In response to our article, ‘Changing the Gender Landscapes in the Legal Profession,’ Phumzile Sokhela, a previous legal researcher at the Supreme Court of Appeal who is currently reading for her Masters in International and Comparative Law at Trinity College, Dublin, wrote this comment;

More focus should be placed on young women entering the legal profession for the achievement of gender transformation in the legal profession

I read the opinion piece, ‘Changing the Gender Landscapes in the Legal Profession’ posted on 4 September 2017. Although I agree with the overall object which is the advancement of women in the legal profession generally, I suggest that the focus of discussions right now, should be on the advancement of young women starting their careers in the legal profession at University level.

For transformation of the legal profession to be realized in a holistic way, it is necessary to develop young women from when they begin their legal careers, at University. A grassroots approach, focusing on University curriculum amendments, practical legal training and mentorship throughout the legal career of the young woman is needed. This will require commitment and collaboration from all stakeholders and potential stakeholders, and concerted steps to be taken by all, especially by the State. So that by the end of their University stints, young women could enter their practice areas with the necessary skills to pursue an impactful and mutually fulfilling legal career. Thus, in the long run, we would achieve ‘an open, bias-free and non-hierarchical profession which sees the removal of prejudices so that talent can flourish, unhindered by the assumptions that are often linked to the

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characteristics of race, sex, gender and sexual orientation, among others\textsuperscript{2} i.e., a transformed legal profession.

The idea of grassroots level that I posit is firstly, upon entry at University, and then throughout the legal studies of the young woman. The 2015/2016 statistics published by the Law Society of South Africa\textsuperscript{3} indicate that at University level, more women than men had enrolled for the various under graduate legal degrees during 2016. This appears to be the inclination over the past years, as more women than men graduated with the LL.B.\textsuperscript{4} This trend further filters into statistics provided in relation to the registration of articles and admission in the attorney’s profession. By and large, more women than men are recorded.\textsuperscript{5} With regards to the advocates’ profession, it appears that the intake of pupils is skewed in favour of men.\textsuperscript{6} This is also the case in respect of membership at the various bar councils; more men than women are recorded.\textsuperscript{7} It is accepted though that annually, many women enter the profession, but each year, several disappear along the way. This exodus happens for various reasons, mostly attributed to marginalization, and appears to be the case, especially among black women.\textsuperscript{8} Why does this continue to happen, and what should be done to counter this problem? Could the answer be in, what appears to be, the approach to transformation of the legal profession? Is transformation currently approached in the right manner? The short answer to this is ‘I don’t know’. The long answer ensues.

There seems to be a disjuncture between efforts to transform the judiciary and other strategic roles in the profession, and efforts to transform the legal profession

\textsuperscript{3} Available at http://www.lssa.org.za/upload/LEAD%20STATISTICS%20FOR%20LEGAL%20PROFESSION%202015_2016_2.pdf at 19, accessed on 4 October 2017.
\textsuperscript{4} Ibid, at 22 – where it is said that approximately 2600 and 1860 women and men respectively, graduated with a bachelor or laws.
\textsuperscript{5} Ibid at 25-43.
\textsuperscript{6} The pupil intake for 2015 seems to suggest that more men than women were accepted for pupilage at the bar in all 9 provinces, with totals in the region of 125 and 85 respectively. Ibid, at 46.
\textsuperscript{7} Ibid, at 47.
\textsuperscript{8} The CALS report, at 61.
generally. But in order to address the representation of the judiciary, it is important to examine the entire development of the legal careers of women.

Over the years, the focus of the various stakeholders and interest groups in transforming the legal profession has been on the advancement of women in the legal profession mainly in strategic positions. These includes attempts to further representation in top legal firms, the bar associations, academia, parastatals, to name a few, and especially in the judiciary.

This is an important and necessary objective, because historically, these roles were predominantly filled by men, overwhelmingly so, by white men. This was an untenable situation. As our democracy matures, the need to have a legal profession that represents the South African demographic becomes more urgent. Despite laudable strides, representation in the legal profession still alludes us, and will continue to do so, it seems. Top positions within the profession continue to be dominated by white men.\(^9\) Indeed, one has but to look at the leading counsel that represented litigants in some of the ‘trending’ public interest cases argued before the top courts this past year, to get a sense of the long walk ahead to achieve transformation of the profession.\(^10\)

It is not all doom and gloom. There has been considerable progress in representation, particularly within the judiciary. The momentous appointment of Madam Justice Maya to the position of President of the Supreme Court of Appeal in over 100 years of the court’s existence, was one of the most progressive.\(^11\) This appointment was extremely important for our new democracy, and will hopefully set the tone for the

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\(^9\) Ibid.
\(^{10}\) For instance, the ‘secret ballot’ case, United Democratic Movement v Speaker of the National Assembly and Others (CCT89/17) [2017] ZACC 21; 2017 (8) BCLR 1061 (CC) (22 June 2017) accessible from http://www.saflii.org/za/cases/ZACC/2017/21.pdf. There were in excess of seven women who formed part of the legal team. This is a substantial number, and is commendable. See also the legal team in the ‘CPS’ judgment: Black Sash Trust v Minister of Social Development and Others (Freedom Under Law NPC Intervening) (CCT48/17) [2017] ZACC 20; 2017 (9) BCLR 1089 (CC) (15 June 2017) at 13. And most recently, the ‘spy tapes’ matter, for which judgment has been reserved in the Supreme Court of Appeal: Jacob Gedleyihlekisa Zuma v Democratic Alliance & others - 771/2016 (GP) and Acting National Director of Public Prosecutions & another v Democratic Alliance & another 1170/2016 (GP).

