

Article

“Let us Learn”: Learning about Legal Mobilization through a Case Study of Strategic Legal Action for the Rights of Young Migrants to Access Student Loans in the UK

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Abstract

Practitioners and scholars have argued that mobilizing the law can play a crucial role in translating human rights principles into transformative changes for rights holders. However, we have only a relatively embryonic understanding of the full range of mechanisms by which strategic legal action might lead to change and the conditions under which it is more or less likely to do so. Current thinking on how to assess legal mobilization has urged scholars and practitioners to pay increased attention to methodological issues. Our research builds on recent work to showcase the variety of mechanisms by which strategic legal action can translate into change. We seek to identify that factors that social justice practitioners should consider at each stage of the litigation process to improve the likelihood of success. We draw on an in-depth case study of mobilization by young migrants in the UK whose immigration status meant they could not access student loans for higher education thus violating their right to education. The analysis draws on a wide range of data including media analysis, organizational documents from the NGO supporting the young people and semi-structured interviews.

Key words: Legal mobilization; strategic litigation; right to education; migrants

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Introduction

A key area of enquiry in the relationship between human rights law on the books and human rights practices on the ground concerns the role of strategic litigation. Practitioners and scholars have argued that mobilizing the law can play a crucial role in translating human rights principles into transformative changes for rights holders.¹ However, we have only a relatively embryonic understanding of the full range of mechanisms by which strategic legal action might lead to change and the conditions under which it is more or less likely to do so. Current thinking on how to assess legal mobilization has urged scholars and practitioners to pay increased attention to methodological issues. For example, writing in this journal Donald and Mottershaw (2009) highlight important considerations in assessing the impact of strategic litigation. They conclude that:

... in *any* national context where the rule of law pertains, an understanding of the levers which effect change is a prerequisite not just for promoting changes to policy and practice based upon human rights principles derived from legal judgments but also for evaluating the impact of any given case, since they determine where to look for the evidence.

In their study, which looks across a range of examples of human rights litigation, Donald and Mottershaw (2009) focus mainly on how to assess policy change and shifts in the practices of senior and frontline institutional actors. We recognise the strengths of the multiple case study approach they adopt and understand their focus on changes (or failures to change) in public authority practices. Our research seeks to complement their approach in three key ways. First, we believe it is also important to look for the impact of litigation beyond just policy changes and the practices of frontline officers of public sector authorities. Specifically, we are interested in the impact that a litigation campaign (and associated communications activities) can have on public discourses and on extra-legal mobilizing. Second, we take a broader temporal dimension into account in our analysis in terms of the litigation

¹ The term ‘legal mobilization’ embodies contested academic terrain as there is no sharply defined or universally accepted meaning. One of the earliest and most cited formulations put forth in the political science literature is that “the law is . . . mobilized when a desire or want is translated into a demand as an assertion of rights” (Zemans 1983). In its narrowest applications, the term refers to high-profile litigation efforts for (or, arguably, against) social change. More broadly, it has been used to describe any type of process by which individual or collective actors invoke legal norms, discourse, or symbols to influence policy or behavior.

process itself. Some research on the impact of legal mobilization takes the court decision as the starting point of analysis. We argue that the impact of litigation can start to show well before a legal case is decided and suggest that it is important to consider potential impact (and barriers to impact) from the very outset of a strategic legal challenge. Third, we agree with Donald and Mottershaw (2009) that there is always a trade-off between breadth and depth of analysis. While their study looks across cases we have chosen to take an in-depth approach by focusing on one strategically selected case study and engaging with a broad range of actors and data to try to understand how success was achieved. Case studies of the micro-processes of an organization's involvement in strategic litigation outside of the U.S. are still relatively rare. This research involved unprecedented levels of access to organizational data and actors which facilitates assessment of the process and outcomes. Overall, we seek to address the following question: what factors should social justice practitioners consider at each stage of the litigation process when undertaking a legal intervention if they want to enhance the likelihood of having a positive impact?

In order to address this question this article presents an illustrative case study of the involvement of a UK NGO, Just for Kids Law, in a key legal case before the UK Supreme Court. The case concerned student finance for young people whose immigration status meant they were unable to access student loans. Student finance litigation has played an important role in changing policy on who is considered eligible for student loans in order to pursue higher education and who is not. The Supreme Court decision in *R (Tigere) v Secretary of State for Business, Innovation and Skills* [2015] is a key case in this regard. Just for Kids Law acted as a third-party intervener in the *Tigere* case and pursued a series of campaigning and communications activities over the course of this litigation. This process also played a catalytic role in the development of a new, youth-led campaign called "Let Us Learn".

