

Gender, Nationality and Religion of the Arbitrator - A Saudi Perspective

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Abstract

Background: The lack of diversity of arbitrators is a global phenomenon equally concerning arbitration institutions in Europe, U.S. and elsewhere. In most parts of the world, there were no legislative restrictions to the choice of arbitrators, yet predominantly white and male arbitrators have been appointed thus far. In Saudi Arabia for a long time, there was no clear legislative provision if it is permitted to appoint women, foreigners or non-Muslims as arbitrators. Jurisprudence and doctrine had diverging opinions on the matter based on the subject matter of the dispute and the interpretation of Sharia that gives no explicit answers to this question. Commercial Arbitration in Saudi Arabia is on constant rise since the adoption of the new Arbitration law in 2012 and the reform of the judiciary and the enforcement laws. The new arbitration legislation removed the barriers based on nationality or religion but did not resolve the question of women being appointed as arbitrators. The jurisprudence finally resolved the matter by allowing the first female appointment of an arbitrator in 2016. While women in 2018 also took over mandates in public prosecutions, they are yet to be admitted becoming judges in Saudi Arabia. The Saudi Vision 2030 seeks to empower women to gain full access to the legal profession in Saudi Arabia.

The paper in particular focuses on the arguments in favor or against diversity of arbitrators under Sharia law to the extent that it may influence the diversity of arbitrators in the future development of arbitration under Saudi Vision 2030.

Methods: The normative method was used to identify legislation in Europe, U.S. and Saudi Arabia on the choice of arbitrators. This method also included a comparative analysis of EU, U.S. and Saudi legislation and case-law to draw conclusions and recommendations for further development. Statistics were used to confirm how the legislation has impacted the actual appointment of arbitrators based on their gender, religion and nationality in different European states, the U.S. and Saudi Arabia. The dogmatic method was used to understand the reasons behind the current statistics and legislation on the gender, nationality and religion requirements for arbitrators in different states. The analytical method is used to draw conclusions on the quality and transferability of the practices and legislative measures in European states and the U.S. to the current developments in Saudi Arabia.

Results and conclusions: While the need for diversity of arbitrators is undisputed, the statistics before the leading arbitration institutions in Europe, U.S. and Asia are far from satisfying. In Saudi Arabia there was a legislative restriction to nominate diverse arbitrators until 2012, while in other examined states the diversity was not accomplished despite the modern arbitration legislation. The results reveal the current stage of discussion and development in Europe, Saudi Arabia and other states when it comes to

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gender, nationality and religion of the arbitrators and expose the need for further measures to achieve the desired diversity.

Keywords: *Arbitration; Diversity; Women Rights; Saudi Arabia; Islamic Law; Sharia.*

1. Introduction

International arbitration as a dispute resolution method becomes more and more attractive. The reasons may be found in its effectiveness and neutrality, confidentiality, the expertise of the arbitrators, the flexibility reflected in the wide party autonomy that includes nomination of arbitrators, the right to choose procedural and substantive laws, and the enforceability of the arbitral awards in more than 160 states under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (Queen Mary University, 'International Arbitration Survey: The Evolution of International Arbitration' (2018), (see Z Meskic, A Gagula, (2023)).

International arbitration is growing in different parts of the world. The rise of big law firms, increased caseload before leading arbitration institutions, the development of regional and national arbitration centers, the increased number of mandatory or elective courses on international arbitration at law schools, global moot court competitions such as the Willem C. Vis International Commercial Arbitration Moot are all great examples of growing diversity in international arbitration. However, this level of diversity is not reflected in the nomination of arbitrators. The arbitration community recognized the problem and increased the number of female arbitrators, although today's statistics are still far from satisfactory as will be discussed in this paper. However geographic, age, ethnic and cultural diversity have not truly improved (Queen Mary University Survey 'International Arbitration Survey: Adapting arbitration to a changing world' (2021) In this paper we will firstly discuss the need for more diversity in terms of gender, nationality and religion of the arbitrators on a global scale. After that we will discuss the specific case of Saudi Arabia, where such diversity has been prevented by the law for several years, until the last decade, when Saudi Arabia invested a lot in in the development of arbitration. The arbitration legislation is now in accordance with international standards to the extent that Saudi Arabia is an arbitration-friendly state both as a seat of arbitration, as well as for enforcement of foreign awards.

