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# Study on Ethnic Diversity in International Arbitration



IBA Arbitration Committee, 2025

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## Background

This project was born out of longstanding discussions on diversity in arbitration – discussions that have often centred on gender diversity. While there has been considerable progress in the inclusion of female arbitrators and support for female arbitration practitioners in general, ethnic diversity has remained a less explored, and perhaps more hotly debated, area. Addressing diversity, particularly ethnic diversity, in international arbitration is an inherently complex and sensitive endeavour. The task of addressing diversity is fraught with tensions, competing expectations, and deeply personal experiences. It is a sphere where doing too much, too little, or even trying to engage can draw criticism.

Yet notable incidents in recent years have thrust this issue into the spotlight, creating some urgency around addressing diversity more broadly. In such context, UNCITRAL Working Group III has called for reform in the Investor-State Dispute Settlement (ISDS) regime, citing a concern regarding the lack of diversity among decision-makers. There is growing discussion within the arbitral community as well on these topics, with organisations such as ‘REAL’ (Racial Equality for Arbitration Lawyers) fostering dialogue and debate. Despite this increased awareness, there has been limited empirical research specifically focused on ethnic diversity in the context of arbitration.

Initiating a dialogue around ethnic diversity in arbitration is essential if progress is to be made.

International arbitration is inherently multi-ethnic in scope, and users of the system are increasingly representative of the world population. We must examine, then, whether the decision-makers and the system at large are keeping pace with this rate of change – and if they are not, what this may mean for the legitimacy of the system as a whole.

Thanks to the IBA’s commitment and generous funding, the IBA Arbitration Committee was able to commission an independent research organisation, Cortex Capital, to carry out empirical research on ethnic diversity in international arbitration. Cortex Capital’s principal, Dr Ula Cartwright-Finch, is a former arbitration specialist, with over 12 years of practice in Asia and Europe, representing parties in international commercial and investor-state arbitrations. She is also an expert in psychological science, with a Ph.D in Cognitive Neuroscience from University College London and an Honorary Research Fellow position at the University of Warwick. At Cortex Capital, Dr Cartwright-Finch has led multiple research projects on diversity in international arbitration – including relating to gender diversity, ethnic diversity and diversity in sexual orientation – as well as on decision-making in legal contexts.

The attached report reflects the research, analysis, and findings of Cortex Capital. The independent presentation of the Cortex Capital report reflects a deliberate approach adopted to ensure the study’s independence, enhancing the reliability of its methodology and the strength of its conclusions.

The nuances of an issue as multi-faceted and complex as ethnic diversity mean that any effort to examine it will inevitably encounter challenges, including the risk of alienating or offending different groups. Some may feel that they have not had adequate opportunity to participate in the dialogue or that it has not targeted a sufficiently diverse or representative audience. Some may perceive that their contributions are being insufficiently acknowledged or take umbrage at attacks on the legitimacy of the system; others may believe that user perceptions are being taken out of context and that concerns regarding ethnic diversity are exaggerated. Striking the right balance in such a multifaceted discourse is an almost impossible task. The subject is approached with the understanding that efforts may be imperfect but with the hope that this

study serves as a catalyst for broader and more inclusive discussions. The goal is not to present definitive answers but to invite the arbitral community to engage in ongoing reflection and collective action towards greater diversity and inclusion.

## Summary of research programme

The primary goal of this project is to establish an empirical reference point from which to understand the views of the arbitral community regarding ethnic diversity on arbitral tribunals. This report aims to serve as a starting point, or baseline, for further dialogue regarding the topic. The study sought to provide empirical data on the role and impact of ethnic diversity in international arbitration. It aimed to capture a picture of current user perceptions of ethnic diversity in international arbitration proceedings.

The research is based principally on a survey launched at the 2024 IBA Arbitration Day and distributed worldwide to lists and organisations with the intent to target experienced arbitration users and counsel; it ultimately attracted the participation of over 300 respondents.

The results of this research programme are important and worthwhile of attention because the survey establishes several fundamental perceptions that arbitration users and participants appear to hold regarding (i) the lack of and (ii) the importance of ethnic diversity on arbitral tribunals. That such perceptions exist in significant numbers is itself worthy of attention and dialogue.

Substantively, three overarching takeaways appear to emerge from the research programme.

First, the data indicate that arbitration users perceive a lack of ethnic diversity in arbitral tribunals. Survey respondents were instructed not to presume in their answers that ethnicity in arbitral tribunals need match that of the participants, but to instead consider ethnic diversity as a general matter, in formulating their view. Among survey respondents, 68 per cent rated the current levels of ethnic diversity on tribunals as a general matter as ‘Somewhat lacking’ or ‘Very lacking’.

Second, the findings reveal that ethnic diversity is regarded as important for arbitration in at least two ways. As an initial matter, survey respondents suggested that a lack of diversity can affect arbitration outcomes. Of the survey respondents, nearly half (49 per cent) identified ethnic diversity as ‘Very important’ (15 per cent) or ‘Important’ (34 per cent) for arbitral outcomes. Another 24 per cent said that it was at least ‘Moderately important’. Respondents also suggested ethnically diverse tribunals are more likely to grasp cultural nuances, which can significantly impact the interpretation of documentary and witness evidence and the application of procedural rules. In these and other ways, arbitrators’ decision-making may be influenced by the lack of an ethnically diverse panel (ie, outcome determinative).

In addition, survey respondents believed that a lack of ethnic diversity can affect the legitimacy of an arbitration. Almost all survey respondents (89 per cent) responded that having some level of ethnic diversity on the arbitral tribunal supports the perceived legitimacy of international arbitration to some degree, with most quantifying the degree of this support as ‘Somewhat’ (37 per cent) or ‘To a large extent’ (35 per cent). In other words, even if the outcome can be deemed ‘correct’ as a substantive matter, the perception may exist that the process has been unfair (ie, de-legitimising).

In sum, then, the research programme suggests that arbitral participants believe that ethnic diversity matters, not just as a matter of ensuring that parties identify with their panel or that arbitral tribunals properly reflect the ethnic makeup of arbitral participants generally (as can be argued with respect to gender diversity, for example) – but more broadly in the context of rendering appropriate, accepted, and just arbitral outcomes. Some survey respondents believed that ethnic diversity itself provides a level of understanding that cannot be obtained through other means. Many, however, acknowledged that cultural sensitivity and understanding of the parties’ backgrounds can be achieved through means other than shared ethnicity alone. This suggests that while ethnic diversity may be desirable to ensure broader representation and understanding of diverse perspectives, even ethnically homogenous tribunals can achieve optimal outcomes and perceived legitimacy by focusing on cultural and ethnic sensitivity.

Third, the research underscores the complexity of defining and measuring ethnic diversity. Ethnicity encompasses a multitude of dimensions that vary significantly across cultural, social, and geographical contexts, making it a deeply nuanced and context-dependent concept. The study found significant variation in how individuals identify with ethnicity, revealing a wide range of self-reported ethnic identities among survey respondents. This highlights the need for a nuanced approach when addressing ethnic diversity in international arbitration.

There are of course limits on the ability of a survey, which collects generalised results from an anonymous sample of the population, to fully address the nuance surrounding a subject as complex as ethnic diversity in international arbitration. The IBA Arbitration Committee acknowledges these limitations and does not seek to characterise the results of this research programme as conclusive or definitive. Moreover, and importantly, the study does not purport to investigate actual diversity on tribunals, but instead users’ perceptions thereof. The survey measured perceptions; it did not seek to assess whether those perceptions are fair, reasonable, or accurate. However, since perceptions drive decision-making, the findings remain important and significant.

## **Next steps**

The IBA Arbitration Committee views this report as a significant initial milestone in fostering dialogue on ethnic diversity within international arbitration. However, it represents only the beginning of what must become an ongoing and concerted effort to effect meaningful change. Using the example of gender diversity, it took many years of sustained debate, attention to, and conversations around this issue to start to see real change. Our hope is to generate similar efforts with respect to ethnic diversity.

Accordingly, there is more work to be done. The IBA Arbitration Committee intends to carry out this work in at least two ways. First, we will be hosting a series of roundtable dialogues in cities around the world to debate and discuss the findings of the report and potential concrete steps forward. Second, we will initiate conversations with arbitral institutions about how they track ethnic diversity and/or foster ethnic diversity within tribunal appointments, the challenges they face, and their ideas for instituting change.

We welcome the views of the arbitral community on this important initiative and look forward to exploring with you how we as a community can show continued and sustained attention to this important subject matter.

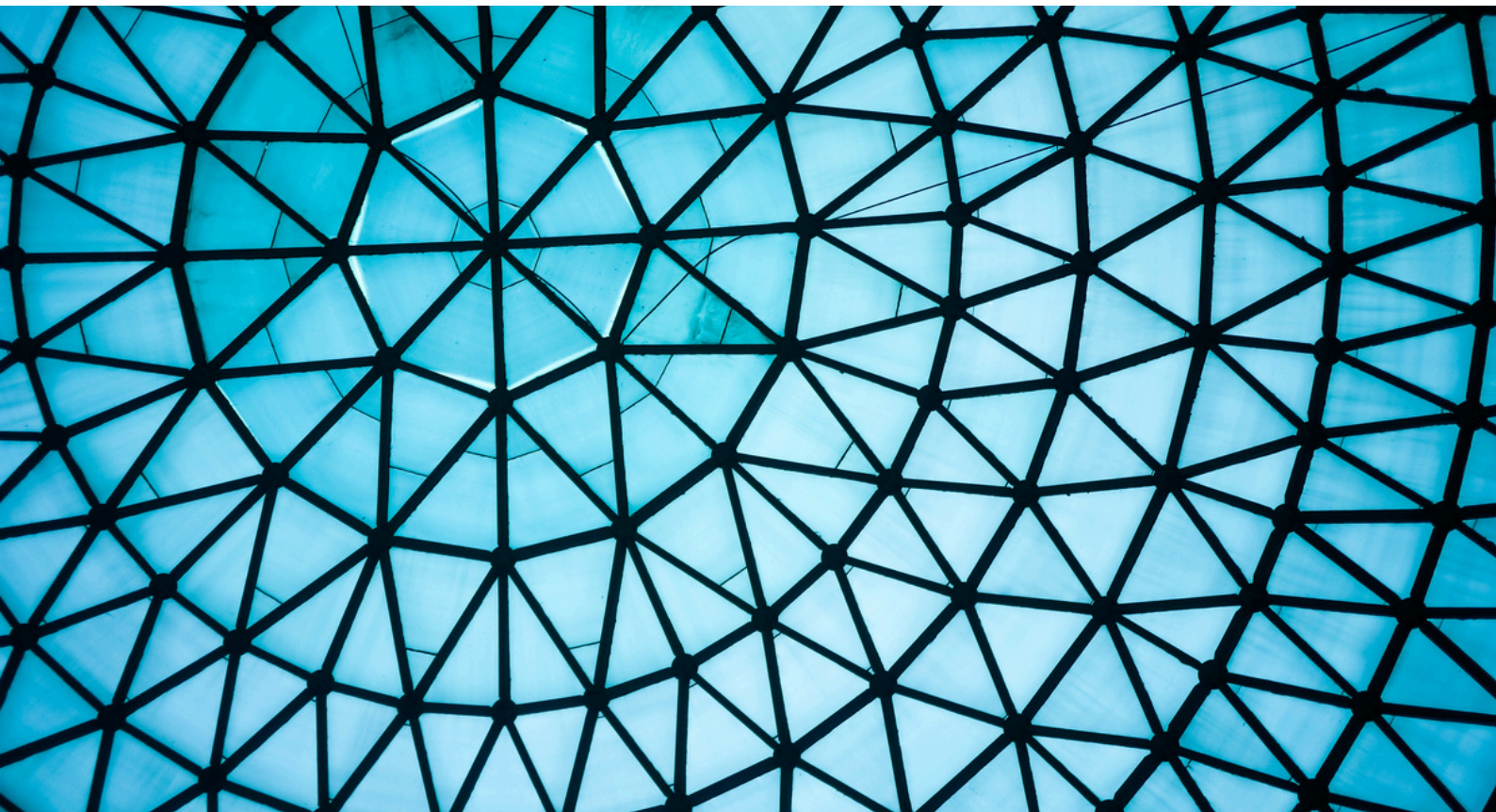
## Acknowledgements

This project was launched in June 2022 by the leadership of the IBA Arbitration Committee, reflecting the shared commitment by the Committee's leadership to advancing diversity in international arbitration.

