://siac.org.sg/wp-content/uploads/2024/04/SIAC\\_AR2023.pdf](https://siac.org.sg/wp-content/uploads/2024/04/SIAC_AR2023.pdf)

16. London Court of International Arbitration (LCIA). *2022 Annual Casework Report*. Available at: <https://www.lcia.org/News/LCIA-news-annual-report-on-2022-updates-on-the-lcia-court-and.aspx>

17. International Chamber of Commerce (ICC). *ICC Dispute Resolution 2023 Statistics*. Available at: [https://iccwbo.org/wp-content/uploads/sites/3/2024/06/2023-Statistics\\_ICC\\_Dispute-Resolution\\_991.pdf](https://iccwbo.org/wp-content/uploads/sites/3/2024/06/2023-Statistics_ICC_Dispute-Resolution_991.pdf)

18. International Centre for Settlement of Investment Disputes (ICSID). *The ICSID Caseload-Statistics, Issue 2024-2*, August 19, 2024. Available at: <https://icsid.worldbank.org/sites/default/files/publications/2024-2%20ENG%20-%20The%20ICSID%20Caseload%20Statistics%20-%28Issue%202024-2%29.pdf>

19. ICCA. (2022). *ITA Americas Initiative – Latin American Arbitral Institutions Scoreboard*. Available at: <https://www.cailaw.org/media/files/ITA/Publications/arbitral-institutions-scoreboard-2023.pdf>

20. ICCA (2022). *Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings, 2022*. Available at: [https://cdn.arbitration-icca.org/s3fs-public/document/media\\_document/ICCA-Report-8u2-electronic3.pdf](https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8u2-electronic3.pdf)



# The Role of Women in Arbitration Practice, ADR and Other Forms of Litigation

**Gabriela Inés Vásquez López, María Montserrat Dorado Yero, & Selva del Carmen Quintero Marrone**

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The role of women as lawyers has become more and more important over the years. Gone are the days when law was seen as a profession for men and, on the contrary, more and more women are entering the field of law. Nowadays it is more common to find women occupying important positions as academics, arbitrators, judges, magistrates, litigators and partners at important law firms— all positions that historically had been occupied, mostly, by men.

Although it is obvious that participation and opportunities for women lawyers have been evolving and increasing, we cannot overlook that, even today, there are still limitations, biases and other obstacles that make the road to professional success for women lawyers more difficult, and that we must still contend with differences and inequalities compared with men.

This is a reality that is experienced in different areas of law, among these, in the practice of arbitration, alternative dispute resolution (ADR) and other forms of litigation.

In discussing this with a number of women lawyers practicing arbitration, ADR and litigation, many agreed that ultimately, there is still a long way to go and many things that must change in order to truly equalize opportunities for women and men in this field.

It is worth noting that, regarding the differences in choice between female and male lawyers in the area of arbitration, different arbitration centers in Panama, including the International Chamber of Commerce (ICC) and the Center for Conciliation and Arbitration of Panama (CeCAP), have collected statistics that clearly



show that appointments continue to be predominantly male.

The statistics indicate that the numbers vary depending on who appoints the arbitrator. When the arbitrator is appointed by the parties, according to CeCAP statistics, 65-67% of the parties prefer to appoint male arbitrators, and just 33-35% prefer female arbitrators. However, when the appointment is made by the co-arbitrators, the preference is to appoint women as presiding arbitrator in 57% of the cases, while when the arbitration center appoints arbitrators, the statistics show a 50% split between men and women in institutional appointments.

This is evidence that, in Panama, women are usually appointed by lottery, because in this case both centers (CeCAP and the Dispute Resolution Center, CESCÓN) have been oriented towards parity. However, the parties and their lawyers continue to prefer appointing male arbitrators.

On the other hand, with respect to counsel in arbitration, CeCAP's gender statistics for 2023 indicated that parties prefer to be represented by men. These results showed that men are preferred by the claimant 71% of the time, and 70% by the respondent; versus 29%

and 30% representation of women in the same cases.

However, today there are large numbers of female judges and magistrates. In fact, the position of Chief Justice of the Supreme Court of Panama is currently held by a woman, and the Supreme Court is mainly made up of women. This is evidence of an advance in terms of gender in the Panamanian Judicial System, in considering female professionals for such positions.

With regard to the participation of women litigants in the courts, it is true that there are still notorious differences in the treatment of women compared to men.

In many Latin American countries (including ours), *machismo* is still deeply rooted. The fact that women have different roles, such as mother, wife, etc., is usually seen as a weakness by their peers as well as by those who choose or appoint them.

It is these cognitive biases and cultural barriers that were created and passed from generation to generation that continue to make the road more difficult for women.

Now, in the face of these barriers and differences for women lawyers, what can we do?

This question touches on the debate about whether public policies focused on the fulfillment of "quotas" are really a solution, or whether they are an imposition that does not necessarily change people's mentality and further stigmatizes women.

Several women lawyers with whom the topic was discussed are in favor of meritocracy and not imposition; however, they acknowledge that the policies and norms on gender parity have created a little more openness, at least in arbitration centers. They also consider that, despite the creation of rules, guidelines and policies on this issue, the increase in participation and consideration of women lawyers has been very timid in comparison with the academic qualifications that many have, which, in many cases, are even greater than their male counterparts.