2. THE LACK OF GENDER AND NATIONALITY DIVERSITY IN INTERNATIONAL ARBITRATION AS A GLOBAL PROBLEM

International arbitration has always had a diversity problem. The common description of arbitrators in international arbitration is "pale, male and stale" (B Davis, 'American Diversity in International Arbitration: A New Arbitration Story or Evidence of Things Not Seen' (2020) 88 (6) Fordham L Rev, 2143-2154, 2151). Out of the three infamous descriptors, the most debated in the arbitral world so far is the dominance of male gender in arbitrations. The debate is not heated because of the lack of women participating in arbitration conferences, taking arbitration courses at law schools or participating in the Willem C. Vis International Commercial Arbitration Moot. On the contrary, women are the majority at most of the mentioned events, at least in the last two decades. Therefore, the statistics on the (lack of) female representation in the appointments as arbitrators is even more stunning. In 2012 the leading arbitral institution ICC in Paris reported overall 10,3% female appointments, the ICSID in Washington equally 10%, while a somewhat greater number of 20% was reported by HKIAC in Hong Kong (B Davis, 'American Diversity in International Arbitration 2003-2013', American Review of International Arbitration (2014). Despite great efforts and admittedly progress in the recent years, the

underrepresentation of women as arbitrators remains a global phenomenon, in the East and in the West. While there is a clear trend of increasing appointments of women as arbitrators, the statistics before the main arbitral institutions show that in 2021 only 26.1% or all appointed arbitrators were women (ICCA, 'Report of The Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings' (2022 update). It does reflect a significant increase from 2015 when 511 women were appointed before the leading arbitral institutions, whereas the number increased to 1317 appointments in 2022, with an approximate 20% increase of overall caseload during that period (Ibid.). In the arbitral institutions with somewhat smaller number of caseloads the progress is more visible. The Austrian VIAC published in its statistics of 2022 that 44% of arbitrators were women, whereas 57% of Board appointed arbitrators were women(<https://www.viac.eu/de/statistiken>).

The nationality of arbitrators has long been centralized in Western Europe and the North America (A Braghetta, '(2015) The ICC statistics of 2020 do show that overall, 92 nations have been represented among the appointed arbitrators in 2020, however still two thirds of them come from Western Europe or North America (ICC, 'Dispute Resolution 2020 Statistics'). The data on racial diversity is less accessible. Some ideas may be drawn from the data of the nationality of arbitrators, to the extent that nationality coincides with race. The famous Jay-Z case (N.Y. Sup. Ct., Petitioners' Memorandum of Law in Support of the Order to Show Cause for a Temporary Restraining Order and Preliminary Injunction, (2018) Carter v. Iconix Brand Group, Inc., No. 655894/2018) showcased how the party autonomy to nominate arbitrators if there is no racial diversity in the pool of available arbitrators before a particular institution. In the complex commercial case, Jay-Z, a famous African-American rapper and his company was trying to appoint an African-American arbitrator, but the initial list of 200 potential arbitrators specialized in "Large and Complex Cases" provided by the American Arbitration Association (AAA) given to them did not contain a single African-American arbitrator. Jay-Z felt deprived of his right to equal protection of the laws, and he felt misled that the AAA will provide fair and impartial adjudication (V Francis, '(2021). The petition by Jay-Z summarizes why diversity is essential for the perception of equal access to justice by the users of arbitration, but also for the opportunity to make full use of party autonomy. Representativeness of the pool of arbitrators is further required for the legitimacy of the system itself (J Karton, 'Diversity in Four Dimensions', in S F Ali, F Balcerzak, G F Colombo and J Karton (ed.), 2022).