The IBA Arbitration Committee thanks researcher Ula Cartwright-Finch for her dedication and assistance, and Cortex Capital for its rigorous approach to this subject matter. We also thank the IBA for its generous funding for this project, and for its unwavering commitment to diversity in all facets of the legal community.



# **ETHNIC DIVERSITY IN INTERNATIONAL ARBITRATION**



**Commissioned by  
the International Bar Association  
Arbitration Committee**

## 1. Executive Summary

- This report examines ethnic diversity on arbitral tribunals and its impact on stakeholders' perceptions of legitimacy and fairness in arbitration, arbitration outcomes and cultural understanding of tribunals. It was commissioned by the International Bar Association Arbitration Committee in order to establish an empirical baseline for understanding the arbitral community's views on ethnic diversity in tribunals and to foster further dialogue on the topic.
- Data were gathered from a large and diverse group of international arbitration stakeholders through a Survey Study, which captured data from 305 respondents spread across 76 different countries. The survey was designed following input from interviews with a group of senior in-house counsel from diverse nationalities and backgrounds.
- The majority of study participants indicated that ethnically diverse arbitral tribunals support perceived legitimacy and fairness of international arbitration, contribute positively to arbitration outcomes, and demonstrate greater cultural sensitivity compared to arbitral tribunals lacking ethnic diversity.
- Echoing concerns expressed by other arbitration stakeholders in recent years, most participants reported a lack of ethnic diversity on arbitral tribunals over the past five years. In this study therefore, we found a disconnect between the reported significance of ethnic diversity on arbitral tribunals and the levels of ethnic diversity that stakeholders are currently seeing.
- The data revealed important nuances:
  - While cultural understanding was often identified as the key factor distinguishing ethnically diverse tribunals, tribunal members can also gain this understanding through other means, such as spending time in a region or adopting an open-minded approach to proceedings.
  - However, nearly all survey respondents agreed that tribunals with some shared ethnicity among members and parties demonstrate greater cultural appreciation, suggesting that ethnic diversity in itself offers advantages beyond those that experience or mindset alone can achieve.
- Other factors such as legal background (common law vs civil law) and language proficiency emerged as important considerations which are closely connected – though not necessarily correlated – with ethnic diversity on arbitral tribunals.
- The concepts addressed in this research are complex and interrelated, and all studies necessarily have limitations. This report intends to represent a first step in illuminating issues for further exploration.

## 2. Terminology

This report discusses ethnicity and ethnic diversity on arbitral tribunals.

Following the United Nations Statistics Division, we take ethnicity to refer to the shared cultural or national heritage that characterises a group of people. The concept often involves several mostly invisible but distinguishable elements such as language, geographic origin, race, physical appearance, religion, cultural traditions and shared history.

Ethnicity is therefore a complex and multifaceted concept. It can vary widely across geographical and cultural contexts.

For instance, China recognises 57 distinct ethnic groups (according to Orcasia, the Organisation for Research on China and Asia), while Kenya recognises 46 (according to the Kenya National Bureau of Statistics).

Other jurisdictions may have a more limited or entirely different approach to the concept of ethnicity. For example, in the United States, race-based diversity is a central focus due to civil rights history. In France, by contrast, diversity discussions often prioritise nationality over ethnicity.

By way of further illustration, in the dataset presented in this report, among the 305 survey respondents: 230 different ethnicities were reported compared to just 76 nationalities, 65 elected not to provide their ethnicity and one (1) said that they had never thought about it.

The terminology in this area also continues to evolve and there is ongoing debate about the most appropriate and inclusive ways to



discuss ethnic diversity. Other words such as 'racial diversity', 'cultural diversity' or 'racial and ethnic diversity' might be used in different contexts.

Because of this complexity, there are inherent difficulties in identifying an acceptable international vocabulary with which to talk about ethnicity.

On this issue, the United Nations Statistics Division explains that: *"by the nature of this topic [i.e. ethnic and/or national group], these categories and their definitions will vary widely from country to country; therefore, **no internationally accepted criteria are possible**"*.<sup>1</sup>

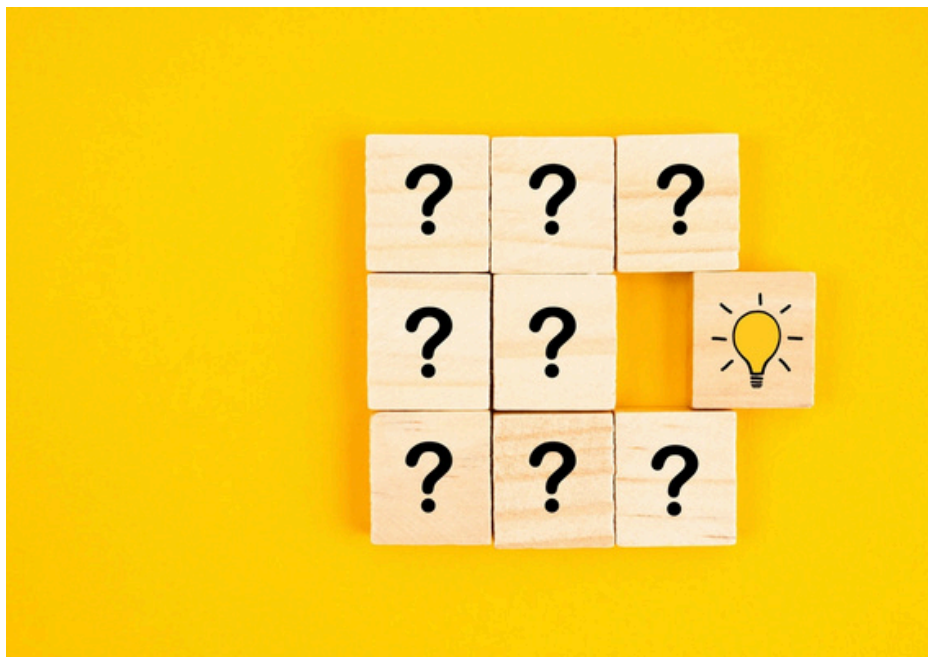
The absence of the 'right' definitions is uncomfortable but it must not prevent progress.

Recognising that any terminology will be necessarily limited, and that other terms may be preferred in specific jurisdictions, using the framework of 'ethnicity' and 'ethnic diversity' aims to make this report globally relevant while acknowledging and respecting local nuances.

For the purposes of this research, all questions were therefore framed around 'ethnic diversity' and 'ethnicity' (see Annex I).

In line with the approach taken by arbitral institutions and other international arbitration organisations, the survey noted that 'ethnically diverse tribunals' and 'ethnic diversity on tribunals' were used to indicate a tribunal comprising arbitrators of different nationalities / ethnicities from one another. We recognise the distinction between nationality and ethnicity and acknowledge the risk of oversimplification when using nationality as a proxy. However, this pragmatic approach allowed participants to use a universally understood framework, if they deemed necessary, to respond effectively to the questions. It also aimed to balance inclusivity for a global audience with the complexities and sensitivities involved in categorising race and ethnicity in a multinational context, where parties are typically defined by nationality.

### 3. Project Genesis



Diversity in international arbitration has been a topic of discussion for many years. Gender usually takes the spotlight, in particular the relative under-representation of female arbitrators appointed to arbitration panels. Much empirical research supports these discussions, and initiatives and policies launched as a result have made great strides in closing the gender gap (the Equal Representation in Arbitration Pledge is one notable example).

Historically, discussion around ethnic diversity in international arbitration has been less rigorous, though attempts to begin measuring factors connected to ethnicity are emerging (see Box 1). However, in recent years, voices across the arbitration community have raised concerns, particularly regarding the lack of ethnic diversity on arbitral tribunals. Two examples stand out.

**1. The Jay-Z Case:** Diversity on arbitral tribunals was catapulted into the mainstream media in 2018 by the famous African-American rapper Jay-Z. Jay-Z and his company Marcy Media won an injunction from the supervisory courts staying arbitration proceedings on the basis that he was given an insufficient choice of diverse and representative arbitrators from which he could select.

The concern in this case went beyond ensuring that the parties to the arbitration saw themselves represented on the tribunal. The dispute involved intellectual property related to Jay-Z's Rocawear brand, and Jay-Z was particularly concerned that the tribunal should possess the cultural awareness to fully understand the broader context of the brand and its identity (see Box 2).

#### 2. UNCITRAL Working Group III:

Around the same time, the United Nations Commission on International Trade Law (UNCITRAL) Working Group III (Working Group III) began considering possible reforms of Investor State Dispute Settlement (ISDS) to respond to criticisms with the system. One concern reported by Working Group III is that *“the current lack of diversity in decision-makers in the field of ISDS contributed to undermine the legitimacy of the ISDS regime”*,<sup>2</sup> with several comments focusing on the skewed geographical representation on ISDS panels.

During its preliminary consideration of the selection and appointment of ISDS tribunal members, Working Group III *“reiterated that geographical, gender and linguistic diversity as well as equitable representation of the different legal systems and cultures would be of essence in the ISDS system”* and *“highlighted that achieving diversity would enhance the quality of the ISDS process, as different perspectives, especially from different cultures and different levels of economic development could ensure a more balanced decision-making”*.<sup>3</sup>

Attention is therefore moving towards the topic of ethnicity in arbitration, and in particular, the relative lack of ethnic diversity on arbitral tribunals.

In contrast to gender diversity, where achieving more equal representation between men and women is the clear goal, the objective for ethnic diversity on arbitral tribunals is less straightforward.

Further, how can meaningful ethnic diversity on arbitral tribunals be achieved within individual cases? Should tribunals be composed of arbitrators whose ethnicity reflects, to some degree, the nationality of the parties and/or their key stakeholders/representatives? Are there additional factors, such as regional differences, the nature of the disputed issues, or the type of arbitration (commercial versus investor-state), that might influence this analysis? At a broader level, what should be the goal for ethnic diversity in arbitration as a system? Is there a potential tension between striving for ethnic diversity within individual cases and achieving it systemically across the field of arbitration?

Answering these questions is complicated for several reasons. Defining ethnicity is complex and nuanced, as discussed above. This makes capturing data pertaining to the issues challenging. Moreover, several factors relating to the arbitration and the parties can influence the analysis, such as the parties' geographic origin and the facts in dispute.

Against this background, the aim of this research project was to gather empirical data from different arbitration stakeholders across broad themes

**Box 1. Mapping the Gap: Tracking Ethnic Diversity in Arbitration**

While institutions do not generally publish data on arbitrator appointments according to ethnicity characteristics per se, many are starting to report these data based on national origin or geographical origin (e.g. the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the International Centre for Settlement of Investment Disputes (ICSID), the Singapore International Arbitration Centre (SIAC) and the Hong Kong International Arbitration Centre (HKIAC)). While these metrics provide valuable insights, they fall short of capturing the broader dimensions of ethnic diversity, which often transcend national or geographic categorisations.

Initiatives are also emerging to address specific issues linked to ethnic diversity in international arbitration. For example:

- Notable organisations include the African Promise, which seeks to increase the presence of African arbitrators in Africa-related arbitrations, and Racial Equality for Arbitration Lawyers (REAL), which provides a platform focusing on racial equality in arbitration generally.
- The LCIA's new Equality, Diversity and Inclusion (EDI) Guidelines highlight the importance of demographic diversity, including social, cultural and national identities, as part of a broader effort to create a more inclusive arbitration process and enhance fairness and legitimacy in international arbitration.
- A survey published in 2024 by Singapore International Dispute Resolution Academy (SIDRA) also incorporates various questions regarding ethnic diversity on arbitral tribunals in connection with international commercial arbitration.