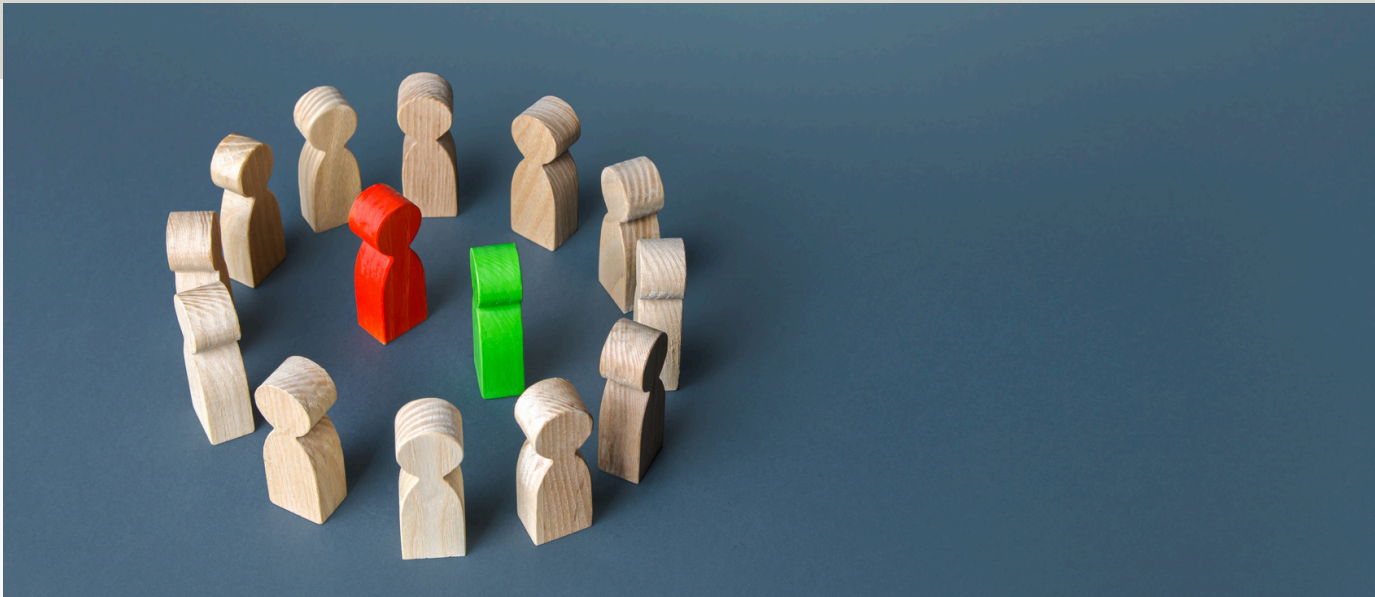
It is evident that, even today, most women litigators, arbitrators, mediators, and others do not compete on equal terms with men. In most cases, we must stand out more, be better prepared and demonstrate greater availability in order to excel.

In short, the struggle to achieve greater equality in the area of arbitration, ADR and litigation by women is something that is not over yet. However, an important factor that it seems all successful women lawyers have, is the combination of perseverance, experience, and visibility gained through forums, networks, events, and other opportunities. Thus, continuing education and achieving as much balance as possible between our professional and personal lives are key to our success in these areas of law practice.

**“Despite the creation of rules, guidelines and policies, the increase in participation and consideration of women lawyers has been very timid in comparison with the academic qualifications that many have, which, in many cases, are even greater than their male counterparts.”**

# Challenges and Opportunities for Women in Tax Dispute Resolution

Andrea Moya



Of the 20 judges that make up the specialized chambers of the National Court of Justice of Ecuador, 40% are women. Of the 12 judges that make up the District Tax Court of Quito, 50% are women. In the private sector, of the 17 professionals ranked in Ecuador by Chambers & Partners in the tax area, 35% are women. This percentage is reduced to 17% for the dispute resolution area in which, of the 29 ranked lawyers, only five are women.

Tax advice involves not only technical knowledge, but also communication skills, critical analysis and the ability to adapt to a constantly changing legal and economic environment. These skills are also essential to effectively represent the taxpayer in dispute resolution processes before the administration.

In both adversarial systems such as litigation and non-adversarial methods such as mediation, being a trial lawyer requires a combination of knowledge, skills and personal attributes. The book *Making Your Case: The Art of Persuading Judges*, written by Antonin Gregory Scalia, Justice of the Supreme Court of the United States, and Bryan A. Garner, offers valuable insights that are particularly relevant to identifying these skills and attributes that, historically, have been considered the domain of men.

In terms of knowledge, it is not enough to know the law, principles and jurisprudence applicable to the case; it is essential to master the facts. This is especially relevant in tax settlement proceedings since the agreement between the parties is not limited to the applicable law; this agreement also depends on the two parties'

**Recent behavioral studies offer a new approach: that women's perceived self-confidence does not correlate with the confidence perceived by others.**

of the facts of the case. In order to develop a strategy to deal with the case, one must anticipate the arguments of the opposing party.

The ability to communicate the case in a clear and concise manner is paramount. In *Making Your Case*, the authors quote the following phrase from Demetrius de Falero: "Length dissolves vehemence, and a stronger effect is obtained when much is said in a few words...". This concept encompasses what judges expect from the trial lawyer: clarity and vehemence.

Women often bring a different approach to advocacy, emphasizing clarity and brevity. These skills are crucial in tax law, where legal arguments must be precise and easily understood. The ability to explain the content of complicated laws and regulations in clear and persuasive arguments is a skill at which many women excel.

However, expressions that, in a male lawyer may qualify as passion, may be taken as emotional behavior in a female lawyer. The difference in interpretation reflects broader societal attitudes toward gender and emotion. Women's emotional

expressions tend to be disqualified, whereas men's enthusiasm or strong feelings are admired or respected.

This is closely related to a personal attribute: confidence. Projecting confidence and credibility in the courtroom or in a mediation process is vital. Many articles have been written about the apparent lack of self-confidence displayed by women, suggesting that they relinquish the attributes of femininity, learn the rules of the male-dominated world of work, and assert themselves in that environment.<sup>1</sup>

However, recent behavioral studies propose a new approach: women's perceived self-confidence does not correlate with the confidence perceived by others. That is, although a woman may feel confident and competent, this internal perception does not necessarily match the assessment of others. Understanding this discrepancy is crucial to creating more inclusive and equitable professional environments, where the perception of confidence is aligned with the reality of people's capabilities and talents.