\(^{11}\) Madam Justice Maya gives her views on her appointment in an inspirational interview with the SABC during Womens’ month here: https://www.youtube.com/watch?v=eD-k-5EXy3g. Accessed on 4 October 2017.
profession generally. Pursuing representation within the leadership roles in our profession is crucial to the overall transformative objectives.

However, it is important that a balance be struck between the advancement of women in key positions, and the advancement of women as they begin their careers within the profession. Or at least, that both objectives be seen in the light of the main goal i.e., the attainment of representation in all areas of the legal profession, on all levels. So that that the advancement of women in the legal profession is approached as a unitary process, from the grassroots to the higher echelons. Currently, the approach seems to be a top down one – fragmented. There seems to be no strategic focus on the careers of the young woman at the infantry of her legal career.

When a young woman begins her legal career at University, she is essentially on her own. There are very few programmes in place, such as vacation or community programmes and mentorship programmes, to assist her in finding her place within the profession at that level.

Many questions arise in this regard. For example, should Universities, in their various legal curriculums, be encouraged\footnote{By the various stakeholders, and potential stakeholders.} to offer courses focused on representation in the profession, with a view to sensitize young women of this issue early on in their careers? The University’s role in the development of young women can be categorized, broadly, as providing access, educating, and informing, amongst other things. But is there more that can or should be done by Universities? Like developing their curriculums to include courses that deal with contemporary issues faced by women in the legal profession. There is ample literature available on the subject, and institutions such as the Judges Matter, the Democratic Governance and Rights Unit (DGRU) at the University of Cape Town and CALS could play a leading role in the development of such courses for the various institutions.

Aligned to the above, is the question regarding collaboration amongst the various stakeholders and potential stakeholders. In addition, whether Universities should implement programmes geared towards the advancement of young women to prepare them for the legal profession? Are there any South African universities which
have implemented such programmes and how can these assist to weed out some of the potential future challenges women are likely to face in practice? What role can interest groups such as the Department of Justice and Constitutional Development, the various law societies and bar councils, law firms, public interest litigation organisations, private and state-owned companies, the Legal Aid Board and the National Prosecuting Authority play in collaborative efforts with the Universities? Is there a duty on stakeholders to do so? These are all questions which can guide the focus towards a more grassroots approach.

The second area concerns legal training throughout the legal careers of young women. Law firms play a substantive role in the training of young aspirant practitioners. To this end, many of the firms in South Africa offer vocational programmes focused mainly on students in their second year (and upward) of their legal degrees. Each year, during long University vacations, firms take in scores of students. And an important aspect of the programme is that it normally paves the way towards procurement of articles at the firm.\(^{13}\) The requirement for acceptance into the programme is almost exclusively merit based.\(^ {14}\) There does not appear to be any criterion aimed at giving preference to young women. This is not to say that women are not able to attain the average required. What it means however, is that the process, at face value, does not have any intentional focus on young women.\(^ {15}\) A question that arises is whether there should be such intentionality – and I would answer, yes. There is a need for law firms, and any other institutions providing similar programmes, to give preference to young women. And institutions which do not have such programmes, but nevertheless source legal professionals in their daily operations, such as banks, insurance companies, mining houses, construction companies, parastatals, shipping companies, pharmaceutical companies, should be required to do so – and must prioritize placement for young women. Including these

\(^ {13}\) See http://www.werksmans.com/graduates/what-we-offer/vacation-work-programme/: ‘Many of our graduates who attended the Vacation Work Program went on to become Candidate Attorneys with us, as it provides you with an opportunity to make a lasting impression, plus it will guarantee you an articles interview with us before you leave.’

\(^ {14}\) One of the requirements at Webber Wentzel is to ‘[m]aintain a minimum 65% academic average (academic excellence)’. See at http://www.webberwentzel.com/wwb/content/en/ww-the-vac-programme accessed on 4 October 2017.

\(^ {15}\) This may not necessarily be the case, and many law firms may indeed be able to show that more women than men are drawn into the program.
institutions (so that they too become stakeholders) in the advancement of transformation of the legal profession will serve the profession in the following way. Young women will, through the vacation programme, get experience in a field of law generally dominated by men, more so, by white men. This could then help to dispel the perceptions around women’s’ abilities in these fields.