In general, there is growing recognition of the need to collect and to publish comprehensive data relating to ethnic diversity of arbitral tribunals in order to help drive improvements in this area.

relating to ethnic diversity on arbitral tribunals. Themes included the importance of ethnic diversity on tribunals as a general matter, its impact on perceived legitimacy and perceived fairness, and the relevance of shared ethnicity between the parties and the tribunal (see the Research Programme section).

Given the scope of the project and the complexity of the subject matter, the goal of this report is to inform the debate on ethnic diversity on arbitral tribunals with the findings from scientific research and to promote further discussion on the topic.

### Limitations of current research

The survey was intentionally disseminated through channels designed to reach experienced international arbitration stakeholders. It was conducted in English, the primary language of the funding body, the IBA. This may introduce skewing within the data towards more senior stakeholders who are fluent in English and hold relevant memberships.

Additionally, the geographic and national representation of survey respondents show a slight skewing towards individuals in the Asia-Pacific region, with 51% indicating it as a primary region of focus, compared to only 10% focusing on Africa (see also the breakdown of nationalities in Figure 12 in Annex II).

This may be due to its initial dissemination at IBA Arbitration Day in Singapore. However, the survey was also disseminated more broadly, with specific targeting of Latin American and African networks (see further discussion in Survey Methodology below).

### Box 2. The Jay-Z Case: 99 Problems

In 2007, the American brand management company, Iconix Brand Group (Iconix), acquired certain rights to Jay-Z's clothing brand, Rocawear, for US\$204 million.

A dispute arose when Jay-Z's entertainment company, Roc Nation, used its paper aeroplane logo on a new line of baseball caps created in partnership with Major League Baseball. Iconix argued that the use of the Roc Nation logo breached the terms of its agreement with Jay-Z regarding the Rocawear brand; Jay-Z countered that the sale of his brand to Iconix extended to Rocawear only, not Roc Nation.

Arbitration was commenced under the rules of the American Arbitration Association (AAA).

The parties could not agree on a sole arbitrator to hear the dispute, and thus proceeded under the AAA rules to the selection of three arbitrators from the AAA's National Roster for Large Complex Cases.<sup>4</sup> From about 200 potential candidates, lawyers for the rapper could not identify a single African-American arbitrator that was in New York and had the appropriate experience for the dispute.

Jay-Z complained about the lack of choice and the AAA sent a supplementary list with six (6) further candidates. However, of those alternatives, only three (3) were African-American – and one of whom would have been conflicted out.<sup>5</sup> The AAA then instructed Jay-Z to either select from the existing sample including the individuals the AAA identified in response to his concerns, or else the AAA would select for the parties.

Jay-Z applied to a New York state court to stay the arbitration proceedings, complaining that the AAA, by failing to provide diverse and representative arbitrators, had violated his constitutional rights to equal protection and equal access (among other things). In response, the AAA agreed to a series of steps to ensure more diverse candidates would be available for the matter, leading Jay-Z to withdraw his request for a preliminary injunction. In particular, the AAA made available an additional eighteen (18) African-American individuals for the case at hand and pledged to take measures to improve diversity in the arbitrator slate.<sup>6</sup> The parties eventually settled the dispute.

## 4. Research Programme: Design and Participants

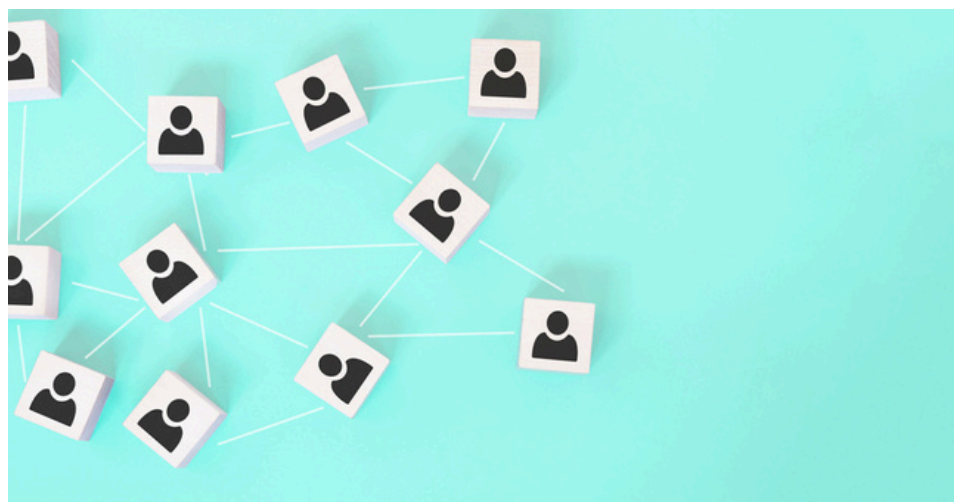
This research programme was conducted in two phases: a large-scale data collection phase (Survey Study), which was preceded by an initial exploratory data collection phase (Interview Study) designed to help identify and guide relevant questions of focus. The details for each phase are summarised below and elaborated in Annexes I and II of this report.

### Survey Study

An online Survey Study was launched to a global population of the international arbitration community (survey respondents). This large qualitative study provided an opportunity to quantify data on this topic and to generalise results from a wider global sample of respondents.

The survey sought to obtain a broad understanding of how the international arbitration community views various matters relating to ethnic diversity on arbitral tribunals in international arbitration, including its impact on perceptions of fairness and legitimacy of international arbitration generally, and its relevance to ensuring cultural sensitivity and appreciation within tribunals. The survey questions were worded broadly and respondents were asked to frame their responses within the context of their experience over the past five years. The survey questions are provided at Annex I to this report.

Before the survey questions were presented, instructions explained to respondents that the survey uses the terms 'ethnically diverse tribunal' and 'ethnic diversity on tribunals' to indicate a tribunal comprising



arbitrators of different nationalities/ethnicities from one another. The instructions also noted that unless otherwise indicated (in one particular question), the survey sought respondents' views in relation to ethnic diversity on arbitral tribunals regardless of whether or not any of the tribunal's ethnicities are shared by any of the parties.

The survey gathered responses anonymously so that respondents could not be identified.

Three-hundred and five (305) respondents completed the survey. Survey respondents encompassed a broad range of arbitration roles including outside counsel, in-house counsel, arbitrators, arbitral institution staff, experts, third party funders and academics. Annex II provides a detailed breakdown of survey respondents' roles, specialisations, principal areas of focus, geographic regions and demographic data.

Further detail regarding the Survey Study methodology is provided at Annex I of this report.

### Interview Study

Before the Survey Study was launched, a pilot Interview Study was conducted in order to gather insights on this topic from a select group of geographically and ethnically diverse users of international arbitration (interview participants) and to formulate relevant areas of focus and inform the questions for the survey. The goal of the Interview Study was to obtain initial perspectives rather than to provide a comprehensive analysis.

Eleven (11) participants were interviewed in total. Conducting such a study with a small, focused population is standard methodology in this field of scientific research. It allows key themes to be identified and for the approaching subsequent larger-scale studies to be refined. It also provides an opportunity to recognise and mitigate potential interviewer bias in relation to the formulation of questions.

Interview participants occupied senior in-house counsel roles within governments (5 participants) or commercial entities (6 participants).

All had extensive experience in international arbitration proceedings, principally as representatives of their governments/companies as respondents in investor-state arbitration (5) or as claimants in commercial arbitration (6).

Participants were drawn from around the world including from Africa, Asia, the Middle East/North Africa, and the Americas. Gathering in-depth interview data from a diverse group of experienced users of international arbitration helped ensure that the survey captured a broad range of perspectives, enhancing validity by identifying the most relevant issues and themes.

Interview participants were asked largely open-ended questions regarding their experiences and views on issues relating to ethnic diversity on arbitral tribunals. Topics included experience of different arbitral tribunals, views on the impact of ethnic diversity on arbitral tribunals, including on perceived legitimacy and fairness, and observations about different arbitral tribunals during various stages of an arbitration, including hearings. All interviews were conducted confidentially to protect participants' anonymity.

Further detail regarding the pilot Interview Study methodology is provided at Annex I of this report.

## 5. Results



In addition to presenting the survey data, this results section includes selected comments from survey respondents and interview participants that highlight common themes or that address particularly significant issues. These qualitative insights are anecdotal but are incorporated to provide a deeper understanding of the quantitative findings.

### A. Self-identification: What is your ethnicity?

The inherent difficulties in defining ethnicity were highlighted by the self-identification data gathered in the research.

At the end of the survey, participants were asked to provide the ethnicity with which they self-identify. In order to capture the most rich and meaningful data, the survey was designed to gather open responses to this question rather than asking respondents to choose from a fixed list of pre-determined answers shown on a drop-down menu. Several interesting points arise from the self-reported ethnicity data in these studies.

**Fewer responses:** Compared to the other demographic information requested on age, gender and nationality, significantly fewer survey respondents provided their ethnicity: only 79% provided ethnicity (240 of 305) compared to 87% for nationality (265 of 305), 95% for age (289 of 305) and 91% for gender (278 of 305) (see Figure 1).

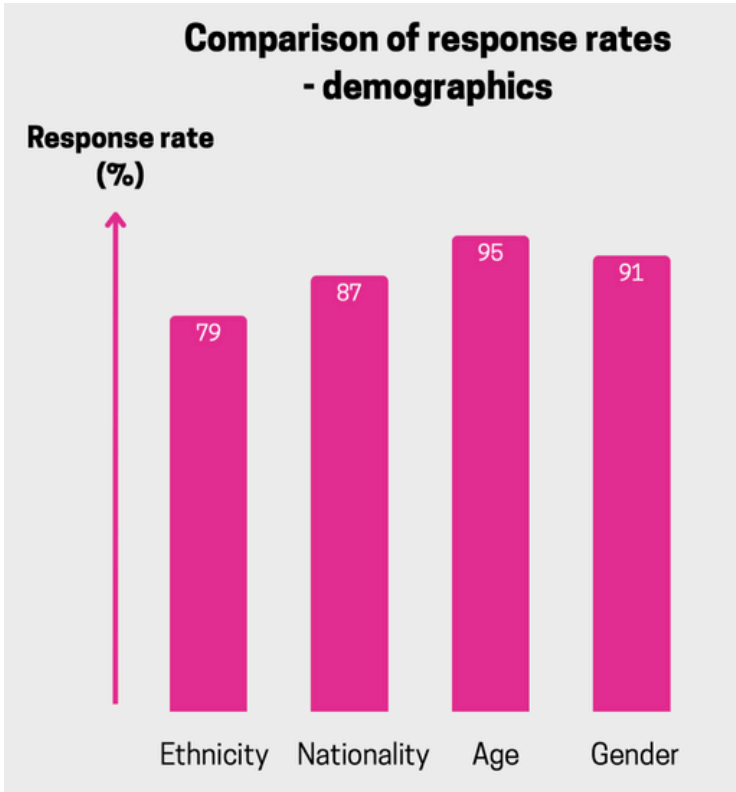
**Range:** Across those survey respondents who provided their ethnicity, there were 230 different ethnicities reported in total, including 34 with mixed ethnicity. This is far higher than the 76 different nationalities reported in total, including 19 with multiple nationality (see Figure 2). The full range of ethnicities identified by survey respondents is provided at Table 2 in Annex II to this report.