In Ecuador, tax law has been a space in which women have been able to develop our careers successfully precisely because our capacity and talent have been duly appreciated. Women are not only participating; they are breaking barriers and setting new standards. Historically, the legal profession, including tax law, has been dominated by men. However, the growing number of women serving as tax judges and attorneys marks a significant advance toward gender equity.

1. In 2013 Sheryl Sandberg, the COO of Facebook, published a book in which she advised women to take chances ("lean in"). The following year, authors Katty Kay and Claire Shipman published the book "The Science and Art of Self-Assurance - What Women Should Know," in which they describe how men don't think twice about taking chances and, on the contrary, too many women who are fully qualified still hold back and don't dare due to lack of self-confidence.



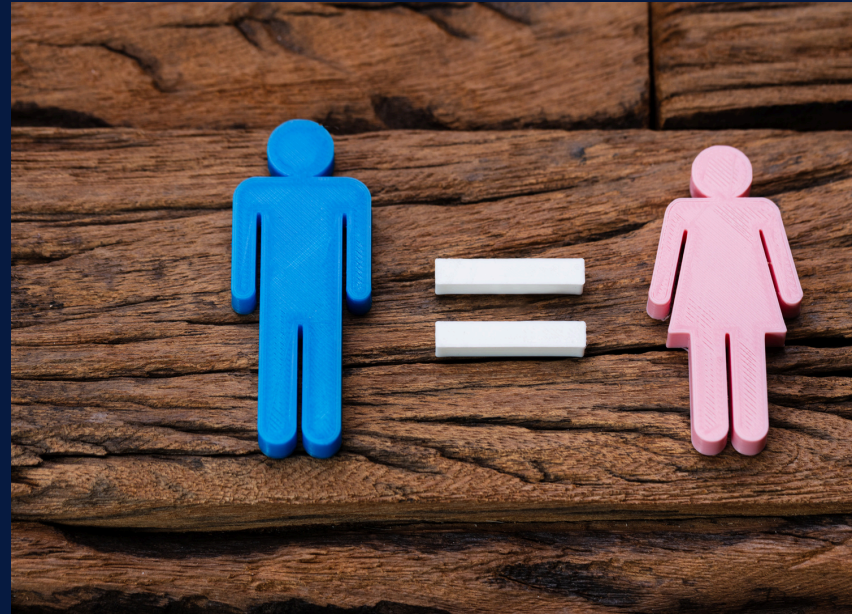
# The Equality Challenge

**María Gabriela Dávila C.**

Since the French Revolution, the demand for women's rights has been part of a social, political and cultural process, beginning with classical liberal feminism (equality of formal opportunities), through social liberal feminisms (equality of material or real opportunities), to socialist feminisms (equal access to resources). Although the struggle for gender equality has been gaining strength, unfortunately the results obtained have not been the desired ones.

Currently, Sustainable Development Goal 5, established by the United Nations, sets as an aspiration: "Achieve gender equality by 2030". However, according to the World Economic Forum's Global Gender Gap Report 2024, it will take 134 years to achieve gender parity. The question then arises: What is the reason for the existing gender gap?

First of all, the cultural factor. We still live in a world where there are biases rooted in gender stereotypes, which inhibit us from advancing in the construction of more equitable and fairer societies. In the business world, the incorporation of women in managerial positions is scarce. According to García León (1995): "... the higher the institutional hierarchy, the fewer women there are." In short, women are a clear minority who suffer serious difficulties and problems in attaining power, hence their name "discriminated elites."



The phenomena of professional or labor segregation, such as the so-called "glass ceilings," constitute barriers that hinder the professional development of women and do not allow them to climb the organizational ladder on an equal footing with men. These are generally insurmountable barriers, which occur due to the lack of organizational culture in companies, gender stereotypes and care systems; therefore, it is a first step to incorporate public policies that allow the generation of equality strategies within companies.

Secondly, there are the family responsibilities of caregiving. Caregiving is highly feminized, especially in Latin American countries, where 91.5% of women devote their time to caregiving. According to UN Women in "Towards the construction of Integral Care Systems in Latin America and the Caribbean," women triple the amount of time men spend on caregiving, creating an inequality of professional or work opportunities. Therefore, one form of social reconstruction will lie in the redistribution of the burden of care in households, allowing women to have greater access to education and professional or labor insertion.

**The question then  
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gender gap?**

Thirdly, there are unconscious prejudices or the so-called "imposter syndrome," characterized by an externalization of success and an internalization of failure. On many occasions, women invalidate our achievements, creating doubts about ourselves, considering that we are not competitive or qualified enough for a given job, which generates a feeling of guilt and frustration, which men generally do not experience. For this reason, women's empowerment must be reinforced, providing tools and generating support networks to help them overcome this syndrome.

Understanding that the incorporation of women in executive positions in companies is key, generates new perspectives in organizations. Building a true female leadership brings with it better communication, promotes diversity, creativity and the generation of different visions in decision making. For Sheila Penrose, Chairman of the Board of Jones Lang Lasalle: "Companies that overlook half of the world's population, overlook half of the world's talent. To compete effectively, we need to reflect the diversity of the world in which we, and our clients, live and work."<sup>1</sup>

The World Economic Forum's Global Gender Gap Index (WEF, 2022) ranks Ecuador 41st out of 146 countries, and 10th out of 22 in Latin America and the Caribbean.<sup>2</sup> The representation of women in management positions is still low: 23% in large companies and 33% in small and medium-sized companies. Therefore, although the overall gap has decreased, there is still a steep road ahead.

In January 2023, Ecuador enacted the so-called "Violet Economy Law," whose objective is to strengthen, guarantee and implement the mainstreaming of the gender and multicultural approach, through the generation of incentives and public policies that allow full access and exercise of the fundamental rights of women, promoting equality, gender equity and multiculturalism.