Diversity is not for diversity's sake. There are numerous studies showing how background, race, gender, prior employment and political affiliation may affect decision making (R C. Chen, (2021). The decisions are mostly affected by unconscious bias of the judges or arbitrators (V Francis, (2021). However, sometimes judges or arbitrators may also consciously follow a certain ideology, or they may have had a specialized knowledge or experience in a certain matter that affects their opinion (R C Chen, (n 13) *ibid*, 452.). Additionally, quite often international arbitration is chosen as a method of dispute resolution for neutrality, and thereby reasons of diversity. In international arbitration diversity truly matters. One of the reasons for having a panel of three arbitrators instead of a sole arbitrator is the diversity of arbitrators based on their national, legal or cultural background creating a perception of more neutrality than a sole arbitrator (C Rogers, 2014). Parties often resort to a neutral seat of arbitration and nominate arbitrators from that state, rather than having an arbitrator of the same nationality as any of the parties. If the applicable law is at least in part a religious law, then having an arbitrator of that religion would be beneficial for the expertise just like the expertise in any other law or subject matter.

3. THE RESTRICTIONS FOR APPOINTMENT OF ARBITRATORS IN THE FORMER ARBITRATION LAW OF SAUDI ARABIA

The lack of diversity when appointing arbitrators in Europe, U.S. or before the leading Asia arbitration centers is not caused by any legislative restrictions. It might seem even more worrisome to acknowledge that the diversity in arbitration is lacking despite the fact that parties are free to choose arbitrators of any gender, ethnic group or religion. This was different in Saudi Arabia. In Saudi Arabia the Court of Appeal in Dammam in 2016 for the first time approved a woman appointed as an arbitrator (Case No. 3022 / Q of 1436 AH; see also M H Almulhim, 2023). This is a result of a legislative development for over more than three decades.

Saudi Arabia passed its first independent arbitration law M/46 in 1983 (By Resolution No.164 dated April 1983 (21.06.1403H), the council of Ministers decided to approve the arbitration Regulation attached to the Resolution. H.M. the king gave his approval by Royal Decree M/46 dated 25/April 1983 (12.07.1403H). The regulation was published in the *Um –Al-Qura* (Official Gazette) on 3 June 1983 (22.08.1403H) and became effective thirty days thereafter, i.e., on 3 July 1983 (22.09.1403H). This law was replaced in 2012 by a new Arbitration law (Passed by Royal Decree Number M/34, 2012), based on the UNCITRAL Model Law on International Commercial Arbitration (T A Alshubaiki, Z Meskic, 2022). In the former Arbitration law of 1983, there was no provision regulating the gender of the arbitrators. However, regarding the religion and nationality of the arbitrators, the implementing regulations stipulated in Article 1/3 that: “The arbitrator must be a Saudi national or Muslim foreigner, chosen amongst the members of the liberal professions, or other persons. He may also be chosen amongst state officials after authorization of the supervising authority that he belongs to” (Article 1/3, the executive regulations of the old Saudi Arbitration Law, 1415 AH.).

Based on the formulation of the old arbitration law, the jurisprudence held that the arbitrator must be of Muslim religion regardless of the parties to the dispute, their nationalities, and their right to choose their arbitrators. Differently than with regards to the nationality and religion, the former arbitration law did not mention any requirements regarding the gender of the arbitrator. Due to the lack of an explicit text in the old arbitration law about permissibility of female arbitrators, the question was left to Islamic jurisprudence. The majority opinion in the jurisprudence rejected the right of women to be appointed as arbitrators by comparing it to the exclusiveness of male judges, based on what was said by the Malikis, Shafi’is, Hanbalis and some of the Hanafis (K bin A Al-Khudair, ‘Judgment of the Condition of Islam in Arbitration Disputes’, (1433 AH) 4 Al-Jadaiyah Magazine, 128):

1- Based on AlQuran: {Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand} (Quran, Sura An-Nisaa: 34).