**Variety:** The enormous variety in reported ethnicities highlights the complexity and nuance involved in defining the concept for the purposes of this kind of discussion. Respondents interpreted ethnicity in a variety of ways, including identifying

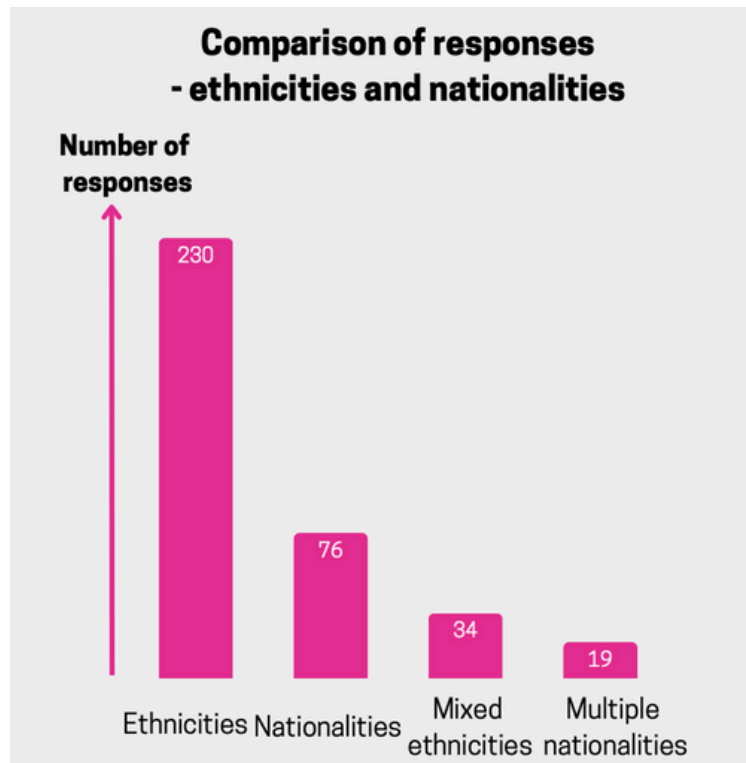
themselves by nationality (e.g. “Dutch”, “Vietnamese”), race (e.g. “Black”), a combination of both (e.g. “White British”), geographic regional identity (e.g. “South Asian”), cultural-linguistic heritage (e.g. “Punjabi”) or cultural-religious identity (e.g. “Ashkenazi Jew”, “Indian Hindu”). In addition, as mentioned, there were far more mixed ethnicity (34) than multiple nationality (19) reported by survey respondents.

**Lack of familiarity:** A separate factor raising difficulties in this area is that ethnicity itself can be an unfamiliar or uncertain concept for some individuals. One (1) respondent stated that they had never thought about which ethnicity they self-identify as, two (2) reported ‘Human’ and one (1) gave ‘Regional’.

Overall, the ethnicity self-identification data gathered across the research programme brings to light the complications involved in discussing ethnic identity with international stakeholders. This factor is important to consider in future research and discussions on this topic.



**Figure 1:** Survey response rates (% of respondents answering the question by demographic category)



**Figure 2:** Survey responses (number of different responses collected) for ethnicities and nationalities

## B. Levels of ethnic diversity on arbitral tribunals

Survey respondents were asked how they would rate levels of ethnic diversity on arbitral tribunals they have encountered in the last five years. Sixty-eight percent (68%) of survey respondents rate arbitral tribunals as lacking ethnic diversity, with 45% reporting tribunals as ‘Somewhat lacking in diversity’ and 23% reporting tribunals ‘Very lacking in diversity’ (see Figure 3). Only 20% of survey respondents reported tribunals they had experienced as ‘Somewhat diverse’ (18%) or ‘Very diverse’ (2%).

Survey respondents also expressed views, primarily negative, on the current state of ethnic diversity on arbitral tribunals in their open comments.

For example, a few survey respondents commented that tribunals are slowly becoming more diverse in line with the legal sector more broadly, but that *“there is still a long way to go”*. Another commented that ethnic

diversity is *“still a pending topic in most jurisdictions”*.

Some respondents commented on the popularity of European and North American arbitrators, and one noted that this trend persists partly because *“clients still want the best-known names in arbitration and these are typically UK- or US-based”*.

Some survey respondents noted that there are important regional differences in the degree of ethnic diversity in arbitral tribunals. For example, *“Asia-based panels are significantly more ethnically diverse than European or North American panels”*.

In general, interview participants reported greater ethnic diversity on tribunals determining investor-state disputes compared with international commercial disputes.

Overall, survey respondents indicated that, based on their recent experience, arbitral tribunals generally lack ethnic diversity.

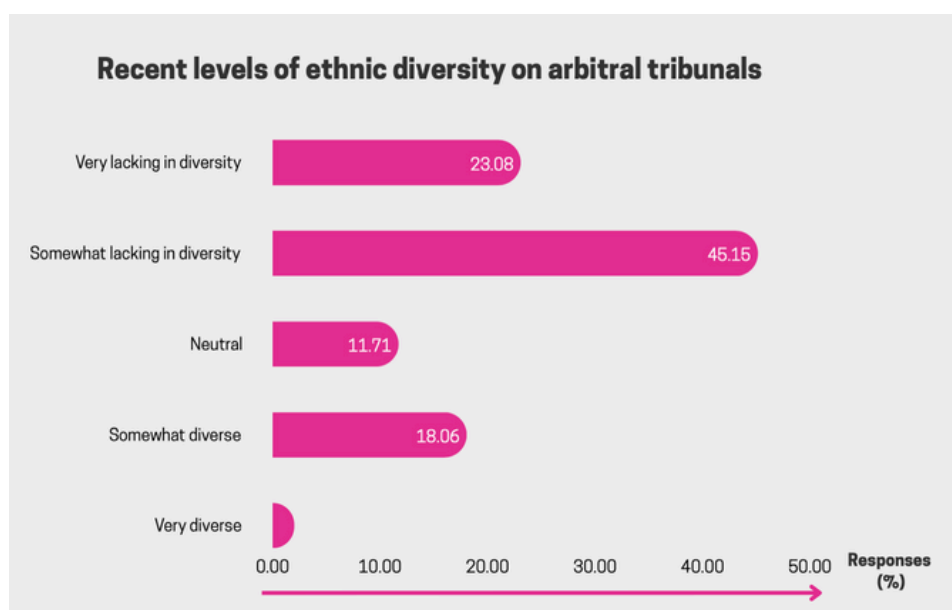
## C. Perceived legitimacy

Study participants were asked about how ethnic diversity on arbitral tribunals impacts their perceptions of legitimacy in international arbitration.

Almost all survey respondents (89%) believe that having some level of ethnic diversity on the arbitral tribunal supports the perceived legitimacy of international arbitration to some degree. Most quantify the degree of this support as ‘Somewhat’ (37%) or ‘To a large extent’ (35%) (see Figure 4).

In this context, the term ‘legitimacy’ was intentionally left open for participants to interpret. The analysis of their comments revealed two distinct perspectives:

- (i) The legitimacy of a specific arbitration proceeding or award; and
- (ii) The broader legitimacy of arbitration as a system for resolving international disputes.



**Figure 3:** Survey respondents’ recent experience (past five years) of levels of ethnic diversity on arbitral tribunals

**(i) Legitimacy of specific arbitration proceedings**

In relation to legitimacy within specific arbitration proceedings, one survey respondent commented on the positive impact of ethnic diversity on a tribunal’s decisions: *“ethnic diversity contributes to better decision-making and acceptance of the tribunal’s decision”*.

Some respondents explained how it would change their experience positively if there were an arbitrator of their ethnicity or from their region on the tribunal. For example: *“if you have an arbitrator in the panel who’s your own ethnicity, it might give you comfort that they understand the culture”* and *“you’d feel more comfortable making certain arguments in front of that tribunal. You would even think about putting other witnesses in front of them, so strategically it opens up doors as well”*.

Relatedly, respondents mentioned the difficulties in communicating certain issues if tribunals lack ethnic diversity: *“someone from a developed jurisdiction like Paris or The Hague*

*would not always understand – not just the legal system but the government in a country like mine”*.

**(ii) Legitimacy of international arbitration as an adjudication system**

In relation to the legitimacy of international arbitration as an adjudication system more generally, one survey respondent stated that *“diversity creates representation”*, while another noted that the absence of ethnic diversity on arbitral tribunals could deter parties from choosing to arbitrate as a dispute resolution process in the first instance.

With respect to investor-state arbitration in particular, one respondent noted that *“the fact that arbitrators in ISDS are overwhelmingly European or North American is causing a lot of concern about the legitimacy of the system”*.

In connection with international commercial arbitration, another respondent noted that *“when culture is a really important aspect of the dispute, having someone who*

*understands the culture on the tribunal helps the perception that the process is legitimate”*.

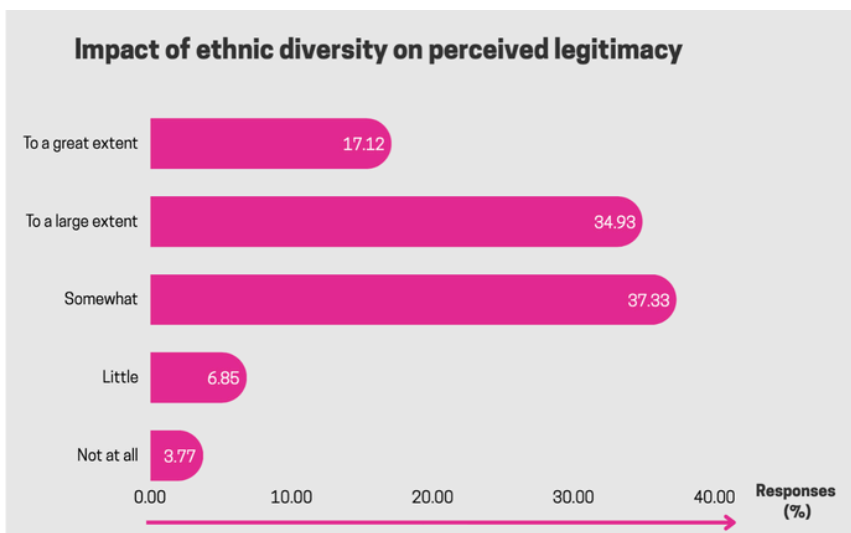
Another said that: *“to me, ethnic diversity matters a lot. Ethnicity is important to give the tribunal legitimacy. When I see a construction case, for example, where the arbitrators are three English lawyers but the project is in [my region, outside Europe], that undermines legitimacy in my view”*.

**D. Perceived fairness**

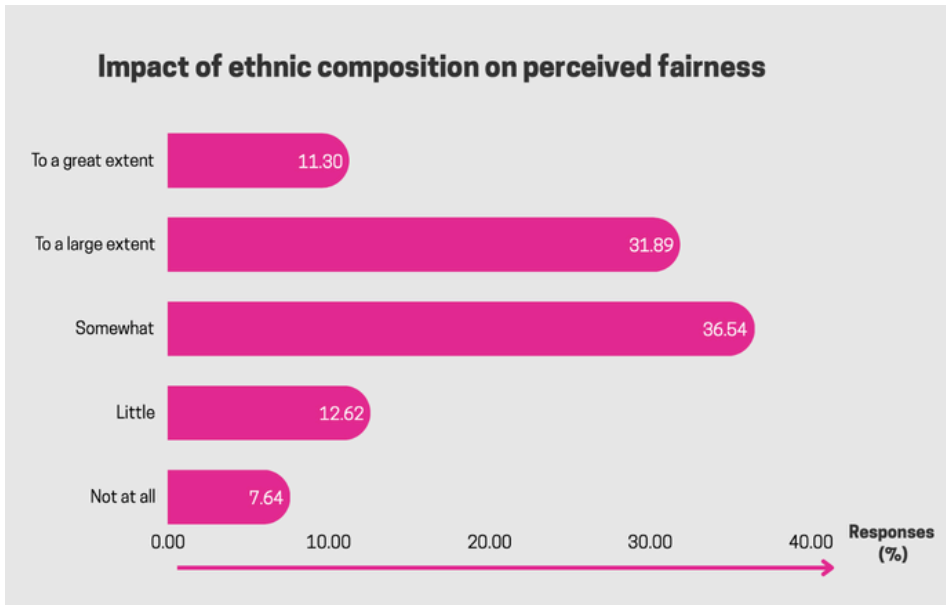
Survey respondents were asked about how ethnic diversity on arbitral tribunals influences perceived fairness of the arbitration process. The large majority of survey respondents (80%) believe that ethnic diversity on tribunals has some impact on the perceived fairness of the arbitration process: 11% think it impacts ‘To a great extent’, 32% think it impacts ‘To a large extent’ and 37% believe it impacts ‘Somewhat’ (see Figure 5). Only 8% think it has no impact at all on perceived fairness.