Among some of the actions contained in this law are: the reduction of wage gaps; the creation of incentives for the participation of women in the different spaces of society; the creation of employment policies that increase the participation of women, especially for those who have been victims of violence or are in a situation of vulnerability; and, the generation of adequate measures to eliminate barriers for the labor insertion of women, especially those related to inadequate remuneration, job instability or sexual harassment at work, with the purpose of guaranteeing the integral development of women.

The most innovative actions of the Violet Law include the creation of obligations for companies such as the elaboration and implementation of equality plans, in order to establish strategies and practices to achieve parity of opportunities between women and men; the opportunity to redistribute caregiving tasks between fathers and mothers, including how the 12-week paid leave for the birth of a child will be taken; and the mandatory inclusion of women in the composition of companies' boards of directors.

Ecuador faces a great challenge, as implementing this regulatory framework will not be easy and will take time; however, strong legislation will undoubtedly contribute to the reduction of gender gaps in our country.

1. Penrose, Sheila. "How business leaders can help women at work", World Economic Forum, 2014. Available at: <https://www.weforum.org/agenda/2014/10/business-leaders-can-help-women-work/>  
2. Available at: <https://www.weforum.org/publications/global-gender-gap-report-2022/>



Writing these lines represents, by far, the longest reflection I have had in recent years.

Inevitably, I was reminded of the time when I was beginning my studies in law school, with more than 200 classmates. In a familiar refrain, we were told not only about the difficulties of achieving a quality education in my country, but also that only a couple of generations ago, a woman had no certainty that she would be able to study, much less work in whatever field she chose.

This is why I assign a special value to the composition of my graduating class: approximately half of them were fellow female students. The professional challenges were transforming, however, and, to my astonishment, I soon learned that this proportion of female classmates, which I considered normal, would not be repeated.

At that time, I read with attention papers such as those of Ruth Bader Ginsburg - who was, more or less, my grandmother's age, a contextual detail that allowed me to understand many of her ideas - in which she reflected on her many personal and professional

achievements, expressing her deep gratitude for the support she received from those close to her, which was fundamental for her to face the professional world that had so few open doors for a young lawyer of her time, even as her life and career progressed. Undoubtedly, the society in which she lived was different from those on this side of the world, but, in many ways, it is a society similar to our own.

Our understanding of the importance of a quality education for any person, regardless of gender, has proliferated in recent decades and with it, we find more and more and better prepared legal professionals in a society that is increasingly integrated with the world. Of course, this task is not yet finished in Peru.

Since the beginning of humankind, legal professionals have worked to solve conflicts. However, women's participation in this profession is relatively recent, and their widespread incorporation into this world occurs in a modern

context with different perspectives, new activities and technologies, as well as the impasses they bring along with them. This is now a world where the exploitation of intellectual property has been key to generate modernity and development on a large scale.

Thus, legal professionals bring their perspective to a world that continues seeking to equalize the fairness of various rights and to be increasingly creative in seeking to resolve conflicts in various human relationships and technological business situations alike.

In this scenario, we find more tools to resolve such disputes. From this arise alternative dispute resolution mechanisms, which, although they are more firmly entrenched in territories such as the United States, are increasingly being chosen in these latitudes to solve commercial disputes and, thus, take firm steps to include the specialty of Intellectual Property in such practice.

It is impossible not to mention the expansion of the concept of the national judge in the Andean Community as a tangible sign of such progress, as well as other development-related challenges such as the definition of procedural aspects in the arbitration of conciliatory intellectual property matters.

The participation of female legal professionals in mediation, conciliation and arbitration is diverse. This is demonstrated, for example, by checking the composition of the arbitration centers in Lima<sup>1</sup>, as well as some registries of arbitrators specialized in intellectual property in Peru<sup>2</sup> and WIPO.<sup>3</sup> In some centers we find an equal number of female and male arbitrators; in others, women make up only one third, and, in some cases, less than one tenth.

The training of new legal professionals continues within a context of a growing number of senior and contract professors.<sup>4</sup> Remember, this is only a snapshot of the moment.

1. CARC PUCP, Court of Arbitration. Available at: <https://carc.pucp.edu.pe/servicios/arbitraje/corte-de-arbitraje/>. CIAR USMP, Court of Arbitration. Available at: <https://usmp.edu.pe/ciar/corte-de-arbitraje/>

2. Registro único de árbitros del Indecopi. Available at: <https://www.gob.pe/institucion/indecopi/informes-publicaciones/5598578-registro-unico-de-arbitros>.

3. WIPO arbitrators, mediators and experts (of Peru). Available at: <https://www.wipo.int/amc/es/domains/panel/panelists.html#13>

4. Universidad de Lima. Available at: [http://fresno.ulima.edu.pe/bu\\_dbdirexp01.nsf/planadocentewebcat?openview&carrera=6100](http://fresno.ulima.edu.pe/bu_dbdirexp01.nsf/planadocentewebcat?openview&carrera=6100). Pontificia Universidad Católica del Perú. Available at: <https://departamento-derecho.pucp.edu.pe/profesores/docentes-contratados>





# Professional Ethics of the Trial Lawyer

Verónica Arroyo Merizalde

## Legal ethics are more than a professional responsibility.

In many countries, professional bar associations have tried to put principles of ethical conduct in writing, but is a code sufficient?

Ethical principles can exist by general consensus. Certainly, a code makes available to lawyers the ethically binding principles that, in some way, help to ensure more effective adherence to them. A code of ethics usually contains prohibited conduct, behaviors and practices, aimed at solving specific problems of professional ethics; however, no instrument can predict all ethical problems that may arise in the practice of our profession.

Principles of legal ethics, whether written or unwritten, not only regulate the conduct of legal practice, but also reflect the basic assumptions, premises and methods of the legal system in which the lawyer practices. These principles also reflect the profession's conception of the administration of justice, which includes the fundamental assumption that the typical lawyer, although primarily engaged in the representation of private interests, also has considerable public responsibility, since a lawyer is a professional who plays a fundamental role in upholding the integrity of the legal system. Accordingly, a lawyer must avoid tactics that nullify the fair administration of justice, even as he or she works vigorously to advance a client's interests.