2- What was said by the Prophet (ﷺ) when he heard that a woman rule Persia, "A people who make a woman their ruler will never be successful (M bin I Al-Amir Al-Sanaani, *Subul As-Salam*, 2001), Volume 4, 390, and refers to *Sahih Al-Bukhari*, (6/10) (9/70). A part of jurisprudence believes that the evidence in the hadith of Prophet (ﷺ), can go to the general mandate, which is what is intended in his hadith.)”

3- Another view based on AlQuran: {And abide in your houses and do not display yourselves as [was] the display of the former times of ignorance. And establish prayer and give zakat and obey Allah and His Messenger. Allah intends only to remove from you the impurity [of sin], O people of the [Prophet's] household, and to purify you with

[extensive] purification} (Quran, Sura Al-Ahzab: 33. The reasoning of the third opinion is that God commanded the woman to stay in the house, and the judiciary requires her to go out and mix with men, which contradicts the verse.

It was further not allowed to appoint an arbitrator from another religion, as the law stipulated a condition that the arbitrator must be a Saudi national or Muslim foreigner. Part of jurisprudence justified this approach, based on the Quran - and from the Sunnah, stating that it would be allowed for an arbitrator to be a non-Muslim, provided that the dispute is between a Muslim and a non-Muslim. But if the dispute is between Muslims, then the arbitration is not valid, as it is obligatory to implement Islamic law, whether regarding arbitrators or the applicable law, because choosing non-Muslim arbitrators to arbitrate between them, or choosing a law other than the Islamic law, is considered a waiver of their duty to apply Sharia. But Muslims must abide the law that must be applied to them (as they said) (Kh bin A Al-Khudair, *ibid*) The previous opinion contradicts with the explicit texts mentioned in the current arbitration law, as there is no provision in the current law that prevents a non-Muslim arbitrator from arbitrating a dispute between a Muslim and a non-Muslim or between Muslims. Also, the opinion that it is necessary to apply Islamic law and therefore Muslim arbitrator must be chosen, contradicts the new arbitration law, which gave freedom to the parties to choose the law applicable to the subject matter of the dispute (Article 38 of the Law) or the dispute procedures (Article 25 of the Law). The same opinion went even further and held that even a foreign nationality should not be allowed in such a case, although this opinion goes against the explicit wording of the old Arbitration law (Kh bin A Al-Khudair, *ibid*). It was also stated that “it is not permissible for anyone to take over the judiciary and rule in any of the affairs of Muslims and the people of the dhimma (The term “dhimma” refers to protected non-Muslim people living in a state governed by Muslims; Y Friedmann, ‘Dhimma’, in K Fleet, G Krämer, D Matringe, J Nawas, D J Stewart (ed.) 2012) except a Muslim (Ibn H Al-Andalusi, *Al-Mahalla bi-Athar*, 2002.

This problem was discussed in a case heard by the Board of Grievances, which included an objection to a non-Muslim arbitrator (Case No. 235/sq/2/1995). A Dutch company OGEEM filed a claim against the King Abdulaziz University, a Saudi public university. The arbitral tribunal ordered the university to pay over 7 Mil Saudi Rial (over 1,7 Mil Euro). (See the full analysis of the case in H Sh Alhussein, Z Meskic and A Al-Rushoud, (2023) While the university in most complied with the award, the dispute continued over the outstanding amount. The University raised the objection that one of the arbitrators was a non-Muslim. The Ninth Circuit of the Board of Grievances confirmed the arbitral tribunal’s decision. The Board of Grievances found no reason to invalidate the arbitral award due to one of the members of the arbitration panel being a non-Muslim, and he did not oppose to any of the committee's decisions, since all the decisions were taken unanimously. Further it found that the decision was not related jurisprudential matters subject to *ijtihad* (The term “*ijtihad*” refers to the independent or original interpretation of problems not precisely covered by the Quran; Encyclopedia Britannica, February 2024., but rather arithmetic matters equal in the knowledge of Muslim and non-Muslim and their results do not differ according to different religions.