On the topic of perceived fairness, one respondent commented that *“an arbitrator who lacks relevant cultural understanding would risk making unfair decisions on the issues”*.

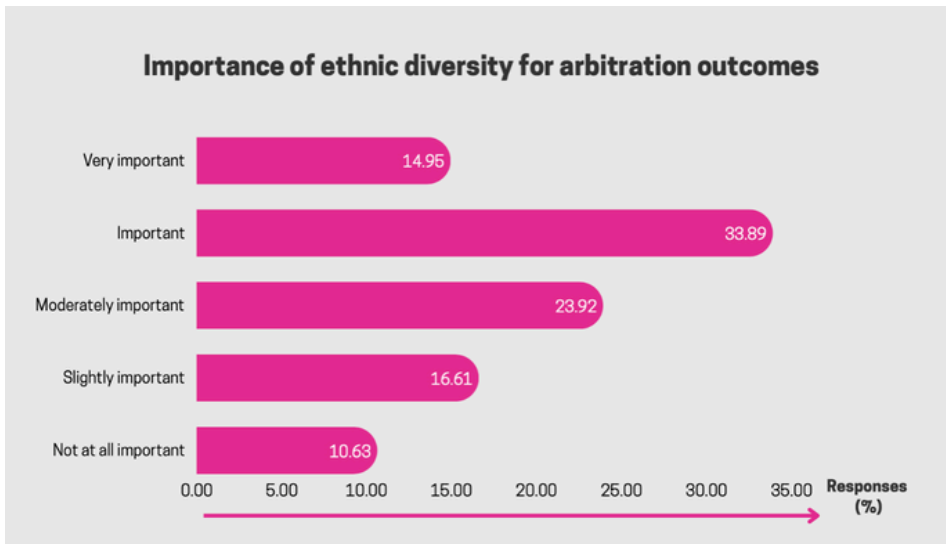
Others commented on bias against parties from different cultural backgrounds. One respondent reported *“a lot of unconscious bias towards African, Asian and Commonwealth of Independent States (CIS) people”*, such as more easily distrusting their witness evidence. Another commented that *“White tribunals have demonstrated prejudices and bias against Latin American parties and lawyers”*.



**Figure 4:** Survey respondents’ views on the impact of ethnic diversity on perceived legitimacy



**Figure 5.** Survey respondents' views on the impact of ethnic diversity on perceived fairness of the arbitration process



**Figure 6.** Survey respondents' views on the perceived importance of ethnic diversity on arbitration outcomes

## E. Arbitration outcomes and cultural understanding

Survey respondents were asked to share their views on the importance of ethnic diversity on arbitral tribunals for arbitration outcomes as well as respondents' perceptions of tribunals' cultural sensitivity and whether this sensitivity is influenced by shared ethnicity between the tribunal members and the parties involved.

The majority of survey respondents believe that ethnic diversity on arbitral tribunals is important for final outcomes in arbitration. Most view ethnic diversity as 'Very important' (15%), 'Important' (34%) or 'Moderately important' (24%).

Only 11% of respondents think that ethnic diversity is 'Not important at all' for arbitral decisions (see Figure 6).

Connected to this, several respondents drew a connection between ethnic diversity (or lack of it) and the quality of tribunal decision-making. For example:

- Positive comments included: *"[ethnic diversity leads to] better deliberations"* and *"the inclusion of ethnic diversity on an arbitral tribunal enhances its collective intelligence and decision-making quality"*.
- Negative comments included: *"not sufficiently understanding the psyche, culture and norms relevant to the dispute can lead to misapprehension which can, in turn, influence the finding and decision"* and *"subconscious bias influences the subtle decisions that have to be made in any arbitration, be they procedural or substantive"*.

**(i) Cultural sensitivity**

The majority of survey respondents (64%) consider that ethnically diverse arbitral tribunals are more likely to demonstrate cultural sensitivity relevant to the dispute as compared with an ethnically homogenous tribunal (either ‘Definitely’ (32%) or ‘Probably’ (33%)).

Only 6% think ethnic diversity is unlikely to impact cultural sensitivity (2% responded ‘Definitely not’ and 4% responded ‘Probably not’) (see Figure 7).

Many respondents provided comments on the issue of cultural understanding. One respondent noted that ethnically diverse tribunals *“will be more sensitive to how the parties think and do business”*.

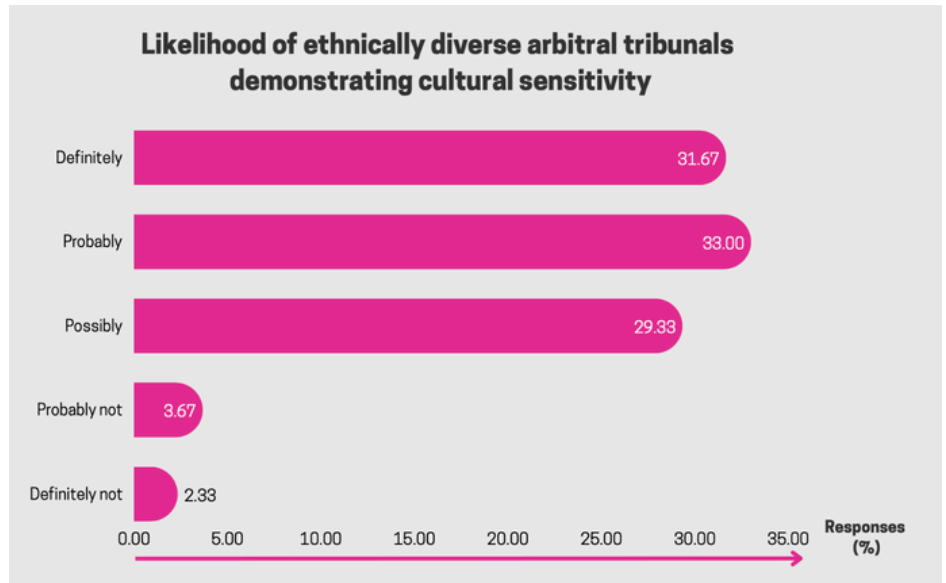
As an example, one survey respondent explained that *“in some cultures it is quite common to agree certain contractual terms (such as payments/delays) without confirming them in writing or via email”*. Another respondent stated that *“language and behaviour are shaped by cultural background and norms; there will be a breakdown in understanding a party’s position or a witness’s testimony without a full appreciation of the cultural context”*.

In the context of Asian disputes in particular, one respondent commented that *“non-Asian tribunals often fail to appreciate cultural nuances when it comes to how witnesses give evidence and how counsel make submissions”* and another noted that *“many western arbitrators lack the necessary understanding of Chinese parties and witnesses”*.

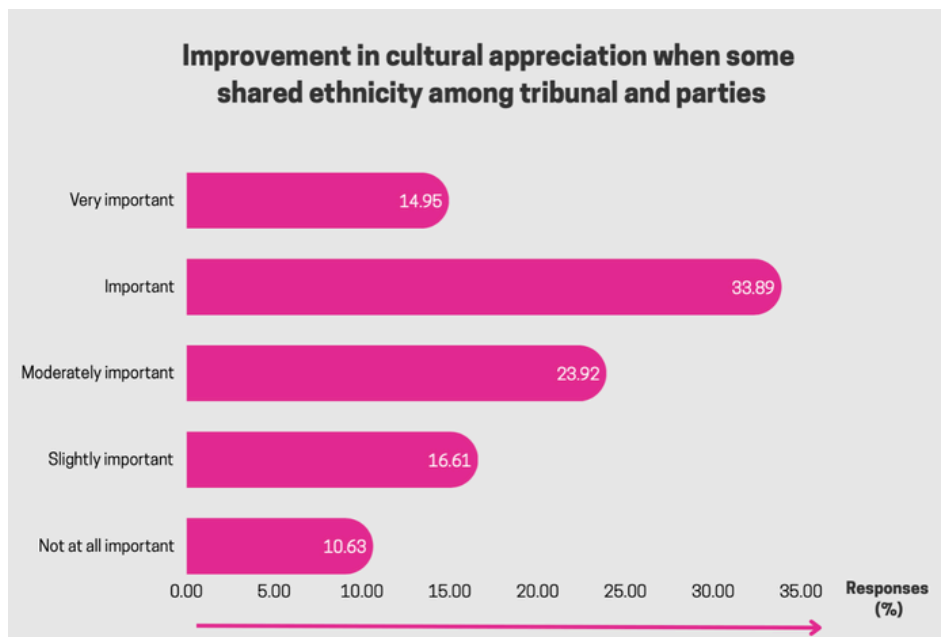
**(ii) Cultural appreciation**

Almost all survey respondents (96%) believe that the tribunal’s cultural appreciation is improved to some degree when there is some shared ethnicity among the tribunal and the

arbitrating parties. In these circumstances, over half of survey respondents consider a tribunal’s cultural appreciation to be either ‘Improved’ (40%) or ‘Very much improved’ (18%) (see Figure 8).



**Figure 7.** Survey respondents’ views on the perceived likelihood of ethnically diverse arbitral tribunals demonstrating cultural sensitivity (as compared with ethnically homogenous tribunals)



**Figure 8.** Survey respondents’ views on the perceived improvement in cultural appreciation where there is some shared ethnicity among tribunal and parties

Some respondents identified instances where they viewed ethnically homogenous arbitral tribunals to have lacked, or to potentially lack, understanding of relevant cultural contexts. Examples touched on various aspects of arbitration proceedings including witness testimony, documentary evidence, factual evidence and procedural matters.

**Witness testimony:** Witness testimony conveys complex non-verbal information over and above the spoken words, such as facial expression, eye gaze, physical gesture and body posture. The interpretation of these non-verbal cues varies, sometimes significantly, across cultures. For example, in some Asian cultures, direct eye contact in certain contexts is perceived as disrespectful. A tribunal unfamiliar with this cultural nuance may misconstrue a witness's avoidance of eye contact as indicating dishonesty or may otherwise negatively assess their overall credibility. Interviewees perceived that the evaluation of witness testimony could therefore be biased where a tribunal lacks familiarity with the witness's cultural background: *"if a witness [from Asia] is humble or timid, a tribunal composed of western arbitrators may think 'that witness is lying' or 'they don't look confident or assertive enough' based on their body language"*.

**Documentary evidence:** Common practice relating to business documents can vary considerably across cultures. For instance, one interview participant explained that *"in our culture, when you write letters to the other side, even when you're*

*fighting like crazy, you start and end the letter with 'we wish you prosperity'. In one arbitration, the other side disputed the fact that we were raising claims in our written correspondence. We had to explain to the tribunal that this apparently friendly language is something you always include in formal correspondence as a matter of course"*. Concern was expressed that tribunals might misconstrue documentary evidence if they did not possess a thorough understanding of relevant business writing practices.

**Factual evidence:** Business practices in general can vary widely across cultures. In some cultures, for example, it is quite common to agree payment terms, or variations to those terms, without recording those agreements in writing. These facts may be interpreted against the enforcing party by arbitrators from jurisdictions where contractual terms are generally required to be recorded in writing in order to be legally binding.

Another example is the way apologies are communicated and what they are intended to mean in different cultures. In certain Asian cultures, for example, *"the fact that you apologise doesn't mean that you admit an obligation or liability – but that might not be the same judged by western standards"*.

Governmental and administrative practices also differ greatly between countries. One example is the relative accessibility of high-level officials, such as presidents and ministers, in certain countries. This accessibility can lead to unscheduled conversations between high-level officials and commercial parties which, in other countries, would be

considered highly unusual. In relation to the administration of government, another participant reported *"this progressive worry that the Chair of the tribunal [who was not from the region] was not understanding how institutions work in a developing country"*. The concern expressed in relation to factual evidence, is that different arbitrators can hold widely different interpretations of the same events depending on the extent to which they understand the relevant cultural nuances.

