

Women Judges in Fragile States. Insights from the Haitian Judiciary

Marianne Tøraasen

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Scientific environment

Marianne Tøraasen is a PhD Candidate both at Chr. Michelsen Institute (CMI) and the Department of Comparative Politics at the Faculty of Social Sciences, University of Bergen.

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Abstract

This cumulative PhD dissertation studies women’s judicial representation in fragile states through an in-depth case study of the judiciary in Haiti, one of the most fragile (and patriarchal) countries in the world. By centring the analysis on three core elements of women’s judicial representation – *representative roles*, *access*, and *experiences* – the study focuses on creating a better understanding of women judges’ actual opportunities and willingness to address women’s rights and other issues in a fragile and patriarchal context. The study’s point of departure is that judiciaries are both representative and highly gendered institutions but remain understudied compared to the other branches of government. This is particularly the case for more fragile contexts, as most studies on women’s judicial representation focus on institutionalized democracies in the global north. However, women are entering courts as judges in increasing numbers in very different countries, including in fragile contexts, where questions of gender and representation are becoming salient issues, also in the judicial sphere.

The study asks what the representative roles of women judges are; what can explain the increase in the number of women judges in the Haitian judiciary; and what are the gendered experiences of being a judge in a fragile context. The study provides new empirical knowledge about a severely under-researched case. It also contributes with valuable theoretical insight into the topic of gender and representation in the judiciary. This is done through a partly exploratory research design with a focus on identifying how certain factors that are unique to or particularly prevalent in fragile settings may shape women judges’ access, experiences, and representative roles on the bench.

The dissertation is composed of three independent and single-authored articles, of which one is published in a peer-reviewed journal, and two are currently under review. The first article, “A good judge has no sex? A typology on judicial representation” is under review

and studies the representative role of women judges, focusing on perceived benefits of women's presence on the bench. The typology is applied to the Haitian context and is used to analyze how judges themselves, and people outside of the judiciary, relate to gender representation on the bench. The second article, "Women's judicial representation in Haiti: Unintended gains of statebuilding efforts" is published in *Politics & Gender* and seeks to explain the increase in the number of women judges in post-conflict and post-authoritarian Haiti (Tørraasen 2023). The third article, "State Fragility and the Gendered Experiences of Judges: Insights from Haiti" is currently under review in a special issue and focuses on the gendered experiences of being a judge in a fragile context like Haiti.

Haiti scores very high on all four major dimensions of state fragility: high political instability, poor economic performance, low institutional quality, and weak governance. This makes the Haitian judiciary a useful extreme case (in the sense that it has extreme values of the typical characteristics of a fragile state) for understanding how these dimensions of state fragility may shape judges' representative roles, access, and experiences in gendered ways. All articles rely on a triangulation of a rich data material, collected during five months of fieldwork in Haiti, with elements of both quantitative and (mostly) qualitative data. This includes 70 interviews, numerous documents (descriptive statistics, reports, news articles etc.), and some observational data. By comparing the experiences and perceptions of women *and* men (which is something surprisingly few similar studies do) the study can say something meaningful about gendered variation in this regard. And the in-depth, qualitative approach helps understand the relationship between formal and informal norms, rules, and procedures in political institutions.

The study contributes with new theoretical insights into the nascent sub-field of women judges in fragile states, while simultaneously contributing to the wider and more established literatures on courts, women in decision making, and fragile states. Specific theoretical contributions of the articles include a typology for understanding judicial gender representation and the representative roles of judges, which may be used beyond the study

of gender to include other traditionally marginalized groups, and in different contexts (article 1). Another theoretical contribution is the identification of fragility-related variables (such as *insecurity, informality, international involvement, and constitutional and institutional reform*) and how they contribute to shaping different gendered outcomes with regards to access to and experiences on the bench. These gendered outcomes entail both *increased opportunities* for women to become judges, but also *gendered challenges and vulnerabilities* for women judges once on the bench.

Empirically, the study finds that there is room for gender representation on the bench if one applies a broader perspective to representation. The case study of the Haitian judiciary calls for attention to contextual variation: it shows how a less institutionalized (and heavily donor-dependent) judicial system, as well as a history of male-dominated corrupt practices, may shape the representative roles for women judges (article 1). The study also finds that seemingly “gender-neutral” judicial reforms aimed at strengthening the judiciary has done more for women’s numerical representation in courts than gender-targeted reforms, by introducing more merit-based and transparent appointment procedures to the judiciary (article 2). The study further finds that women judges feel particularly vulnerable in an insecure and unstable context. This is exacerbated by the fact that women are treated as outsiders and are sidelined and excluded from shadowy and informal networks within male-dominated judiciaries, and thereby are also deprived of sorely needed security measures (article 3).

In sum, the dissertation contributes to the emerging research agenda on the judicial representation of women with a particular focus on the under-researched context of state fragility. With the growing international focus on “inclusive statebuilding” and the potentially important role of courts in this regard, the dissertation helps understand how women in decision making experience and participate in statebuilding, how gender power relations work within the state apparatus in fragile contexts, and how state fragility and statebuilding can have gendered implications for decision-makers, in this case judges. By

showing how issues of gender representation are also highly relevant within judiciaries, the study contributes to the wider literature on gender and politics.

Sammendrag

Denne artikkelbaserte doktorgradsavhandlingen studerer kvinners representasjon i domstolene i sårbare stater gjennom en casestudie av rettsvesenet i Haiti, et av verdens mest sårbare (og minst likestilte) land. Studien setter søkelys på tre sentrale elementer ved kvinners rettslige representasjon – representative roller, adgang til dommerembetet og erfaringer på dommerbenken – i den spesifikke konteksten av sårbare stater. Utgangspunktet for studien er at domstolene er både representative og kjønnede institusjoner. Likevel har domstolene fått mindre oppmerksomhet når det gjelder kvinnerepresentasjon enn de andre statsmaktene. Dette gjelder særlig mer sårbare kontekster, ettersom det meste av forskning på kvinnelige dommere studerer institusjonaliserte demokratier i det globale nord. Dette til tross for en global utvikling der flere og flere kvinner blir dommere, inkludert i sårbare stater, og der spørsmål om kjønn og representasjon blir stadig mer relevante også i den rettslige sfæren.

Studien undersøker hva kvinnelige dommeres representative rolle er; hva som kan forklare økningen i antall kvinnelige dommere i det haitiske rettsvesenet; og hva de kjønnede opplevelsene av å være dommer i en sårbar kontekst er. Studien bidrar med ny empirisk kunnskap om et svært lite studert land. Den bidrar også med verdifull teoretisk innsikt i temaet kjønn og representasjon i rettsvesenet ved å belyse hvordan visse faktorer som vi typisk finner i sårbare stater kan forme hvordan kvinner blir dommere og hvordan de opplever sin rolle på dommerbenken. Dette gjøres gjennom et delvis eksplorerende forskningsdesign.

Avhandlingen er satt sammen av tre selvstendige artikler, hvorav én er publisert i et fagfelleurdert tidsskrift, og to er under fagfellevurdering. Den første artikkelen, "A good judge has no sex? A typology on judicial representation" er under vurdering og fokuserer på kvinnelige dommeres representative rolle, med fokus på begrunnelser for hvorfor det er

viktig å ha kvinnelige dommere. I artikkelen presenteres en typologi som brukes til å analysere hvordan dommere selv, og personer utenfor rettsvesenet, forholder seg til kjønnsrepresentasjon på dommerbenken. Den andre artikkelen, «Women's judicial representation in Haiti: Unintended gains of statebuilding efforts» er publisert i *Politics & Gender* og forklarer økningen i antall kvinnelige dommere i post-konflikt og postautoritære Haiti (Tøraasen 2023). Den tredje artikkelen, «State Fragility and the Gendered Experiences of Judges: Insights from Haiti» er for tiden under vurdering i et spesialnummer og studerer de kjønnede opplevelsene av å være dommer i en skjør kontekst som Haiti.

Haiti skårer veldig høyt på alle de fire hoveddimensjonene av sårbare stater: høy politisk ustabilitet, dårlig økonomisk ytelse, lav institusjonell kvalitet og svakt styresett. Dette gjør det haitiske rettsvesenet til et nyttig ekstremt case (i den forstand at landet har ekstreme verdier av de typiske egenskapene til en sårbar stat) for å forstå hvordan disse dimensjonene av sårbarhet kan påvirke hvordan dommere opplever sine representative roller, adgang til dommerembetet og erfaringer på dommerbenken, og hvordan dette er kjønnnet. Alle artiklene baserer seg på triangulering av et rikt datamateriale, samlet inn i løpet av fem måneders feltarbeid i Haiti. Dette inkluderer både kvantitative og (for det meste) kvalitative data, blant annet 70 intervjuer, skriftlige kilder (deskriptiv statistikk, rapporter, nyhetsartikler m.m.). Ved å sammenligne kvinners og menns erfaringer og oppfatninger kan studien si noe meningsfylt om hva som er kjønnnet. Og den kvalitative tilnærmingen bidrar til å forstå forholdet mellom formelle og uformelle normer, regler og prosedyrer i politiske institusjoner.

Studien bidrar med ny teoretisk innsikt i den gryende litteraturen på kvinnelige dommere i sårbare stater, samtidig som den bidrar til den bredere og mer etablerte litteraturen om domstoler, kvinner i beslutningstaking og sårbare stater. Et eksempel på et teoretisk bidrag er typologien i artikkel 1 som brukes for å forstå rettslig kjønnsrepresentasjon og dommers representative rolle. Denne kan brukes i videre forskning for å forstå representasjon av andre marginaliserte grupper i tillegg til kvinner, og i ulike kontekster (artikkel 1). Et annet

teoretisk bidrag er å identifisere typiske variabler i sårbare kontekster (som usikkerhet, uformelle nettverk, internasjonal tilstedeværelse og konstitusjonelle og institusjonelle reformer) og hvordan disse bidrar til kjønnede konsekvenser for dommere. Konsekvenser innebærer både økte muligheter for kvinner til å bli dommere, men også kjønnsmessige utfordringer og sårbarheter for kvinnelige dommere på dommerbenken.

Empirisk viser studien at det er rom for kjønnsrepresentasjon på dommerbenken hvis man tolker kjønnsrepresentasjon bredt, og at noen former for representasjon blir sett på som mindre i konflikt med det nøytrale rettsidealet enn andre. Casestudien av det haitiske rettsvesenet understreker viktigheten av kontekst: den viser hvordan et lite institusjonalisert (og svært donoravhengig) rettssystem, samt en historie med mye mannsdominert og korrump praksis, kan forme kvinnelige dommers representative roller (artikkel 1). Studien viser også at tilsynelatende «kjønnsnøytrale» rettsreformer med sikte på å styrke rettsvesenet har gjort mer for kvinners numeriske representasjon i domstolene enn kjønnsrettede reformer. Dette har man oppnådd ved å innføre mer meritokratiske og transparente utnevnesprosedyrer for rettsvesenet (artikkel 2). Studien viser videre at kvinnelige dommere føler seg spesielt sårbare i en usikker og ustabil kontekst. Dette forsterkes av at kvinnelige dommere blir behandlet som «outsidere»: de blir satt på sidelinjen og ekskludert fra uformelle mannsdominerte maktnettverk, og fratras dermed tilgang til uunnværlige sikkerhetstiltak (artikkel 3).

Samlet sett bidrar avhandlingen til den fremvoksende forskningsagendaen om rettslig representasjon av kvinner med et spesielt fokus på sårbare kontekster, som vi fortsatt vet lite om. Med et voksende internasjonalt søkelys på «inkluderende statsbygging» og domstolenes potensielt viktige rolle i denne forbindelse, bidrar avhandlingen til å forstå hvordan kvinner i beslutningstaking opplever og deltar i statsbygging, hvordan kjønnsmaktforhold fungerer innenfor statsapparatet i sårbare kontekster og hvordan sårbarhet og statsbygging kan ha kjønnede konsekvenser for beslutningstakere, i dette

tilfellet dommere. Ved å vise hvordan spørsmål om kjønnsrepresentasjon er svært relevante også innenfor rettssystemet, bidrar studien til den bredere litteraturen om kjønn og politikk.

List of publications

Tøraasen, Marianne (under review). "A good judge has no sex"? A typology on judicial representation."

Tøraasen, Marianne (2023). "Women's judicial representation in Haiti: Unintended gains of statebuilding efforts". *Politics & Gender* 19(1): 34–65

Tøraasen, Marianne (under review). "State fragility and the gendered experiences of judges: Insights from Haiti".

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Introduction

“[T]he empowerment of women...is at the heart of successful peacebuilding and statebuilding.”

(International Dialogue on Peacebuilding and Statebuilding: New Deal for Engagement in Fragile States, 2011)

“The resolution [1325] reaffirms...the importance of [women’s] equal participation and full involvement in all efforts for the maintenance and promotion of peace and security”

(United Nations Security Council Resolution 1325 on Women, Peace and Security, 2000)

A growing commitment by donors to integrate a gender perspective in international peacebuilding and statebuilding efforts is a sign that questions of gender and representation are salient issues in fragile contexts. Our understanding of a representative government has a triple structure, with a legislative, an executive, and a judicial branch. It is argued that these institutions should be representative of the people they govern, which they historically have not been. In the past decades, we have seen a push to increase the diversity of decision-making bodies to include the members and interests of previously marginalised groups, such as women. A large body of research analyses women’s representation in decision-making, but most of this research focuses on the executive and, particularly, on the legislature. The judiciary, on the other hand, remains relatively understudied with regards to women’s representation (Celis et al. 2008; Krook and Childs 2010). This may be explained by an apparent tension between the representative function and the ideal of the judge as a neutral and objective arbiter who only adheres to the law, and not to any group’s interests. Further, as opposed to members of the other branches of government, judges are usually appointed rather than elected and are thus not accountable to a constituency in the same way as elected representatives (Kenney 2013a).

Still, judiciaries are powerful political institutions, with judges at all court levels exercising “enforceable authority over the lives of others, affecting their liberty, livelihood, and

reputation” (Mallison 2003, 18). The global trend of ‘judicialisation of politics’ the past decades has made courts increasingly powerful due to formal and informal shifts in decision-making power from legislative and executive bodies to courts, including on issues of a highly political nature and significance (Hirschl 2008; Vallinder 1994). The demands of democratic principles thus arguably apply to judiciaries as much as to other political institutions (Mallison 2003). Furthermore, judiciaries are, like executives and legislatures, highly gendered institutions.¹ Women judges represent a relatively new phenomenon in the history of justice, as judiciaries for centuries were dominated by men, shaping norms, laws and practices (Chappell and Waylen 2013; Kenney 2013a; Krook and Mackay 2011; Rackley 2013; Schultz and Shaw 2013). Thus, claiming the judiciary to be a neutral institution by default is to ignore the fact that modern justice systems emerged out of patriarchal conceptions of justice (Kenney 2013a).

Just 27% of the world’s judges are women (O’Neil and Domingo 2015).² Acknowledging judiciaries as both *gendered* and *representative* institutions makes it clear why women’s judicial representation matters. First, the numerical presence of a traditionally marginalised group like women on the bench – what is referred to in the political representation literature as descriptive representation (Pitkin 1967) – is intrinsically important due to principles of

¹ I agree with those who believe that gender is more than a binary category of women and men. It is however the different experiences and perceptions between women and men that is the topic of this dissertation, as this is most relevant in the case of Haiti. I also acknowledge that gender is socially constructed and interacts with, but is different from, biological sex. However, most interviewees used “gender” and “sex” interchangeably, which signals a perceived overlap between gender and sex in the Haitian context, or at least among my sample of informants. It should also be noted that gendered inequalities intersect with other social and economic inequalities, such as ethnicity, age, sexual orientation, geographic location, and more (Crenshaw 1989), which may create more variation within the group of women than between some women and some men. I have taken this into account by integrating interviewees’ background characteristics into the analysis.

² These numbers are almost a decade old, but updated global numbers for women judges are hard to come by. It is likely that the numbers are slightly higher today than they were in 2015.

fairness and inclusion (Kenney 2013a). A second argument relates to substantive representation, which focuses on representative actions: the presence of women judges may help balance out male bias and protect the rights of women and other marginalised groups in judicial decision making (Cook 1981; Martin and Pyle 2004). Third, as non-elected judges cannot derive legitimacy from the popular vote, diversity on the bench is an important source of judicial legitimacy because it signals that different interests are heard in the judicial process (Malleon 2003). This relates to symbolic representation, where the importance lies in how people react emotionally to the representative (Pitkin 1967). A last argument is oriented towards human capital, and thus more concerned with utility than democratic participation (Hernes 1982; Skjeie and Teigen 2005; Teigen 2016): assuming that talent is distributed fairly evenly among men and women aspiring judges, male dominance in judiciaries indicates an under-utilisation of women's skills. In sum, representation on the bench matters because it may create more democratic, inclusive, legitimate, and efficient courts, and thus increase the quality of justice.

One can further argue that it is particularly important that judiciaries are representative in *fragile states*. While fragile states differ in severity and type, they typically lack the capacity and/or will to provide adequate public goods to their citizens, including justice and security, economic management and basic social services (Torres and Anderson 2004). Fragile states are also regularly plagued with widespread violence, crime, and corruption, and often have a history of conflict in one way or another (Dupuy, Gates, and Nygård 2016). In short, fragile states “face uniquely formidable obstacles to stability, development and democracy” (Kaplan 2015). In 2022, OECD listed 60 countries as fragile, 15 of which were labelled extremely fragile (OECD 2022) while the World Bank listed 37 fragile states (The World Bank 2022) (see Appendix 1). Although this reflects a certain ambiguity in the use of the concept, it indicates that a considerable portion of the world's population lives in so-called fragile contexts. Somalia, South Sudan, Afghanistan, Yemen, Central African Republic, Democratic Republic of the Congo, and Haiti are regularly found among the most fragile states in the world.

In such contexts, it is not easy for democracy to take root. While there has been a myopic focus on elections in fragile states, judiciaries and judges may play crucial roles in ensuring that other state institutions are accountable and responsive to its citizens and can thus work as bulwarks against democratic erosion (Diamond 1996; O'Donnell 1994). Courts also play an important role in protecting citizens from the routinised violence and abuse – from state actors or criminal fractions – often found in fragile contexts (Domingo and Othieno n.d.). In other words, courts are essential for upholding the rule of law in fragile states. To succeed in these important tasks, judicial authority needs to be respected and accepted. But in fragile state settings, judiciaries (and other formal institutions) are typically very weak, with low levels of public trust (OECD 2010). The inclusion of women in decision making as judges may be one of several potential sources of judicial legitimacy in these contexts.³ Representative judiciaries in fragile states are further important because the presence of women judges may motivate women who have experienced violence during or after conflict to bring their cases to court. This reflects a widely held assumption that women judges, due to their lived experiences as women in patriarchal societies, are better equipped than their male colleagues to bring justice to victims of sexual and gender-based violence and advance the rights of women more generally.⁴ Further, recruiting from the whole pool of potential judges – women and men – is a way to get “the best heads” and thus strengthen judicial capacity, which also tends to be weak in fragile state settings. A growing commitment by donors to integrate a gender perspective in international peacebuilding and

³ Lack of legitimacy may contribute to state fragility “because it undermines the processes of state-society bargaining that are central to building state capacity” (OECD 2010, 3). Further, the discrimination or exclusion of certain groups in society may diminish state legitimacy in fragile contexts (Kaplan 2015). It has even been argued that in many fragile contexts, unrepresentative justice institutions may be a root cause of insecurity (OECD 2007).

⁴ See for instance IAWJ (n.d.); Inter-American Dialogue (2013); Malik (n.d.); United Nations (n.d.). For a presentation of the evidence on the effect of judges’ gender on judicial decision making in relation to gender issues, see literature review.

statebuilding efforts in fragile contexts, including in judicial reform efforts (Carlisle 2017; Domingo and Holmes 2013; Lake 2018; UN Women 2023a; Wimpelmann 2017), is a sign that questions of gender and representation are becoming highly relevant in fragile contexts.

Still, it is perplexing how little we actually know about how women judges in fragile states access the judiciary, how they experience being a judge, and how they relate to their representative role. This study seeks to address this knowledge gap through an in-depth case study of Haiti, the 10th most fragile and the 8th least gender equal country in the world (Fund for Peace 2022; OECD 2022; UNDP 2022) (more on Haiti below). It is beyond the scope of this dissertation to study the effect of having women on the bench. However, by centering the analysis on three core elements of women's judicial representation – *representative roles*, *access*, and *experiences* – I focus on creating a better understanding of women judges' actual opportunities and willingness to address women's rights and other issues in a fragile and patriarchal context. To understand this, I draw on the literature on women in decision making more generally, which has largely focused on the political sphere. There is no room in this study for a comparative analysis of women in the judiciary and women in the other branches of government, and there are, as mentioned, some fundamental differences between judges and politicians. Still, both spheres are important, but traditionally male-dominated, arenas for women's decision making and I believe that our understanding of women in judiciaries will benefit from engaging with the more sophisticated and developed literature on women in politics.

Empirical research on women judges has overwhelmingly focused on a relatively homogenous group of wealthy and institutionalised democracies in the Global North. In these countries, women have gradually entered courts in growing numbers since the 1970s, when economic prosperity and increased participation in education led more women to qualify as lawyers (Schultz and Shaw 2013, 14). However, changes in the gender composition of judiciaries are currently happening in countries with very different

socioeconomic and sociopolitical backgrounds. It is striking how many of the best performers in terms of women's descriptive (or numerical) representation in the judiciary are also found in the elusive category of fragile states. Examples are Madagascar (52% women judges), Angola (40% women judges), Uganda (45% women judges), Guatemala (40% women judges) and Venezuela (50% women judges). Fragile states with smaller percentages of women judges have also seen sharp increases the past decades (Tøraasen et al. *forthcoming*).

I argue that there are certain factors in fragile states, some of which are more prevalent or unique to these context, that may create both opportunities and challenges towards women's participation in judicial decision making. Opportunity factors include *conflict* and *political ruptures* that lead to the creation of new *laws* and *institutions*, and a high presence of *international donors* pushing for *judicial and gender reform* as part of statebuilding efforts. At the same time, challenging factors include high levels of *insecurity* and *political turbulence*, as well as *informality* and *shadowy arrangements*, which may have different gendered mechanisms and consequences. I will detail more about how these factors may interact below. My first research question concerns the *representative roles* of women judges:

RQ 1: What is the representative role of women judges? (Article 1)

This research question is motivated by the fact that we have not sufficiently theorised around ways in which judiciaries could and should be representative institutions. As noted, there is an apparent tension between representation and the judicial function, which is not elected and ideally neutral. Empirical research on judicial behaviour, however, establishes that judges' attitudes, role orientations, social background, personality, and descriptive characteristics – including gender – explain why judges act the way they do (Epstein and Weinshall 2021). Hence, judges demonstrably are not entirely neutral. Further, theorists challenge the assumption that questions of representation are only relevant for elected

institutions. I argue that questions of representation *are* highly relevant for the judiciary, but that a theoretical framework for understanding this in relation to gender is currently lacking.

Drawing on general representation theory, while taking the unique nature of courts and the judicial function into account, I develop a typology of four distinct, but not mutually exclusive, ways in which judicial gender representation is conceived and justified in the literature: *substantive representation* (women judges representing women through their actions, in the form of women-friendly decision making in court, or through other women-friendly activities outside of court); *representation as diversity of perspectives* (women judges bringing in new perspectives to the deliberative process, helping improve the quality of justice, and balancing out male bias); *representation as accessibility* (women judges making courts feel more accessible to women and inspiring more women to bring their cases to court); and *symbolic representation* (women judges signalling inclusion and thus increasing judicial legitimacy, challenging traditional perceptions of women in decision making, and/or acting as role models for other women).

As noted, questions of gender and representation in the judiciary are salient in fragile contexts. I thus apply the typology to the Haitian judiciary to understand how judges themselves – and people outside of courts – relate to the representative role of women judges. Furthermore, as Haiti represents a type of case that is far from the established democracies that most existing studies focus on or that are reflected in the typology, the case study helps test the potential reach and usefulness of the typology to different context. The analysis also provides valuable empirical knowledge from an under-researched country, as does the second research question:

RQ 2: What can explain the increase in the number of women judges in Haiti? (Article 2)

The high share of women judges in many fragile states raise the question whether there are mechanisms at play in these contexts, at an institutional or societal level, that open up opportunities for women to *access* judicial decision-making positions. Theory suggests that political junctures – like regime change, democratic transitions, the end of conflict, and/or the drafting of new constitutions – may help women access decision-making roles (Hughes and Paxton 2008; Tripp 2015; Waylen 1994, 2007). However, most empirical research exploring this relationship focus on mechanisms facilitating women’s *election* to the political sphere, such as gender quotas. We still know little about how women access the judicial branch in these contexts, where recruitment is based on *selection* rather than election.