Again, an appeal was filed to the Cases Audit Committee (First Circuit), which eventually disagreed with the ruling of the Ninth Circuit of the Board of Grievances regarding, among other things, the formation of the arbitration panel as one of its members is a non-Muslim. Accordingly, the judgment of the Ninth Circuit was reversed, and the European company's complaint was rejected including all its demands (Kh bin A Al-Khudair, 1432 AH). See also reference to this judgment at N bin S Al-Sharif (2013). Following the reasoning of the final decision, having a non-Muslim arbitrator based on the old arbitration law would possibly also allow for annulment of the arbitral award, or it would at least create obstacles for enforceability of the award in Saudi Arabia (H Sh Alhussein, Z Meskic and A Al-Rushoud, *ibid*).

4. CHANGE AND UNDERLYING POLICY

Although the old Saudi Arbitration law did not allow women to be arbitrators, there were several opinions opposed to such prohibition. The view which supports that woman may be arbitrators, is based on the absence of explicit terms in Islamic principles that prohibit women from being as so. According to this view, a woman may be appointed as a judge, since it is not a requirement that who hold this position should be a male. The reason behind that stems from the idea that a woman testimony is permissible in certain matters in Islam, and accordingly, she might be appointed as a judge within the scope of these matters. However, in matters where a woman testimony is impermissible, she may not be appointed as a judge. This view is followed by Hanafis (Al-Mawardi,2006, and Ibn Qasim of the Malikis. Based on this opinion, the Hanafis permit women to hold the position of a judge, except in hudud (Hudud is a punishment for a crime stipulated in Islamic shariah representing the right of Allah.). On the other hand, Ibn Jarir supports the view that women can be appointed as a judge in all matters (M bin I Al-Amir Al-Sanaani, ibid.). Yet, Zahiri school (See Kh bin A Al-Khudair, ibid) follows opinion that it is not a requirement in Islamic principles that a judge position is limited to a male (Hanafis, Malikis, and Zahiris are schools in Islamic jurisprudence).

The new Saudi arbitration law of 2012 set a clear and more flexible conditions for the appointment of arbitrators. There was no longer any restriction based on religion or nationality. Further, the gender remained unregulated by the Arbitration law and left for the jurisprudence to decide. However, based on the changed legal environment the jurisprudence changed its opinion with regards to the permissibility of women to be appointed as arbitrators.

The new law specified clearer conditions for the appointment of arbitrators, as the arbitrator must be:

- 1- Fully qualified.
- 2- Of good conduct and behavior.
- 3- To have at least a university degree in Sharia or formal sciences, and if the arbitral tribunal is composed of more than one arbitrator, then it is sufficient that this condition be met by its president (Article 14 of the Saudi Arbitration Law).

The party autonomy is fully respected when appointing the arbitrators as long as the conditions under Article 14 of the Arbitration law are fulfilled (Article 15 of the Saudi Arbitration law.). In line with the UNCITRAL Model law, under Article 50 (e) of the Saudi Arbitration law if the arbitrators are appointed contrary to parties' agreement or the law, it is a ground to invalidate the award. Therefore, the law did not differentiate between men and women, nor did it mention any restrictions based on nationality or religion. Article 42 of the new Arbitration law stipulates that the arbitral award must include a statement of the arbitrators' nationality. This shows that the nationality of the arbitrators may be non-national without any restriction on this nationality. Without any explanation, the jurisprudence changed its previous position on female arbitrators and approved the appointment of Shaima Aljubran as the first female arbitrator in Saudi Arabia. The First Commercial Chamber of the Administrative Court of Appeal in the Eastern Region in Dammam had jurisdiction to decide on the appointment of the presiding arbitrator under Art 15 (2) of the Saudi Arbitration law of 2012. One of the co-arbitrators appointed by the parties was Shaima Aljubran and once the presiding arbitrator was appointed the Court in Dammam found the case closed without discussing the appointment of the female arbitrator and thereby impliedly approved it (Case No. 3022 / Q of 1436 AH, Referred to in N bin Gh Al-Zaid, 1438-2017). There is no reasoning given by the court for the decision.