**Procedural matters:** Tribunals may issue procedural orders or draw conclusions based on a party's non-compliance with those orders that parties consider to be inappropriate given the cultural context. In relation to disputes in the Middle East for example, one interview participant explained that *"there is a lot of hierarchy and there are a lot of protocols around [Very Important Persons (VIPs)]. Having a witness statement from the Sheikh or a VIP is very difficult. So the tribunal would need to understand that"*.

Separately, procedural approaches to arbitration vary widely across cultures. The nature and propriety of *ex parte* communications, for example, can be fundamentally different across cultures, as can be the approach to production of documents that are confidential or which may adversely impact a case. Respondents perceived that insufficient cultural understanding on the part of the arbitral tribunal may therefore have wide-ranging impacts on arbitration procedure and on substantive decisions.

## 6. Discussion

### A. Preliminary issues

Two key issues emerged during the process of conducting this research. Both are fundamental to acknowledge in the context of discussions around ethnic diversity on arbitral tribunals and in international arbitration more broadly.

#### Issue 1: Terminology

First, there is no perfect terminology with which a global audience, like the international arbitration community, can talk about ethnic diversity. Ethnic identity encompasses multiple elements and it can vary depending on the context.

This complexity became evident in the self-reported ethnicity data from the Survey Study. Some participants indicated unfamiliarity with the concept of ethnicity and a portion of survey respondents chose not to answer the question (21%). Additionally, the number of reported ethnicities (230) far exceeded the number of nationalities (76) in the survey data. This latter finding highlights a potential gap in the current approach of many arbitral institutions, which typically report nationality data in arbitrator appointments without the more nuanced dimensions of ethnicity.

The absence of any universally 'correct' definitions when discussing ethnic, racial, national or geographic categories is uncomfortable – particularly for lawyers, who are trained to create clear definitions and the certainty they provide. However, acknowledging this reality is a crucial first step toward meaningful progress.



#### Issue 2: Ultimate objective

Second, identifying the ultimate objective regarding ethnic diversity on arbitral tribunals is not straightforward for several reasons.

**Challenges in achieving meaningful ethnic representation on small tribunals:** While increasing diversity is generally seen as important, the question of how to achieve meaningful representation is complex.

Noting the mismatch between ethnicity of arbitrators and the legal nationality of corporate parties, should the ethnicities on the tribunal reflect, to some degree, those of the parties and/or representatives/stakeholders? At a systemic level, should international arbitration aim to achieve representation on arbitral tribunals that reflects the ethnic composition of the global population?

**Case-specific variation in the importance of ethnic diversity on arbitral tribunals:** The importance of ethnic diversity on arbitral tribunals may vary depending on the identity of the parties and the nature of the issues

in dispute. Some survey respondents indicated that ethnic diversity is more relevant where the disputing parties come from different cultural backgrounds, while others felt it less significant where the parties share common cultural roots.

Additionally, the need for ethnic diversity on the tribunal may differ from case to case depending on the presence of cultural issues in dispute.

**Divergent views on the relevance of ethnic diversity on arbitral tribunals:** There is some disagreement among arbitration stakeholders regarding the relevance of ethnic diversity on arbitral tribunals. Whereas the majority of respondents appear to support increased ethnic diversity on arbitral tribunals, with one commenting that “*ethnic diversity on the tribunal should mirror the ethnic diversity of the parties involved*”, a small minority expressed the view, without providing further explanation, that ethnic diversity should not be a factor in the discussion of arbitral tribunals at all. Each of these issues would benefit from further consideration and investigation by the international arbitration community.

## B. Results of the study

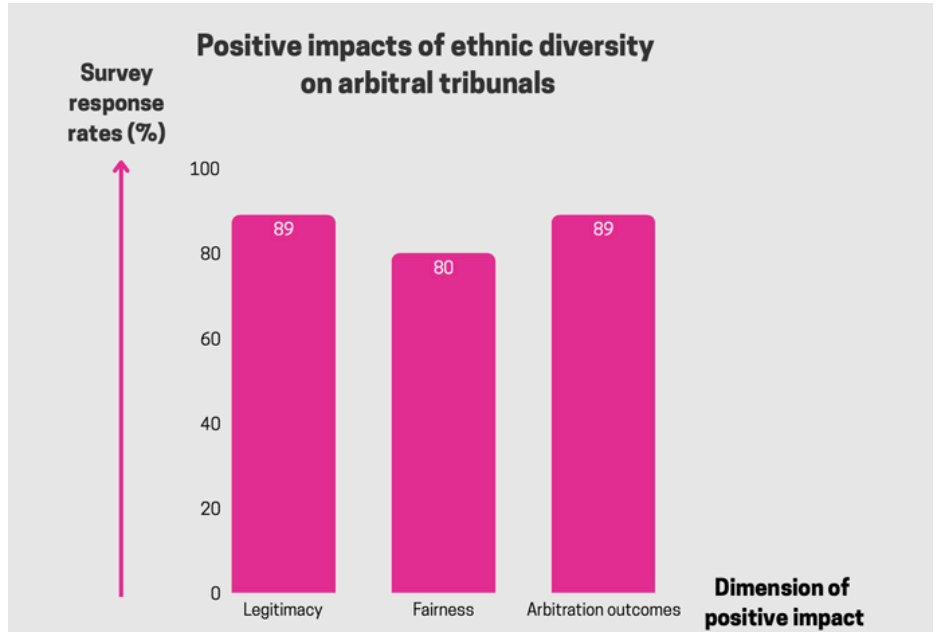
### Perceptions of legitimacy, fairness and arbitration outcomes

The findings of this study indicate a strong consensus among arbitration stakeholders regarding the positive impact of ethnic diversity on arbitral tribunals. In particular, 89% of survey respondents believe that ethnic diversity supports perceived legitimacy and 80% feel it contributes to perceived fairness (see Figure 9).

The study examined legitimacy and fairness in broad terms. Participants' comments differentiated between the legitimacy of specific arbitration proceedings and the legitimacy of arbitration as an adjudication system generally. Concerns about fairness primarily focused on the potential for perceived bias and unfairness in decisions.

Nearly all participants (89% of survey respondents) also believe that ethnic diversity on arbitral tribunals is important for outcomes in international arbitration, referring to ethnically diverse arbitral tribunals showing “*better decision-making*”, while those lacking diversity potentially suffering from misunderstandings and perceived biases.

Given the large sample size and the views expressed, these results underline the need for further exploration of this important topic (see Figure 9).



**Figure 9:** Survey respondents' views (% reporting a positive impact) on the impact of ethnic diversity on different dimensions of international arbitration including legitimacy, fairness and outcomes

### Levels of ethnic diversity on arbitral tribunals: Where are we now?

Based on recent experience, most survey respondents reported a lack of ethnic diversity on arbitral tribunals they had experienced (68%). The present study data therefore reflect

concerns voiced recently by different international arbitration stakeholders.

The data also mirror trends found in the 2024 SIDRA Survey: 73% of their respondents would like to see more diversity in the nationality of arbitrators in international commercial arbitration and 72% would like to see more diversity in ethnicity.<sup>7</sup>

#### Box 3. What's getting in the way? Barriers and challenges to increasing representation

Across their open comments, respondents noted certain barriers or challenges to improving levels of ethnic diversity on arbitral tribunals including lack of awareness of issues relating to ethnic diversity and a limited pool of diverse arbitrators with sufficient experience to preside over disputes in specific arbitrations.

Following these preliminary findings, important next steps for the international arbitration community include: clarifying additional potential barriers or challenges to improving representation; promoting discussions that raise awareness and education on this topic; and increasing the visibility of arbitrators from diverse ethnic backgrounds.

## Cultural understanding

The reported positive impact of ethnically diverse arbitral tribunals appears to be primarily attributed to the enhanced cultural understanding among tribunal members. Indeed, respondents described a wide range of potential negative impacts where an arbitral tribunal lacks cultural understanding.

However, there are important nuances in this discussion. Some respondents noted that ethnic diversity *per se* may not be necessary to enable this deeper understanding.

**Cultural experience:** Arbitrators can acquire relevant cultural expertise through lived experience, such as spending an extended period engaging in business in the region. Some respondents reported examples of arbitral tribunals demonstrating cultural awareness and sensitivity in the handling of international disputes, without any ethnic diversity on the tribunal or any shared ethnicity with the parties – such as accommodating cultural practices, such as scheduling key dates around public holidays or religious observances, or demonstrating awareness of relevant geopolitical issues, allowing better understanding of the background context and expectations relating to factual matters involved.

**Cultural mindset:** There are specific actions or approaches tribunals can take to develop their understanding of relevant cultural issues. Open-mindedness and a genuine willingness to engage were described as essential, especially for tribunals lacking relevant ethnic diversity. As

one respondent noted, “*tribunals should be curious, ask questions, and avoid premature conclusions*”, while another emphasised the need to understand domestic systems instead of imposing preconceived notions from their own jurisdiction.

Another procedural step tribunals could take is to hear from experts on culture to educate them on relevant issues. One respondent described how the parties had provided “*a professor in business administration as an expert*” in one arbitration to explain the relevant cultural context.

In certain contexts, therefore, ethnic identity itself may not be necessary for an arbitral tribunal to consider matters that are influenced by ethnic, cultural or linguistic nuance. That said, however, nearly all survey respondents (89%) consider that tribunals with some shared ethnicity among members and parties demonstrate greater cultural appreciation. This suggests that, according to stakeholder perceptions, ethnic diversity offers advantages beyond those that experience or mindset alone can achieve.

These findings parallel those in the 2024 SIDRA Survey relating to cultural familiarity among arbitrators. For example, while the majority of SIDRA respondents consider cultural familiarity ‘Important’ or ‘Absolutely crucial’ as factors influencing their choice of arbitrator in international commercial arbitration (92% of Client Users and 82% of External Counsel), far fewer respondents were satisfied with the cultural familiarity of their chosen arbitrator (only 46% of Client Users and 73% of External Counsel).<sup>8</sup>

## Closely connected factors

The research studies also identify two separate factors bearing on stakeholders’ perceptions of international arbitration and which are often (though not always) closely tied to the ethnicities on the arbitral tribunal.

**Common law vs civil law:** An arbitrator’s legal background was flagged as an important factor by respondents. For example, some raised the fact that tribunals formed of arbitrators versed only in common law may reach very different decisions on matters governed by civil law as compared with tribunals with some civil law expertise, and vice-versa. Two participants stated that, for some cases, legal training was more important than the arbitrator’s ethnicity.

**Language:** Language was also mentioned. Respondents commented on the challenges posed by a tribunal’s lack of proficiency in relevant languages, ranging from substantial time and costs spent on translation to outright failures to understand documents or witnesses. Language proficiency is not necessarily correlated with ethnicity. However, language barriers can be a common corollary of tribunals lacking relevant ethnic representation.

The present research focused on ethnic diversity on arbitral tribunals broadly, defined as tribunals where at least one member has an ethnicity different from the others, and how such diversity impacts matters such as perceived legitimacy and fairness. Outside the scope of this research

were more nuanced questions regarding the impact of the extent or type of ethnic diversity, or its impact on distinct elements of legitimacy and fairness. These aspects represent valuable avenues for future research.

The findings of this study highlight the importance of ethnic diversity on arbitral tribunals for different aspects of international arbitration, and point to the need for further investigation and discussion on this topic.

## Annex I: Study Methodology



The research in this study was led by Dr Ula Cartwright-Finch of Cortex Capital. Dr Cartwright-Finch is an experienced international arbitration counsel, with over 12 years of practice in Asia and Europe, representing parties in international commercial and investor-state arbitrations. She also holds a PhD in Cognitive Neuroscience from University College London and is an Honorary Research Fellow at the University of Warwick. At Cortex Capital, she has led multiple research projects on diversity in international arbitration – including relating to gender diversity, ethnic diversity and diversity in sexual orientation – as well as on decision-making in legal contexts.

### Survey Study methodology

Three-hundred and five (305) respondents completed an online questionnaire for the Survey Study.