Litigation is a complex process that has evolved throughout the history of legal systems. Judicial systems have been eliminating problems within the process to make it more reliable, focused on justice and equality of arms; despite this, the ethics of litigation are not perfect.

The legal system appears to be well developed; however, almost every day we encounter novel, unexplored situations. When this happens, the rules that regulate the judicial system do not offer a simple answer, putting the application of the principles of professional ethics to the test to ensure the ethical practice of law, in the best interest of the parties involved. In arbitration, for example, while there is an abundance of rules regulating the conduct of arbitrators, the same is not true for lawyers, and, although recent situations have led to the alternative of removing a lawyer who has caused a conflict situation, the debate is far from being resolved.<sup>1</sup>

An uncertain area may arise even before going to court. Clients may bring situations to the table that are not necessarily clear from a legal standpoint. Artificial intelligence has already generated a major legal firestorm and, with it, a number of legal "gray areas." For example, in June 2023, a federal judge in New York fined a law firm for presenting false precedents created by ChatGPT in an aviation injury claim.<sup>2</sup>

Technological platforms are the clearest example of this issue. Innovations have demanded societal changes and raised confrontations with the status quo. As is common, innovation anticipates public policy and law, so there is always an attempt to catch up. Before the new technological revolution, the delay was almost imperceptible because there was enough time to adapt the law to reality. technology is advancing by leaps and bounds and often unpredictably, so it is logical that there are legal loopholes and problems of adequacy for which codes of ethics have not yet found a reasonable

1. See Óscar Franco Pujo & Roberto Muñoz Rojola, Remoción del Abogado en el Arbitraje Internacional ¿Una Alternativa Viable? La Revista de Arbitraje de la Comunidad Iberoamericana, Available at: <https://ciarglobal.com/wp-content/uploads/2018/04/La-Remocion%CC%81n-del-Abogado-en-el-Arbitraje-Internacional-abril-2018.pdf>. See also: Hrvatska Elektroprivreda, d.d. v. La Republica de Slovenia, Cas CIADI No. ARB/05/24, Decisión del Tribunal Arbitral relacionada a la participación de David Milson QC, May 6, 2008.

2. See United States District Court for the Southern District of New York. Roberto Mata v. Avianca Inc. (2023)



solution. Without clear and well described rules, ethics in litigation is called into question.

However, even though our world and our profession are constantly evolving, and even within a competitive and adversarial environment, there are parameters that never change, especially when it comes to performing well – principles that not only guide our practice, but reflect our commitment to service.

First, one of the main responsibilities of a trial lawyer is his or her commitment to justice. It is not only about defending the interests of our clients, but also about acting under the principles of honesty, transparency and integrity. The figure of the trial lawyer plays one of the most important roles in the legal field, since he/she guarantees information, acts as an advisor, represents the defense in court, etc. Therefore, the lawyer cannot be conceived only as a representative of his client, but as an operator of the legal system, whose objective is the proper functioning of the administration of justice.

Second, professional secrecy and confidentiality are basic principles required of all lawyers, regardless of the field in which we practice. These values are essential principles in the attorney-client relationship, which is based on trust and requires us to conduct ourselves professionally with integrity, honesty, loyalty and diligence.

The initial consultations and discussions between a client and a lawyer, even without the representation being formalized, are usually covered by professional secrecy, since clients share information in a context of confidentiality. This moment will undoubtedly be the beginning of a relationship of trust, in which the basic principles required by moral ethics must prevail.

Third, the good performance of the profession and the effective achievement of the purposes of the administration also lies in the due respect, loyalty and professional deference among lawyers, who, regardless of their legal position and strategy, must maintain mutual respect. One of the challenges faced by trial lawyers are offensive expressions or extremist positions that exceed tolerable limits and harm the system. We lawyers must coexist in the forum, be prudent, and avoid behavior that leads to uncomfortable situations and unpleasant encounters in the courtroom. Respect not only improves the quality of legal practice, but also contributes to a more collaborative and less adversarial environment.

Finally, women litigators face additional challenges in a field that has historically been dominated by men. Gender equality ensures fair and representative justice, and as litigators, we have an ethical role to foster a culture that values inclusion and mutual respect. Women lawyers in important roles within an organization must promote values that celebrate diversity and eliminate biases that enhance legal practice. Commitment to this principle is a challenge that requires ongoing attention on our part; this commitment not only enhances the work environment, but strengthens fairness and equity in society at large.

To conclude, ethics in the courts largely boils down to exactly what it is in normal life. Ethics is the sense of right and wrong, and the way in which potentially harmful situations to third parties are dealt with. In the words of Don Alfonso el Sabio, the precepts of law are: live honestly, do no harm to another, and give to each his or her own.<sup>3</sup>

3. See Don Alfonso X, *Las siete Partidas*, Ley Tercera



# Women in Arbitration: A Personal Perspective



Claribel Medina  
De León

Arbitration is an alternative dispute resolution method that has established itself as an effective and efficient tool that offers the parties involved the possibility of resolving their disputes more quickly, confidentially and with the intervention of experts in the field. In an increasingly globalized and complex world, arbitration has become a preferred option due to its flexibility and ability to adapt to the specific needs of the parties.

Historically, arbitration has been dominated by men, both in arbitral tribunals and in the institutions that administer them. However, in recent years, we have seen a significant shift in women's participation in the field. This transformation reflects an ongoing effort towards greater equity and diversity in arbitration, although much remains to be done.

My experience as an arbitration attorney has been, without a doubt, very enriching and positive. Since the beginning of my career in arbitration, I have found a space where I have been able to develop professionally without feeling discriminated against because of my gender. I have had the opportunity to arbitrate complex and relevant cases, and at all times, I have felt that my contribution has been valued by my colleagues and by the parties involved.