The reason behind these changes regarding the acceptance of women in arbitration or the acceptance of the appointment of a non-Muslim foreigner is the desire of the Saudi legislator to harmonize with the international community, which does not place any

restrictions on this topic. Further, the promotion of gender equality has shown a positive impact in neighboring countries, as both women and men should have equal benefits from the same resources and opportunities (A Iqbal, S Hassan, H Mahmood, M Tanveer, (2022).

The acceptance of appointments of non-Muslim foreigners as an arbitrator is in line with the global trend (E.g. the Syrian law does not require the arbitrator to be of a specific gender or nationality unless the parties to the arbitration agreed otherwise; Article 13 (2) of the Syrian Arbitration Law of 2008) and it follows the goal to improve conditions for international investments. Foreign investments play an important role in improving the economic and social, and developing countries as well as increasing the flow of capital (Sh Al-Qahtani, M Albakjaji, (2023). The international investment treaties and customary law protects aliens' rights (L Alfaify, (2023). In addition, the UNCITRAL Model Law that served as a model for the Saudi Arbitration law, encourages multinationalism to ensure impartiality (Article 11 (5) of the UNCITRAL Model law stipulates that "(1)- No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.").

Further, the permission for women to serve as arbitrators is supported by several sources of Sharia law. Firstly, in Al Quran: {Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing (Quran, Sura An-Nisaa: 54. The command to fulfill the trusts - and the judiciary is one of the greatest of them - was mentioned in a general that includes men and women, and the command to judge between people with justice was also mentioned in a general way, as it also includes both (M O Mahmoud, 2013). Secondly, the support may be based on Umar ibn al-Khattab, may God be pleased with him, who appointed a woman to rule the market. If it was said: The Prophet (ﷺ) said: "A people who make a woman their ruler will never be successful. But we need to bear in mind that the Prophet said that in the general matter for positions with general mandate (Ibn Hazm Ali bin Ahmed bin Saeed). The Prophet (ﷺ) also said that he consulted Umm Salama, may God be pleased with her, in Umrah al-Hudaybiyyah, and accepted what she advised him, which points in the direction that he would not prevent her from assuming the judiciary. Finally, Aisha, may God be pleased with her, led the army in the Battle of the Camel. If it was not accepted for a woman to assume leadership positions, she would not have assumed command of the army (N Z Al-Rashoud, (2016).

It appears from the previous opinions that there is no agreement to prevent women from taking over the judiciary, and this paved the way for the legislator to allow appointing women as arbitrators, especially since arbitration is only in matters in which reconciliation is permissible, contrary to criminal matters or personal status matters (M O Mahmoud, *ibid*).

Amending the laws to give freedom to appoint arbitrators as they see fit, also finds their basis in Islamic law. As AL Quran said: {And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things]}(Quran, Sura An-Nisaa: 54). And since Islam does not prohibit the marriage of a Muslim man to a non-Muslim woman, this indicates the permissibility of the arbiter appointed by the wife's family being non-Muslim.

5. IMPLICATIONS OF CHANGES AND INSIGHTS FOR FURTHER RESEARCH

A. The Implications of the Changes for the Law and Society

The permission for women to be appointed as arbitrators is one of many steps undertaken in Saudi Arabia to give women access to legal profession in several spheres. In 2018, 50 women were appointed to public prosecution in Saudi Arabia (Saudi women become Public Prosecution investigators for the first time; <<https://saudigazette.com.sa/article/575574>> accessed 22 December 2023.), that is considered part of the judicial authority. This is further significant as thereby women assume important roles in criminal matters. The last step of the development, to appoint women as judges in Saudi Arabia was put on hold, as the Shūra Council rejected twice (in 2018 and 2020) the proposal to appoint women as judges, both times without explanation (S Al-Agha, (2023). Interestingly, in the second attempt in 2020, the proposal was reduced to allow women to be judges solely in the Personal Status Courts, with the hope that a narrower proposal could be easier accepted, but still it was rejected (Ibid.). From a comparative perspective, in 1959, Zakia Hakki of Iraq became the first female judge in the region, followed by Morocco in 1961, Lebanon and Tunisia in 1966, Yemen in 1971, the Syrian Arab Republic in 1975, Sudan in 1976, the State of Palestine in 1982, Libya in 1991, Jordan in 1996, Egypt in 2003, Bahrain in 2006, the United Arab Emirates in 2008, Qatar in 2010 and Mauritania in 2013, (UN, Women in the Judiciary in the Arab States Removing Barriers, Increasing Numbers (2020).-and recently, In Kuwait, women were appointed as judges since 2021, (<https://www.alanba.com.kw/1074012>), Only Oman, Saudi Arabia and Somalia have not yet appointed female judges (Ibid. Allowing women to get full access to the legal profession is in line with the Kingdom's vision 2030 and empowering Saudi women.