Haiti is interesting in this regard because, whereas the proportion of women elected to the legislature has never been above 5% - putting Haiti among the world’s worst performers in women’s numerical political representation – there has been a significant increase in the proportion of women judges in post-conflict Haiti, from 2% in the mid-1990s to 12% in 2020. While this may seem like a moderate achievement compared to Haiti’s Latin American and Caribbean neighbours, it suggests that something has happened in the judiciary that is not (yet) mirrored in the political sphere. We thus need to know more about the relationship between post-conflict, fragile contexts, and the recruitment of women judges. To answer this research question, I explore two competing hypotheses where the first focuses on the role of donor-supported gender reform and the second on more “gender neutral” donor-supported judicial reforms aimed at professionalising the judiciary. My third research question puts the focus more firmly on the experience of the judges themselves:

RQ 3: How does state fragility affect the experiences of judges, and how is this gendered?
(Article 3)

While fragile contexts may open up opportunities for women to become judges, such contexts may simultaneously pose challenges for the exercise of judicial office once on the bench. My third research question focuses on the gendered *experiences* of being a judge in a fragile state. I develop an analytical framework based on 1) what we know about gendered experiences in the judiciary and 2) what we know about the gendered challenges in fragile states. Judiciaries tend to be highly masculine institutions where gendered power hierarchies and norms shape the working life of men and women differently. This is manifested in the prevalence of gender stereotypes, gender-discriminatory practices, and male power networks. Such tendencies are common for judiciaries in most countries (Schultz and Shaw 2013).

While fragile contexts threaten the security of both men and women, studies show that women suffer specific physical and structural insecurities by virtue of their gender (Connell 2011; Davies and True 2018; Gould 2014). Few scholars study how such contexts affect decision makers, particularly judges. We can however expect that factors typically found in fragile contexts – particularly *high levels of insecurity* combined with the prevalence of *informal and shadowy arrangements* – are likely to interplay with, and even amplify, the masculine culture of judiciaries (and society at large) and create different gendered experiences for men and women judges. Women judges in fragile states thus likely face unique gendered challenges that their colleagues in more stable contexts (subject to more scholarly attention) do not. These challenges may have implications for how women judges exercise and experience their role on the bench.

Haiti scores very high on all four major dimensions of state fragility: high political instability, poor economic performance, low institutional quality, and weak governance (Fund for Peace 2022; The World Bank 2020). This makes the Haitian judiciary a useful

extreme case (in the sense that it has extreme values of the typical characteristics of a fragile state) for understanding how these dimensions of state fragility may shape judges' representative roles, access, and experiences in gendered ways.

Since the fall of the Duvalier dictatorship in 1986, Haiti has been stuck in a protracted and violent transition towards democracy (Faubert 2006) marked by political instability, coups, foreign intervention, natural disasters, extreme poverty and economic inequality, and an inability to provide basic services to its citizens. There have also been periods of extreme state-sponsored violence – particularly during the Duvalier dictatorships (1957-1986) and the military-backed Cédras regime (1991–94) (Mobekk 2016). While Haiti has been struggling for years with high levels of violence and recurring political crises, the situation has taken a turn for the worse since the beginning of this research project. Insecurity and overall fragility increased around 2017, which coincided with the departure of the United Nations' fifth peacekeeping mission, MINUSTAH (The United Nations Stabilization Mission in Haiti) (Fund for Peace 2022; Kolbe 2020). The assassination of President Jovenel Moïse on July 7, 2021, shocked the world, leaving the country in chaos. At the time of writing, violent gangs have taken over large parts of the Haitian capital Port-au-Prince, spreading fear and forcing thousands of Haitians to flee their homes. There is no functioning parliament after successive failed efforts to hold new elections (Taylor 2023). These circumstances also affect the judiciary, as several courts have been forced to close down due to violence and unrest (Jean-Baptiste 2021). Though formally independent, the Haitian judiciary is severely weakened by political interference, few resources, corruption, and lacking trust among the population (Berg 2013). As part of state- and peacebuilding efforts, international actors have provided millions of dollars in justice support to strengthen the judiciary and rid it of its authoritarian heritage (Cavise 2012; Mobekk 2016).

An in-depth study of the Haitian judiciary can shed light on how fragile settings may present both opportunities and challenges to women's participation in judicial decision making. The dissertation builds on a considerable amount of data that I collected via

multiple sources (interviews, documents, observation) during five months of fieldwork in Haiti between late 2018 and early 2020. During an increasingly turbulent political period in Haiti, I interviewed a heterogenous sample of 70 people in total. 50 of these were Haitian magistrates (41 judges and nine prosecutors) from all court levels (peace tribunals, courts of first instance, appeals courts and the Supreme Court), including rural and urban courts. The center of this study is the *gendered* aspects of judges' representative roles, access, and experiences, focusing on the differences between women and men. I have to include both women (32) and men (18) in my sample, which, perhaps surprisingly, is an innovative approach, as most studies of gender and judges in more fragile contexts focus only on women's narratives. For contextual insight and an outside perspective on the Haitian judiciary, I interviewed 20 other key informants such as women's rights activists, civil society representatives, international organisations, lawyers, and journalists. The study further builds on news articles from online newspapers, reports on the status of the Haitian judiciary by international organisations and Haitian human rights organisations, legal documents, policy documents by Haitian authorities, descriptive statistics on the gendered composition of the judiciary, and direct observation within judiciaries. This triangulation of data helps substantiate interviewees' claims and provide additional contextual information.

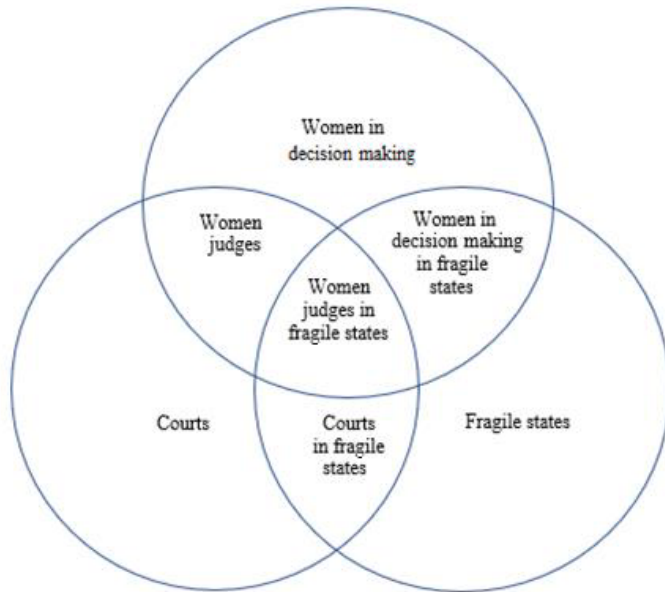
One aim of this dissertation is to develop theoretical insights into the nascent sub-field of women judges in fragile states, while simultaneously contributing to the wider and more established literatures on courts, women in decision making, and fragile states. In the literature review in the next section, I identify how these strands of literature help generate some expectations with regards to women's representative roles, access, and experiences in fragile states, while pointing to serious research gaps that the dissertation addresses through a partly exploratory methodological approach. After a short section on the context of Haiti, I present my research design, methods, and data. I have chosen to do a case study of the judiciary in the extremely fragile and patriarchal context of Haiti. This research design is useful for observing fragility-related and gendered variables – of which there is

an abundance in Haiti – and the interplay between them. I also discuss the ethical and practical challenges of doing research in a particularly fragile context. I continue with a presentation of the main theoretical, empirical, and methodological contributions of the articles in the dissertation, as well as some related topics for future research.

Literature review

We know very little about the situation of women judges in fragile states. This is puzzling given that there are rich and growing literatures on both courts, women in decision making, and state fragility. However, as I show in this section, these literatures rarely speak to each other. The scholarship on women in decision making rarely focus on courts, while the literature on courts and women judges remains heavily Western-centered. There is a growing literature on women's decision making in more fragile contexts, but this still focuses much more on politicians than on judges. Similarly, what has been done on courts in fragile states is less concerned with women's judicial representation. There is thus a huge knowledge gap in the intersection of the scholarship on courts, women's decision making, and fragile contexts. My in-depth study of women judges in the fragile state of Haiti builds on and contributes to all three literatures (see Figure 1).

Figure 1 Literature on women judges in fragile states



The literature on courts

Courts have become increasingly central in the study of law and politics over the past decades as a consequence of what is often referred to as the judicialisation of politics. This is the formal and informal process of transferring decision-making power from legislative and executive bodies to courts – including on issues of a highly political nature and significance (Hirschl 2008; Vallinder 1994). For a long time, scholars interested in the political role of courts and judges, often referred to as judicial politics, focused almost exclusively on high courts, particularly in the United States. Originally, judges' judicial behaviour formed the core of the study of judicial politics. Today, with the study of the judicialisation of politics, scholars are taking a broader view, focusing on the whole judicial hierarchy and on courts and judges as political actors in relation to the wider political process and other political actors such as other courts and judges, executives, legislatures,

interest groups, lawyers, and ordinary citizens (Whittington 2010, 11). There is also a newer interest in the role of international law (Simmons 2010) and international courts (Alter 2010, 2014; Bass 2010; Katzenstein 2014). The scholarship on law and society, focusing on, among other things, legal mobilisation and law as an instrument of social change, is also growing (Whittington 2010).

The vast judicial behaviour literature tries to explain what judges do, and why they do it. Several explanatory models are presented. The attitudinal model proposes that judges make decisions based on their own political or social opinion. According to the legal model, judges rule solely on the basis of the law, meaning that all judges, regardless of personal attitudes, will rule the exact same way (Segal 2010). The strategic model holds that judges make decisions strategically based on the preferences and expected actions of other actors, be it other judges, superiors, politicians and the public (Epstein and Weinshall 2021). Empirical scholarship find that attitudes, role orientations, social background, personality, and various descriptive characteristics play a large part in explaining why judges act the way they do (Epstein, Lee and Waterbury 2020).

This includes a sub-field on the impact of judges' gender on judicial decision making. For most types of cases, scholars have not yet managed to establish that women judges rule differently from men. However, in sexual harassment cases, consistent findings show that women more often than men tend to side with the female plaintiff (Haire and Moyer 2019). This implies that, on certain gender-relevant issues, the presence of women judges (descriptive representation) may lead to the substantive representation of women through more women-friendly judicial decision making. Yet few scholars refer to the research on judicial behaviour as a form of representation. Due to the quantitative nature of most studies of judicial behaviour, we know little about the reflections that lie behind gendered differences in judicial behaviour. And because of the overwhelming focus on Western, especially U.S. courts, we know very little about how contextual circumstances shape

judicial behaviour. I will return to the literature on gendered differences in judging in the section on women in decision making.

Democratic transitions in Latin America, Africa, Eastern Europe, and Asia expanded the focus of judicial politics from the United States to these countries' new constitutional courts (Ginsburg 2003), and an emergent literature looks at judicial independence and the role of courts in upholding the rule of law in democratising contexts. This literature argues that while there has been a myopic focus on democratic elections in emerging democracies, there are other essential components that need to be in place for democracy to take root, such as independent and well-functioning courts (Diamond 1996; O'Donnell 1994). This is essential for securing the rule of law and works as a bulwark against the erosion of democratic institutions. The judiciary can strengthen the rule of law through horizontal accountability, making sure those in power submit to the rules. For this to work, judges need to be independent and should not "be biased in favor or fear to challenge the powers that be" (Chavez 2008, 37). Threats to the rule of law may come from different sources – presidents, executives, parliaments, the state bureaucracy, extremist groups, the military, business elites or organised crime – depending on where economic and political power is concentrated in society. Often, informal and subconstitutional practices allow elected officials to control courts and judges. This includes withholding funding to the judiciary, imposing limitations on courts' jurisdiction, or removing judges and appointing new, more "loyal" ones ("court packing"). Pressure can be more or less subtle (VonDoepp and Ellett 2011) and may sometimes turn violent (Llanos et al. 2016). While this strand of literature is relevant to our understanding of courts in fragile states, few studies thoroughly investigate these informal practices, and instead limit analysis to formal guarantees of judicial autonomy. Actual practices on the ground may reveal that the formal institutions are mere facades that hide the subordination of the courts (Chavez 2004). Furthermore, we know little about how political intervention and other threats to the rule of law can have gendered consequences for judges. My in-depth analysis of the Haitian judiciary from a gender perspective contributes with new insight in this regard.

Due to the importance of courts in upholding the rule of law, judicial reforms have become an important focus among practitioners and scholars alike. While adopting judicial reforms to strengthen judicial independence may be a strategic choice by political actors,⁵ the literature on the construction of the rule of law is increasingly turning towards the key role of nonstate actors, particularly of civil society and the international community. The creation of reform coalitions between domestic civil society – human rights groups, lawyers, judges, and business associations – and external actors have according to some proved efficient in putting pressure on the legislature and executive branch to adopt rule-of-law reforms (Keck and Sikkink 1998).⁶ International actors are increasingly recognising the importance of judicial reforms in strengthening the rule of law and have placed these reforms high on the international agenda. Donor-supported reform has focused on reforming laws, increasing government’s compliance with the law, and reforming law-related institutions. The latter focuses on professionalising justice actors in courts, prosecution, police, and prison administration. This involves judicial training programs, improving working conditions, and developing ethic codes and professional standards (Mooney et al. 2010). As many nascent democracies are economically vulnerable and highly aid dependent, external actors can use material leverage in the form of sanctions or aid conditionality to push governments to reform (Chavez 2010). Some countries may also adopt judicial reforms in an attempt to gain legitimacy in the international community (Klug 2000). The literature on transitional justice has highlighted the importance of strong judicial systems (and thus, judicial reform) in order to respond to past human rights

⁵ Strategic political actors may see independent courts as a form of assurance in the face of possible electoral defeat. Hence, where there is vibrant party competition between two or more parties, the ruling party is more likely to promote independent courts. In cases where the ruling party foresees that it will stay in power indefinitely, independent courts are less likely to develop (Finkel 2005; Ginsburg 2003).

⁶ Spreading information and imposing electoral costs on power holders seeking to subordinate courts are some of the tactics used by domestic civil society (Chavez 2010).

violations in post-conflict and post-authoritarian contexts (Skaar, Gianella Malca, and Eide 2016).

International actors' ability to push for judicial reforms is limited without the support of domestic civil society, which helps legitimise international presence (Chavez 2010). International rule-of-law promotion have been criticised for not bringing about any discernable change (Mooney et al. 2010) and for not taking into account the complexity and interdependence of the multiple parts of the rule of law (laws, institutions, power structure, and cultural norms) (Kleinfeld 2012). Some also argue that the focus on more law, more courts, and more judges does not necessarily create positive change, as it can be used by elites in authoritarian and fragile settings as a strategic instrument of authority, control, and coercion (Massoud 2013).

Recently, some judicial reform efforts have integrated a gender perspective. Combatting gender-based violence has become a top priority for international donors. Consequently, the gendered aspects of judicial reforms in fragile and conflict-affected settings is usually linked to protecting women's rights and security by making courts more accessible to women, particularly those seeking justice for sexual and gender-based violence (Carlisle 2017; Lake 2018; UN Women n.d.; Wimpelmann 2017). Aid dependency and weak statehood incentivises courts in fragile states to respond to the agendas of external stakeholders, which can explain why courts in fragile states have a particular focus on addressing gender-based crimes (Lake 2018). The gendered effects of donor-supported judicial reform (explicitly gender-focused or not) is an under-researched area, particularly in relation to women's representation in courts. I explore this further in the articles.

The literature on women in decision making

The literature on women's participation in decision making is rich, mirroring the increasing international commitment to boost women's representation in all branches of government

(UN Women 1995). The executive and (particularly) the legislative branches are widely considered important arenas for women's representation and have received considerable scholarly attention. Fewer studies focus on the judicial branch in this regard, and those that do are mainly concerned with the Global North.⁷ While there are some crucial differences in women's political and judicial representation, we also find some similar patterns and explanations.

Though numbers are growing, women remain underrepresented in all branches of government. On average, women make up approximately 27% of the world's judges (O'Neil and Domingo 2015), 25% of the world's parliament members (Inter-Parliamentary Union 2022a), 36% of elected members of local government (UN Women 2021), and 21% of government ministers. Women serve as Heads of state and/or Government in just 30 countries (UN Women 2022). The famous "glass ceiling" seems to exist for women in decision making in general as women leaders are rare in the political and judicial sphere: the higher up in the hierarchy, the fewer women are there (Krook and Childs 2010; Schultz and Shaw 2013). Still, there has been a significant increase in the proportion of women judges in high courts over the past decades, from less than 1% in 1970 to 19% in 2010 (Escobar-Lemmon et al. 2021). Scholars of women's political representation have the advantage of access to a global database on women in the world's parliaments, with monthly updates (see Inter-Parliamentary Union 2022b). For judges, the first global database on women in high courts was published as recently as 2021 for the years 1970 to 2013 (Escobar-Lemmon et al. 2021). While this is a valuable resource for scholars

⁷ See for instance work on France (Bessière and Mille 2014; Boigeol 1993, 1996, 1999, 2000, 2003, 2013), Germany (Rowekamp 2013; Schultz 2014, 2015)(Schultz 2013), the United Kingdom (Ciale 1980; Feenan 2008; Rackley 2008, 2009, 2012, 2013), and Australia (Basten 2015). The bulk of research has focused on courts in the United States (Boyd, Epstein, and Martin 2010; Coontz 2000; Davis 1992, 1993; Glynn and Sen 2015; E. Martin 1989, 1991; P. Y. Martin, Reynolds, and Keith 2002; Resnik 1991, 1996; Songer, Davis, and Haire 1994; Songer and Haire 1994).

interested in judicial representation, it is limited to high courts⁸ between the years 1970 and 2013. Maintaining an updated database on judges at all court levels would involve a lot of work since the selection of judges, as opposed to the election of politicians, does not necessarily follow fixed cycles. Statistics for lower courts are harder to come by and may in some cases – like for this PhD project – require fieldwork. The late arrival of a database on women judges is reflective of how the judicial sphere has been overlooked by scholars of women’s representation in decision making.

Women’s numerical representation varies greatly across countries, and much research has been devoted to explaining this variation. Scholars examine both supply and demand factors in this regard. The former refers to women’s qualifications, resources, and motivation to run for office or apply for judicial posts, while the latter focuses on elites’ willingness to select female aspirants (Fox and Lawless 2010; Niven 1998; Norris and Lovenduski 1995). Supply and demand factors are in turn shaped by institutional and contextual factors (Krook and Childs 2010). Women’s participation in education and the labor force, levels of national socioeconomic development, and cultural attitudes, are linked to women’s representation in both politics and in the judiciary (Duarte et al. 2014; Krook and Childs 2010; Schultz and Shaw 2013; Williams and Thames 2008). For elected politicians, differences in electoral system, party system, and the use of gender quotas can explain much of the variation of women in political office around the world. Since being a judge requires a law degree, women’s entry into law schools can help explain the increase in women judges (Cook 1984).

⁸ Types of courts vary across judicial systems. High courts are on top of the judicial hierarchy and include supreme courts, constitutional courts, and higher appellate courts (Escobar-Lemmon et al. 2021). Lower courts include trial courts, intermediate appellate courts, and peace tribunals. Even in systems where women make up a considerable number of the judges, they are usually found in the lower rungs of court (Schultz and Shaw 2013).

For judges, who are usually appointed rather than elected,⁹ there are also other institutional mechanisms at play to explain the share of women in office. Recruitment procedures for judges vary between countries and courts. Appointments are often made by a chief executive (like a president, a governor, or a mayor) or a legislative body, or both, sometimes involving a nominating commission; or, particularly for lower courts, the judicial administration makes appointments after competitive examinations of candidates (Bulmer 2017; Kenney 2013b; Schultz and Shaw 2013). Recruitment procedures tend to vary by legal tradition,¹⁰ and the general rule – with many exceptions and moderations – is that in civil law countries judicial appointments are made via competitive examinations and feed into the lower tier of a career judiciary, often directly after the candidate finishes a law degree. Women tend to do better under these circumstances (Schultz and Shaw 2013). In common law systems, judges are normally appointed from other parts of the legal profession, later in their careers. Appointments are to a larger extent dependent on factors such as professional visibility, career achievements and connections to gatekeepers, such as old boys’ networks and clubs. These so-called “secret soundings” discriminate against women and other candidates who are less known within the judiciary and the bar (Rackley

⁹ In a small number of countries, certain types of judges are directly elected to their positions by the people. In Bolivia, a majority of judges are elected through popular vote. In Switzerland, judges in the cantons are elected by citizens, while federal judges are elected by the parliament. In Japan, government-appointed supreme court justices are reviewed in a popular referendum once every ten years. A similar popular review process takes place in the Northern Mariana Islands. In the United States, several states elect some of their judges, while the president appoints federal judges (Federal Judicial Center n.d.)

¹⁰ Legal systems around the world generally fall into the category of civil law or common law systems. The main difference between the systems is that in common law systems, case law – embodied in published judicial opinions – is most important, while codified statutes predominate in civil law systems. Civil law countries are often found in Europe and in former Spanish, French and Portuguese colonies. Examples of common law countries are the United States, the United Kingdom, Australia, New Zealand, and former British colonies. For more information on the difference between civil and common law systems, see for instance Merryman and Pérez-Perdomo (2018) and Syam (2014).

2013). Differences in appointment procedures are presented as one important explanation for why civil law countries tend to have more women judges than common law countries (Schultz and Shaw 2013). That judgeship is seen as more prestigious in common law countries, where judges often have more visibility and greater discretionary “law-making” powers, is put forth as another explanation for why there are fewer women judges in these systems (Remiche 2015).

Other measures to boost the number of women judges are making appointment criteria more transparent and merit-based also to the upper echelons of the judiciary and in common law contexts (Cook 1982; Kang 2016; Kenney 2013b; Morton 2006). Despite reforming the formal procedures for increasing women’s judicial representation, informal norms in the selection process influence who is seen as “qualified” for judicial office, which may contribute to excluding women (Escobar-Lemmon et al. 2021). For the sake of clarity, when I refer to merit-based recruitment in the case of Haiti, I refer to competitive examinations. The very definition of merit is, however, subject to debate in the literature, and some argue that the very concept of merit, as normally understood, itself advantages men. This is because the meaning of merit was constructed “around the needs of certain preferred groups in a way which has unfairly advantaged them” (Malleon 2006, 136). Since most judges historically have been male, the concept of merit in relation to judiciaries is not necessarily gender neutral.

Most of the literature on judicial recruitment focuses on well-functioning democracies with solid legal institutions and a strong rule of law tradition where there is more or less consistency between law and practice. In fragile states, where informality is strong and institutions are weak, we can expect that practice diverges from the law. To understand what this means for the judicial recruitment of women, there is a need for more in-depth empirical research on fragile contexts.

Gender quotas, the so-called “fast track” to women’s representation (Dahlerup 2006), are a popular tool for boosting women’s representation in politics. The successful adoption of gender quotas is presented as the main reason why we see high numbers of women parliamentarians in less developed and more fragile countries around the world (Tripp 2015). There is a rich literature on the impact of gender quotas in politics (see Franceschet, Krook, and Piscopo 2012). Despite some calls for the adoption of judicial gender quotas to address women’s continued underrepresentation, gender quotas are still rarely used for courts, and very few scholars study how they are adopted and how they work in the judicial context (Kamau 2013; Malleson 2009; Piscopo 2015). The study of Haiti sheds light on how gender quotas can be successfully applied in the recruitment to judicial education.