We think analysis of this case is particularly illuminating for three main reasons. First, at the outset, legal success in this case was uncertain. Legal precedent on the issue seemed to suggest this was a David and Goliath-type case and the issue fell into that category of human rights issues that has historically divided the UK courts because it raised questions about entitlements to social benefits (Hart 2015). Second, it was also an unlikely victory in terms of both policy and public rhetoric.

Immigration is highly politically salient and in recent years has consistently ranked in the top five ‘most important issues’ as selected by the British public. Approximately three quarters of people in Britain currently favour reducing immigration (Blinder and Allen 2016). Furthermore, there has been an explicit government policy of creating a “hostile environment” for undocumented migrants in recent years. Children born in the UK to migrant parents or those who have lived in the country nearly all their lives were hit by a barrage of policy changes over the course of the early part of this decade, leaving many without the rights and protections they previously enjoyed (Valdez and O’Callaghan 2015). Finally, this case can help us better understand some of the dynamics around rights assertion by those whose immigration status may be precarious. This research follows most recent socio-legal scholarship in its assumption that “illegality” is not caused by undocumented migrants but rather is a product of law which is a socio-political construct (Calavita 2005; Chauvin and Garcés-Mascareñas 2014). Recent studies have highlighted the agency of migrants and their use of social networks and the key support of non-governmental organizations. Chauvin and Garcés-Mascareñas (2014), in summarizing previous research, point out that at the discursive level, migrants and their allies in civil society contest the legal identities assigned to them with counter-strategies and assertions of subjective legitimacy. This has been most visible among those in the immigrant youth movement. Research has shown that young people who were born abroad but who have grown up and been educated in Europe and North America have heightened feelings of legitimacy and hence frustration when they butt up against exclusionary political institutions (Abrego 2014; Chauvin and Garcés-Mascareñas 2014; Gleeson and Gonzales 2012). Yet existing research has heavily focused on youth immigrant advocacy in the U.S., particularly on the group called the DREAMers (after the proposed legislative act that would grant them status, the Development, Relief, and Education for Alien Minors (DREAM) Act) (Gonzales 2016). We know far less about the aims, activities, strategies and successes of other, similarly situated young people. This case study helps address this empirical lacuna.

This article is structured as follows. The next section discusses the methodology and sources of data used for the research. The following section provides some important legal and political background to the analysis. This then leads into the empirical analysis of the strategic legal

intervention focusing on different stages of the process. The final section presents the conclusions and recommendations for practitioners considering strategic legal action.

Methods

Evaluating the broad range of impacts of legal cases is notoriously difficult (Donald and Mottershaw 2009; Epp 2009; Keck 2009; Rosenberg 1991; Vanhala 2011). The impact of a strategic legal intervention on subsequent changes in policy, practice and movement-building is not always clear-cut. This research addresses the challenge by seeking to identify possible causal connections between activities/decisions on one hand and outcomes on the other. This case study of a single legal intervention involves developing a “thick description” of each stage of the litigation process to identify strategic considerations and activities, engagement an organization makes with other actors and critical junctures over the course of the process. In this project, data-gathering and analysis was focused on activities and decision-making at four different stages of the legal action: identification of a legal problem and a legal case; preparation for strategic litigation; communications and campaigning; and legacy activities. The data gathering and analysis included a wide range of sources including: the legal documents associated with the case including, for example, the Court’s judgments in earlier cases, the intervener’s statement of case and evidence; organizational data including documents detailing the planning undertaken for the case, organizational data on communications activities and outcomes, data on the number of referrals the organization received on the issue; media data collected by the researchers (with the support of a research assistant) on newspaper reporting on the *Tigere* case and on a series of earlier cases known as *Kebede* and interview data from qualitative interviews with 14 research participants. Those interviewed included those working on the issue within Just for Kids Law and the Let Us Learn movement, the various lawyers involved in the case either acting for the claimant or acting for the intervener as well as “outsiders” working in civil society organizations who work in the immigration-policy space who are aware of the case and the organization’s work. Interview quotes have been anonymized. We have sought to bring in the voices of those involved in the process as much as possible in the analysis.

The *Tigere* Case and the Socio-political Context

The *Tigere* case in the Supreme Court in 2015 concerned an appellant, Beaurish Tigere, who came to the UK lawfully from Zambia as a young child in 2001 as a dependant of her father. She overstayed with her mother and then obtained discretionary leave to remain (DLR) in 2012 and was considered highly likely to obtain indefinite leave to remain in 2018. Ms Tigere completed all of her primary and secondary education in the United Kingdom. She was head girl of her school and obtained 7 GCSEs and 3 A levels. She received a number of offers to attend university. However, she was treated as ineligible for a student loan because she did not have “settled” immigration status.² The relevant regulations had come into effect in 2011. At the time, in order to qualify for a student loan from the Government under the relevant regulations, an applicant had to be both settled in the UK and have been ordinarily resident throughout the three- year period prior to the first day of the course. Ms Tigere, who had only DLR, did not meet these criteria. She challenged the application of the criteria to a person (such as her) who had a clearly established private life right to remain in the UK. She argued that the criteria breached her right to education, under Article 2 of Protocol 1 of the European Convention on Human Rights, and unjustifiably discriminated against her in the enjoyment of that right on the grounds of her immigration status, contrary to Article 14 of the European Convention on Human Rights.