The content and design of the questionnaire was guided by the themes and trends emerging during the interview study described below. The survey comprised 14 questions asking about respondents' arbitration

experience, their views towards various perceived impacts of ethnic diversity on arbitral tribunals and demographic data including self-identified ethnicity.

The survey collected responses anonymously so that individuals could not be identified from the data. A copy of the survey introduction and questions is provided below.

The survey was launched before an audience attending the 25th Annual IBA Arbitration Day in Singapore in February 2024. It was subsequently published on the IBA Arbitration Committee LinkedIn webpage (a private LinkedIn group) and by international arbitration's leading industry publication, Global Arbitration Review. It was also distributed directly to certain membership organisations, including targeted outreach to Latin American and African networks, in order to generate more regionally diverse responses.

The survey was coded and hosted on SurveyMonkey. Responses were collected between 23 February 2024 and 10 May 2024.

### Interview Study methodology

A pilot Interview Study was conducted to generate ideas and feedback in order to refine the survey design.

To that effect, eleven (11) experienced international arbitration users were interviewed by Dr Cartwright-Finch.

Participants were interviewed individually. Interviews were conducted confidentially in order to protect participants' anonymity and to encourage frank discussion. All interviews were conducted on Zoom and lasted approximately one hour.

Each interview comprised a semi-structured discussion, guided by specific questions exploring participants' views and experiences of arbitration under different arbitral tribunals, with a focus on ethnic diversity and its perceived impacts.

Specific comments from the interview pilot have been included in this report to provide anecdotal information that highlights or informs particular points. Some quotes have been slightly modified for clarity, ensuring that the original meaning remains intact.

## Survey design

The survey was titled “*Diversity and Legitimacy in International Arbitration*”.

The following instructional text was provided before respondents completed the questions:

*“Today we are asking arbitration users about their experiences of international arbitration under different tribunals. The survey includes simple questions and should take no more than five minutes to complete. Your responses will help contribute to the future development of international arbitration. The survey is completely anonymous so feel free to answer as honestly as you wish. You will have the chance to share any comments and insights you have on this topic during the survey. Thank you for taking the time to answer our questions.”*

*Recognising the complexity of defining race and ethnicity in its broadest sense, we use nationality as a proxy for race / ethnicity where relevant in this survey. We are using ‘ethnically diverse tribunal’ and ‘ethnic diversity on tribunals’ to indicate a tribunal comprising arbitrators of different nationalities / ethnicities from one another. Except where indicated, we are asking for your views in relation to ethnic diversity on arbitral tribunals regardless of whether or not any of the tribunal’s ethnicities are shared by any of the parties.”*

Fourteen (14) survey questions were then presented as follows:

### **About you**

#### **Question 1: What is your primary role? [Select only 1]**

In-house Counsel  
Outside Counsel  
Arbitrator  
Tribunal Secretary  
Funder  
Arbitral Institution Staff  
Academic  
Other (please specify)

#### **Question 2: What is your principal focus? [Select only 1]**

Commercial Arbitration  
Investor-State Arbitration  
Both Commercial and Investor-State Arbitration  
Other (please specify)

#### **Question 3: On which region(s) do you focus primarily? [Select all that apply]**

Europe  
Asia-Pacific  
Latin America  
North America  
Africa  
Middle East

### **Your experience and views**

Please answer the following questions based on your experience or feedback you have heard from others (e.g. clients/witnesses) over the past five years.

#### **Question 4: To what extent is ethnic diversity on the tribunal important for the outcome of arbitration?**

Not important at all  
Slightly important  
Moderately important  
Important  
Very important

#### **Question 5: To what extent does the ethnic composition of the tribunal impact the perceived fairness of the arbitration process?**

Not at all  
Little  
Somewhat  
To a large extent  
To a great extent

#### **Question 6: Based on your experience over the past five years, how do you rate the levels of ethnic diversity on arbitral tribunals?**

Very diverse  
Somewhat diverse  
Neutral  
Somewhat lacking in diversity  
Very lacking in diversity

#### **Question 7: Do you think an ethnically diverse tribunal is more likely to demonstrate cultural sensitivity relevant to the dispute (as compared with an ethnically homogenous tribunal)?**

Definitely not  
Probably not  
Possibly  
Probably  
Definitely

#### **Question 8: To what extent is the tribunal's cultural appreciation improved when there is some shared ethnicity among the tribunal and the arbitrating parties?**

Not improved at all  
Slightly improved  
Moderately improved  
Improved  
Very much improved

**Question 9: Do you have any comments or insights on the topic of ethnic diversity on arbitral tribunals?**

E.g. good or bad examples of cultural understanding.

[Open answer]

**Question 10: To what extent does having some level of ethnic diversity on the tribunal support the perceived legitimacy of international arbitration?**

Not at all

Little

Somewhat

To a large extent

To a great extent

**More about you**

**Question 11: What ethnicity do you self-identify as?**

[Open answer]

**Question 12: What age are you?**

<24

25-34

35-44

45-54

55-64

65+

**Question 13: What gender do you self-identify as?**

[Open answer]

**Question 14: What is your nationality?**

[Open answer]

## Annex II: Survey Respondents



### Arbitration roles

Respondents performed a range of roles within international arbitration. The majority act primarily as Outside Counsel (182) or Arbitrators (76). Across the remaining respondents were In-house Counsel (9), Arbitral Institution Staff (12), Tribunal Secretary (8) and Academics (2) (see Figure 10).

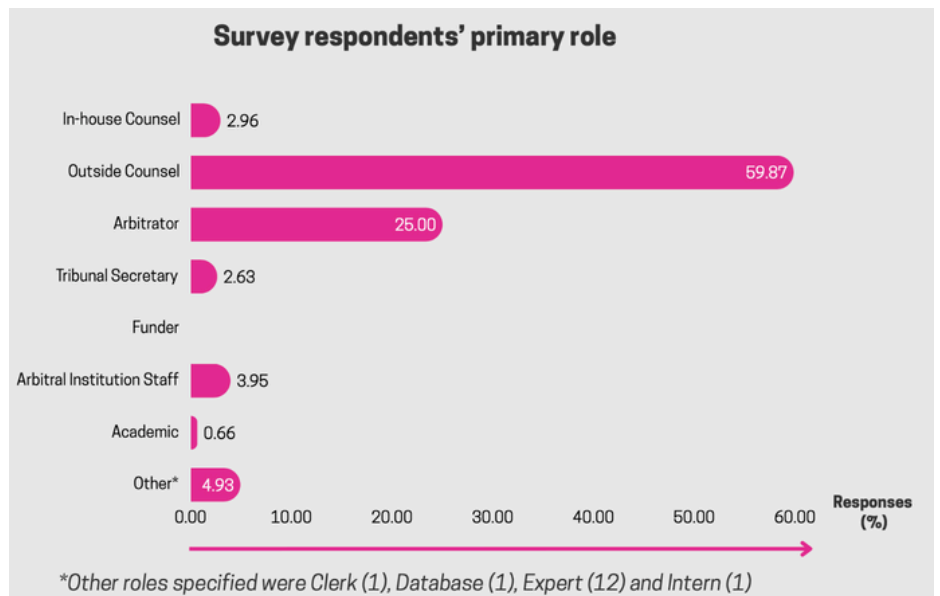


Figure 10. Distribution of primary arbitration roles among survey respondents

### Arbitration specialisation

Most respondents focus principally on commercial arbitration (67%). Nearly a third of respondents have a mixed focus including commercial and investor-state arbitration, whereas a small minority have investor-state arbitration as their principal focus (2%) (see Figure 11).

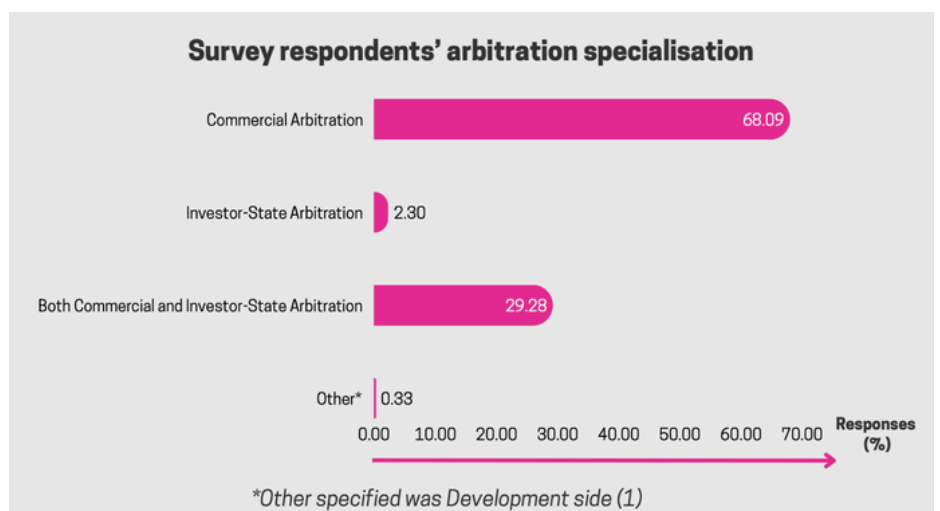


Figure 11. Distribution of arbitration specialisation among survey respondents

### Geographical region of focus

In relation to respondents' primary geographical regions of focus, Asia-Pacific and Europe saw the most concentration with 51% and 38% respectively, followed by Latin America (29%), Middle East (19%), North America (14%) and Africa (10%) (see Figure 12).

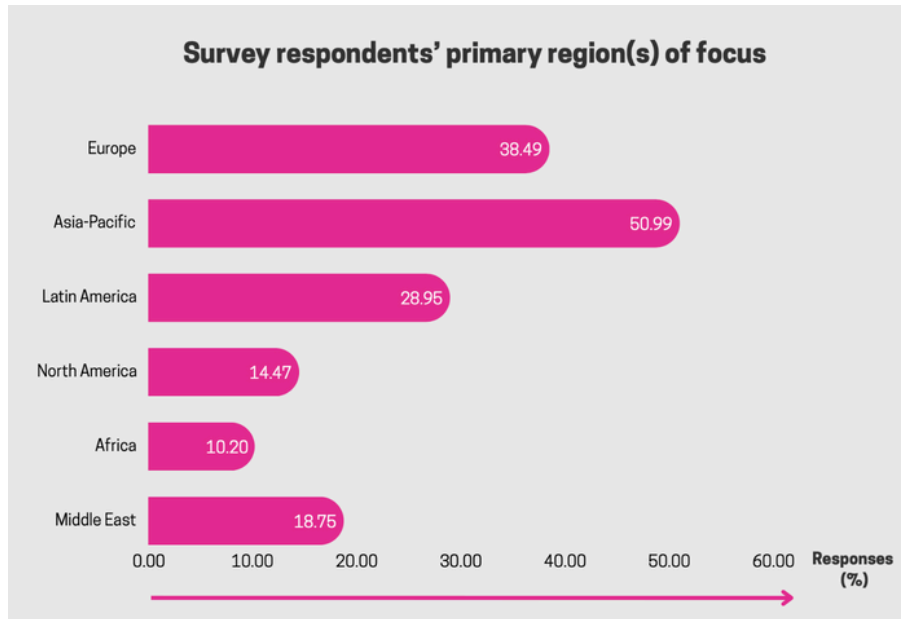


Figure 12. Distribution of primary region(s) of focus among survey respondents

### Age

There was a broad distribution of ages among the survey respondents. Of those respondents who indicated their age (289 respondents), most fall inside the 35-64 age bracket (36%) with smaller numbers in the 25-34 years (10%) and the 65+ years (8%) categories (see Figure 13).