In the literature on political representation, scholars have long been concerned with issues relating to the contribution of having women in political office. This line of work has focused much on the relationship between women’s presence (descriptive representation) and actions (substantive representation) (Krook and Childs 2010; Pitkin 1967). Political theorists argue that the presence of women in decision making will introduce women’s “interests” to the political process (Mansbridge 1999; Phillips 1995). However, this has raised questions as to what “women’s interests” actually are, and whether we can (and should) expect women in politics to behave differently from men; and if so, what is the *critical mass*, that is, how many women are needed for change to occur. They also ask under what circumstances women in politics pursue women’s issues, which may depend on conditions such as the diversity among women, the political environment, institutional norms, electoral systems and more (Krook and Childs 2010). A nascent subfield of women’s representation concerns the relationship between descriptive and symbolic representation. One approach examines how women’s presence impacts the perceived legitimacy of political institutions (Clayton, O’Brien, and Piscopo 2019), while another examines how women’s presence alters people’s beliefs about the nature of politics as a male domain (Alexander 2012; Bauer 2012; Burnet 2012; Tøraasen 2019).

We find similar research areas in the scholarship on women judges, but it is much less developed. It is also striking how little the scholarship on women judges engages with the literature on women in decision making more generally. Illustrative of this is the literature on judicial behaviour, where numerous scholars have asked whether women judges decide cases in a more women-friendly manner than their male colleagues. Such questions, I would argue, concern substantive representation in the judiciary, that is, women judges *acting for* other women. There is also a strong assumption in the literature on gender and courts that a diverse judiciary will increase judicial legitimacy (Grossman 2012; Malleon 2003), which relates to symbolic representation.¹¹ Yet, few of these studies refer to representation theory at all.¹² This may have to do with the judicial ideal of the neutral judge only adhering to the law and not representing anyone as a way to guarantee equality before the law, fair trials, and judicial independence.¹³ It may also be because the literature on gender and judging has been somewhat siloed from the more general literature on women in decision making, which this dissertation seeks to address.

¹¹ The limited empirical research that has been done remains inconclusive (Lee, Solberg, and Waltenburg 2022; Redman 2017; Scherer and Curry 2010). As for the strand of symbolic representation covering attitudes about the judiciary as a male domain, I have not yet come across any studies exploring this concept in a judicial setting. This is surprising given the fact that like legislatures, judiciaries are traditionally male bastions of power.

¹² For some important exceptions, see Boyd, Epstein, and Martin (2010); Dawuni (2016); E. Martin (1993), and Kenney (2013a).

¹³ According to this ideal, judges must suppress their own preconceptions, perspectives, identifications, and values in order to treat everyone the same, regardless of race, class, gender, or any other descriptive characteristics (Devlin 1995). I elaborate further on the tension between this conventional judicial ideal of neutrality and different forms of representation in Article 1.

Much of the scholarship on gender and judicial behaviour rests on the assumption that women judges are “different” (Gilligan 1993),¹⁴ and will behave accordingly when making decisions. Some argue that we can only expect women to decide differently when dealing with gender-sensitive cases such as gender-based violence, sexual harassment, divorce, et cetera. This is because women are considered better informed about the thematic of these cases stemming from their shared life experience of being women in a man’s world. Women may also feel that they represent their “class” of women and are therefore expected to work for women’s rights and protection. A contrasting theory suggests that there is no difference in women’s and men’s judicial behaviour because judicial training and practice eradicates gender differences (Boyd, Epstein, and Martin 2010). Moreover, it is argued that judges are drawn from elitist segments of society, and that women judges will have little in common with women court users other than their sex (Malleon 2003). Others point to the importance of promoting intersectional inclusion into the judiciary for a diversity of perspectives to be heard (Kang et al. 2020). After all, “women” is not a homogenous group, and gendered inequalities intersect with other social and economic inequalities, such as ethnicity, age, sexual orientation, geographic location and more (Crenshaw 1989). We can expect this to influence not only the perspectives women bring to the judicial process, but perhaps also their ability to articulate and be heard on these perspectives.

Some scholars have thus called for a focus on *feminist* rather than feminine judges when explaining judicial behaviour. This critique may explain why quantitative empirical scholarship offers only limited support for the relationship between judges’ sex and behaviour (Kenney 2013a). More qualitative studies of judicial behaviour (Kamatali 2016;

¹⁴ Based on Gilligan’s theory of difference (Gilligan 1993), legal scholars have proposed a “feminine jurisprudence” that is supposedly concerned with substantive fairness, community values, and a focus on contexts and circumstances of a particular case rather than working with abstract absolutes. A masculine jurisprudence, it is argued, emphasises individual rights, universal principles, and procedural fairness (Werdegard 2001).

Voorhoeve 2017), which are still rare, suggest that institutional and contextual factors shape the circumstances for women judges to pursue women’s interests – just like in politics. This includes professional and institutional norms, legal tradition, workload, and the law. Some studies also find that when judges sit on panels, the gender composition of the panel shapes decision-making panel dynamics: in sex discrimination cases, “male judges are more likely to support the plaintiff when seated with female (rather than male) colleagues” (Haire and Moyer 2019, 8), referred to as “panel effects”. It is hypothesised that this is due to women’s perspectives informing or influencing the deliberative process. Alternatively, strategic vote trading or moderation at the hands of male judges may also explain this (Peresic 2005).

Some argue that, due to the complexity of judicial decision making, any difference in the attitudes of women and men judges is not necessarily reflected in case outcomes. This has led some scholars to look beyond case outcomes when studying the potential impact of having women on the bench. This research suggests that women judges may contribute to a more open, less biased and more victim-focused judiciary. For instance, women judges tend to show less sexist attitudes (Bendixen et al. 2014) and be more gender conscious (Martin, Reynolds, and Keith 2002) than their male colleagues. In some countries, they also make an effort to create a victim-centred environment in court (Dawuni 2016; Kamatali 2016). While more qualitative studies focusing on the impact of women judges can bring to the fore judges’ own reflections on gender issues, we still know little about the potential role of men judges in pushing for a feminist jurisprudence¹⁵ and women’s rights in courts, since most qualitative studies include only women.

¹⁵ Feminist jurisprudence is “a philosophy of law based on the political, economic, and social issues of equality”, which focus on the gendered implications of seemingly “neutral” laws and legal practices (Cornell Law School n.d.). See also Hunter (2008, 2018).

Studies on women judges have focused mainly on access to or impact on the bench, while fewer thoroughly examine judges' gendered experiences on the bench. These studies build on the literature on feminist institutionalism, which understands institutions as a collection of gendered formal and informal rules, practices and norms, and examines how these shape actors' strategies and preferences (Chappell and Waylen 2013). Gender in institutions can take the form of "stereotypes about male and female behaviour; from characteristics and behaviours conventionally associated with women and men; from normative assumptions about appropriate behaviours of men and women; from assumptions about biological differences; and from social structures of power and difference" (Beckwith 2010, 160). Gendered dynamics in political institutions result from men's historical and ongoing dominance in positions of power. Masculinity thus usually reflects what is valued in these institutions, while femininity – which can take on many forms, but is usually assigned to women – is mostly subordinate to the prevailing hegemonic masculinity or "a residual category, a foil or Other for masculinity to define itself against" (Hooper 2001).

One rarely finds gendered formal rules in today's political institutions. More informal rules, however, are often gendered. As noted by Chappel and Waylen (2013, 600), informal rules are notoriously tricky to unravel and research because they often represent the status quo. They are seen as natural and immutable and are rarely questioned, if they are seen at all. Formal rules may be undermined or propped up by informal rules, norms, and practices. The interaction between informal and formal rules may create different gendered outcomes and experiences for those working inside institutions. In male-dominated institutions, the outcomes for women are often negative.¹⁶ These outcomes are complex and call for in-depth and context-specific analysis (Chappell and Waylen 2013, 608). The interaction between formal and informal rules in relation to gender is under-researched inside judiciaries, but what has been done establishes that informal and gendered practices

¹⁶ There is a possibility that men are being disadvantaged within women-dominated professions, but the few scholars who explore this possibility find this not to be the case (Simpson 2004; Williams 1992)

disadvantage women judges in various ways (for more details, see theoretical section in Article 2). The literature mostly overlooks fragile settings, which, as noted, is where we can expect informal dynamics to play an even more important role in shaping judges' experiences in the absence of strong formal state institutions.

As more women enter arenas traditionally reserved for men, they sometimes experience a backlash (Mansbridge and Shames 2008; Sanbonmatsu 2008). This backlash may turn violent. An emerging literature is examining the gendered aspects of political violence, understood broadly as not just physical, but also psychological, sexual, economic, and semantic violence (Krook 2020; Krook and Restrepo Sanín 2019). Violence may also be gendered in its form, motivation, and/or impact (Bardall, Bjarnegård, and Piscopo 2020). Violence against judges may be considered as a form of political violence, as its “purpose, choice of targets or victims, surrounding circumstances, implementation, and/or effects have political significance” (Nieburg 1969, 13). Scholars of violence against women in politics call for a broad approach to “politics” in this regard, including female human rights defenders, lawyers, and judges (Krook 2020). Still, gendered aspects of violence against judges have received surprisingly little attention. What has been done has focused on the United States and Canada (Backhouse 2003; Kenney 2013a), and not engaged much with the broader literature on violence against women in decision making. Research suggests that decision makers are more vulnerable to physical violence in settings with weak state capacity (Piscopo 2016), and one study finds that illicit pressure and violent attacks on judges is a problem in fragile democracies (Llanos et al. 2016). Overall, there is little comparative research focusing on the security of judges in fragile contexts that includes a gender perspective, which my study of the judiciary in Haiti seeks to address.

The literature on fragile states

The concept “fragile states” has become widespread among donors, technical agencies, and governments in the areas of development, humanitarian assistance and state- and peacebuilding, as well as in academic work. Other words used to describe fragile states are weak, vulnerable, unstable, failed, soft, or states in crises, among others (Grimm, Lemay-Hébert, and Nay 2014; Nay 2013). Since state fragility and conflict often are interrelated, many refer to fragile and post-conflict/conflict-affected states and situations (FCAS) when talking about these contexts (Domingo and Denney 2012; Dupuy, Gates, and Nygård 2016; The World Bank 2022b; WHO 2017). State fragility has four major dimensions: high political instability, poor economic performance, low institutional quality, and weak governance (Gelbard et al. 2015). According to the OECD, state fragility increased worldwide from 2020 to 2021 (OECD 2022). Since actors such as OECD, the World Bank, and Fund for Peace operate with slightly different criteria for state fragility, lists of fragile states of the world differ somewhat (see Appendix 1).

While scholars and donors have been concerned with issues of state fragility since the decolonisation movement, the so-called “fragile state agenda” picked up steam in the mid-1990s with Helman and Ratner’s article on failed states, which they defined as “a situation where governmental structures are overwhelmed by circumstances” (Helman and Ratner 1993, 5). A similar research agenda was pursued at the time by Fukuyama (2004), Rotberg (2004) and Zartman (1995), focusing on the causes of state fragility, the consequences of state fragility (including the perceived threat towards international security), how to prevent states from breaking down, and how to “repair” fragile states. Scholars have explored the issue of classification of fragile states and how to forecast state collapse. Others have focused on different actors in statebuilding, including the importance of traditional and non-traditional actors in statebuilding processes, and the production of normative standards and good practices in international statebuilding (Grimm, Lemay-Hébert, and Nay 2014).

The gendered aspect of fragile settings has centred on the gender-specific impacts of conflict and violence under the Women, Peace, and Security agenda (WPS).¹⁷ Underlying this agenda is the acknowledgement that women and girls are disproportionately affected by violent conflict (Davies and True 2018; Gould and Agnich 2016). The focus is on protecting women and girls from gender-based violence, particularly conflict-related sexual violence. There is also an assumption that women play a key role in preventing conflict and in post-conflict reconstruction, and that one should work to boost women's participation in decision making in post-conflict societies (United Nations 2000). The scholarship on the Women, Peace and Security (WPS) agenda has been concerned with sexual and gender-based violence in conflict-affected states, donors' relationship to the WPS agenda, women's participation in peacekeeping operations, and women's participation in peace agreements (Davies and True 2018). Surprisingly little research examines the role of women in political institutions in (re)building fragile and conflict-affected states, particularly as judges. A few recent works study the role of women judges in settings that can be termed "fragile" (see selected sections in Bauer and Dawuni 2016; Crouch 2021; Escobar-Lemmon et al. 2021a; Sonnevold and Lindbekk 2017). These studies contribute with important and long overdue insight into developments in women's judicial representation and impacts of their presence in judiciaries beyond the Global North. While most of these studies do not deal specifically with the gendered aspects of state fragility, a couple point to how women judges find the insecurity, informality and corruption in fragile state settings challenging (Ibrahim 2016; Mehdi 2017). Again, most studies in this field only cover women's narratives. As gender usually appears in the difference between men's and women's experiences (Bardall, Bjarnegård, and Piscopo 2020, 918), it is difficult to establish what is gendered and what is just part of being a judge in a fragile state without comparing women and men.

¹⁷ The United Nations Security Council Resolution 1325 on women, peace and security was adopted unanimously by the UN Security Council on 31 October 2000 (United Nations 2000).

Some research highlights the opportunities for women to access decision making in fragile and conflict-affected settings. Institutional ruptures caused by violent conflict and democratic openings allow women to claim their rightful place in the new society and create women-friendly laws and institutions, such as gender quotas. These help boost women's access to elected office, and are the reason why many post-conflict countries are among the world's best performers in terms of women's political representation (Hughes and Paxton 2008; Tripp 2015; Waylen 1994, 2007). Emerging research from the judicial sphere suggests that similar patterns – the end of conflict, democratic transitions and new, progressive constitutions and laws pertaining to women's rights – can explain the entry of women into African courts (Bauer and Dawuni 2016; Dawuni and Kang 2015; Kamau 2013). Studies also find that institutional ruptures pave the way for changing constitutional rules of judicial appointment, which may help women enter higher courts (Arana Araya, Hughes, and Pérez-Liñán 2021; Arrington et al. 2021). Still, we know little about how conflict, institutional ruptures, and political openings may influence women's entry to the judiciary *as a whole*. The same can be said about the role of donor-supported judicial reform and women's judicial representation, questions I explore in Article 2.

When it comes to the fragile states literature, it should be noted that several scholars have taken a more critical approach to the fragile state agenda (Grimm, Lemay-Hébert, and Nay 2014). Some criticise the validity of the fragile state concept, calling it too unstable and too broad to have any analytical function (Nay, 332). It has been argued that piling together states with huge variation in the levels of security, capacity, and legitimacy under the label “fragile” leads to donors’ responding in a formulaic and inefficient manner to build state capacity. Another criticism is that most studies of political institutions in fragile states are “grounded in a Western-centric approach to social order and political stability”, and that states are considered “solid” or “successful” only when they meet Western standards (Nay 2013, 332). “Fragile states” is described as a political concept that emerged out of a Western post-Cold War context, reflecting Western powers’ military doctrines, diplomatic

opinions, and economic choices. The concept can thus be used to justify external political and military intervention into conflict-affected and poor countries, while depriving local actors of their agency (Bøås and Jennings 2005; Chomsky 2006). There is not enough room in this dissertation to engage thoroughly with these debates. It is still important to be aware of the limitations surrounding the concept and its sometimes problematic use. It should however be noted that much of the harshest criticism does not separate between “fragile” and “failed” states, where the latter arguably entails a more problematic normative meaning. “Fragile” is the word used by most social scientists for countries that deal with similar challenges related to high political instability, poor economic performance, low institutional quality, and weak governance. Comparativists like myself, who want to say something meaningful about these contexts, need a common language. The challenges and limitations of using very broad concepts is something political scientists are used to dealing with. I will discuss this further in the section on research design and methods.

Context: Gender and the judiciary in Haiti

To study the three core elements of women’s judicial representation in fragile states – representative roles, access, and experiences on the bench – there is a need for some contextual insight on how Haiti is fragile, how the Haitian judicial system works, and women’s role in it.¹⁸ Haiti is situated on the Western third of the island of Hispaniola in the Caribbean Sea. The population of approximately 12,000,000 is largely descended from African slaves, who rebelled against their brutal colonizer, France, and won independence in 1804 (Dubois 2004). Independence came at a high cost, however, as the world’s first black-led republic was forced to pay a crushing indemnity of 150 million francs that France demanded for its “lost property” (i.e., Haitian slaves), crippling Haiti’s economy for years to come.¹⁹ Haiti’s abolishment of slavery in a slavery-dependent world contributed to diplomatic isolation for the newborn country. In 1915, following a bloody coup, the United States – who had come to see Haiti as strategically important for economic and military reasons – invaded Haiti to “reestablish political order” and stayed for almost 20 years. During the occupation, Haiti became increasingly economically and politically dependent on outside powers (Dubois 2012).

Haitian state institutions have historically served the purpose of preserving power for a small elite, while excluding the vast rural majority from formal political involvement.²⁰

¹⁸ The aim of this dissertation is not to disentangle the historical causes for Haiti’s fragility in detail – other Haiti scholars have done that exquisitely before me (see Dubois 2012; Farmer 2006; Fatton Jr 2002, 2007, 2014; Renda 2001; Trouillot 1990)

¹⁹ Though the “independence debt” was later reduced to 60 million francs by France, the Haitian state had been forced to take up loans in French banks to pay the indemnity, which worsened the cycle of debt (Dubois 2012). The debt was not completely paid off until 1947 (Daut 2020).

²⁰ Some separate between the possessing class (who control things in the “background”) and the ruling class. As Fatton Jr (2000, 11-12) explained: “Both the possessing and ruling classes have no social project,

Elites have fought among themselves to cement their wealth, power, and influence over the state, which has eroded democratic, political, and economic development (Democracy International 2015; Trouillot 1990). This practice has fostered a predatory state (Fatton Jr 2002) with “a devastating set of authoritarian political habits” (Dubois 2012, 6). In 1957, François “Papa Doc” Duvalier was elected president, and later declared himself president for life. During his 14-year rule, the executive dominated the judiciary, the legislature, ministries, the army, and civil society through institutionalised corruption and violent repression (Trouillot 1990, 17). It is estimated that François Duvalier’s paramilitary troops, the notorious *Tonton Macoutes*, caused nearly 30,000 deaths. Upon François’ death in 1971, Jean-Claude “Baby Doc” Duvalier took over and continued his father’s reign of terror until he was overthrown in a popular uprising in 1986 (Trouillot 1990).

A new democratic constitution was written in 1987, in which the Haitian women’s movement – which grew rapidly after having been suppressed by the Duvalier dictatorship for decades – pushed for the formal recognition of equality between women and men (Charles 1995b; Merlet 2010). In 1990, Haiti’s first female supreme court judge, Ertha Pascal-Trouillot, was named provisional president and organised Haiti’s first free elections, which brought leftist Catholic priest Jean-Bertrand Aristide to power in 1991. Haiti’s first experience with democracy was short-lived, however, as Aristide was overthrown in a military coup led by Commander-in-Chief Raoul Cédras that same year. It is estimated that between 3,000 and 5,000 Haitian civilians were killed during the coup regime (1991-94) at the hands of the army, its paramilitary supporters (*Front pour l’Avancement et le Progrès d’Haiti* FRAPH), or military-affiliated armed gangs (*attachés*). The main targets were

except the day-to-day struggle of keeping themselves in positions of power, wealth, and prestige. Having neither a national vision nor a coherent ideology, their time horizon never goes beyond the immediate short-term. Ruling and possessing classes are not always in alliance; whatever unity they achieve is rooted in an opportunistic convergence of interests. They form an uneasy partnership in which each has its own sphere of concerns, but which tends to coalesce when faced by a challenge from below”.

Aristide supporters (*Lavalas*), who, with time, also organised within their own armed gangs (Mobekk 2016). Haiti's rocky transition towards democracy has been marked by a complex and violent conflict with "no armed factions fighting for power, but armed groups supported by various political and economic actors perpetrating assassination, killings and violence that destabilized and undermined the democratization process", which has been able to thrive in "the continued absence of state authority and lack of socio-economic development" (Mobekk 2016, 35-37). Many scholars thus situate Haiti as post-conflict despite not coming out of a civil war (see Buss and Gardner 2015; Donais 2012; James 2010; Kolbe 2020; Muggah 2005; Quinn 2009; Seraphin 2018).

U.S. troops and the United Nations (UN) helped reinstate Aristide in 1994, which marked the beginning of the first UN peacekeeping operations in Haiti to ensure a "secure and stable" environment (Mobekk 2016, 34).²¹ Political and economic violence and unrest persisted, however, leading Aristide to flee the country again in 2004 and to the deployment of another UN mission – the UN Stabilization Mission in Haiti (MINUSTAH). A devastating earthquake hit just south of the capital Port-au-Prince on January 12, 2010, killing between 200,000 and 300,000 people, while one million became homeless. Important infrastructure – hospitals, schools, government buildings, courts – were destroyed. Following the earthquake, the UN Security Council decided to extend and enlarge the UN peacekeeping presence in Haiti to help stabilise and reconstruct the country (United Nations Peacekeeping n.d.). The last MINUSTAH peacekeepers left in 2017, a departure that was welcomed by many Haitian and international commentators due to its problematic history and its perceived threat to Haitian state sovereignty.²² However, the departure coincided with increased levels of insecurity and fragility (Fund for Peace 2022;

²¹ Simultaneously, a Truth Commission was established to investigate human rights abuses under the military junta (Selvik 2022).

²² Among other things, international peacekeepers have exposed the people they were supposed to protect to a cholera epidemic (Katz 2016) and sexual exploitation (Peltier 2019).

Kolbe 2020). A smaller transitioning mission (The United Nations Mission for Justice Support in Haiti or MINUJUSTH) focusing on the areas of security, rule of law, and human rights took over. MINUJUSTH's departure in 2019 marked the end of 15 years of consecutive peacekeeping in Haiti.

The present situation in Haiti shows that decades of external intervention did not succeed in creating lasting stability in the country. Haiti currently ranks as the 10th most fragile state in the world according to OECD's "States of fragility" index (OECD 2022).²³ The most essential characteristics of state fragility are in place: high political instability, poor economic performance, low institutional quality, and weak governance (Fund for Peace 2022). The government is unable and/or unwilling to provide citizens with basic services. Haiti is one of the world's poorest countries, while the country's wealth is concentrated in the hands of the few (The World Bank 2020). Democracy remains fragile, and elections are often plagued by fraud and violence. The state's monopoly on the use of force has in large parts of the territory been replaced by heavily armed gangs spreading fear and forcing thousands of Haitians to flee their homes. Kidnappings and crime are widespread, and the Haitian National Police is too weak to do anything about it. The situation has only worsened since the assassination of President Jovenel Moïse on July 7, 2021. At the time of writing, former Prime Minister Ariel Henry is the acting president of Haiti. There is no functioning parliament, and it is difficult to organise new elections in the current environment. The UN is yet again discussing sending international troops to Haiti to stabilise the situation (Phillips 2023). Extreme state fragility is further weakening the judiciary, which already struggled with undue political interference, few resources, corruption, and lacking trust among the population (Berg 2013).

²³ See also Appendix 1.

The Haitian judicial system

Haiti adopted France's civil law judicial system after independence, which entails a dual system of magistrates: sitting magistrates (*magistrats du siege*) are the judges, while standing magistrates (*magistrats du parquet* or *commissaires du gouvernement*) are the public prosecutors. Education and appointment procedures are the same for judges and prosecutors, and many magistrates work as both during their career. Prosecutors defend the interests of society and public order and have no fixed mandate. Judges' mandates vary from three to ten years, depending on court level (Comparative Constitutions Project 2013). Haiti has one Supreme Court (*Cour de Cassation*), five appeals courts (*cours d'appel*), 18 courts of first instance (*tribunaux de première instance*), and 179 peace tribunals (*tribunaux du paix*) spread across the country. There are also special courts for cases concerning land, minors, and labor (Conseil Supérieur du Pouvoir Judiciaire 2018). There are two paths to become a magistrate in Haiti: direct appointments, or, since 1996, appointments through competitive examination at the magistrate school (*Ecole de la Magistrature* EMA). Haitian magistrates usually start their careers in the lower rungs of court, which is the norm in most civil law systems.²⁴

Haitian civil society actors and international donors have initiated numerous judicial reform projects since the 1990s, with the aim of creating a well-functioning and independent judiciary. Years of authoritarianism, political instability, violence, and neglect have left the Haitian judiciary largely dysfunctional. The judiciary never became the independent institution that was prescribed under the new progressive constitution of 1987. Rather, the judiciary “has evolved in the context of persistent efforts by polarized elites to

²⁴ I detail the two paths (and how they are gendered) in Article 2.