B. Remaining discussion points

The contrasting views in doctrine and jurisprudence on the restrictions to appoint non-Muslims, foreigners and women as arbitrators should be examined in greater detail, not just in Saudi Arabia but also in other states that follow Shariah law. It should be examined if the principles of Shariah law make a difference with regards to the role within the judiciary and the subject matter of the dispute. The current role of women in Saudi Arabia the public prosecution within criminal matters, as arbitrators on commercial matters and the request sent to Shūra Council (The Shūra Council is one of the main authorities in Saudi Arabia bas on the Basic Law of Governance. It is a consultative and legislative body directly advising the King, currently consisting of 150 members, out of which 30 are female; See <<https://www.shura.gov.sa/wps/wcm/connect/shuraen/internet/home>> 2024.) to accept women as judges in personal matters, seems to support women taking a role in the judiciary in most important areas of law. The question for further research would be if there is any area of law or any particular role from which principles of Shariah would exclude foreigners, non-Muslims and women.

6. CONCLUDING REMARKS

The need for diversity of arbitrators in international arbitration is undisputed. While some improvements with regards to gender diversity have been accomplished, the current statistics are far from satisfactory. The legislators across the globe did not put any restrictions to the appointments of arbitrators and still parties predominantly opt for white and male arbitrators. The diversity based on race, ethnicity or religion is still in its early stages of development. Saudi Arabia for some time was in the exceptional situation that the arbitration legislation and the jurisprudence directly prevented diversity based on gender, nationality and religion. However, there is no conclusive text in the Holy Qur'an

or in the Sunnah that prevents women from assuming the position of judge or arbitrator. This caused a jurisprudential and scientific debate in Saudi Arabia, which was resolved in favor of allowing women to be appointed as arbitrators and in public prosecution, but not yet as judges. The prohibition of a non-Muslim foreign person to be appointed as arbitrator, has been overcome with the issuance of the Arbitration law of 2012. Under the new law, the foreigner has the right to undertake the arbitration without any restriction related to nationality or religion. The development shows that the jurisprudence adopted prior to 2012 that limited the appointment of women, foreigners and non-Muslims as arbitrators is no longer the prevailing opinion and has lost its support by the legislator, the doctrine or the judiciary. This is an important step towards international recognition of Saudi Arabia as a desirable seat of arbitration and the development of the arbitration community in Saudi Arabia. However, as the examples in Europe, U.S. and the most prominent Asian arbitrations centers show even with liberal arbitration laws diversity of arbitrators, unfortunately, this cannot be achieved without additional efforts. There should be additional efforts from the arbitration centers and law offices to contribute to the desired diversity. The Saudi Center for Commercial Arbitration (SCCA) has already made some steps in the right direction by appointing women of different ethnicity and religion to the Board of Directors, the SCCA Court and its advisory committee.

RECOMMENDATIONS

- Modern legislation is not sufficient to achieve diversity in appointing arbitrators, and additional measures are required in Europe, as much as other parts of the world.
- For Saudi Arabia, it could be better if the court of appeal nominate women to act as arbitrators in cases where the court has jurisdiction/the power/ the authority to appoint arbitrators
- Conducting advanced studies on the view of Islamic law regarding the appointment of women to the judiciary or arbitration.

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