As the largest consumer of legal services in the country, the State must take leadership of the development of young women at grass roots level. In his budget speech earlier this year, Mr Masutha pointed out that the justice department was intent on transforming State Legal Services, with two objects in mind:

‘Firstly, to enhance the efficiency and effectiveness of the legal services rendered to government at all levels and;

Secondly, to use the system to expedite transformation within the profession and building capacity for inclusive participation in the profession, especially by those who were historically marginalized, notably Black people in general and women in particular.’ (own emphasis.)

These laudable goals can be achieved by enlisting programmes, akin to vacation work, or routinely – in the form of community hours. Consider, as a guide, the clinical hours that young medical students spend in hospitals and clinics, from their first or second years of study. We already have the necessary public institutions in place, in the form of hundreds of civil and criminal courts, labour courts, land claims courts, Masters’ offices, family courts, the South African Police Service, the South African Revenue Services, correctional facilities, Legal Aid offices, the National Prosecution Authority, various government departments and other bodies such as the Public Protector’s office, the National Credit Regulator, the Competition Commission, Tribunal and Appeal Court, the Commission for Conciliation, Mediation and Arbitration (CCMA), Municipalities, State Attorney, to name a few. These institutions employ thousands of officials with industry and institutional knowledge in their specific legal fields. If these institutions were to implement programmes like vacation programmes

16 This is according to Minister Michael Masutha, and was said by him at a service delivery symposium arranged by the office of the State Attorney in 2015. See at http://www.saflii.org/za/journals/DEREBUS/2015/205.pdf, accessed on 4 October 2017.
offered by law firms, with a focus on young women, we would have young women completing their degrees having obtained essential skills during this training. This would place young women at an advantage upon entry into the profession. Naturally, for this kind of initiative to bear fruits, requires, amongst others, commitment of leaders and individuals within these institutions, and their willingness to develop young women.

Public service litigation organisations, as a stakeholder, could also play a significant role by implementing vacation programmes or in the form of community service hours. These institutions have led much of the development of the country’s constitutional jurisprudence, and has contributed to the training of women who have had impactful legal careers. Their position in the legal profession is very important, and the work they do continues to change the South African socioeconomic landscape. Vacation programmes within these institutions would go the distance in enhancing experience in, amongst others, constitutional litigation. This could enhance representation in the higher echelons of these institutions in future.

Practical training throughout the young woman’s legal training at University is thus essential and can provide the basis for an impactful legal career. Stakeholders and potential stakeholders, together with the University should collaborate to implement vacation programmes or community hours, and preference should be given to young women.

This brings me to the third important aspect, namely, mentorship. ‘Juniors and mid-level professionals do best when they have the guidance and assistance of legal practitioners who are senior to them. Beyond training (which is also critical), these types of relationships help newcomers to the profession develop their professional reputations and build confidence, networks and client-bases. Those participants who have or had mentors and sponsors noted the positive effect of these relationships on their careers.’ If the preceding statement is true of practicing legal professionals, it must be so too for young students. We all remember the teacher, either at primary

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or high school, who took an interest in our development as a learner. In many instances, those individuals shaped us and helped us choose our careers. Organisations such as the South African Chapter International Association of Women Judges have recognized the importance of mentorship for young women, and have implemented mentorship programmes for young women. Judge President Kgomo of the Northern Cape Division of the High Court has been lauded by women in the judiciary for his role in identifying candidates for mentorship, and his continued mentorship of women until their appointment on the bench. Former Public Protector, Thuli Madonsela, who had Mam Albertina Sisulu as a mentor, has spoken of mentorship as a way of ensuring that the mentee realizes their full potential, and without enduring hardships that the mentor had to endure. Young women need mentors from earlier on in their careers in order to shape their path. Woman, especially black women, seldom have a point of reference when they start their careers. Some have never even spoken with a ‘real lawyer’, and may not know what the day-to-day of the careers they wish to enter entail. Worse, some do not even know what being a law student entails, how to place a legal subject within its practical context or how to pursue their studies effectively. Yes, this may be an area for the University, but how much better a mentor to show a young woman what the drafting of a will entails? To sit down with them and talk about the process of consulting with a client. Or just to have that young woman tag along to a consultation with community members to discuss a land rights’ dispute. Incorporating mentorship into the early years of a young woman’s legal career will undoubtedly positively influence young women throughout their University careers.

I agree with Alison Tilley, we must ‘[f]ocus on going forward and invigorate young female lawyers.’ We can start by giving the word ‘lawyers’ broader application – to include students. Thus, shifting the focus to the young female student at University,


making her aware of contemporary issues facing women in the field, investing our efforts in her practical legal training and mentorship from the beginning of her legal career. She is our future judiciary. She is our future bar council member. She will one day be a commissioner of the South African Human Rights Commission.

It is incumbent on all stakeholders, potential stakeholders and the State to work with Universities to start to develop young women at the start of their careers. What is suggested is a grassroots approach, with three areas of focus – University curriculum, practical legal training and mentorship. These are all achievable, with cooperation by all stakeholders. And in this way, transformation can be achieved in a holistic manner. So that a few years from now, our young women could go on to pursue dynamic legal careers – with fewer hurdles.