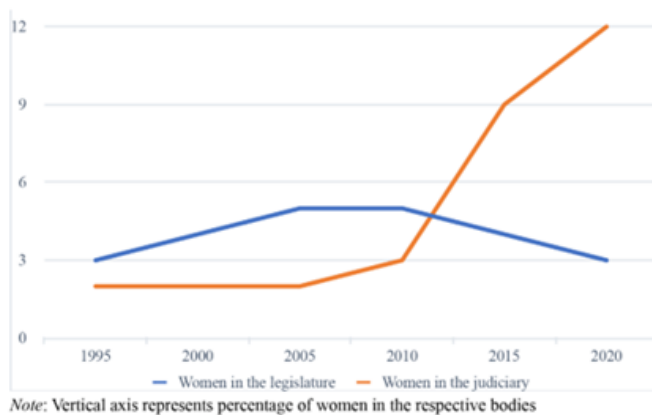
concentrate political authority while relying on informal networks to repress opposition and limit space for civil society” (Berg 2013, 2). Widespread corruption and impunity, arbitrary arrests, prolonged detention, inhumane prison conditions, torture and summary executions, unending delays, lack of counsel, and incompetent judges are just some of the challenges (Cavise 2013). Since 2004, the UN missions (MINUSTAH and MINIJUSTH) had a clear mandate to support judicial reform, which included strengthening government institutions and rule-of-law structures, and promoting and protecting human rights (United Nations Peacekeeping n.d.). Together with other international donors (most notably the United States, Canada, the European Union, France, the UNDP, and the Organization of American States), the UN missions provided both human and financial resources to strengthen the judiciary. This included, among other initiatives, training of magistrates, management practices of judicial institutions, reform of outdated legal codes, rehabilitation of courts, access to justice, technical assistance and advice to the Haitian Ministry of Justice and the purging of incompetent or corrupt judges (Mobekk 2016). The success of these reforms in creating a more independent and well-functioning judiciary has been limited, as noted by several scholars and practitioners (Berg 2013; Cavise 2013; Democracy International 2015; Mobekk 2016).

Women’s representation and status in Haiti

Ertha Pascal-Trouillot became Haiti’s first female magistrate when she entered the court of first instance in Port-au-Prince in 1975. Women’s entry to the judiciary was initially slow, and women made up a meager 2% of judges in the mid-1990s. By 2013, the proportion had increased to 5%. By 2020, the proportion more than doubled to 12% (Conseil Supérieur du Pouvoir Judiciaire 2015, 2018; United Nations 2014, author's interviews). Meanwhile, women’s presence in the legislature has remained extremely low. Women made up just 3% of the previous parliament, a number that has never been above 5%. For the executive branch, numbers are hard to come by. The UN notes that the

proportion of women has fluctuated dramatically due to cabinet reshuffles and that women’s presence in these posts “has mainly a visibility effect” and has tended to be ephemeral (CEDAW 2014, 30). The numbers show that Haiti is lagging far behind in women’s numerical representation in decision-making bodies compared to the rest of the world, in both the political and judicial spheres: The world average of women in legislatures is 26% (Inter-Parliamentary Union 2022b), while the average is 27% women in judiciaries (O’Neil and Domingo 2015).²⁵ The numbers however simultaneously suggest that important developments in women’s numerical representation have taken place in the judicial sector in Haiti that are not mirrored in the legislative sphere (see Figure 2), a puzzle I explore in Article 2.

Figure 2 Women’s judicial and political representation in Haiti, 1995-2020



Source: Tøraasen (2023)

The low number of women in decision-making positions is reflective of Haiti as a highly patriarchal society. According to the Gender Inequality Index, it is the 8th least gender equal

²⁵ This gap becomes even more evident when comparing with countries that are more similar to Haiti: In the Americas, women make up 34% of parliamentary seats, and 31% of higher courts (ECLAC 2021).

country in the world, based on levels of maternal mortality rate, adolescent birth rates, women in parliament, women’s participation in secondary education and in the work force (UNDP 2022). There are also high levels of gender-based violence, experienced by one in three women over the age of 15 (Institut Haïtien de l’Enfance & The DHS Program ICF 2018). Furthermore, women represent the majority of the extremely poor: 60% of female-headed households are living in extreme poverty, and most women work in the informal sector (International Monetary Fund 2008). Income disparities are striking, and women earn less than half of men’s wages (Haiti Equality Collective 2010), contributing to a “feminization of poverty” (Padgett and Warnecke 2011). The Haitian women’s movement played an important role in overthrowing the Duvalier dictatorship and pushed for the formal recognition of equality between women and men in the 1987 constitution (Charles 1995b; Merlet 2010). Later efforts by the women’s movement to improve the status of women in Haitian society have however been severely hampered by political instability, underfunding, a lack of unity (Charles 1995a), and human losses.²⁶

²⁶ The Haitian women’s movement lost a generation when three of its leaders, Myriam Merlet, Magalie Marcelin, and Anne Marie Coriolan, died in the earthquake in January 2010. They founded three of the most important women’s rights organisations in Haiti (Enfofam,, Kay Fanm, and SOFA). Merlet and Coriolan were top advisors to the Ministry of Women’s Rights, and all three women and their organisations played an important part in developing the first law to criminalise rape in 2005 (Nasaw 2010; Ravitz 2010).

Research design, data, and methods

To answer my research questions on women judges' representative roles, access, and experiences in fragile settings, I have chosen to do a case study of the Haitian judiciary. While there is no scholarly consensus on the exact definition of a case study (Htun and Jensenius 2021), it can be understood as an "attempt to understand and interpret a spatially and temporally bounded set of events" (Levy 2008, 2). I have several reasons for choosing this approach.

A case study of the Haitian judiciary

First, one advantage of case study design is that it is an excellent tool for developing theory (Van Evera 1997; Flyvbjerg 2006; Gerring 2007; Lijphart 1971). The in-depth, holistic nature of case studies allows for the discovery of new variables, explanations, and hypotheses (George and Bennet 2005), which can contribute to developing new theory (Htun and Jensenius 2021; Rogowski 1995). One main goal of this dissertation is to contribute with new theoretical insight on the highly topical yet gravely under-studied and under-theorised subject of women judges in fragile states. Single-case studies are considered to comprise "the first line of evidence" and are thus useful when a subject (in this case, women's judicial representation) is being considered in a fundamentally new way (in this case, fragile contexts) (Gerring 2007, 40). There exists no concrete recipe for developing theory from case studies, but one common approach is to choose cases that have extreme values on the variables of interest (Van Evera 1997; Lijphart 1971). An in-depth case study of the judiciary in the extremely fragile context of Haiti highlights how certain fragility-related factors, of which there are many in Haiti (see the previous section), interact with aspects of women's judicial representation (more precisely, access, experiences, and representative roles). We can expect both fragility-related and gender-related factors to be much more *observable* in such a context than in more stable and

gender-equal settings, which facilitates theory development. The case in this study thus constitutes a case of women's judicial representation in an extremely fragile, but also extremely patriarchal, context.²⁷ I have chosen to study the judiciary in Haiti based on information-oriented selection criteria, which is used to "maximize the utility of information from small samples and single cases" (Flyvbjerg 2006). The scant existing literature on women judges in fragile states calls for a somewhat exploratory research design (Yin 2009). However, as is clear from the literature review, the study does not "move in a theoretical vacuum," either (Lijphart 1971; 691), but rather builds on the rich literatures on courts, women in decision making and fragile states. This literature helps generate some theoretical assumptions and expectations that guide the study. And the findings from the study itself help adjust, refine, and modify these into hypotheses that can guide future research.

However, as stated by several scholars, the divide between theory-testing and theory-developing research designs is not clear-cut (Flyvbjerg 2006; Lijphart 1971), and researchers may pursue several goals at the same time, which is possible with case study designs (Van Evera 1997, 55). While case studies cannot necessarily test for effects, it is argued that case study designs can be used for testing theories in the "soft" sense, that is, testing propositions or hypotheses to see whether events unfold or actors behave in the way predicted by theory (Van Evera 1997; Flyvbjerg 2006). While this dissertation focuses primarily on developing theory, it also has elements of theory testing according to this definition. There is no established "grand theory" on the effect of fragility-related factors on women's judicial representation that a case study of the Haitian judiciary can test systematically in the conventional sense of the word. At the same time, the underlying knowledge base is more developed for some of my research questions than for others. We

²⁷ It should be noted that in theory-generating research, it is not always clear to the researcher what the case is a case of before conducting the research. "Casing" the case may be part of the research process itself rather than part of the preparatory work (Htun and Jensenius 2021; Soss 2021).

know enough about women's *access* to decision-making roles in post-conflict and fragile settings to generate two competing hypotheses that I pursue in Article 2 (the importance of gender-targeted reforms versus more "neutral" judicial reforms), which is a way of "testing" whether events unfold in one predicted manner or another. While I do not find support for the hypothesis that gender reform and quotas can explain the increase in the number of women judges in the particular case of Haiti, this does not mean that I completely reject gender reform and quotas as an explanation behind women's increased judicial representation in general; large-N cross-case studies can do that with a greater degree of confidence than a single-case study (Gerring 2007). The rejection of the hypothesis however points to how other factors, such as judicial reform, better explain the increase in women judges in Haiti, and perhaps also in similar contexts.

The literature on women's *experiences* with decision making is less developed, especially for judiciaries beyond the Global North. This is reflected in the more exploratory approach in Article 3 – but here too I use existing research to generate some expectations. In the article, I detect how fragility-related variables such as insecurity and shadowy practices, which have previously been largely overlooked in the literature of courts, interact with the masculine cultures of judiciaries (and the wider society) and create disparate experiences for women and men judges. The discovery of these variables and how they cause different gendered effects helps build the theoretical foundations for our understanding of women judges' experiences in fragile contexts. As for the *representative roles* of judges, my point of departure is that gender representation in the judiciary is under-theorised. In Article 1, I develop a new theoretical framework based on the more general representation literature – mostly founded on the elective branches of government rather than on the judiciary – that can help us better understand the representative role of judges in relation to gender. "Borrowing" theories and applying them to different settings is one way to develop new theory (Van Evera 1997). I then "test" the applicability of the theoretical framework through a case study analysis of the Haitian judiciary. This way of developing and testing

theory (in the soft sense of the word) in the same study is possible with case study designs, which is another reason why I have chosen this approach.

Furthermore, case study designs allows for in-depth research that creates a holistic understanding of the research topic. Case study research lets the researcher carefully consider contextual factors and how it may influence the workings of different variables, and is useful when the boundaries between the phenomenon being studied and the context in which it occurs is not clearly evident (Yin 2009). This is, among other things, made possible through collecting data involving multiple sources of information (Creswell 2013). For my study, the context (a fragile state) is an integral part of the phenomenon being studied (women judges *in* fragile states). A single-case study of the Haitian judiciary within a limited timeframe helps obtain in-depth knowledge about the units of analysis and the context in which they operate (Yin 2009). The holistic nature of a case study also allows me to address different aspects of women's judicial representation and how these are interrelated. For instance, how women judges relate to their potentially *representative roles* is likely colored by gendered *experiences* they have on the bench and opportunities and challenges in *accessing* the bench.

Finally, there are practical reasons for why I have chosen a case study design. As noted, statistics on women judges in different courts around the world are hard to come by, particularly in more fragile settings where statistics may be deficient, unreliable, and rarely digitised. In theory, an alternative research design could include a large-N cross-country analysis of the number of women judges in several countries over time, including fragile and non-fragile states, to see whether states who had undergone donor-supported judicial or gender-based reforms would experience more growth than other countries (while controlling for other possible explanations). However, such an approach is not yet possible without the necessary statistics. That being said, the statistics I collected on-site in Haiti for this study can be used in larger comparative research projects in the future.

Case studies are typically used to shed light on a larger class of similar cases (Gerring 2007). This should not be confused with statistical generalisation. Rather, case studies can provide *analytical* generalisation “in which a previously developed theory is used as a template with which to compare the empirical results of the case study” (Yin 2009). For this dissertation, it is important to be aware of the limitation in generalisability (external validity) of single-case studies. As stated by Gerring (2007, 43), “[c]ase study research suffers problems of representativeness because it includes, by definition, only a small sample of cases of some more general phenomenon.” To what degree are my findings from Haiti valid for the broader (and unstudied) population of fragile states? This question is perhaps especially pertinent considering the broad definition of fragile states, which opens up for different interpretations of what a fragile state is. Hence, I do not claim that my findings will be generalisable to *all* other fragile states, such as Iran or North Korea (see list of fragile states in the Appendix). But I do believe that there is something to learn about women’s participation in decision making and in the judiciary in fragile states that deal with some of the same issues as Haiti, such as weak institutions, political instability, poverty, widespread insecurity, corruption, and donor dependency. These are factors that are commonly found in many other fragile states – but for most cases, to a lesser degree than for the extreme case of Haiti (see Appendix 1).²⁸ The literature on women judges to date, which has mostly focused on countries that are typically not considered fragile, has not thoroughly examined the role of these factors.

The fact that my study belongs to a larger research project, called “Women on the Bench – The Role of Women Judges in Fragile States”, may increase external validity. In this project, we compare the situation for women judges in five different fragile states, ranging

²⁸ Some would perhaps argue that Haiti is a “typical” case of a fragile state, since it has all the typical characteristics of a fragile state: high political instability, poor economic performance, low institutional quality, and weak governance. However, since it scores extremely high on these factors, I have chosen to define it as an extreme case.

from extremely fragile to moderately fragile: Afghanistan, Haiti, Angola, Uganda, and Guatemala. Comparing findings across different parts of the world – Latin America and the Caribbean, Sub-Saharan Africa and the Middle East – improves the extent to which we can generalise the results to other fragile settings (Tripp 2018). Several of the empirical findings from Haiti (such as the importance of donor-driven judicial reforms in boosting women’s descriptive representation in courts, and how informality and insecurity have gendered consequences for judges) are replicated in some of the other case studies, thus making these findings more potent and generalisable to other fragile contexts. Also, being able to compare and discuss theory and findings with colleagues in a research project like “Women on the Bench” helps prevent bias and blind spots, while also introducing multiple perspectives from an interdisciplinary research team and drawing on various theoretical approaches, which increases internal validity (Tripp 2018). Lastly, comparing across cases highlights general patterns, as well as what is unique to the Haitian context. I will discuss challenges of validity further below.

Collecting and analysing data

While case studies may contain elements of both quantitative and qualitative methods (Yin 2009), the research questions in this dissertation call for a mostly qualitative approach. Rather than testing for effects of state fragility, the aim is to explore a complex phenomenon (different aspects of judicial gender representation) with a focus on people’s experiences, attitudes, and beliefs, where the context (a fragile state) is an integral part of the phenomenon being studied. This information is often best achieved through qualitative methods, which typically involve data collection in the natural setting “where participants experience the issue or problem under study” (Creswell 2013, 27). Still, collecting quantitative data can sometimes be an important part of field work, particularly in settings where such data is not easily accessible (Jenselius 2014), and I spent a considerable time getting hold of statistics on the gendered distribution of judges on different court levels as

well as graduates from the Magistrate School (EMA). Single-case studies and qualitative methods have in common a focus on empirical richness over quantity, which means that external validity (to a broader population) tends to be low, while internal validity (to the sample) tends to be high (Creswell 2013; Gerring 2007). One can, as mentioned, take measures to improve external validity. At the same time, there are many potential threats to internal validity also in qualitative research. For instance, the risk of self-selection of interviewees, social-desirability bias and researcher bias may influence the findings in a way that impacts its trustworthiness. In this section, I show how I have taken conscious measures to improve internal validity, for instance through data triangulation, spending time in the field, aiming for a big and representative sample of interviewees, being conscious of my own role in the research process, and more.

For this dissertation, I collected data during three field work trips to Haiti with a total duration of five months. The first trip lasted for two weeks in November 2018, the second trip lasted for six weeks between May and June 2018, while the last trip had a duration of three months from October 2019 to January 2020. I interviewed a heterogenous sample of 70 people, 50 of which were Haitian magistrates (32 women and 18 men). For contextual insight, I also interviewed 20 other key informants, such as women's rights activists, civil society representatives, international organisations, lawyers, and journalists. I supplemented interview data with descriptive statistics, news articles, reports and other written documents, and some direct observation. Parts of the documentation, like reports and statistics, were not available online and needed to be collected on site. For an overview of the data collected, see Table 1 and 2.

I had never been to Haiti before when I embarked on this project. To establish access to the field, I reached out to different people. One was a woman who had worked with the Haitian chapter of the International Organization of Women Judges. I also contacted Norwegian police officers who were stationed in Haiti at the time under the United Nations Mission for Justice Support in Haiti (MINUJUSTH). They all pointed me towards one

Haitian female judge who was very well connected and eager to help, and who helped me get in touch with other magistrates. I also benefited from participating in the Haitian Studies Association conference in Port-au-Prince at the beginning of my first field trip in 2018, which helped me get access to other key informants. In Haiti, I got hold of a list of all judges in the country with contact information from the Higher Judicial Council. In order to get a more representative sample and not rely entirely on the snowballing method (which could impact the responses I got during interviews), I reached out to judges on the list directly through WhatsApp, Messenger, and SMS.

Within-case comparison is central to all three research questions. Since my focus is on *what is gendered* with regards to access, experiences, and representative roles on the bench, my main level of comparison is that between women and men. I thus decided early on that I wanted to ask similar questions to both women and men magistrates to include male perspectives and to be able to compare across genders. Qualitative research abroad is however incredibly time-consuming, not to mention the added challenge of working in a politically volatile setting. Due to these limitations, I did not opt for a 50-50 gender balance, but prioritised women, which is why there are more women (32) than men (18) in my sample. Still, I believe the number of men is large and heterogenous enough to provide a solid base for comparison. To ensure that my interviewees were representative of the wider population of magistrates, I also aimed for variation with regards to interviewees' career backgrounds, age, how they were recruited to the judiciary, what court level they worked on, and the location of their court. I expected some of these factors to interact with gender and create different experiences for judges. For instance, younger women judges are likely more susceptible to discrimination and harassment than older and more experienced women judges. Further, insecurity is likely more of an issue for judges working in gang-controlled areas than in wealthier neighbourhoods, while judges in high courts are likely more protected than those in lower courts. For the sample of other key informants, the main purpose was to obtain sufficient contextual understanding of Haiti to do an in-depth multi-level analysis of the Haitian judiciary in the Haitian political and social context. The aim

was, among other things, to avoid some of the criticism towards fragile states research as “simplistic analysis of political institutions” (Nay 2013, 332). I used a matrix as a sampling tool, which helped me during data collection to make sure I had talked to men and women on all court levels. Apart from lacking interviews with a male Supreme Court judge, I managed to talk to women and men at all levels. As for geographical location, I initially aimed for courts all over Haiti. I was however hindered from travelling to large parts of the country due to political unrest, a point which I will return to later. Most of my interviewees were thus based in Port-au-Prince and in rural and suburban areas that were reachable from Port-au-Prince by car. I also spent some days interviewing magistrates in the South of the country, resulting in 16 interviews with magistrates outside of the capital. To keep my interviewees anonymous, I have only included magistrates’ gender and court location, and the job position and gender for the other key informants in the overview of interviewees (Table 1). I have also included the total number of women and men judges on different court levels (in grey) to show the size of my sample in relation to the wider population of judges, segregated by gender. The Ministry of Justice could not provide me with the total number of prosecutors for this study.

Table 1 Interviewed magistrates

MAGISTRATES						
Court level	Women judges		Women prosecutors	Men judges		Men prosecutors
	Interviewees	Total		Interviewees	Total	
<i>Supreme court</i>	1	1		0	9	
<i>Appeals court</i>	3	11	2	2	43	
<i>Court of first instance</i>	12	32	6	8	186	1
<i>Peace Tribunals</i>	8	57		7	528	
Total	24	101	8	17	766	1

Table 2 Other key informants

OTHER KEY INFORMANTS		
	Women	Men
<i>Civil society & women's organisations</i>	5	
<i>Journalists/academics</i>		3
<i>Lawyers</i>		1
<i>Governmental institutions</i>	3	1
<i>International organisations</i>	3	4
<i>Total</i>	11	9

When preparing interview guides, I opted for open-ended questions. This gave interviewees the necessary flexibility when answering, while I could probe for more information if needed. Open-ended questions are advantageous because they increase the response validity by allowing respondents to answer questions in their own way. This is perhaps extra important when dealing with complex social phenomena such as gender issues, where informants may have individual subjective meanings, and where these may be expressed outside the frames of closed-ended questions. Furthermore, elites and other highly educated people tend to not like “being put in the straightjacket of close-ended questions” (Aberbach and Rockman 2002, 674). My main goal when preparing interview guides was to find various ways of capturing gendered variation on access, experiences, representation, and other gender-relevant topics, with help from existing theory (where available) and my own assumptions and ideas. I also included some more general questions on Haitian politics, society, and the justice system. I ended up with an extensive interview guide of 40 questions, highlighting the most important ones, while having others as backup (see Appendix 2). What I wanted to know from the other key informants differed with their area of expertise. Interview guides varied accordingly, focusing on open-ended questions that could enhance contextual insight for my research questions. Interview guides were written in French, which is one of two official languages in addition to Haitian Creole, and the language taught in schools and used in court. While many Haitians do not speak French, I did not consider this to be a problem with magistrates. Almost all 70 interviews were recorded and transcribed by me with some help from an online transcription tool.

Interviews took place in different locations. I usually let the interviewees decide the location where they felt most comfortable. Most interviews took place in restaurants, cafes, and hotels, at the Magistrate School in Port-au-Prince, in my apartment or in interviewees' homes. I also visited magistrates and other key informants where they worked, which allowed me to observe their working environment. For instance, I observed that most courts were in extremely bad shape, lacking proper waiting areas, security, computers, paper, electricity, and other essentials. These observations substantiated interviewees' complaints of poor and unsafe working environments. Observation also helped me get additional insight into security issues and its gendered effects. For instance, one male judge brought two (!) bodyguards to our meeting, while another brought his gun. Several of the women I talked to were accompanied by their husbands for safety. I also observed how some interviewees interacted with colleagues, which gave additional insight into gender relations at work. These are examples of how spending time in the field helps the researcher understand the context and make sense of the interviews (Tripp 2018).

For further contextual insight, I used a variety of different written documents. Some of these were available online, others had to be collected on site. Written data sources are included in Table 2 below. While some of these were used as background information to illuminate all my research questions (for instance the Haitian Constitution, the gender strategy for the judiciary, and statistics on judges), other sources were more relevant for some questions than others, as shown in the table. I used news articles and annual reports on the judiciary more actively when examining the *experiences* of magistrates as a way to substantiate claims from interviews. Laws on the magistracy and the magistrate school were most relevant for understanding the process of *accessing* the bench and helped illuminate the difference between formal and informal aspects of this process by comparing official written documents with interview data. My research question on *representative roles* is concerned with how magistrates themselves and people outside of the courts relate to gender representation on the bench. I thus relied more on interviews than on written documents for this research question.

Table 3 Written data sources

Type & number	Sources & description	RQ 1: Representative roles	RQ 2: Access	RQ 3: Experiences
News articles (8)	Le Nouvelliste (4)			X
	AlterPresse (1)			X
	CNN (1)			X
	The New York Times (2)		X	
Reports (11)	<i>Reseau National de Defense de Droits Humains Haiti (RNDDH, 2011-2020):</i> Seven (7) annual reports on the Haitian judiciary, 20-40 p. each.			X
	<i>International Legal Assistance Consortium (ILAC) (2021):</i> One (1) report on the rule of law in Haiti, 20 p.			X
	<i>Haiti Equality Collective (2010):</i> One (1) report on gender in Haiti, 42 p.		X	
	<i>MINUSTAH (2012):</i> One (1) report on gender in peace- and statebuilding in Haiti, 27 p.		X	
	<i>United Nations (2014):</i> One (1) CEDAW report, 54 p.		X	X
	<i>Democracy International (2015):</i> One (1) report on the rule of law in Haiti, 22 p.			X
	<i>World Values Survey (2016):</i> One (1) survey on values in Haiti, 99 p.	X		X
Surveys (2)	<i>Institut Haïtien de l'Enfance (IHE) and ICF (2018):</i> One (1) survey on mortality and health in Haiti, 646 p.	X		X
	<i>World Values Survey (2016):</i> One (1) survey on values in Haiti, 99 p.	X		
	<i>Conseil Supérieur du Pouvoir Judiciaire (CSPJ, 2015, 2018, 2020):</i> Three (3) directories on courts and judges in Haiti, 100 p. each.	X	X	X
Statistics on judges (4)	<i>Ecole de la Magistrature (EMA, 2020):</i> List on EMA graduates from 1997-2020, 2 p.		X	
	<i>Conseil Supérieur du Pouvoir Judiciaire (CSPJ, 2018):</i> One (1) document on the gender strategy for the judiciary, 37 p.	X	X	X
Government policy documents (1)	The Haitian Constitution of 1987 with Amendments through 2012, 71 p.	X	X	X
	Law on the Magistrate School (2007), 7 p.		X	
	Law on the status of the Magistracy (2007), 10 p.		X	
Laws (3)				
Total: 29 documents				

Knowledge on background and context factor into the interpretation of data and can confirm or contradict what is said in interviews. In highly politicised contexts such as Haiti, it is important to be aware that interviewees, perhaps especially elites, may be coloured by some ideological affinity, organisational affiliation, or other interest, which is reflected in

their statements. Spending time in the field gives the researcher a critical advantage, and helps her avoid adopting the official government position and presenting it as a fact (Tripp 2018). I used a lot of probing during interviews to get beyond the “standard answer”. Spending time in the field also gives unique insight into the distinction between official and actual practice, as well as into the role of informal rules within formal institutions. Such in-depth knowledge is vital for understanding what is really going on, especially in fragile states.