## **The Growing Role of Women in Arbitration**

The role of women in arbitration has gained visibility in recent years, reflecting a positive shift towards greater inclusion and diversity. Women in arbitration not only bring a unique perspective, but also contribute with their high level of preparation and detailed approach to dispute resolution. The presence of more women in leadership roles within arbitral tribunals has enriched the quality of decisions and fostered a more balanced and representative environment.

I have observed a considerable increase in the participation of women in arbitrations, which is an encouraging sign of progress in our profession. This increase is not only in numbers, but also in the quality and importance of the cases we women are arbitrating. However, much remains to be done to achieve true equity. It is essential that more opportunities continue to open up and that more women continue to be considered for the role of arbitrator.

Women have the professional excellence necessary to perform this role successfully. Therefore, I invite institutions and colleagues to continue to support and encourage the inclusion of more women in arbitration, recognizing the value we bring to this field. Doing so not only strengthens the arbitration process, but also builds a fairer and more equitable system of justice.

## **Women's Participation in Alternative Dispute Resolution (ADR)**

In addition to arbitration, women's participation in other alternative dispute resolution (ADR) methods, such as mediation and conciliation, has also grown significantly. These methods offer more collaborative and less adversarial ways of resolving disputes, and women have proven to be particularly effective in these roles due to their ability to foster dialogue and cooperation between parties.

Mediation is a field where empathy, active listening, and the ability to understand the needs of all parties are essential. Many women have found mediation to be an ideal platform to exercise their talents and skills in peaceful conflict resolution. Similarly, conciliation has seen an increase in female participation, which has contributed to the diversification of approaches and innovation in dispute resolution techniques.

In these spaces, as in arbitration, the presence of women has enriched ADR practice, bringing new perspectives and approaches that improve the quality and efficiency of the processes. However, it is necessary to continue promoting the participation of women in these roles, ensuring that their contributions are recognized and valued to the same extent as those of their male colleagues.

### **The Role of Women in Other Forms of Litigation**

Women's participation in arbitration and other alternative dispute resolution methods also reflects a broader shift in the field of litigation. Traditionally, courts and formal legal practices have been dominated by men, but this is changing. More and more women are rising to leadership positions in law firms, courts and regulatory bodies. These women are setting precedents, leading high-profile cases and being recognized for their excellence in the field of law.

This change is crucial not only for equitable gender representation, but also for the evolution of legal practice as a whole. Diversity in litigation and judicial processes leads to fairer and more balanced decisions that better reflect the diverse realities and needs of society.

As more women participate in litigation, whether in court or in arbitration proceedings, they bring with them a fresh and innovative approach. Their participation not only diversifies the field, but also drives greater equity and fairness in dispute resolution. However, as in all fields, there is still a long way to go to ensure that women have equal opportunities to lead and excel in these areas.

### **Looking Ahead**

It is undeniable that women's participation in arbitration and other alternative dispute resolution methods is on the rise. However, to maintain and accelerate this progress, it is crucial that policies and practices that promote gender equality continue to be implemented. This includes everything from training and mentoring new female arbitrators, to actively promoting women in leadership roles within arbitral and ADR institutions.

Women have the capacity and professional excellence to play key roles in dispute resolution. Their increasing participation in these fields is a sign that arbitration and alternative dispute resolution methods are evolving towards a more inclusive and representative model.

For women considering a career in arbitration or ADR, my advice is not to hesitate to take the plunge. It is a field where professional growth is real and where, in my experience, equity and excellence are valued. With determination, support and opportunity, women will continue to advance and redefine the field of arbitration and dispute resolution in general.

# Get Out the Bias!

Chidimma Njoku-Fadare



Every March 8, we celebrate International Women's Day with hashtags like "breaking the bias," "each for equal," and the like gracing our screens across the world. While there is no doubt that women in all professions including the legal profession have dragged us out of the Stone Age, we all can agree that it is not yet *Uhuru* for women in the workplace, especially with the clog of unconscious bias.

Unconscious bias (also known as implicit bias) is unfair belief about a group of people that you are unaware of and that affects your behavior and decision.<sup>1</sup> It is the bias we bring into our judgments and decision-making without realizing we are doing so and women in the legal profession face these every day in varying forms and degrees. As with everything, there are categories of unconscious bias and this article would address them one after the other.

First is that women experience microaggressions at a significantly higher rate than men<sup>2</sup> as they are two times more

likely to be talked over or interrupted when speaking amongst their colleagues than men. They are also more likely to be assigned office housework or administrative tasks such as organizing get-togethers, ordering and serving food during lunch/tea-time, and taking minutes even when they are not junior staff. Now on the flipside, women are more likely to be penalized for assertive behavior required for their job than their male counterparts. So a woman is more likely to be viewed as aggressive while her male colleague exhibiting the same traits is described as "assertive." So, blamed if you do, blamed if you don't.

Female lawyers are also perceived as less committed to their work as soon as they decide to have children. This is called the maternal penalty. This has led to a mass exodus from law firms, leaving fewer women in the workforce to rise to the top leadership of law firms and other corporate organizations. So they are more likely to be passed over

for promotion, visible work, and other key responsibilities without being asked if they would like to sit out those opportunities. Research has shown that men are perceived as more committed to their jobs when they start families, whereas it is the opposite for women.

Now, the aim of this article is to call ourselves out and catch ourselves when we are taking decisions steeped in implicit bias, when as women, we key into these biases because they have been peddled to us by others and we have not stopped to question the rationale. The good news however is that once a problem is identified, we are well on our way to the solution. This leads us to how we can take little steps daily to change the narrative in our spheres of influence. The first step to conquering implicit bias is to accept that we all have biases. Shocker? Yes! Nobody is free of biases. The only difference is that your bias might not be mine.