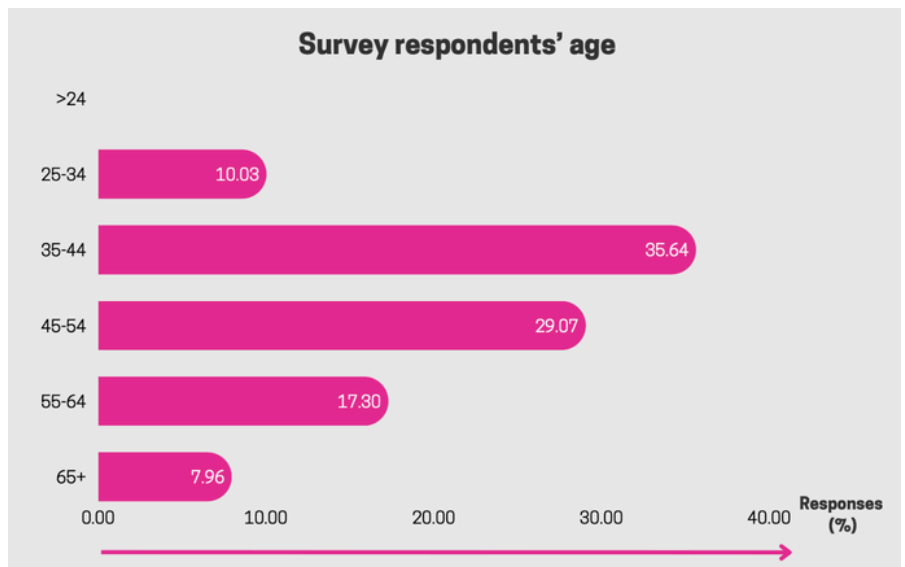


Figure 13. Age distribution of survey respondents

### Gender

Of those respondents who indicated their self-identified gender (278 respondents), there were slightly more male (59%) than female (41%) (see Figure 14).

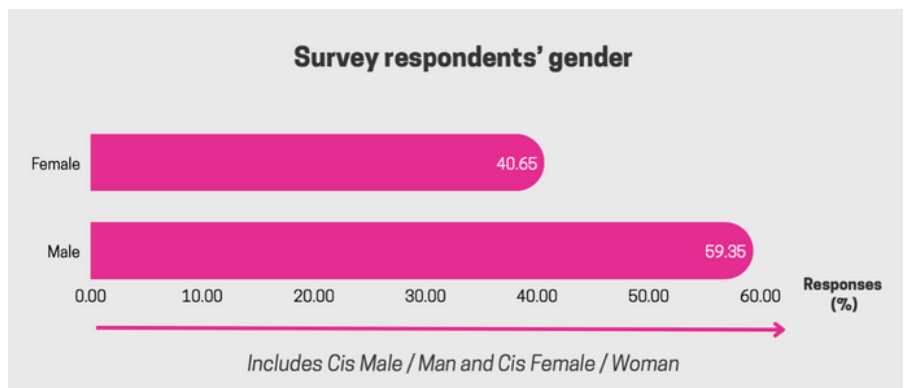


Figure 14. Distribution of survey respondents' gender

### Nationality and ethnicity

Compared to the demographic information requested on age and gender, significantly fewer respondents provided their nationality (41 skipped this question; 264 responded) and fewer still provided their ethnicity (64 skipped this question; 240 responded).

Across those that provided their nationality, there were 76 different nationalities reported including 19 with multiple nationality (18 reporting dual nationality; 1 reporting triple nationality). The full range of nationalities is provided at Table 1 (and see Figure 15 for geographical distribution).

Across those respondents that provided their ethnicity, there were 230 different ethnicities reported including 34 with mixed ethnicity. The full range of ethnicities identified by respondents is provided at Table 2; we have included all responses provided even where the response may not constitute what would typically be regarded as an ethnic distinction.

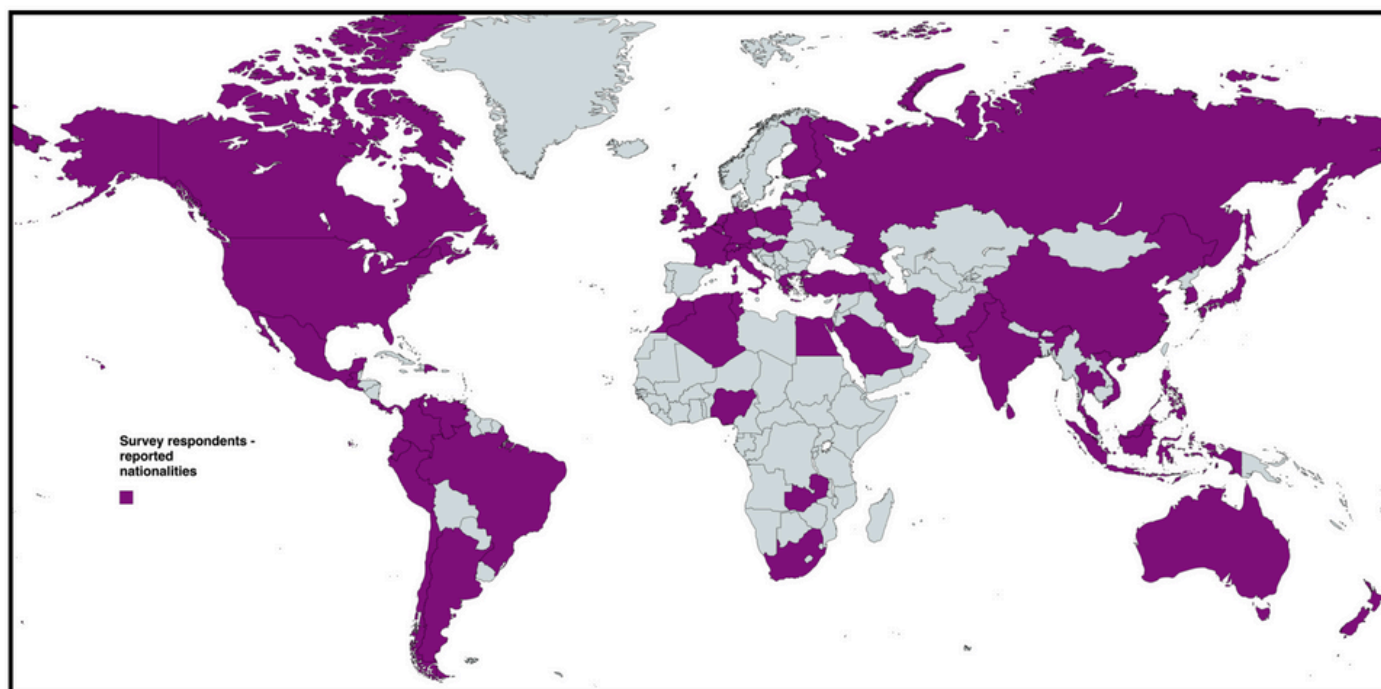


Figure 15: Geographic distribution of survey respondents' nationalities

Algerian	1	Dominican	1	Mexican / Italian	1
American	11	Dutch	4	Moroccan / French	1
American / Egyptian	1	Dutch (Netherlands)	2	New Zealander	3
American / Kenyan	1	Ecuadorian	1	Nigerian	1
American / Peruvian	1	Egyptian	2	Nigerian / British	1
Argentinian	3	English	2	Pakistani	1
Argentinian / Spanish	1	Filipino	3	Panamanian	2
Argentinian / Italian / British	1	Finnish	1	Peruvian	5
Australian	8	French	5	Polish	1
Australian / American	1	French and Lebanese	1	Russian	1
Austrian	5	German	4	Salvadorian	1
Belgian	2	Greek	1	Saudi	2
Belgian / American	1	Guatemalan	1	Scottish	1
Brazilian	7	Hungarian	1	Singaporean	31
British	23	Indian	8	South African	2
British / American	2	Indonesian	1	Spanish	6
British / Iranian	1	Irish	1	Sri Lankan	1
Canadian	4	Italian	3	Swiss	10
Canadian, Singapore permanent resident	1	Japanese	6	Thai	5
Chilean	4	Korean	3	Tunisian	1
Chilean / Italian	1	Korean (South)	1	Turkish	2
Chilean / Spanish	1	Latvian	1	Venezuelan	1
Chinese	4	Lebanese	2	Vietnamese	3
Colombian	5	Malaysian	13	Zambian	2
Costa Rican / American	1	Mexican	18		
Cypriot	1	Mexican / Spanish	1		

**Table 1.** Self-reported nationalities of survey respondents

Afghan Australian	1	Chinese Asian	1	Latin	31	Sri Lankan	1
African	2	Colombian	1	Latin American / Black	1	Tamil	1
American	1	Dutch	1	Malay / Malaysian	2	Thai	1
Anglo Saxon	2	Eastern European	1	Mestizo	1	Thai / Chinese	1
Arab	4	Eurasian White	1	Mexican	1	Tunisian / Arab	1
Ashkenazi Jew	1	Eurodescendant	1	Middle Eastern	3	Vietnamese	1
Asian	32	European	15	Mixed	2	White	21
Asian / European	1	European (racial colour considered offensive, therefore not reported)	1	Mixed British and Filipino / mixed European and Asian	1	White Asian	1
Asian Bangladeshi British	1	Filipino	1	Mixed race	4	White Brazilian	1
Asian (Desi / South Asian)	1	French and Lebanese	1	Mixed race White and Black African	1	White British	1
Black	2	Greece	1	Mixed White and Asian	1	White Caucasian	3
Black African	1	Half Caucasian half East Asian	1	Never thought about it	1	White European	4
British	1	Hispanic	6	North Africa-Middle East	1	White Hispanic	1
Caribbean	1	Human	2	North-African	1	White Latin American	1
Caucasian	29	Indian	9	Punjabi	1		
Caucasian / Hispanic	1	Indian / Hindu	1	Regional	1		
Caucasian / French Canadian	1	Indian Malaysian	1	Singapore Indian	1		
Chinese	14	Iranian UK	1	Sinhalese	1		
Chinese / Indian	1	Jewish	1	South Asian	2		

**Table 2.** Responses to survey question on self-reported ethnic identity

For the purpose of creating this list: variations of the same ethnic categories were consolidated (e.g. Latin, Latin American, Latina, Latino and Latinoamericano are all captured under 'Latin American' above); otherwise, self-reported identities have been retained (e.g. Sinhalese, Sri Lankan and Tamil are listed individually).

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## References

<sup>1</sup> United Nations Statistics Division, Concepts and Definitions, Section A, para 187 and Section D, para 2.117, emphasis added.

<sup>2</sup> UNCITRAL Working Group III, Report of the 36th Session, A/CN.9/964 at paragraph 92: <https://documents.un.org/doc/undoc/gen/v18/075/12/pdf/v1807512.pdf>

<sup>3</sup> UNCITRAL Working Group III, Report of the Resumed 38th Session, A/CN.9/1004/Add.1 at paragraph 101: <https://documents.un.org/doc/undoc/gen/v20/007/33/pdf/v2000733.pdf>

<sup>4</sup> Where parties to AAA arbitration do not appoint an arbitrator of their own accord, the parties each submit four potential candidates, and the AAA selects four additional candidates to form a list of 10-12 potential arbitrator candidates drawn from their National Roster of Arbitrators. The usual practice in domestic US arbitration is for each party to strike arbitrators they deem unacceptable and then rank the remaining candidates. The AAA then appoints the arbitrator with the highest joint ranking across the parties' lists.

<sup>5</sup> One of the African-American candidates provided by the AAA was a partner at the law firm representing Jay-Z's opponent in the underlying dispute. The three other candidates on the supplementary list were Asian-American, South Asian and Latino. See Petitioners' Memorandum of Law in Support of the Order to Show Cause for a Temporary Restraining Order and Preliminary Injunction in *Carter et al v Iconix Brand Group et al*, No. 655894/2018.

<sup>6</sup> In a letter to the court, Jay-Z's lawyer highlighted AAA's openness to including additional African-American arbitrators for selection, and to broader remedial measures intended to improve the diversity of the arbitrator roster more generally. See Petitioners' Letter to Judge Ostrager, December 9, 2018 in *Carter et al v Iconix Brand Group et al*, No. 655894/2018.

<sup>7</sup> SIDRA International Dispute Resolution Survey: Final Report 2024, at paragraph 5.38.

<sup>8</sup> SIDRA International Dispute Resolution Survey: Final Report 2024, paragraph 5.30, Exhibit 5.15 and Exhibit 5.16.