It also points to how qualitative data analysis starts already during the data-collection process and is reflective of the iterative nature of qualitative research. I applied an open research strategy while collecting data. This involved treating the interview guides as a living document, changing and adding new questions to better capture what I was interested in, and removing the ones that did not work as I went along. New insight during data collection also made me change the research questions. For instance, I started this project with the idea that I wanted to explain why there were so *few* women in the Haitian judiciary (12%), compared to the judiciaries of its Caribbean and Latin American neighbours, and of many other fragile states. But after learning that there had been a relative growth from 2% in the mid-1990s, and that the growth was quite remarkable given no growth in other spheres of decision making, I decided that focusing on explaining why the proportion of women increased (in addition to explaining why it has historically been low) was both more relevant and interesting (see Article 2).

The more systematic part of the analysis took place when I returned from the field. I used Nvivo to organise and analyse the huge amounts of interview data. I started by reading through all transcribed material, and made rough categories based on what came up during interviews. I read through the material several times, creating more specific sub-categories as I went along. The method differed somewhat between research questions. For example, when analysing gendered *experiences* on the bench, I started by marking everything that had to do with magistrates’ working life. It became apparent that most magistrates were

concerned with the numerous challenges they faced in their work, so I created a category named “challenges”. After re-reading, I created new sub-categories of challenges, labelled “insecurity”, “corruption”, “discrimination”, “lacking resources”, et cetera. Under “insecurity”, I coded different sources, settings, and incidents of insecurity, such as “political protests”, “organised crime”, “daily commute” et cetera. Often, quotes from interviews belonged in several categories at once. This was frequently an indication of how things were really connected, which I often had not thought of beforehand. This reflects my inductive approach to the analysis and is in line with the wider aim of building theory. I also started noting the gender of the informants, as well as other background information, such as mode of recruitment to the judiciary, age, rural or urban court, high or low court, to see if there were any interesting variations, patterns, trends, and deviations. I supplemented with news articles and reports to substantiate claims by interviewees. As for *representative roles*, I had based some questions on modes of representation borrowed from the wider representation literature. However, it became apparent from interviewees’ statements that there were other modes of representation specific to the judiciary that I had given less thought to, which became new categories. As for the question on *access*, I had a clearer idea of what to expect. I thus applied a more deductive approach for data analysis, exemplified by how I searched the material specifically for statements about gender quotas, which I had hypothesised would explain the increase in the number of women judges. However, due to the iterative nature of my research design (and of qualitative research in general), the boundaries between deductive and inductive analysis of the data material has been rather fluid.

Challenges and ethical considerations

In this section, I discuss some of the practical challenges and ethical concerns I encountered while collecting data in Haiti. One challenge was the lack of available and reliable written data sources and statistics. Another challenge was the insecure and violent setting, which raised ethical concerns for me as a researcher and my informants. These challenges put limitations on what I was able to do, and I had to repeatedly revise my research design.

Reliable and updated statistics on areas concerning the judiciary is hard to come by in Haiti. I initially wanted to supplement interviews with analyses of case decisions in order to investigate whether women judges contributed with more women-friendly judgements (substantive representation), particularly in cases related to sexual and gender-based violence (SGBV). However, case decisions are not archived electronically in Haitian courts. I also learned that the UN had previously collected statistics on reported SGBV cases, but had stopped when the UN stabilisation mission scaled down in 2017. Older statistics were destroyed when UN headquarters collapsed in the 2010 earthquake. I considered collecting court decisions manually while visiting judges in courts. This turned out to be difficult, as courts were mostly closed during my stay due to strikes or insecurity. I decided to instead focus on how magistrates themselves reported thinking about gender-relevant issues when deciding cases (Article 1), which is something we know little about, and focused on talking to as many judges and other key informants as possible.

I was also forced to abandon a planned survey experiment examining the effect of judges' gender on the institutional legitimacy of courts and court decisions. This study was inspired by the research on women's symbolic representation, which has focused little on judges. I prepared a survey experiment where I would present vignettes of court decisions while varying the type of court case (gender-sensitive vs. non-gendered) and the gender of the judge deciding (woman vs. man). Based on existing research, and what came out of the interview data with Haitian judges, I expected court decisions, particularly in gender-

sensitive cases, to enjoy more legitimacy in the public eye when the judge was a woman. Since big international survey companies like Latinobarometro and Gallup do not work in Haiti on a regular basis, I was referred to Institut Haïtien de l'Enfance (IHE) through my academic network in Norway. I had several meetings with IHE in Haiti planning the study. IHE would provide enumerators and survey tools, while I would oversee the study. Within my limited budget, we decided to focus on the capital area. When I left Haiti in January 2020, the plan was to go back for the survey experiment later that year. Then COVID-19 hit. As the pandemic progressed, the security situation in Haiti deteriorated. Violence and kidnappings skyrocketed, and criminal gangs took over large parts of the capital. Returning to Haiti became increasingly unrealistic, and I saw it as unethical and irresponsible to send enumerators out to survey the population without being able to provide them with the necessary security. In politically volatile contexts, research assistants may take huge personal risks, driven by the power imbalance between researchers with funding and local partners (Cronin-Furman and Lake 2018). I decided to abandon my aspiration of making my dissertation a mixed-methods research project. This meant that I had more time to analyse the 70 interviews and 29 documents I had already collected.

While research ethics is something all researchers need to relate to, several scholars point to the particular ethical challenges connected to doing research in fragile and politically unstable contexts (Campbell 2017; Cronin-Furman and Lake 2018; Knott 2019; Krause 2021; Tripp 2018). As mentioned, it may generate exploitative dynamics with local research partners. The researcher also has special obligation to protect sources. When starting this project, I was not aware of the extent to which Haitian judges are subject to enormous, sometimes violent pressure, and poor security (see more in Article 2). Thus, I did not plan to anonymise informants unless they asked for it. However, it became apparent during my stay in Haiti that anonymisation was necessary to maintain the security of judges. Interviewees reported being threatened and attacked. One of my interviewees was tragically shot dead in the streets of Port-au-Prince by unidentified men on motorbikes a couple of months after I spoke to him. The security situation has continued to deteriorate

since I returned home from fieldwork, and because many magistrates were outspoken and critical of the government, I decided to anonymise everyone when presenting my findings.

The experience from Haiti is an example of how political scientists “frequently work in dynamic contexts which can change dramatically after exiting the field” (Knott 2019, 140), which necessitates making ethical considerations not just before and during, but also after, fieldwork. It further points to how understandings of vulnerability of research participants is context-dependent and fluid and may shift with changes in the political climate. Researchers should be aware that the research in question can create vulnerabilities also in the future (Lake, Majic, and Maxwell 2018). My informants may have consented to participating and having their names published when the PhD project started five years ago, but they might not have consented today.²⁹ My choice to anonymise is an example of how researchers may sometimes hold back on information to minimise harm and bring risks to informants, even when informants say such data can be used. It is the researcher’s responsibility to make this decision if they think revealing the identity may harm the respondent (Fujii 2012; Wood 2006).

Research ethics concerns the safety of not just research participants, but also the researcher (Krause 2021). Before going to Haiti, I talked to other people who had spent time there about which security precautions to take. I hired a private driver since public transportation in Haiti (*taptaps* or *motos*³⁰) is neither particularly safe nor easy to manoeuvre for a solo-travelling young woman like myself with limited knowledge of Haitian creole. My driver

²⁹ I should note that, in addition to registering the project with the Norwegian Centre for Research Data, all participants were informed of their rights to withdraw their participation whenever they liked without question, and I also gave all participants my contact information if they should have any qualms.

³⁰ Tap taps are colorfully painted buses or pickup trucks that serve as shared taxis following a predetermined route. Motos are motorcycle taxis. I was strongly advised against relying on either alternative by some Norwegian police officers who were working in Haiti at the time.

turned out to be a great guide, door opener, and *de facto* bodyguard in Haiti. He knew how to avoid driving into political protests and dangerous areas, and which days were too “hot” to venture out at all. On more than one occasion, I was stuck for days – at my apartment, or in another part of the country – due to political protests and blocked roads. I decided not to have a research assistant with me most of the time for logistical reasons, as having to pick someone up in the excruciating Port-au-Prince traffic would have been too time-consuming. I split my five-month-long fieldwork into three trips in order not to exhaust myself (Krause 2021). While some of my experiences in Haiti were alarming (including two episodes with gunfire), it gave me first-hand insight into how state fragility feels for people dealing with it on a daily basis. This adds an extra level of contextual insight to my findings.

Some researchers note how the impromptu and informal nature of things in weaker states can sometimes provide more access to elites than contexts with greater institutional stability (Cronin-Furman and Lake 2018). I experienced this to be the case in Haiti: Informants seemed willing to talk to me, and through my network I got access to informants high up in the judicial hierarchy. There is always the possibility that I as a foreign researcher was implicitly associated with international networks, connections and hopes of support in some way or another. After all, “white skin and Western passports open doors” (Cronin-Furman and Lake 2018, 608). I was advised by a Haitian friend not to be photographed with any public person I encountered, as they could use it to signal that they had Norway’s backing for whatever political agenda they had. Others note that suspicion of foreigners runs high in contexts like Haiti with a troubling history of foreign intervention (Peritore 1990; Sluka 1990). Regardless, I chose to approach this potential problem with as much transparency as possible about myself, the research project, and what I was really doing in Haiti (Fujii 2012).

These issues relate to questions of positionality, that is, reflections on where I come from and what I bring to the research process. There is little doubt that as a relatively young,

solo-travelling Scandinavian female political scientist researching gender issues, my presence impacted the research process in one of the most patriarchal countries in the world. It may be that interviewees told me what they thought I wanted to hear, presenting themselves as more open, tolerant, gender-conscious or anti-corruption than they would to a researcher with a different background. To counter this, whenever I felt a response was “too good to be true”, I made sure to probe for more information, ask follow-up questions, request elaboration, or ask similar questions in different ways, in order to get to the core of my informants’ opinions. Being an “outsider” may also have its advantages, as it creates a distance from the research topic that makes it easier to conceptualise what is happening and to grasp the wider perspective and its connections, causal patterns, and influences (Fay 1996). From previous fieldwork in Francophone Western Africa, I have experienced that it also allows the researcher to ask somewhat naïve questions, which forces research participants to reflect on issues they may take for granted in new ways.

My background impacts not just how research subjects relate to me, but also how I relate to the research subjects and the wider research topic. All knowledge is socially constructed (Habermas 2015), hence science (particularly social science) is not objective and value-free (Harding 1993). The concepts I use, the questions I ask, and how I interpret my respondents, is coloured by my experiences, background, and privileges. For instance, my background as a political scientist living in a liberal democracy and welfare state likely influences my understanding of what a state is and what the role of the state should be. Similarly, being a feminist from Scandinavia – where gender equality is high – affects my understandings of gender roles and what gender equality should look like. Coming from a very different background than magistrates in Haiti, how do I know that my research subjects and I talk about the same things when we discuss central social science concepts such as “gender” or “state” or any other concept? How does one create meaningful knowledge as an outsider? There is no simple quick fix to the challenge of researching socially constructed phenomena in different contexts. After all, as a researcher I need to rely on certain intellectual instruments, such as social science methods and concepts, in

order to make sense of what I find and to connect it to the wider literature. Bourdieu and Wacquant (1992) propose that the researcher should direct the same critical gaze towards themselves as towards their research participants. One example of how I addressed this issue in practice was by listening to how my interviewees themselves defined and understood central concepts, such as “violence against women” or “feminism” to make sure we talked about the same things. I avoided asking leading questions. I also prepared for fieldwork by reading up on Haitian society, culture, and politics before going. At every stage of the research process, I tried to have an open, reflective, and conscious approach to the research and my own role in it.

Findings and contributions

In this section, I summarise the main contributions of the articles – all single-authored – and the dissertation as a whole. The contributions are both theoretical, empirical, and methodological. Table 3 gives an overview of the three articles, including titles, research questions, methods and data, main findings, and publication status.

Table 4 Article summaries

	Title	Research question	Methods and data	Main findings	Status
Article 1	'A good judge has no sex'? A typology on judicial representation.	How is gender representation conceived of in relation to judiciaries, and what is the possible representative role of women judges?	Single-case study. Documents, interviews.	Judicial gender representation takes on different forms: substantive representation, representation as diversity of perspectives, representation as access to justice, and symbolic representation. Some forms seen as in tension with judicial ideals of impartiality, others seen as valuable.	Submitted to Perspectives on Politics.
Article 2	Women's Judicial Representation in Haiti: Unintended Gains of State-Building Efforts.	What can explain the increase in the number of women judges in post conflict Haiti?	Single-case study. Descriptive statistics, documents, interviews.	Donor-supported judicial reform boosts women's judicial representation. It introduces more merit-based and transparent recruitment procedures, diminishing importance of male power networks.	Published in Politics & Gender (12.04.2022).
Article 3	State fragility and the gendered experiences of judges: Insights from Haiti.	How does state fragility affect the experiences of judges in their work, and how is this gendered?	Single-case study. Documents, news articles, interviews.	Insecurity, political interference, etc. create challenging experiences for judges, but women feel extra vulnerable. Women judges are sidelined and excluded from shadowy and informal male-dominated networks, and thereby deprived of security measures.	Under review in Law & Society Review (Special Issue, Women on the Bench).

Theoretical contributions

As noted, one main aim of this dissertation is to develop theory on the under-researched topic of women judges in fragile states. However, the theoretical contributions arguably go beyond fragile state contexts. In Article 1, I develop a typology on judicial gender representation where I theorise different forms in which gender representation may take place in the judiciary in general, not just in fragile states. The aim is not to explain and establish causality (“explanatory typology”) but to “explicate the meaning of a concept by mapping out its dimensions” (Collier, LaPorte, and Seawright 2012, 2018). Drawing on general representation theory, while taking the unique nature of courts and the judicial function into account, the typology presents four distinct, but not mutually exclusive, ways in which judicial gender representation is conceived and justified: *substantive representation*, *representation as diversity of perspectives*, *representation as accessibility*, and *symbolic representation* (see Table 4). Such a typology has previously been lacking in the literature, which may have to do with previous research’s reluctance to engage with the wider representation literature when it comes to judges, who are usually not elected and conventionally – although, inaccurately – viewed as “neutral” (Kenney 2013a). By presenting different normative justifications for women’s descriptive representation on the bench, the typology takes a broader approach to judicial gender representation than most existing studies and highlights how the representative role of women judges entails much more than passing out women-friendly judgements based on interpretations of the law. It also highlights how some aspects of judicial gender representation in courts may theoretically *enhance* objectivity (by bringing in diverse perspectives, creating more accessible courts etc.), not threaten it, as often presumed. The typology can contribute to developing further our ways of thinking around judges’ representative roles and serves as a useful tool for future research analysing judicial gender representation overall. While it is beyond the scope of this dissertation to empirically test the causal assumptions underlying the different justifications, this is an interesting avenue for future research (more on this in the conclusion). The typology may also be used for understanding judicial representation of other marginalised groups who have historically been underrepresented in courts, such as ethnic minorities.

Table 5 A typology of judicial gender representation

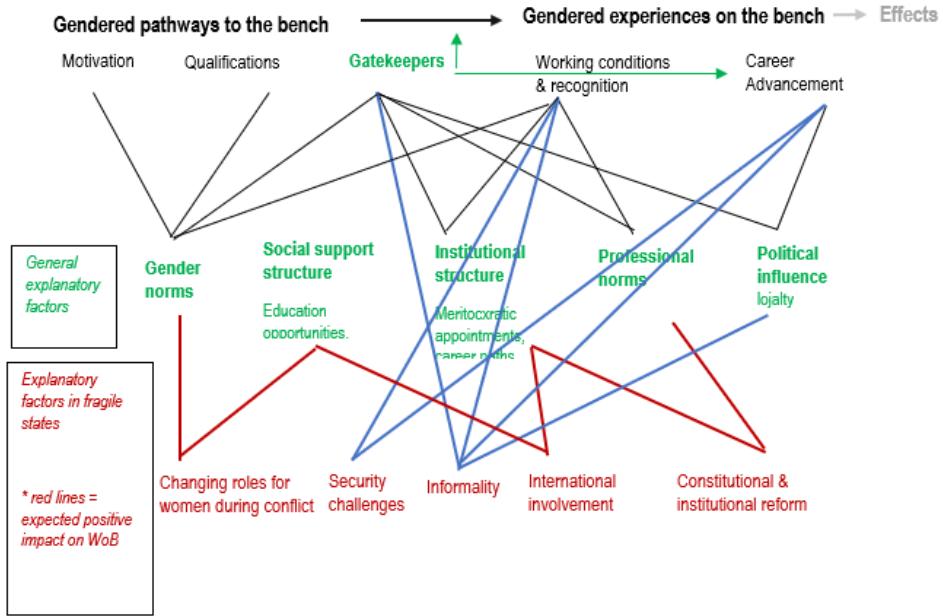
Type of representation	Description and justification
Substantive representation	Women judges represent women through their actions, through women-friendly decision making in court, or through other women-friendly activities outside of court. May help advance gender equality in society.
Representation as diversity of perspectives	Women judges bring in new perspectives to the deliberative process. May improve the quality of justice and balance out male bias.
Representation as accessibility	Women judges make courts feel more accessible to women. May help more women judges seek justice, particularly on gender-sensitive issues.
Symbolic representation	Women judges signal that diverse perspectives are heard. May increase judicial legitimacy. May change people's perceptions of women in power, and act as role models for other women.

As for women's judicial representation in fragile state settings in particular, the theoretical contributions of the dissertation are the following. First, the dissertation identifies variables and explanatory factors that are typically found to a greater degree in fragile settings, most prominently *insecurity, informality, international involvement, and constitutional and institutional reform*. Second, it shows how these factors interact with each other and with more general explanatory factors for women's access to and experiences on the bench, such as *gender norms* (in the judiciary and in society), *education opportunities, appointment procedures, professional norms, gatekeepers, and political influence*, and create gendered outcomes. One such gendered outcome is *increased opportunities for women to access the judiciary* (Article 2): Donor-driven judicial reforms introduce more posts and meritocratic appointment procedures, which help women circumvent male power networks that were previously keeping them out of judicial decision making. Simultaneously, another gendered outcome is various *gendered challenges on the bench (gendered experiences)* (Article 3): The widespread insecurity and informality in fragile states interplay with the masculine culture found in the judiciary and in society as a whole, and shape specific gendered challenges for judges. In the case of Haiti, this entails less access to sorely needed security measures for women judges, which contributes to feelings of vulnerability. It is important to understand what drives such gendered outcomes, as the outcomes determine

women judges' opportunities and willingness to represent other women on the bench. This points to how the three research questions and articles in this dissertation are connected.

I have developed the explanatory model further in Tøraasen et al. (*forthcoming*), together with my colleagues on the Women on the Bench project, drawing on findings from five fragile states: Haiti, Afghanistan, Uganda, Angola, and Guatemala. We have focused on variables explaining access and experiences as the wider research project did not thoroughly address representative roles. Factors/variables written in green are drawn from the general literature on gender in judiciaries, whereas the red ones are the ones we find to contribute to gendered outcomes specifically for fragile states. The framework shows the interaction between variables we propose matters for women's access to and experiences on the bench in fragile states.

Figure 3 Gendered pathways and experiences on the bench in fragile states



Source: Tøraasen et al. (forthcoming)

Empirical and methodological contributions

The in-depth case study of the Haitian judiciary is an important empirical contribution in itself. This is, to my knowledge, the first study on women judges in the Haitian judiciary. It is the first to present statistics on the development of women’s judicial representation in Haiti, data which were hitherto unavailable to the public. I have also collected huge amounts of data material from 70 interviews with Haitian judges, prosecutors, and other key informants on a range of issues previously unexplored in the Haitian context. These are important contributions, as Haiti is an extremely under-researched case in political science. Very few scholars have examined aspects of women’s representation and participation in various levels of decision making in Haiti (see Bardall, 2018; Charles,

1995; and Moore, 2021). The country is heavily dependent on women-friendly foreign donors, but still ends up as one of the least gender-equal countries in the world. This is a puzzle one would expect to have attracted more attention from scholars. The lack of empirical research on Haiti may be linked to the paucity of relevant and available (digitalised) data, and a challenging environment for fieldwork research. It may also have to do with Latin America scholars being more attentive towards Spanish-speaking countries. By providing empirical insights through various sources, I hope to generate more knowledge and interest in this complex, yet under-researched country, particularly from scholars interested in gender and politics. As noted by Flyvbjerg (2006, 221), “in the study of human affairs, there appears to exist only context-dependent knowledge”. We thus learn incrementally through studying different phenomena under different contexts, to which this in-depth case study contributes.

In the next sections, I present in detail the empirical findings from the three research articles, and how they contribute to the literatures on courts, women in decision making and fragile states, as well as the methodological contribution.

Representative roles on the bench

To answer the research question on representative roles, I apply the typology on judicial gender representation (Table 3) to the Haitian judiciary, which represents a type of case that is far from the established democracies the typology largely builds on (Article 1). In addition to providing valuable empirical knowledge from an under-researched country, the case study helps test the potential reach and usefulness of the typology to different contexts. My empirical findings uncover contradictions in perceptions and conceptions of gender representation in the judiciary. Some forms of gender representation are seen as valuable, like women introducing diverse perspectives to the judiciary and inspiring female court users to bring their cases to court. Other forms of representation, like representative actions in the form of “different” judgements, are seen as threatening the ideal of the neutral judge

– but apparently only when the judge is a woman. That women judges engage in representative actions *outside* of the courtroom, through reforming and spreading the law, is seen as less problematic. Further, women judges are seen as symbolising positive change from past corrupt, ineffective, and male-dominated practices that for long have crippled the functioning of the judiciary. This points to the complex way in which gender representation takes place in the judiciary, and that there *is* room for gender representation on the bench if one applies a broader perspective to representation.

The findings show that questions of gender representation are highly relevant among judges, both explicitly and implicitly, and that judiciaries belong in the broader debate on gender representation in decision making. There is also a growing literature exploring women's representation in non-elective institutions and male-dominated institutions, such as women on corporate boards, which this study contributes to. The study helps identify the space for gender representation in an institution that has been largely male-dominated, and where judges have been seen as heavily constrained by institutional factors. It contributes to the literature on judicial behaviour by going beyond case outcomes and focusing rather on judges' reflections around gender issues and their own role on the bench, which expands our knowledge about what lies behind judicial behaviour. The study questions the conventional ideal of the neutral judge, by showing empirically how this very concept is gendered. At the same time, the case study of the Haitian judiciary calls for attention to contextual variation. For instance, a judicial system in the process of being institutionalised offers opportunities for women judges to act for other women through participating in reforming and spreading new laws that protect women's rights (substantive representation). The study also addresses aspects of judges' representation that have previously been overlooked, such as symbolic representation, and finds that in cases like Haiti, people see women judges as important not because they symbolise inclusion (as assumed in the literature), but because they symbolise a break from previous corrupt and male-dominated practices that have left the judiciary largely dysfunctional and inaccessible.