1. Oxford Dictionary

2. "Women in the Workplace 2023", LeanIn.org y McKinsey & Company, October 5, 2023. Available at: <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/women-in-the-workplace-2023>



Now that that's out of the way, the following are pointers to ways to navigate implicit bias as women in the legal profession:

1. Do great, credible work always, promote your work and take pride in it.
2. Show up authentically at work and do not be afraid to take up spaces. Lean into your difference and leverage it to provide impeccable value.
3. Prioritize work life integration – more than work-life balance, work life integration is first to accept that our personal life and our work life are integral parts of us that we may not be able to divorce. Therefore, it is best to plan our life around our work and plan our work around our life to achieve balance.
4. Aspire to, work for, and put yourself out there for leadership roles.
5. Promote inclusivity by creating awareness, fostering mentorship and speaking up against these biases when the need arises.

While the above is neither an exhaustive list of hacks nor of biases, the aim of this piece is to keep us informed and enlightened as we make the workplace more accommodating for women by kicking out biases one after the other, we must all remember that when we conquer the demons of bias, we owe it to posterity to pay it forward.

**“The good news, however, is that once a problem is identified, we are well on our way to the solution.”**





# The Role of Women in Arbitration Practice: What More Can We Do?

**Vanesa Aguirre Guzmán**

I wanted to begin these lines with a question, since more than one would say that, given the access of valuable women to positions such as directors of arbitration centers, arbitrators, or as leaders of judicial defense teams or in arbitration, at this date there is no need for more actions to make women visible in these areas.

I am not one of those women who feel that their world is threatened or undervalued by men. It is true that I was born in the second half of the 20th century, in the western hemisphere, and I have had the privilege of having been able to access higher education, or teach in universities, thanks to the struggle of other less fortunate women who suffered the unimaginable and thanks to whom I am writing these lines today. My undying gratitude to these brave women.

I am not one of those who look down on the work of men either: for me it is a pleasure to work in a team; the gender of my colleagues is all the same to me. I really enjoy the enthusiasm and shrewdness with which men face complex cases, just as I am amazed to meet women who find a thousand possible answers to a legal problem with extraordinary creativity.

So, what is missing? Do we need to prove something more? Or is it enough to be recognized for our work and results?

It is an inescapable paradox that, in the legal world, as in many other professions, people want to deal with a lawyer, who also has seniority, but at the same time

they fill their mouths saying that young women should be given a chance. And the fact is that very few people trust—and this happens, let's not say it doesn't, in other professions—that a young woman is capable of handling her case; however, many people end up recognizing that women have, in some cases, a greater capacity for organization and dedication to the cases entrusted to us. On the other hand, and I will not hide my discomfort on this point, I continue to meet male colleagues who, as a way of "empowering" women, entrust the presidency of arbitration tribunals without consulting us if we will have the necessary time, knowing that the presentation of a case involves much more work.

The problem, I fear, is that it is assumed that women "have to empower themselves". And this contributes to the fact that many women end up becoming masculinized, or adopt aggressive attitudes, even against other women, despite the fact that we talk about sisterhood. Or "empowered" women are also expected to be people capable of delivering impeccable results, while dealing with roles traditionally assigned to women just because they are women.

The legal world is a traditionally male world. Just look at the lists of arbitrators and mediators in arbitration centers. The same thing happens in many law firms: women end up being hated even by other women, because if they demand results they are branded as witches, while a man who demands them is, on the other hand, a leader.

**At this point, at least when we are on equal footing as far as knowledge is concerned, there is no way to argue that a man, just because he is a man, is better at his job than a woman.**

So let's propose or reclaim some ideas:

- The idea of women supporting each other does not mean being enemies of men.
  - How many times will I have to listen to a woman tell me that my team should idolize me or follow me without questioning, regardless of whether I am demonstrating good leadership? We should all be aware that we can make mistakes; that someone younger, woman or man, may notice and help us correct our errors. And there is no cause for offense in this. Humility is a virtue. And it helps us to reach excellence.
  - Vice versa, men should not ridicule the idea that we use terms such as "árbitra" or "presidenta". Every now and then, I see discussions in chat rooms about the suffix "ente" that are, to say the least, hilarious. Let's read what the RAE says. We should certainly not go as far as the ridiculousness of "todes," which does not empower women in the least, believe me.
  - We must learn to trust that a woman, like a man, if she has the necessary integrity and knowledge, will be able to argue—or defend a case—with justice and excellence.
  - No woman should have to adopt an aggressive attitude to be considered an excellent litigator, nor should any man. We must both learn to work as a team. We are colleagues. And colleagues understand being on the same level. At this point, at least when we are on equal footing as far as knowledge is concerned, there is no way to argue that a man, just because he is a man, is better at his job than a woman. We owe each other respect.
  - Avoid condescension with the use of diminutives or terms such as "mijita", "linda", "doctorita" or similar terms. Men should understand that these terms are demeaning, even if they did not intend to use them that way. Sorry, gentlemen: the harsh truth is that they're disconcerting and make us very uncomfortable.
  - Let us learn to lend a hand to women who are just starting out in the legal world, as in arbitration. Let us trust the arbitration secretariats that have not handled cases; or let us ask colleagues who have not presided over tribunals to preside over them, and offer our help in the substantiation of the case.
  - In the field of arbitration, we should assume that those who agree to an arbitration clause do so because they have put their trust in having not only an alternative, but also a reliable space to resolve their disputes. Fair and legal decisions do not depend on the sex of the speaker, but on his or her knowledge and rectitude. And these are not virtues that can only be predicated on men or women. Both sexes must collaborate to make this a fair, sensitive and attentive space for those who trust us to resolve their causes with transparency, justice and reliability..
- Everything else can come in addition to this.

# WIP Worldwide

## COSTA RICA

### WIP Costa Rica Annual Event 2024

On Thursday, September 5th, WIP Costa Rica's Annual Event brought together leaders in the legal field for an inspiring evening. Tatiana Rojas Hernández, President of WIP Costa Rica and Partner at Aguilar Castillo Love, opened the event with a warm welcome.