Access to the bench

My empirical findings on the explanation behind the increase in women judges in post-conflict Haiti relates to the question of access to the bench. I find, counter to what one would expect from the post-conflict literature, that gender reform falls short in explaining the increase of women judges in Haiti. The Haitian women's movement and female politicians, backed by international actors, have indeed managed to push for the adoption of women-friendly policies, including a constitutional gender quota of 30% for all public services, including in the judiciary. However, the implementation of such gender reforms is still lacking. I propose that more "gender-neutral" judicial reforms can better explain the increase. Traditionally, recruitment to the Haitian judiciary have been solely through direct appointments. The dynamics of direct appointments is both informal and highly gendered, favouring candidates with powerful connections, which tends to be men. Donor-driven judicial reforms, aimed at rebuilding the justice system after years of conflict, authoritarianism, and neglect, have introduced more merit-based appointment procedures to the judiciary. In particular, the creation of a magistrate school (EMA) – where appointments to the judiciary happen through competitive examinations – has helped women circumvent the male-dominated power networks that used to keep them out of the judiciary. This shows that general judicial reforms may in some cases be more successful in boosting women's representation than more gender-targeted reforms. This is an approach to gender representation that has received little attention in the literature on state building in post-conflict and transitioning contexts.

My findings bring new insight into how fragile and post-conflict contexts can open up opportunities for women to access decision-making spheres by focusing on the judiciary. While gender quotas have been presented as the main reason why more women enter politics in such settings, the findings from Haiti show that there are different mechanisms at play in judicial recruitment that may boost women's representation. My findings establish a relationship between donor-supported judicial reforms and women's increased

descriptive representation, which shows how statebuilding can contribute to gender equality, without necessarily having a pronounced gender agenda. The findings support previous research on gender and merit-based recruitment (Bjarnegård 2013; Rothstein 2018; Schultz and Shaw 2013), but situates this within a statebuilding context. The study thus contributes to the literature on judicial reform efforts in fragile contexts, which has to a small degree focused on the gendered effects of such reforms, particularly in relation to women's participation as judges.

Second, this study sheds light on how women manage to make inroads into some state institutions while struggling to access others (Tripp 2015). This phenomenon reflects the complexity of adopting and implementing different types of reform in fragile contexts, and how the opportunity structures found in these contexts may fluctuate dramatically. The Haitian case shows that while political openings and institutional ruptures can create opportunities for women to mobilise for better representation (adopting gender-friendly legislation), continued state fragility can also hamper attempts to actually follow through (implementing gender-friendly legislation). I suggest that *political timing* and *donor priorities* may explain why some types of reform succeed and others fail, and, consequently, why women manage to access some state institutions (the judiciary) while remaining marginalised in others (the legislature). This contributes to the literature on post-conflict settings and the opportunities, as well as challenges, these pose for women's representation. The study brings new insight into the literature on judicial recruitment. It is one of few studies shedding light on the application of gender quotas in the judicial sphere. While we know very little about how such quotas work, the Haitian case shows how, in the absence of government action, judicial schools can apply gender quotas to their recruitment strategy successfully.³¹

³¹ Still, as I argue in Article 2, the gender quota in the recruitment to the Magistrate School cannot explain the increase of women to the judiciary in Haiti, as the quota was only applied as late as 2016.

Experiences on the bench

As for the question of experiences, this study finds that judges in Haiti – women and men – face numerous challenges connected to their roles as judges in a fragile state, which are linked to an insecure context and a poorly institutionalised judiciary. Attacks, threats, and illicit political intervention are common challenges. Widespread impunity, corruption, and scarcity of security measures provided by the state complicate the situation further. However, women seem to feel particularly vulnerable in their role as judges. This is exacerbated by the fact that women as outsiders in a traditionally masculine institution are sidelined and excluded from informal, often shadowy, practices that have taken root within the Haitian judiciary. Women judges are thereby also deprived of sorely needed protective measures that are allocated through these networks. Several women judges reported being the only woman judge in their court, and the only judge without a company car, a security guard, or an office. Patriarchal gender norms in Haitian society contribute to these gendered experiences of insecurity. There are also gendered differences in how women and men judges, in the absence of state protection, manoeuvre in an unsafe environment.

The literature on women judges has been mostly concerned with experiences from institutionalised democracies, and the fragile states literature has focused more on how state fragility affects ordinary women or possibilities for women to *access* decision-making. This study contributes to this literature by looking at how fragility-related factors continue to impact the experiences of women once *inside* the formal state apparatus, in this case the judiciary. The study shows that, while women judges in Haiti constitute a (growing) part of the repressive state, they continue to be marginalised within this apparatus as outsiders in a culture of highly gendered and informal practices, reinforced by fragility-related factors. The findings thus speak to the literature on feminist institutionalism by showing empirically how informal and formal practices diverge – perhaps particularly so inside weak political institutions – and how this may have practical and gendered implications. Many scholars have asked why it is important to have more

women judges on the bench (which is also addressed in Article 1). This study identifies factors that may potentially limit women's ability to fully exercise their profession.

The study further sheds light on the highly under-researched topic of violence against judges and its gendered aspects. Judges are influential political actors who make decisions over (sometimes very powerful) people's lives and may be seen as agents of the state, which makes them potential targets of violence. I find that violence against judges, broadly defined, is common in Haiti, and comes from a variety of sources: from disgruntled court users, angry mobs, lawyers, political actors, and their criminal allies. I find evidence that the violence can be physical (physical attacks, assassinations), psychological (anonymous phone threats, stalking), economic (vandalisation of property and withholding of funds), or sexual (sexual harassment, rape) in nature. Some of the violence is clearly political, such as the attacks on courts and magistrates, as representatives of the state, during political protests. The violence is often gendered in its form and effects, and sometimes in its motive. The study contributes to the literature on violence against women in decision making and public roles, which to date have largely ignored violence against judges (George, Tøraasen, and Domingo 2021). Furthermore, analyses of violence in fragile and conflict-affected settings have been critiqued for focusing solely on women and overlooking the importance of understanding masculinities, using "gender" as a placeholder for "women" (Wright 2020). By comparing the experiences of men and women, I highlight the gendered vulnerabilities to violence, and gendered ways of manoeuvring an insecure context.

Additionally, while there is a growing literature on the role of courts and the rule of law in nascent and fragile democracies, this research has tended to focus more on the function of courts at an institutional level in relation to the other branches of government. Focusing on judges' personal experiences and concerns helps us understand how such contexts affect decision makers on the ground, the kind of choices they have to make and what informs these choices. This contributes to our understandings of constraints on judicial

independence, and how political intervention and other threats to the rule of law can have gendered consequences for judges.

My focus on judges' personal experiences is linked to the methodological contribution of this dissertation. Scholars have flagged the importance of doing more in-depth, qualitative research to understand the relationship between formal and informal norms, rules, and procedures in political institutions (Chappell and Waylen 2013; Chavez 2004). Only by expanding analyses beyond what is written in laws and official documents are we able to detect what is really going on – particularly, but not only, in fragile settings. As noted, formal rules in political institutions are rarely gendered; informal rules, on the other hand, very often are. This in-depth study of the Haitian judiciary takes this fact into account. Furthermore, including female and male narratives when studying gender is something surprisingly few similar studies do. As this study compares the experiences, perceptions and attitudes of women and men, it is also able to say something meaningful about gendered variation in this regard. And by including a particularly large interview sample (70 interviewees) with much variation in other background characteristics, the study also takes other intersecting factors, such as age, into account when analysing gender differences. Including other key informants in the sample in addition to magistrates gives an inside and outside perspective on the judiciary, which helps create a more holistic understanding of the institution and its position in society.

Conclusion

This research aimed to explain what shapes different, but interrelated, aspects of women's judicial representation – access, experiences, and representative roles – in the particular context of state fragility. I explored this through a case study of the judiciary in Haiti, arguably one of the most fragile (and patriarchal) countries in the world. In terms of women's representation, the judiciary has received less scholarly attention from political scientists than the other branches of government. This is despite the fact that courts may play extremely important roles as upholders of the rule of law and as bulwarks against democratic erosion. Research on women judges has tended to focus mostly on institutionalised democracies in the Global North. However, changes are happening in the gender composition of judiciaries in very different countries all over the world, including in fragile states. There is a need for research to keep up with these developments. In addition to providing new empirical knowledge about a severely under-researched case, this dissertation contributes with valuable theoretical insight into the topic of gender and representation in the judiciary through identifying how certain factors that are unique to or particularly prevalent in fragile settings may shape women judges' access, experiences, and representative roles on the bench. Based on 70 interviews with Haitian magistrates and other key informants, numerous documents, descriptive statistics, and some observation, I find that fragility-related factors may create both opportunities for women to access judicial posts, and specific gendered challenges for women judges once on the bench. I also find that while there is room for women judges to exercise their representative roles on the bench in general, the context of a less institutionalised judiciary may shape this representative space in different ways.

These findings shed light on the gendered dimensions of decision making in contexts of state fragility. In the literature on fragile states and statebuilding, there is a strong assumption that inclusive and representative decision-making institutions and processes

are vital for securing legitimate, democratic, and well-functioning states. This is a way to build the relationship between state and citizens, which tend to be weak in most fragile contexts (Domingo and Holmes 2013; Kaplan 2015), and even weaker for women citizens who have limited access to state institutions (Castillejo 2011). This focus on “inclusive statebuilding” has increased international commitments to integrate a gender perspective in state- and peacebuilding efforts. However, as noted by Domingo and Holmes (2013, 2), such commitments “have not amounted to much more than declaratory statements” like the ones introducing this dissertation. Furthermore, according to Castillejo (2013, 30), gender in statebuilding tends to focus on women’s special, “social” needs rather than gender power relations, while “greater understanding is required of how gender relates to the core politics of statebuilding in fragile contexts”. This dissertation helps contribute to greater understanding by shedding light on how women in decision making experience and participate in statebuilding, how gender power relations work within the state apparatus in fragile contexts, and how state fragility and statebuilding can have gendered implications for decision-makers, in this case judges.

While women’s numerical representation in decision-making bodies matters for both intrinsic and symbolic reasons, this dissertation goes beyond analysing women’s presence on courts to focusing on the underlying conditions for women’s actual participation in judicial decision-making and in (possibly) promoting women’s rights. It also attempts to connect the judicial sphere to the broader literature on gender and politics by showing how questions of representation, including descriptive, substantive, and symbolic representation, are very relevant within the judiciary. The study further shows how the judiciary is both a highly political and gendered institution, far from the “neutral” arena it has traditionally been perceived to be. This again is reflected in how women (and men) access the bench and how they experience their role as judges.

Theoretical propositions, limitations, and further research

As already touched upon, there is a trade-off between empirical richness and generalisability in case study research of this kind. The extent to which we can generalise to other fragile states from a single-case study of the judiciary in Haiti is limited. However, the purpose behind the research design in this study was to identify variables and mechanisms that can help develop, refine, and adjust theory about women's representation in courts to better reflect a variety of contexts, in this case, fragile settings. We can draw some hypotheses or theoretical propositions from the findings in this study, which can also inspire future research. First, we can hypothesise that when donor-driven judicial reforms introduce more merit-based appointment procedures (for instance through competitive examinations at a judicial school), the proportion of women judges increases. Second, the prevalence of shadowy and male-dominated networks in weak and insecure state settings may create gendered experiences of vulnerability among judges, making women judges feel less secure. Third, this study suggests that there is room for gender representation on the bench (despite a tension with the conventional ideal of the neutral judge) if one applies a broad approach to judicial gender representation.

The proposed relationship between judicial reform and women's access to judiciaries could be tested in cross-national quantitative studies. This would require access to historical and cross-national data from both "fragile" and "non-fragile" countries on the proportion of women judges on different court levels. As mentioned, this kind of data is currently deficient, in part because it is very hard to come by (particularly in fragile contexts) and would probably require an ambitious data collection process.

While this study finds that there is a relationship between male-dominated corrupt practices and gendered vulnerabilities in the Haitian judiciary, it is not unlikely that similar patterns are found in judiciaries in other fragile and patriarchal states that share some of the

characteristics of Haitian society and politics, such as high levels of insecurity, weak state institutions, and routinised corruption through male power networks. This is also supported by findings in other fragile states in the broader Women on the Bench research project that this dissertation is part of, such as in Guatemala and Afghanistan. Similar patterns may also be found in the informal politics of other male-dominated political institutions in such contexts. This could be explored in future research through more comparative research. The complexity of researching informal and gendered practices inside formal institutions may call for a more qualitative comparative approach involving fieldwork and interviews in different countries; however, it may also be done by integrating cross-country survey research comparing the experiences of women and men judges.

Future research may develop the typology of judicial representation further through the discovery of new modes of representation. One could expect that certain forms of representation are more relevant or more clearly manifested in some contexts than in others. As suggested, women judges' opportunities for representing other women through their actions outside of courts may be greater in contexts of judicial reform and law reform. Further, one interesting aspect of the role of judges is that the degree to which they are considered political actors differs between legal traditions and cultures: Common law judges are perhaps considered as more powerful "lawmakers" than the more "bureaucratic" civil law judges, which may impact judges' perceived or actual representative space. These propositions would be interesting to explore further through comparative cross-country case studies using surveys or in-depth interviews.

While I present some interesting findings on how judges themselves (and people outside courts) justify the presence of women on the bench, the study also raises some new questions about causality that can be tested empirically: Does the presence of women judges lead to more gender-friendly decisions in court or other women-friendly activities outside of court? Do women judges affect the deliberative process by bringing in new perspectives and improve the quality of justice? Do they inspire more women to seek

justice? Does their presence increase judicial legitimacy? Does it alter people's perceptions of women's ability to rule? And is there an observable empirical relationship between women judges' access and experiences on the bench and how they contribute on the bench (representative roles)? Some of these questions have hardly ever been investigated empirically. Others have been more thoroughly addressed (for instance through the empirical research on judicial behaviour), but due to the homogeneity of cases, we know little about the impact of context.

There is a growing but underdeveloped literature focusing on the more qualitative aspects of judicial behaviour that not only looks at gender differences in the outcome of cases, but also in how they are written. I did detect a difference in how women and men judges reflect around gender-based violence and other gendered issues in the case of Haiti, but the question remains whether these perspectives are translated into written judgements. Analysing court decisions and comparing with interview data would help shed light on what lies behind a "feminist jurisprudence" or the lack thereof and behind the relationship between gender and gender-consciousness in judging. This would be worth exploring in contexts like Haiti, where training judges on gender issues has been high on the agenda recently.

Future empirical research may build on the findings from this study and investigate whether the presence of women judges increase the legitimacy (institutional or procedural) of the judiciary, as is often assumed. While there is some nascent research exploring the relationship between diversity on the bench and legitimacy, this research focuses on the United States. I would however argue that women judges' symbolic representation is particularly important to explore in fragile and patriarchal contexts where there is little trust in the judiciary, and where women might be less associated with the corrupt and male-dominated practices of these institutions. As mentioned, the possibility of doing a survey experiment (or any other data collection) in Haiti at the current moment is unfortunately poor due to political turmoil and gang wars. It could however be done in other fragile, yet

more peaceful, contexts, where women are starting to enter courts as judges in increasing numbers. In sum, by addressing questions of women's representation in the judiciary within a context of state fragility, this study paves the way for several new and critical research agendas.

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Appendix 1: States of fragility

OECD's «States of fragility»	World Bank's «Fragile and Conflict-affected Situations»	Fund for Peace's «Fragile State Index»
Somalia	Afghanistan	Yemen
South Sudan	Burkina Faso	Somalia
Afghanistan	Cameroon	Syria
Yemen	Central African Republic	South Sudan
Central African Republic	Democratic Republic of Congo	Central African Republic
Democratic Republic of the Congo	Ethiopia	Congo, Democratic Republic of
Chad	Iraq	Sudan
Syria	Mali	Afghanistan
Congo	Mozambique	Chad
Haiti	Myanmar	Myanmar
Burundi	Niger	Haiti
Sudan	Nigeria	Guinea
Eritrea	Somalia	Ethiopia
Iraq	South Sudan	Mali
Equatorial Guinea	Syrian Arab Republic	Zimbabwe
Libya	Ukraine	Nigeria
Angola	Yemen, Republic of	Cameroon
Cameroon	Burundi	Eritrea
Niger	Chad	Burundi
Mali	Comoros	Niger
Liberia	Congo, Republic of	Mozambique
Madagascar	Eritrea	Libya
Uganda	Guinea-Bissau	Iraq
Mozambique	Haiti	Congo Republic
Guinea	Kosovo	Uganda
Nigeria	Lebanon	Venezuela
Papua New Guinea	Libya	Lebanon
Myanmar	Marshall Islands	Guinea Bissau
Guinea-Bissau	Micronesia, Federated States of	Burkina Faso
Zambia	Papua New Guinea	Pakistan
Comoros	Solomon Islands	Cote d'Ivoire
Mauritania	Sudan	North Korea
Timor-Leste	Timor-Leste	Liberia
Zimbabwe	Tuvalu	Kenya
Burkina Faso	Venezuela, RB	Angola
Ethiopia	West Bank and Gaza (territory)	Mauritania
Tajikistan	Zimbabwe	Palestine
Bangladesh		Bangladesh
Pakistan		Iran
Sierra Leone		Equatorial Guinea
Cambodia		Rwanda
Cote d'Ivoire		Zambia
Venezuela		Egypt
Solomon Islands		Togo
Djibouti		Malawi
Eswatini		Sierra Leone
Turkmenistan		Comoros
Laos		Djibouti
Guatemala		Nepal
Tanzania		Philippines

Kenya	Cambodia
Togo	Solomon Islands
Nicaragua	Madagascar
Benin	Eswatini
North Korea	Papua New Guinea
Lesotho	Timor-Leste
Gambia	Sri Lanka
West Bank and Gaza Strip	Honduras
Honduras	Gambia
Iran	Colombia

Sources: (Fund for Peace 2022; OECD 2022; The World Bank 2022)

Note: The OECD and Fund for Peace lists goes from most fragile to least fragile. Fund for Peace estimates fragility for all countries in the world (including Finland as the least fragile). I have thus included the 60 most fragile states on the list, which is the number OECD operates with. The World Bank list does state that it goes from most to least fragile. However, the top 17 countries on the list are fragile states also experiencing conflict, while the remaining 20 are states marked by institutional and social fragility.

Appendix 2: Interview guide for judges

(Translated from French original guide)

How did you become a judge?

- How would you describe your life path before (and after) becoming a judge? (magistrate school/abroad, professional experience, age, marital status, children...)
- When and why did you decide to become a judge?
- How did you end up in the position you are in today?
- Were there any challenges during this process?
- Please describe the court you are working in – level, type of court, geographical area, etc.
- What are your career goals? How does one get promoted as a judge? What are the challenges?
- Are there any differences in how men and women become judges?
- What are the main resources that help women get to the bench?
- What are the main challenges facing people who want to become judges in Haiti today? How is this for women? Was this different before?
- What was the gender balance within the court when you first entered it? How did you feel about this? How is it today?
- Are there women who belong to the court in other capacities than judicial (general services, legal services, administrative services, etc.)?
- Would you describe the court as hierarchical? How? Is this hierarchy based on gender?

What is the biggest challenge facing the Haitian justice system today?

- How is a typical day for you as a judge? What are the main challenges?
- In your daily life as a judge, what should be in place for you to be able to do your work?
- Are there any security risks associated with being a judge? Is this the case for both genders?

- How do you relate to customary authorities as a judge? Customary norms?
- What is it like working with the police, lawyers and other members of the justice system?

Are there any differences with regards to the role of men and women judges? (with respect to the handling of cases, behaviour in the courtroom, contact with court users, contact with the police, authorities, expectations from civil society groups, other areas?)

- What about informal roles? (informal spaces, decision-making processes, exchange of views between colleagues)
- Have you ever felt treated differently because of your sex? Examples? Have any of your female colleagues felt treated differently because of their sex?
- How would you describe the relationship between men and women judges in general?
- Have you ever experienced anything that has had an impact on how you reflect on your role as a judge?
- Are you a member of a (women) judges association? If so, how does this help you?
- Who do you turn to for advice and support on your career progression or professional challenges?

Does your court often handle violence against women/discrimination/harassment cases?

- What do you find particularly important when dealing with these kinds of cases?
- What do you find particularly challenging?
- Are these kinds of cases more often the responsibility of women judges?
- Would you say it is an advantage of being a woman judge when presiding in these cases? Why (not)?
- Do you think the gender of the judge has anything to say for the woman litigant/victim/plaintiff?
- Do you have any personal experiences with regards to presiding in such cases to share?
- What kind of cases do you usually work on? How are these cases assigned to each judge?
- What kind of cases are you most passionate about and why?


- Do you remember a case you presided over that you found particularly... Interesting? Challenging? That you are particularly proud of? That received much media attention?
- Can you describe the experience, and the reactions you received?
- Is there a difference in the types of cases that male and female judges are responsible for?

What is the main contribution of having women on the bench?

- Does the presence of women on the bench affect the deliberation process? In what ways?
- What do you consider your most important role as a judge?
- In your opinion, is gender inequality a problem in Haiti today?
- What can the judiciary do about this?
- Have you received any training from workshops, courses, etc.?
- Did this training include the theme of violence against women?
- Who were the organisers? What did you gain from this training?
- Do you engage in activities outside of the courtroom that in some way or another can be linked to your role as a judge? (Like activism, human rights work, awareness-raising, etc.).
- In your opinion, do we need more women judges? Why (not)? How?
- Would you describe yourself as representing other women through your work as a judge? Why and how?
- Do you consider yourself a role model?
- Do you consider yourself a feminist? Why (not)?

II

Women’s Judicial Representation in Haiti: Unintended Gains of State-Building Efforts

Marianne Tørraasen 

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Although women’s representation in Haiti is generally very low, the number of women judges has increased since the demise of authoritarianism and violent conflict in the 1990s. This case study explores why. I find that “gender-neutral” judicial reforms aimed at strengthening the judiciary have done more for women’s judicial representation than explicitly gender-targeted policies, which still lack implementation. Donor-supported reforms have introduced more merit-based and transparent appointment procedures for magistrates (judges and public prosecutors) based on competitive examinations. This has helped women circumvent the largely male power networks that previously excluded them from the judiciary. The judiciary remains understudied in the scholarship on women’s access to decision-making in fragile and conflict-affected societies; this article contributes to this emerging literature.

Keywords: Judicial representation, women’s representation, women judges, postconflict states, state building, judicial reform, judicial appointment

Women’s judicial representation in Haiti has increased, from 2% of judges in the 1990s to 12% in 2020. This study explores why. A growing literature examines the link between conflict, political openings, and women’s representation in decision-making (Tripp 2015). While most of this literature focuses on women’s access to legislatures, little

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research thoroughly explores the link between postconflict settings and women's *judicial representation*. The dynamics of access to legislatures and courts are different, not least because deputies are elected, while judges are most often selected. A relatively small but growing subfield addresses women's access to judiciaries but focuses mainly on quantitative studies of women's access to high courts or on so-called stable and institutionalized democracies in the Global North. This qualitative study of the Haitian judiciary addresses this knowledge gap and allows for a more in-depth discussion of the mechanisms affecting women's judicial representation in a fragile context and the gendered consequences of state building.

In Haiti, years of authoritarianism and conflict have contributed to weak state institutions, poverty, and corruption. In 2020, Haiti ranked as the 13th most fragile country in the world (Fund for Peace 2020).¹ Since the fall of the Duvalier dictatorship in 1986, Haiti has been stuck in a protracted and violent transition toward democracy (Faubert 2006), marked by political instability, coups, foreign intervention, natural disasters, and an inability to provide basic services to its citizens. Haiti has also undergone periods of extreme violence, most notably under the military-backed Raoul Cédras regime (1991–94), when 3,000 to 5,000 Haitians were killed (Mobekk 2016).² Several scholars thus situate Haiti within the postconflict literature, despite its not coming out of a civil war (see Buss and Gardner 2015; Donais 2012; James 2010; Kolbe 2020; Muggah 2005; Quinn 2009; Seraphin 2018). International actors have been heavily involved in state- and peace-building efforts, particularly through several United Nations (UN) peacekeeping missions, which have included millions of dollars in justice support to strengthen the judiciary and rid it of its authoritarian heritage (Cavise 2012; Mobekk 2016).

Haiti scores extremely low in terms of women's representation in decision-making bodies and lags far behind its Latin American and Caribbean neighbors. In the Haitian parliament, women make up just 3% of the lower chamber and 4% of the Senate (IPU 2020). When it comes to women's presence in the judiciary, however, recent decades

1. Fragile states typically struggle to fulfill the basic functions of the state and are characterized by weak institutions, poverty, and corruption. State fragility can be both a cause and result of violent conflict (Dupuy, Gates, and Nygård 2016).

2. Additionally, more than 50,000 tried to escape by boat to the United States, while 300,000 went into hiding inside Haiti (Quinn 2009).

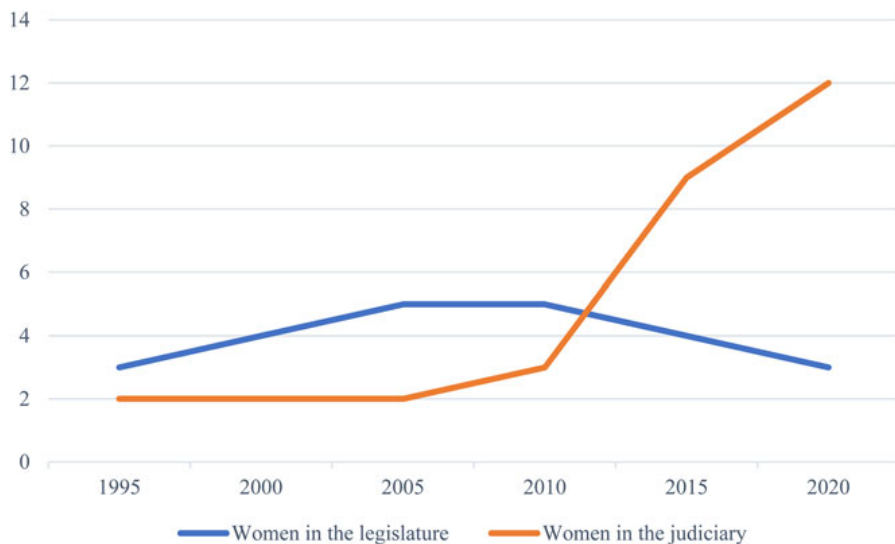


FIGURE 1. Women's judicial and legislative representation in Haiti. The vertical axis represents the percentage of women in the respective bodies. *Sources:* CSPJ (2015, 2018, 2020); UN (2014); and author's interviews.

have seen growth, from 2% in the 1990s to 12% in 2020 (see Figure 1).³ This is a moderate achievement compared with the rest of Latin America, where the average proportion of women judges is 31% (ECLAC 2020). Still, Haiti is interesting because it diverges from many other conflict-affected societies where more women have accessed both the legislative and judicial arenas (see Tripp 2015; and Appendix A in the supplementary material online). The numbers suggest that something has taken place in Haiti's judicial sector that is not (yet) mirrored in the legislative sphere. In this article, I explore this puzzle by pursuing the following research question: what can explain the increase in the number of women judges in postconflict Haiti?

Beyond the intrinsic value of having more women in key decision-making roles, gender diversity on the bench is important as it may improve legitimacy and public confidence in the judiciary (Clayton, O'Brien, and Piscopo 2019; Grossman 2012; Malleson 2003; Rackley 2013). This is especially important in fragile state settings like Haiti, where government institutions are weak and people's trust in the judiciary is low. Although the literature on the effects of a judge's gender

3. Interviews, representatives from United Nations and the CSPJ, Port-au-Prince, Haiti, May 2019.

on decision-making is largely inconclusive,⁴ a more gender-diverse judiciary may motivate female victims of violence during and after conflict — who often face trivialization and discrimination by justice actors (Jagannath 2011) — to bring their cases to court.

To explain the increase in the number of women judges in Haiti, I collected descriptive statistics and interviewed 69 key informants, including 50 Haitian magistrates (judges and public prosecutors) of both genders and at all court levels. Research was conducted during five months of fieldwork in Haiti between late 2018 and early 2020. I find that the increased number of women in the judiciary in Haiti is less an effect of explicitly women-friendly policies than a by-product of general judicial reforms, supported by international donors to create a more independent, professional, and well-functioning judiciary. Although important legislation to promote more women to decision-making bodies, including the judiciary, has been adopted in Haiti, real implementation is still lacking. I argue that the introduction of more transparent and merit-based procedures for appointment to the judiciary through competitive examinations has helped women circumvent the predominantly male power networks that previously excluded them. This shows how state building in itself can contribute to gender equality without necessarily having an explicit gender agenda.

WOMEN IN THE HAITIAN JUSTICE SYSTEM

Haiti was born out of a successful slave revolt against its French colonizers and adopted France's civil law judicial system after independence in 1804 (Romero 2012). This entails a system of *magistrates*: sitting magistrates (*magistrats du siege*) are the judges, while standing magistrates (*magistrats du parquet* or *commissaires du gouvernement*) are the public prosecutors. Education and appointment procedures are the same for judges and public prosecutors, and it is not uncommon to work as both during a career. The public prosecutor defends the interests of society and public order and has no fixed mandate, whereas the judges' mandates lasts from 3 to 10 years, depending on court level (Comparative Constitutions Project 2013). Haiti has one Supreme Court (Cour de Cassation), five appeals courts (*cours d'appel*), 18 courts

4. Scholars disagree on whether women judges are more "women-friendly" in their judgments on gender-based violence cases, and the findings are inconclusive. See Kenney (2013) for a more thorough discussion.

of first instance (*tribunaux de première instance*), and 179 peace tribunals (*tribunaux du paix*) spread across the country. There are also special courts for cases concerning land, minors, and labor (CSPJ 2018a).

Magistrates in Haiti are appointed either directly (*intégration directe*) or, since 1996, through the magistrate school (Ecole de la Magistrature, or EMA). According to law, directly appointed magistrates start their careers in the lower rungs of the court in peace tribunals or courts of first instance, which is also the norm for magistrates appointed through the EMA.⁵ The law also states that promotions and renewals of judges' mandates must go through the High Judicial Council (Conseil Supérieur du Pouvoir Judiciaire, or CSPJ) before being approved by the president (*Le Moniteur* 2007). The first woman magistrate, Ertha Pascal-Trouillot, entered the court of first instance in Port-au-Prince in 1975. In the mid-1990s, the number of women judges was a meager 2%.⁶ By 2013, the proportion had increased slightly to 5%. By 2020, the proportion had more than doubled to 12% (CSPJ 2015, 2018b; United Nations 2014). The total number of judges has varied over time because of a complex system of appointments and vetting but increased from 660 in 2013 to 867 in 2020 (CSPJ 2020). Data for public prosecutors could not be obtained for this study.

The focus of this study is women's *entry to* rather than mobility within the judiciary. It is still worth mentioning that Haiti differs from the global norm in that fewer women are found in the lower courts (10% in peace tribunals). This is likely because most peace tribunals are found in rural areas, whereas women judges — in Haiti and elsewhere — are often found in and around cities (Cook 1984b; Ibrahim 2016). A general lack of security measures in peace tribunals and more informal recruitment procedures for justices of the peace may contribute to this trend (Tøraasen, *forthcoming*). The recent drop in the number of women in peace tribunals and courts of first instance may be due to a temporary stop in the influx of women from below, as the last class from the magistrate school graduated in 2016 (see Table 2).⁷

5. Author's interviews.

6. Interviews, representatives from the CSPJ and the UN mission, May 2019 and January 2020.

7. Another explanation for the higher number of women in higher posts could be for symbolic reasons: appointing more women to these relatively more visible posts may appease international or domestic pressure for gender diversity in courts (Valdini and Shortell 2016).

THEORETICAL BACKGROUND: WOMEN'S ACCESS TO JUDICIARIES

Women are entering decision-making roles in increasing numbers around the world, and the judiciary is no exception. Women make up approximately 27% of the world's judges, although the numbers vary greatly among countries and courts (O'Neil and Domingo 2015).⁸ Knowledge of women's access to the judiciary is largely based on the Global North (see, e.g., Boigeol 1993; Kenney 2013a; Rackley 2013), especially U.S. courts (Cook 1982, 1984b; Goelzhauser 2011; Resnik 1991). Researchers also tend to focus on more prestigious courts, be it women's entry to international courts (Dawuni 2019; Dawuni and Kuenyehia 2018; Grossman 2016) or comparative studies explaining global and regional variations in the number of women in countries' highest courts (Arana Araya, Hughes, and Pérez-Liñán 2021; Arrington et al. 2021; Dawuni and Kang 2015; Dawuni and Masengu 2019; Escobar-Lemmon et al. 2021; Kang et al. 2020; Thames and Williams 2013; Valdini and Shortell 2016). Fewer studies include lower courts when explaining women's access to judiciaries beyond the Global North, with some notable exceptions (Bauer and Dawuni 2016; Bonthuys 2015; Kamau 2013; Kenney 2018; Sonnevold and Lindbekk 2017). This is understandable given the scarcity of global statistics on women's presence in lower court levels. Our understanding of the mechanisms that influence entry to the judiciary thus remains limited, amplified by the shortage of qualitative in-depth case studies from diverse contexts.

Scholars explain women's access to courts with different structural and institutional factors that often work in tandem. Improved educational possibilities in law for women increase the pool of eligible women judges (Sonnevold 2017; Williams and Thames 2008), as do changes in cultural gender norms toward leadership and family life (Duarte et al. 2014; Dawuni 2016; Ibrahim 2016). However, the number of women judges rarely reflects the number of women law graduates or practicing lawyers, leading several scholars to debunk the trickle-up argument (Cook 1984a; Grossman 2016; Kenney 2013a; Rackley 2013). Research from Africa (Bauer and Dawuni 2016) and the Muslim world (Sonnevold and Lindbekk 2017) suggests that access to legal education

8. Numbers may have changed since 2015, but as global statistics on women judges are hard to come by, this is the most recent update.

for women is a necessary but not sufficient condition for women's increased judicial representation.

Researchers also highlight the importance of judicial appointment procedures. Where appointments are based on rational and transparent criteria — such as competitive examinations — women tend to do better. Where appointments are based on career achievements, professional visibility, and “cronyism” — that is, being known to the appointer — women are disadvantaged (Schultz and Shaw 2013). The latter approach often requires access to influential and mostly male-dominated networks (Kenney 2013a; Schultz and Shaw 2013). Similar patterns can be seen in women's access to other decision-making roles (Kittilson 2006; Rothstein 2018). We know from the literature on women in politics that informality and shadowy practices in recruitment are known to benefit those already privileged — who in most systems tend to be men — while effectively excluding women (Bjarnegård 2013). The difference in appointment procedures is part of the reason why we tend to find more women in civil law countries like France (64% women judges), where entry to the judiciary is determined by examination results (Boigeol 2013), compared with common law countries like the United Kingdom (32% women judges), where recruitment is characterized by secret soundings and the “tap on the shoulder” technique (Rackley 2013). Different perceptions of judges' roles (political versus bureaucratic) in legal cultures and the accompanying prestige is another reason why there tend to be more women in civil law countries than in common law countries (Remiche 2015; Schultz and Shaw 2013).

We usually find more women judges where there are policies and practices in place to ensure a representative balance (Rackley 2013, 20). Gender quotas are on the rise, but they are still rarely used in judiciaries (Kamau 2013; Malleson 2009, 2014; Piscopo 2015). A more common approach is to rationalize the appointment criteria used by judicial appointment commissions and other gatekeepers as being more transparent and merit based (Cook 1982; Dawuni and Kang 2015; Kenney 2013b; Morton 2006). Still, even so-called merit-based selection processes may do little for women's inclusion on the bench without a commitment to increasing women's numbers (Crandall 2014; Russell and Ziegel 1991; Torres-Spelliscy, Chase, and Greenman 2010), as the meaning of merit was constructed “around the needs of certain preferred groups in a way which has unfairly advantaged them” (Malleson 2006, 136). Since the typical judge for a very long time was male, merit is not necessarily a gender-neutral concept. For the sake of clarity, when I refer

to merit-based appointment procedures in the context of Haiti, these are competitive examinations through the magistrate school.⁹

Contextual factors, such as a strong women's movement and political will among decision makers, matter for the implementation of these measures (Hoekstra, Kittilson, and Bond 2014; Htun and Weldon 2018; O'Neil and Domingo 2015; Schultz and Shaw 2013). Some studies find that as the number of women in legislatures increases, the number of women judges on higher courts also increases (Thames and Williams 2013). Dawuni and Kang (2015) find that transnational sharing may explain why some African countries appoint women to leadership positions in the judiciary. Pressure from the international community may also influence decision makers to adopt gender-friendly policies that target women's underrepresentation in decision-making (Bush 2011; Hughes, Krook, and Paxton 2015).

Institutional and social ruptures may also give rise to women in decision-making roles. With democratic openings and the demise of violent conflict, women's movements often use the opportunity to claim their rightful place in the new society and create women-friendly laws and institutions, such as gender quotas. Such efforts have been supported by international actors that have put women's representation high on the agenda over the past several decades (Tripp 2015). While most empirical research explores the link between postconflict settings and women's access to legislatures (Burnet 2012; Hughes and Tripp 2015; Muriaas and Wang 2012; Tønnessen and al-Nagar 2013; Tripp 2015); Dawuni and Kang (2015) find that the end of violent conflict, combined with a strong women's movement, may factor in the rise of women to leadership positions in African high courts. Democratic transitions in Africa have opened opportunities for women to become judges at different court levels as a result of the adoption of new, progressive constitutions and laws pertaining to women's rights (Bauer and Dawuni 2016; Kamau 2013). Emerging research finds that institutional ruptures — often linked to postconflict and fragile settings — help women advance to higher courts when changes are made to constitutional rules for appointment (Arrington et al. 2021) and when there is political will (Arana Araya, Hughes, and Pérez-Liñán 2021). Still, we know little about how conflict, institutional ruptures, and political openings may influence women's entry to the judiciary as a whole.

9. For a discussion of the meaning on merit-based appointments in the judiciary, see, e.g., Goetzhauser (2018) and Malleon (2006).

Another unexplored relationship is that between donor-supported judicial reform and women's judicial representation. The frailty of the judicial system in many postconflict and fragile states has made donor-supported judicial reform a key priority in state-building efforts (Lake 2018). A crucial goal of judicial reform is to create more robust and independent judiciaries in order to establish the rule of law (Sutil 1999, 260). One way to achieve this may be to professionalize the judiciary by strengthening merit-based appointment procedures, making judicial appointments less politicized and, by extension, judiciaries more independent. Based on what we know about the importance of merit-based appointments for women's judicial representation (Kenney 2013a; Schultz and Shaw 2013), such reforms may also improve women's access to the judiciary. Thus, there is a theoretical but largely unexplored link between state building, judicial reform, and women's judicial representation in fragile and conflict-affected contexts.

Based on these strands of literature, we can draw two hypotheses about the causes of the increase of women in the Haitian judiciary since the 1990s. With the demise of conflict and democratic openings, we can expect that (1) the introduction of women-friendly policies such as gender quotas led to an increase of women in the judiciary, or that (2) state-building efforts aimed at strengthening the judiciary transformed appointment processes to be more favorable to women, thus increasing women's judicial representation.

METHODOLOGICAL APPROACH

In addition to primary and secondary sources and descriptive statistics, this study relies on 69 in-depth and semistructured interviews conducted during five months of fieldwork in Haiti between late 2018 and early 2020. I talked to a heterogeneous sample of 50 Haitian magistrates of both genders — 32 women and 18 men — from both rural and urban jurisdictions in Haiti and at all court levels. My interviewees also vary with regard to age, family background, and how they were appointed as magistrates. Some entered the magistracy in the 1970s, while others had recently started their career. Some were from families of judges and lawyers, while others had parents who were teachers or merchants, or were even illiterate. A little over half of the interviewed were appointed through the magistrate school (EMA), and the rest through direct appointments. I also spoke to retired magistrates. To find the causes for

the increase in women's judicial representation, I asked magistrates about their professional background, how they became magistrates, and any challenges connected to appointments and their general working life.

At the time of the research, Haiti was going through one of its worst sociopolitical crises of recent decades. This made data collection particularly challenging, with roadblocks and political unrest preventing travel to large parts of the country. Consequently, most of my interviewees were based in and around the capital, Port-au-Prince. To get in touch with interviewees, I started by contacting a female judge at the Port-au-Prince appeals court and member of the *Chapitre Haïtien de l'Association Internationale de Femmes Juges*, a chapter of the International Association of Women Judges,¹⁰ who introduced me to several other magistrates. Eventually, I also received a list of all of Haiti's judges with contact information from the CSPJ. This helped me obtain a certain degree of representativeness in the selection of interviewees, as I could reach out directly to magistrates instead of relying entirely on the snowball method.

For contextual insight, I interviewed 19 other representatives from women's groups, civil society, the United Nations Mission for Justice Support in Haiti (MINUJUSTH), other international organizations, and the CSPJ, as well as journalists and academics. Although most of my interviewees agreed to having their names published, the security situation for justice actors in Haiti has taken a turn for the worse since data collection. To protect my interviewees, I have thus chosen to anonymize everyone. Most interviews were held in French, and I have translated quotations into English.

As few statistics were available online, the CSPJ provided relevant information for this study. Haiti only officially started keeping count of its judges after the creation of the CSPJ in 2012. Thus, complete historical information about the evolution of women's judicial representation in Haiti could not be obtained for this study. Additionally, the Ministry of Justice could not provide complete statistics on prosecutors. However, as the number of prosecutors usually is much smaller than the number of judges (Schultz and Shaw 2013, 7), I trust the statistics to be fairly accurate.

10. CHAIFEH is active in Haiti and provides training on gender issues to both magistrates and ordinary citizens.

FINDINGS: WHAT EXPLAINS WOMEN'S INCREASED JUDICIAL REPRESENTATION IN HAITI?

Based on the literature, I hypothesized that the increase in women in the Haitian judiciary can be explained by gender reform adopted in the wake of conflict and democratic openings. I also hypothesized that state-building efforts aimed at strengthening the judiciary transformed appointment processes to be more favorable to women, thus increasing women's judicial representation. In this section, I examine these hypotheses.

Women-Friendly Policies: Adopted but Not Implemented

Indeed, several women-friendly laws were adopted in the past several decades after pressure from domestic women's groups and international donors. After being suppressed by the Duvalier dictatorship for decades, the Haitian women's movement proliferated and pushed for the formal recognition of equality between women and men in the 1987 constitution in order to create a "socially just Haitian nation" after the fall of dictatorship (Charles 1995; Merlet 2010). In 1990, Haiti's first female supreme court judge, Ertha Pascal-Trouillot, was named provisional president and organized Haiti's first free elections, which brought leftist Catholic priest Jean-Bertrand Aristide to power, only to be overthrown in a military coup that same year. When Aristide was reinstated in 1994 with the backing of U.S. troops and the UN, he established the Ministry of Women's Affairs to promote national equality policies (Haiti Equality Collective, 2010, 5). Years of continuing political instability, social unrest, and sporadic violence followed, leading to Aristide's second ouster in 2004 and the deployment of the UN Stabilization Mission in Haiti (MINUSTAH) to restore democracy and stability and to reform Haiti's fragile institutions (Duramy 2014, 27).

In 2012, a small group of five women deputies, women's rights organizations, and international actors, including MINUSTAH, the UN Development Programme (UNDP), and International IDEA (MINUSTAH 2012; United Nations 2014), pushed for the adoption of a constitutional amendment on gender quotas. The quota amendment stipulated that "[t]he principle of a minimum 30 per cent quota for women shall apply to all levels of national life, and in particular to public services" (United Nations 2014, 19), which includes the judiciary. Other women-friendly advancements in the same period

include a Gender Equality Policy (2014–34) and a National Plan for Action (2014–20), a Gender Equity Office in Parliament (2013), an Office to Combat Violence against Women and Girls (2013), and an Interministerial Human Rights Committee (2013), mandated to assist in gender mainstreaming all state agencies (Bardall 2018).

However, the implementation of these gender reforms is still lacking. The 2012 constitutional amendment contained no implementing legislation and no sanctions for noncompliance, rendering the gender quota practically useless. The disappointment in the quota became evident in the national election of 2015, when *zero* women ended up being elected to parliament (Bardall 2018). As stated by a women's rights activist,

There was never a law for application. So, we have not benefited from this, it is not effective. It exists in the constitution, but there is no law for application. There should follow something about how one is to actually [implement] it. One doesn't know how to do it, how to respect these 30%.¹¹

My interviewees confirmed that the gender quota is not respected in the judiciary either. As stated by a former prosecutor, "We have this 30% quota law. Is it applied? No."¹² Several interviewees attributed the failing implementation of gender reform to a lack of political will and a lack of capacity among both international and national actors, on the governmental and civil society levels. According to a representative from the Ministry of Women's Affairs,

The Haitian state does not really have a gender policy. Also, ministers have neglected it . . . The Ministry of Women's Affairs does not have the means to do anything . . . There is no will to increase women's representation. They have to follow up. The actors are not motivated. Neither national nor international actors are focused enough . . . International actors talk a lot about violence against women, like "blah blah blah." They do not have focus on women's participation in public roles.¹³

Further, the catastrophic 2010 earthquake — in which three of the Haitian women's movement's most prominent leaders lost their lives — disrupted ongoing state programs and projects related to gender equality and diverted all energies to emergency assistance (United Nations 2014). The only area in which gender was addressed in the postdisaster needs

11. Interview, women's rights activist, Port-au-Prince, Haiti, November 2018.

12. Interview, female magistrate, Petion-Ville, Haiti, June 2019.

13. Interview, representative from the Ministry of Women's Affairs, Port-au-Prince, Haiti, November 2019.

assessment was in relation to gender-based violence, while leaving women “out of the equation when it comes to rebuilding the country’s judicial, administrative, legislative and democratic systems” (Haiti Equality Collective 2010, 3; Tøraasen 2020). According to activists interviewed for this study, implementing the gender quotas of 2012 and the successive gender-friendly policies has been challenging in a country still recovering from disaster. Political instability and the lack of consistency in government has further made it difficult to find dedicated allies within the state that could push for real implementation of gender reform. Previous governments have shown little interest in achieving gender equality,¹⁴ as exemplified by a cut in funding to the Ministry of Women’s Affairs from 1% to 0.3% in the 2016 state budget (Bardall 2018). Research shows that gender-friendly constitutional demands for women’s inclusion into decision-making spheres are far from self-executing (Kenney 2018). Hence, because of lack of implementation, gender-targeted reforms fall short of explaining the increase of women judges in Haiti.

Judicial Reforms as State Building: Gender Representation through Professionalization

Haitian civil society actors and international donors have initiated numerous judicial reform projects since the 1990s, with the aim to create a well-functioning and independent judiciary. Years of authoritarianism and violent conflict have left the Haitian judiciary largely dysfunctional, with widespread corruption and impunity, arbitrary arrests, prolonged detention, inhumane prison conditions, torture and summary executions, unending delays, lack of counsel, and incompetent judges (Cavise 2012). Since just 1% of the national budget is allocated to the justice system – and 11% of this is allocated to courts – international funding is crucial for judicial reforms (Berg 2013). The main donors are the United States, followed by Canada, the European Union, France, the UNDP, and the Organization of American States. Since 2004, the MINUSTAH has had a clear mandate to support judicial reform, contributing both human and financial resources to strengthen the judiciary as an institution. Together with other international donors, the UN missions provided more than US\$75 million in foreign support to the justice system between 1993 and 2010.

14. Interview, women’s rights activist, Port-au-Prince, Haiti, December 2019.

This included, among other initiatives, training of magistrates, management practices of judicial institutions, reform of outdated legal codes, rehabilitation of courts, access to justice, technical assistance and advice to the Haitian Ministry of Justice, and purging of incompetent or corrupt judges (Mobekk 2016).

Several studies have indicated the limited success of these judicial reforms, especially in terms of creating an independent and well-functioning judiciary (Berg 2013; Cavise 2012; Democracy International 2015; Mobekk 2016). However, these studies have not focused on the impact of these reforms on women's access to the judiciary. In this study, I find that judicial reforms have introduced an alternative route to the judiciary, which is more transparent and based on competitive examinations, through the creation of the magistrate school (EMA) in 1996. In the next section, I present the ways in which the tradition of direct appointments has worked against women's judicial inclusion and how the route through the EMA has helped women find a way in.