The highlight of the evening was a powerful keynote from Patricia López Aufranc, an accomplished lawyer from UBA and Harvard Law School, and former partner at Marval, O'Farrell & Mairal. She shared invaluable insights on "Professional Career Development," leaving the audience inspired.

A key moment was the presentation of the Pro Bono Project, "Legal Tools for Women: Mapping Regulation in Costa Rica," which underscores WIP Costa Rica's commitment to advancing women's rights. The event also saw the exciting launch of "WIP NEXT," a platform for the next generation of lawyers to continue driving gender equality in the profession.

Gabriela Lucke from INCAE Business School closed the event with a look at the future of WIP Costa Rica, highlighting its strategic alliances and the inspiring women who lead the way. The evening ended with a lively cocktail hour, providing a wonderful opportunity for connection and collaboration.





Since the official launch of WIP's Ethiopian chapter in July 2023, we have been able to organize five events. For our launch event, we were able to bring together five inspiring legal practitioners and leaders to share their journey and experiences as female lawyers in Ethiopia. We also introduced WIP as a platform for collaboration, support and inspiration for women in corporate legal service.

After our launch event, in September 2023, we organized a professional development workshop titled "Pathways to Progress: Enhancing Legal Careers through Professional Development". This was a unique event in that it focused on sharpening soft skills required for a legal practice. Our third event took place at the start of the new year in January 2024. For this event, we partnered with the Law School of Addis Ababa University to discuss Investment Arbitration in Africa under the title "Conversation on Arbitration: Trends and Developments in Africa and Ethiopia". This forum provided a comprehensive exploration of the investment arbitration landscape, diving into the lessons learned from past experiences, the current developments shaping the legal framework, and the emerging trends poised to define the future of arbitration in Africa and Ethiopia.

In March 2024, we took a break from our usual thematic panels to focus on a fun networking event for our participants. We did an enriching pottery session at a Botanical Garden, designed to strengthen bonds among women legal practitioners. The event allowed us to enjoy the tranquility of nature, express our artistic side and network with our peers.



Our latest panel discussion was conducted virtually in August 2024. It brought together Ethiopian lawyers with experience of practicing law in foreign jurisdictions, particularly in the United States of America and the United Kingdom. The event was titled "Practicing Law in Foreign Jurisdictions: Experiences of Ethiopian Lawyers". The panelist emphasized the importance of time and project management skills, networking, and the ability to receive constructive criticism. The panel highlighted how training, internships, and mentorship programs played crucial roles in helping them adapt to foreign legal systems, alongside developing an agile mindset. It was inspiring to hear how these professionals are applying their global experiences - from building sustainable law firms and mentoring young talent to implementing knowledge management systems. One of our participants was the first Ethiopian Vance Center African Legal Fellow from the year 2023.

WIP Ethiopia intends to continue to engage in endeavors that will empower women in the legal sector and foster meaningful conversations. In the near future, we aim to launch our mentorship program that pairs young law students with practicing lawyers and leaders. We hope that WIP Ethiopia will grow strong as a platform for collaboration, support and partnership.



# Creating Connections, Partnerships, and Opportunities



**Mary Mar Samaniego A.**  
Communications Coordinator,  
WIP Ecuador



**Generating Connections Through #WIPTalks:** At the end of August, we began the campaign of expectation through social networks to present an initiative of the Ecuador chapter of WIP, called #WIPTalks. This space, inspired by TEDx®, seeks to convene legal professionals, students and teachers to academic forums where trending topics in various legal branches are addressed, led by inspiring leaders with extensive experience; and, at the same time generate a space for interaction and networking between speakers and participants.

The #WIPTalks launching event started with the expert Ximena Bautista Uribe, recognized lawyer in several countries, with more than 25 years of professional experience, who gave a **GUIDE TO BECOMING A RAINMAKER**, in which she discussed best practices and tips for successful business development, focused on the challenges and opportunities that must be faced with leadership in a corporate environment. More than 50 participants attended this important forum.

The event had the academic support of the Universidad Técnica Particular de Loja and its Business School, who provided their spaces for the talk. Growth Play and LupaLegal also sponsored the event.



The next #WIPTalks will take place in November with the participation of representatives of the 30%+ ClubEc initiative, present in several countries, which works with companies that promote significant and sustainable change in the balance of diversity, equity and inclusion, whose objective is to achieve a minimum of 30% of women on the Boards of Directors and C-Suites in the largest companies in Ecuador until 2030.

[More information](#)





**Agreement between WIP Ecuador and UTPL: Alliances that bet on training to strengthen the culture of legality:** We entered into a cooperation agreement with the Universidad Técnica Particular de Loja, an important institution of higher distance education in Ecuador, for the joint development of virtual seminars specialized in the culture of legality and the management of the legal profession in line with the role of students and professional women in this career. Students and alumnae of the UTPL Law School will be able to benefit from this important agreement. Subsequently, other cooperation alternatives will be verified through mentoring programs and social impact projects.



**"Women in Intellectual Property: An International Vision" Event:** Our founding member Margarita Zambrano, together with our communications coordinator Marymar Samaniego and Ambassador Maria Fernanda Roman, who is also Dean of the School of Government & Corporate Fundraising of the Hemisferios University, attended the event "Women in Intellectual Property: An International Vision." The event was organized by the Ecuadorian American Chamber of Commerce, which included the intervention of Jennifer Chicoski, Intellectual Property Attaché and Silvia Solis, Intellectual Property Legal Advisor of the U.S. Embassy.

**International Symposium: Protecting the Public Interest in the Constitutional State of Rights:** Our founding member Paola Gachet, partner of LEXVALOR Abogados, participated as a speaker at the International Symposium: Protection of the Public Interest in the Constitutional State of Rights, organized by the Attorney General's Office of Ecuador, on the topic "The importance of respecting the rights of state contractors." Paola has significant experience and career achievements in Public Contracting, Tax Law and Administrative Law.

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