Direct Appointments and the Importance of (Male) Power Networks

The norm in Haiti is direct appointments to the judiciary (*intégration directe*). According to law, candidates for direct appointment must be law graduates with at least five years of relevant experience, who are nominated on lists by departmental and municipal assemblies, submitted to the president of the judiciary, followed by a shorter probatory internship organized by the EMA. The CSPJ is responsible for ensuring that magistrate candidates to peace tribunals, courts of first instance, and appeals courts fulfill all these conditions (*Le Moniteur* 2007).¹⁵ But in reality, the process is much more arbitrary¹⁶ and remains highly politicized. According to many of my interviewees, what really matters for appointments is who you know close to power. One female magistrate claimed that following the formal process for application was not enough. It was also crucial to make phone calls to “the right

15. Five years of experience of a “legal profession or of a post in the teaching of Law in a Faculty recognized in the territory of the Republic” or, alternatively, eight years of “professional practice in the legal, economic or social field qualifying them particularly to exercise judicial functions.” More experience is required for the higher levels of court (*Le Moniteur* 2007, 4)

16. According to my interviewees, some judges are appointed without five full years of practice, and many skip the probatory internship.

people,” or else your application would be “lying in a drawer somewhere.”¹⁷ As stated by another woman magistrate,

The constitution stipulates the process, but it is not really respected. If a lawyer is in the system with a lot of experience, he can be nominated as prosecutor or judge. But with the interference of the two other powers, the executive and legislative, one can nominate whoever as a sitting or standing magistrate.¹⁸

Several of the magistrates I talked to claimed that gatekeepers in the judiciary — who were almost always men — favored other men, even when qualifications and professional experience were equal. As stated by a woman justice of the peace, “Here, we always tend to prioritize men. I see that women have much more order and are also competent. . . . But in the legal system, men are given priority over women.”¹⁹ Several interviewees linked this to cultural norms and stereotypes about gender and leadership. And despite the past decade’s increase in women, the magistracy was still largely defined as a “profession for men.” A woman judge in the appeal’s court said the following about accessing judicial posts:

Oh, the challenges are huge! Normally, it is true that there are equal conditions, which say that to access these posts you must have so or so much [experience]. Generally, us women, even if we fill out all the conditions, it is very difficult. Very difficult for us to access these posts.²⁰

In particular, it was considered challenging for women to gain access to the judiciary through *direct appointments*. The directly appointed female magistrates in my sample confirmed the importance of political contacts: one had worked with the Ministry of Justice for years before becoming a prosecutor, another was nominated by a female local deputy, and a third said it would be challenging to become a judge if the person responsible for appointments was “not her friend.” As stated by a female former judge, “[V]ery few women generally join the judiciary [through direct appointment]. Unless it is a woman who is a good friend of a politician; you can see that this person joins the judiciary. No problem. But not many. It is rather men.”²¹ Thus, the overall dynamic of direct appointments appears to be both informal and highly gendered. A young female prosecutor stated,

17. Interview, female magistrate, Port-au-Prince, Haiti, November 2019.

18. Interview, female magistrate, Petion-Ville, Haiti, May 2019.

19. Interview, female magistrate, Port-au-Prince, Haiti, December 2019.

20. Interview, female magistrate, Port-au-Prince, Haiti, May 2019.

21. Interview, female magistrate, Port-au-Prince, Haiti, November 2019.

The executive power and the legislative power keep the judiciary in check. Men have a tendency of collaborating with their peers. I think this is the reason why so few women are high up in the magistracy. . . . So, it is often said that [laughter] the men, to collaborate, to reach their goals — so you know there's a lot of corruption out there in Haiti — the men collaborate with each other. And it would be very difficult for women to let themselves be involved in this corruption. So, this is why I think, for me, that we have not [reached the quota level] in the judiciary. One often says that for men to reach their goals, they collaborate together.²²

A male judge had similar observations about appointments, gender, and powerful networks:

The problem with politics [in judicial appointments] is that it is not based on competences. So, it's about who you are, who you know, your network. . . . It is men who dominate the networks in this country! And the place that we leave to women? Oh, to have a place as a woman in this society, it takes a lot of effort. It really takes a lot of effort.²³

Haiti is still transitioning from its authoritarian past, and democracy remains fragile.²⁴ In the absence of strong political parties and organizations, political elites have tried to ensure political power over the judicial system (Berg 2013; Fatton 2000; Mobekk 2016). Direct appointments thus offer a way for the Haitian government to maintain control over the judiciary. The absence of women from political institutions has influenced today's institutional culture, in which “the masculine ideal underpins institutional structures, practices and norms” (Mackay, Kenny, and Chappell 2010, 582). This has created largely male networks of power, where women are disadvantaged as “outsiders” and rarely have access (Schultz and Shaw 2013). In contexts like Haiti, women have less of what Bjarnegård (2013) refers to as *homosocial capital*, a form of gendered social capital that helps men profit from clientelist networks. As a result of gendered power structures and norms, the system of direct appointments has helped maintain informal discrimination against women, which might explain why in the 1990s a meager 2% of magistrates were women. It was not until judicial reform efforts in the 1990s and 2000s that appointment procedures became more merit based and transparent, notably through the magistrate school,

22. Interview, female magistrate, Petion-Ville, Haiti, May 2019.

23. Interview, male magistrate, Port-au-Prince, Haiti, December 2019.

24. Haiti currently ranks as a “hybrid regime” according to Economist Intelligence Unit's (2021) Democracy Index and as “partly free” according to Freedom House (2021).

which, I argue, was instrumental in opening up opportunities for women's access to the judiciary.

Merit-Based Appointments through the Magistrate School

The magistrate school (EMA) was envisaged in the 1987 constitution, but it was not opened until the end of the military regime and the return of President Aristide in 1996. The EMA was later forced to close down for six years because of political turmoil, but it reopened with the adoption of an important law package in 2007 that also regulated the function and career standards of magistrates and established the first independent organ overseeing the justice sector, the CSPJ. The purpose of the EMA is to train a “new breed” of more professional, competent, and independent judges and prosecutors (Berg 2013). The EMA provides 16 months of initial training for law graduates to become magistrates, as well as additional training for already practicing magistrates.

International support — from the UNDP, European Union, UN missions, Canada, France, and the United States — has been vital for both establishing and maintaining the EMA (Mobekk 2016). For instance, the teachers at the EMA still receive their salary from international donors.²⁵ During its 25 years of existence, the school has educated 256 magistrates in six classes. To enroll at the EMA, aspiring magistrates must take an entry exam. Appointments to the judiciary happen shortly after graduation, depending on available posts. The process is based on academic qualifications and examination results. The top students can choose where they will be deployed as magistrates after graduation.²⁶ Appointments through the EMA are thus based on competitive examinations, and academic achievements are rewarded rather than political contacts. Several of the women magistrates I talked to who had chosen to go through the EMA saw this as a better opportunity for people without the right acquaintances. As stated by one female justice of the peace,

I went through the magistrate school because I didn't have any political contacts. [For direct appointment] you must have contacts. It is made through contacts. You must have a thesis, then you must be lawyer, then you must have contacts. The hierarchy is made like that. Those who have no contacts like me, I still have the chance to participate through the

25. Interview, official at MINUJUSTH, Port-au-Prince, Haiti, May 2019.

26. Author's interviews, Haiti, 2018–2020.

magistrate school, so I had no need for that. That is reality. You must know people. Someone who can present you, who trust you. Those are usually nominated [directly]. So, if you are nominated directly, you owe someone something. They are doing you a favor. If you are appointed through the school, on the other hand . . . I don't know anyone.²⁷

A woman judge at the court of first instance noted that she had chosen the route through the EMA since direct appointments were “too political” for her: “You need to have what we call ‘a parent.’ That means someone to do the lobbying for you, et cetera. So, I like studying and it is much easier for me to access the magistracy [through the EMA].”²⁸ Similarly, a male judge noted that with the creation of EMA, the magistracy became more accessible to women:

There have always been some women [in the magistracy] from prominent families. But then there was [the] EMA. Outside of the school, one can be nominated by direct appointment. These appointments are most often marked by “amity.” But with the reopening of the school, the number [of women magistrates] increased a bit more . . . [W]ith [the] EMA, one encourages women to go through another route.²⁹

According to a woman judge, many women choose to go through the EMA because of the culture of law firms, where unwanted sexual advancements are part of daily life.³⁰ Direct appointments officially require several years of experience as a practicing lawyer. The EMA may thus provide a more attractive alternative for female lawyers set on becoming magistrates, without having to endure uncomfortable behavior from their male colleagues in law firms. Similar claims were made by another female judge who stated that women were sometimes met with demands for sexual favors in return for being appointed directly to the magistracy:

For a man it is easy, if he has a friend, and he is a man, it is easy for him, he will give him a job. For a woman, there must be a precondition . . . When a woman has finished her law degree, she can continue as a lawyer or integrate into the magistracy. Even if she is competent, people may say that “it takes a night” still.³¹

These stories are supported by numbers (see [Table 1](#) and [Table 2](#)). The increase in the number of women in the Haitian judiciary coincides

27. Interview, female magistrate, Pétion-Ville, Haiti, June 2019.

28. Interview, female magistrate, Port-au-Prince, Haiti, November 2019.

29. Interview, male magistrate, Croix-des-Bouquets, Haiti, December 2019.

30. Interview, female magistrate, Port-au-Prince, Haiti, June 2019.

31. Interview, female magistrate, Port-au-Prince, Haiti, December 2019.

Table 1. Women judges in Haiti

Year	1990s*	2013	2015	2018	2020
Supreme Court	—	—	10%	10%	10%
Appeals courts	—	—	15%	18%	20%
Courts of first instance	—	—	13%	18%	15%
Peace tribunals	—	—	8%	11%	10%
Total	2%	5%	9%	13%	12%

*Number based on oral accounts from CSPJ and UN officers.
Sources: CSPJ (2015, 2018, 2020); UN (2014).

Table 2. Women in the magistrate school

	Magistrate Graduates	Women Graduates	Share of Women Graduates
1st class (1997–1998)	60	7	11%
2nd class (1999–2000)	39	8	21%
3rd class (2001–2002)	29	10	35%
4th class (2010–2011)	20	3	15%
5th class (2012–2014)	40	15	38%
6th class (2014–2016)	68	34	50%

Source: Ecole de la Magistrature, 2020.

with an increase in the number of women graduates from the EMA. Since its creation, 256 magistrates have graduated from the EMA, of which 77 are women and 179 are men. The proportion of women EMA graduates increased from 11% in the first class of 1997–98 to 38% in the fifth class in 2012–14.³² The last class in 2016 applied a gender quota in its recruitment strategy (more on that later), which boosted the proportion of women graduates to 50%.

Figure 2 illustrates approximately how many of Haiti's *current* magistrates were appointed through the EMA and how many were directly appointed, divided by gender.³³ Today, 12% of magistrates are women, and 88% are men. The figure shows that 66% of all women magistrates were

32. The promotion following the 2010 earthquake had fewer women, and just 20 law graduates were selected to travel to France and receive their training at the magistrate school in Bourdeaux. These exceptional circumstances may have affected recruitment and may explain the drop in the women's share.

33. Numbers are not absolute because 1) No data exist for prosecutors, who make up an unknown proportion of EMA appointments, and 2) Some magistrates may have left the profession since graduating from EMA, and will not show up in the total. These numbers however give an indication of the gendered dynamics of the two appointment procedures.

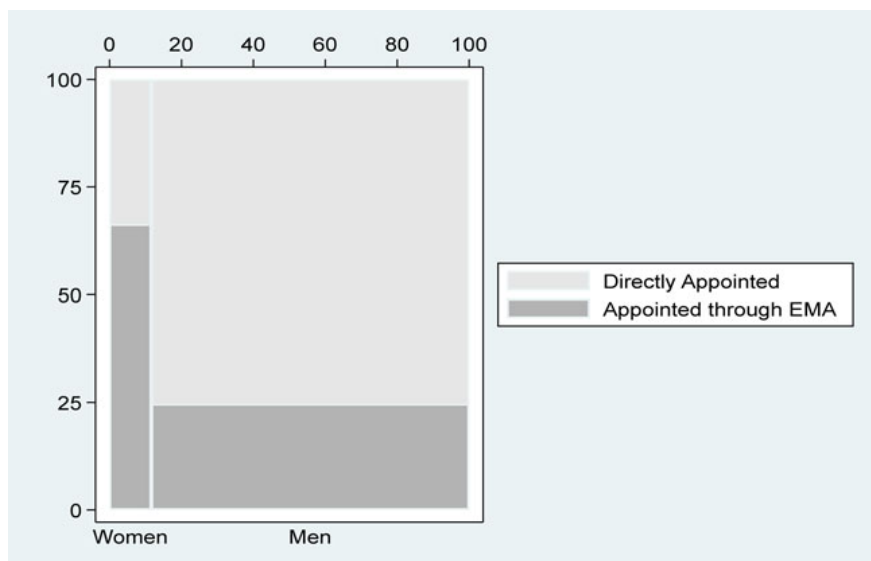


FIGURE 2. Judicial appointments by gender. The horizontal axis refers to the percentage of women versus men judges. The vertical axis refers to the percentage of appointments through the EMA versus direct appointments.

appointed through the EMA, while 34% of women were directly appointed. Just 25% of men magistrates were appointed through the EMA, whereas 75% of men were appointed directly. Hence, women still make up a minority of judges, but the majority of women judges are appointed through the EMA. Male judges, on the other hand, are overwhelmingly recruited through direct appointments.

The effects of a more transparent and merit-based appointment system of magistrates are likely exacerbated by the creation of more judicial posts. The number of posts increased from 660 in 2013 to 867 in 2020. This suggests less competition for posts and a demand for new recruits, which may have created incentives and opportunities for women to pursue a career in the judiciary. This pattern is consistent with findings from other contexts in which an expansion of the judiciary and a greater number of vacant posts are associated with increased opportunities for women to become judges (Arana Araya, Hughes, and Pérez-Liñán 2021; Crandall 2014; Escobar-Lemmon et al. 2021).

In my source material for this study, including interview data, policy documents, and literature on judicial reform in Haiti (Berg 2013; Cavise 2012; Democracy International 2015; Mobekk 2016), I found no evidence that explicit arguments of gender balance in the judiciary

motivated judicial reforms before 2014. The only area in which an explicit gender perspective was integrated was improving female court users' access to justice, with a strong focus on combating gender-based violence (Democracy International 2015). This study is not exhaustive, however, and I cannot rule out that early judicial reform was not on any level motivated by possible gains in women's judicial representation. After all, these reforms took place beginning in the mid-1990s, during a period where women's access to decision-making was high on the international agenda. Still, my evidence suggests that gender balance was not a key priority in initial reforms.

Gender balance has only very recently become an explicit goal in judicial reform efforts. The EMA applied a gender quota of 50% in its recruitment strategy for the last class that graduated in 2016. This was part of a wider gender strategy, supported by the U.S. Agency for International Development and developed by the EMA and the CSPJ, that aimed to fulfill the 30% gender quota stipulated in the constitution (CSPJ 2018b). To get enough women to apply, representatives from the EMA led awareness-raising campaigns at law faculties, encouraging women who were finishing their law degrees to enroll at the magistrate school.³⁴ This new gender strategy will likely accelerate women's future entry into the judiciary as more magistrates graduate from the EMA. The gender strategy also implies that the CSJP must take gender representation into account when approving candidates for direct appointments. How to do this in practice is not yet clear. However, I argue that the increase in the number of women in the judiciary — which started several years earlier — is better explained by a change in appointment procedures than by the quota itself.

The effects of judicial reform on women's judicial representation may have worked in tandem with more structural developments. For instance, several of my interviewees claimed that more women are now studying law in Haiti. However, it is difficult to estimate the impact of such changes because of a lack of gender-segregated national data for law graduates or practicing lawyers. Besides, several scholars have debunked the trickle-up argument, and one should not attribute too much explanatory power to changes in educational opportunities, but rather see it in relation to other developments. As for changes in gender roles, little evidence suggests that any radical change has taken place in Haiti. The almost complete absence of women from the legislative sphere

34. Interview, female magistrate, Port-au-Prince, Haiti, November 2018.

indicates that the most important changes have taken place at the institutional level in the judicial sphere.

In sum, although the introduction of women-friendly policies is often presented as the main cause of women's increased representation in conflict-affected societies (as stated in my first hypothesis), this is not the case for the Haitian judiciary. The increase in women in Haitian courts is more likely a by-product of judicial reforms aimed at creating a stronger and more independent judiciary. This supports my second hypothesis: that state-building efforts have introduced new merit-based appointment procedures through the creation of the magistrate school, which has helped women circumvent the predominantly male networks of power that previously excluded them.

CONCLUSION

Women's judicial representation is relatively overlooked by scholars studying women's representation. In particular, fragile and postconflict contexts are underexplored by scholars interested in explaining women's access to judiciaries, and the studies that do exist focus almost exclusively on women's access to higher judicial office. This study of women judges in the Haitian judiciary addresses this gap. Previous research on women's access to judiciaries urges us to look at women's participation in legal education, changes in gender roles, appointment procedures and legal traditions, gender quotas and other representative measures, and political will to explain women's access to judiciaries. By building on the literature on women's representation more broadly, including postconflict theory, we can draw several theoretical and empirical insights from this case study of the Haitian judiciary.

First, it shows how state building can contribute to gender equality, without necessarily having a pronounced gender agenda. Strengthening justice institutions by making recruitment procedures more meritocratic (through competitive examinations) and less politicized promotes not only judicial independence but also women's participation in decision-making. My findings from Haiti are consistent with previous scholarship on gender, recruitment, and meritocracy: recruitment based on transparency, objective merit-based criteria, and formal rules tends to benefit women's access to decision-making. Recruitment based on discretion, opaqueness, and informal patronage networks tends to benefit men (Bjarnegård 2013; Rothstein 2018; Schultz and Shaw 2013). For

instance, in her study of the United States, Kenney (2013a, 179) finds that more women become eligible for the judiciary when objective and transparent standards of merit are the criteria for appointment rather than cronyism and patronage. Boigeol (2018) attributes the feminization of the French magistracy to recruitment procedures based on competitive examinations. This article situates similar findings within a state-building context. Whereas the introduction of gender quotas is often presented as the main driver of women's increased representation in conflict-affected and fragile contexts, I find that more gender-neutral attempts at state building in the form of justice reform may open up opportunities for women to access the judiciary by simply rewarding academic achievements over powerful connections. The creation of the magistrate school in Haiti has helped women overcome serious barriers that more gender-targeted policy has not yet managed to do. This is an approach to gender representation that has received little attention in the literature on state building in postconflict and transitioning contexts.

Second, this study sheds light on how women manage to make inroads into some state institutions while struggling to access others (Tripp 2015). This reflects the complexity of adopting and implementing different types of reform in fragile contexts. The Haitian case shows that while political openings and institutional ruptures can create opportunities for women to mobilize for better representation (adopting gender-friendly legislation), continued state fragility can also hamper attempts to actually follow through (implementing gender-friendly legislation). I suggest that *political timing* and *donor priorities* may explain why some types of reform succeed and others fail, and, consequently, why women manage to access some state institutions (the judiciary) while remaining marginalized in others (the legislature).

When it comes to *political timing*, who decides what and when is vital in a context like Haiti, where legislative processes are known to be extremely slow (Fatton 2000) and the effectiveness of reforms to a certain degree follows the trajectory of the country's political situation and the political will of its leaders. For instance, the opening of the EMA under Aristide seemed to serve the president's initial aim of diminishing corruption and Duvalierist legacies in state institutions. The 2007 law that reestablished the EMA was adopted during a period of relative stability and political inclusion under President René Préval, who urged the international community to focus on judicial reform and institutional support. His successor, Michel Martelly, campaigned on a promise of strengthening the rule of law and implementing the 2007 law package (which

reestablished the EMA) during his first days in office (Berg 2013). These flashes of political will and relative calm may have facilitated the adoption and implementation of important justice reform measures that also turned out to boost women's access to the judiciary. As previously noted, the timing of more targeted gender reforms was not ideal. The lack of commitment by the Haitian government to follow up on its promises is illustrative of how leaders of aid-dependent countries sometimes adopt women-friendly laws promoted by the international community without a true commitment to the women's cause (Bush 2011; Hughes, Krook, and Paxton 2015). A strong women's movement with capacity to hold decision makers accountable to their promises of gender-friendly reform is thus of vital importance in such contexts, but the Haitian women's movement's efforts have been severely hampered by underfunding, a lack of unity (Charles 1995), few dedicated allies in government, human losses, and political instability.

Donor priorities matter, too. In states labeled "fragile" or "postconflict," international actors tend to prioritize the justice sector in their efforts aimed at strengthening the rule of law (Lake 2018) and to achieve stability, often to the detriment of the inclusion of underrepresented groups like women. Gendered approaches to international statebuilding tend to focus on "social" issues connected to women's special needs rather than gender power relations in state institutions (Castillejo 2013, 30). In Haiti, the attention has been overwhelmingly on combating gender-based violence. While scholars have long predicted a decoupling of law and practice in fragile state settings (Meyer et al. 1997), the absence of a strong state may also create opportunities for NGOs and international organizations to step in and assume responsibility for prioritized areas of local governance, such as the justice sector (Lake 2018). In Haiti, this has opened up space for the international community to take charge of the operation of the magistrate school and the CSPJ, which perhaps would not be possible in a stronger state. The lack of state capacity may constitute less of a problem for the implementation of judicial reform than other types of reform in Haiti because donors prioritize the justice sector.

It should be noted that judicial and gender reform are not entirely decoupled. Although meritocratic and transparent recruitment procedures have proved to be more important for increasing women's judicial representation in Haiti, gender-targeted measures like gender quotas may work within already established meritocratic systems, as witnessed during the last recruitment to the EMA. One should not

ignore the potential symbolic effects of gender reform either, even when less successful, as it puts gender balance on the agenda and sends an important message about transforming gender roles and women's rights to participate in decision-making in highly patriarchal societies. The implementation of gender quotas in the EMA's recruitment strategy shows that in the absence of government actions, quotas "on paper" can function as a guiding principle for other institutions and actors to work for increased gender balance. Such symbolic effects are potentially important, but also hard to measure, and would make an interesting topic for future research. At the same time, the use of gender quotas in judiciaries remains controversial (Malleon 2009, 2014). Some see quotas as giving preferential treatment to "unqualified" women at men's expense, despite solid evidence to the contrary from the political field (see Franceschet and Piscopo 2012; Josefsson 2014; Murray 2012; Nugent and Krook 2016; O'Brien 2012). This study shows that less explicitly gendered measures can play an important role in helping women access the judiciary in state-building contexts that avoids some of the controversies and challenges surrounding gender quotas: if only access to judicial office is based on fully transparent and formal criteria, women will find a way in. This resonates with the words of the late U.S. Supreme Court justice Ruth Bader Ginsburg: "I ask no favor for my sex. All I ask of our brethren is that they take their feet off our necks."³⁵

On a final note, it is important to acknowledge the often highly problematic role that the international community has played in Haiti. At times, international donors have undermined Haitian state institutions and created a culture of aid dependency (Schuller 2017). International peacekeepers have also exposed the people they were supposed to protect to a cholera epidemic (Katz 2016) and sexual exploitation (Peltier 2019). Still, the relative success of judicial reforms, in terms of boosting women's judicial representation, points to the important role the international community can play in helping women participate in shaping the future of Haiti by focusing on strengthening Haitian institutions. The operation of the magistrate school (EMA) — and the continued influx of women to the judiciary — relies on continued international support, as the Haitian government has shown limited will and capacity to create a more independent judiciary. Simultaneously,

35. Quoting the nineteenth-century abolitionist Sarah Grimké, Judge Ginsberg uttered these words during an oral argument before the U.S. Supreme Court in 1973 in a case opposing unequal benefits for married women in the U.S. Air Force, and then again in the 2018 documentary *RBG* (Pilkington 2018).

this makes the functioning of the EMA vulnerable to external shocks and changing donor priorities. Many Haitians and international commentators welcomed the departure of the UN peacekeeping mission in 2019 because of its problematic history and its threat to Haitian state sovereignty. Still, the dramatic downscaling of an organization that has had justice support as one of its main pillars may have serious consequences for the development of the justice sector. The domestic political context complicates things further, as the last class of magistrates of 2019 had to be postponed because of serious political unrest and widespread violence that year. This points to the complexity of women's representation in conflict-affected states that are still plagued by state fragility and how the opportunity structures found in such contexts may fluctuate dramatically.

SUPPLEMENTARY MATERIAL

To view supplementary material for this article, please visit [<https://doi.org/10.1017/S1743923X21000398>]

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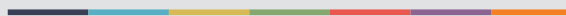
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