The High Court found that the blanket exclusion from eligibility for student loans based on Ms Tigere’s immigration status was a disproportionate interference with her right of access to education and unjustifiable discrimination linked to national origin. The Court of Appeal allowed the Secretary of State’s appeal on the basis that this was an area of national strategic policy related to the distribution of scarce resources, and so a broad margin of appreciation should be afforded to government policy. Ms Tigere appealed to the Supreme Court. In *R (Tigere) v Secretary of State for Business Innovation and Skills* [2015] UKSC 57 the Supreme Court held by a 3:2 majority that the blanket requirement was discriminatory.

The political situation at the time of the *Tigere* case provides some important context for the discussion that follows. The Conservative-Liberal Democrat Coalition government established in

² Those with the Right of Abode or Indefinite Leave to Enter/Remain (ILE/R) are considered 'settled'. The appellant obtained discretionary leave to remain (“DLR”) in 2012 and was considered highly likely to obtain indefinite leave to remain in 2018.

2010 resulted in some policy tensions that are at the heart of the legal case and the campaign around it. On one hand, there was an explicit aim in the 2010 coalition agreement to “attract a higher proportion of students from disadvantaged backgrounds” into higher education. On the other hand, immigration policy was becoming increasingly hostile in tone, particularly for those whose status was not settled. One facet of this was the establishment of what was initially called the “hostile environment working group” (Aitkenhead 2013). The group was established on the explicit instructions of the Prime Minister for the purpose of making Britain a hostile environment for unwanted immigrants. It involved ministers across government generating new ways to make immigrants’ lives more difficult. Proposals and policies included, for example, having landlords check the immigration status of their tenants and requiring GPs to check the status of immigrant patients before treating them or sharing data with the Home Office (Aitkenhead 2013). Much of this tension was exacerbated by the “migration crisis” which had its peak in the public consciousness around 2015.

Just for Kids Law’s Legal Intervention in *Tigere*

Identification of a Legal Problem and a Legal Case

There are a variety of ways in which legal issues and potentially strategic legal cases come across an organization’s radar. Issues and/or cases can be identified *internally*, that is through the work of an organization or through a constituency the organization is working with directly. Or issues and/or cases can be identified *externally*, that is, from outside of the organization, often through the networks an organization has.

Just for Kids Law’s identification of the *Tigere* case is an example of an issue emerging internally and a legal case emerging externally. The emergence of the legal problem and the identification of the specific legal case happened within a relatively short period of time (about a year and a half). The legal issue emerged very much in a bottom-up manner as a growing number of young people who were having problems accessing student finance because of their immigration status were contacting the organization. It became increasingly clear that there was a strong feeling of injustice among the affected population, a clear legal problem and a gap in the advocacy and financial support

that was available. A young woman named Chrisann Jarrett who had approached Just for Kids Law for help then decided to set up the Let Us Learn group to advocate on the issue.

I was an ambassador for Just for Kids Law and I started meeting other young people who were in the same situation ... we would go to meetings and there would be groups that were organizing and creating change for refugees and asylum seekers but not for young people who had actually lived here for a really long time. So not “the usual migrants” (Let Us Learn representative).

With Let Us Learn it was like “right now we’re all trying to get to university”. It was people hammering down the door to go to university. They’ve been told every day of their lives that they’re going to go (Just for Kids Law Representative).

At the same time that this frustration was brewing there was a growing recognition of the legal problem and the political challenges of tackling it.

The real problems in law and in policy change are where things are from two different areas of law or from two different government departments. And that’s where it’s hardest to make the change because no one’s actually taking responsibility for the decision making... So in the *Tigere* case, you’ve got BIS [the then Department of Business, Innovation and Skills] and the Home Office, who are applying all of their immigration rules ... (Just for Kids Law Representative).

It also means these policies aren’t a priority for anybody or they have arisen by default or by accident. That makes them harder to change or challenge. Because when you write your pre-action letter and say “Please can you re-consider?” It’s

always much harder to get anyone to reconsider when you have more than one department involved (Lawyer).

Some interviewees also noticed the political tensions playing out in the background of the *Tigere* case though this was not uniform.

At that time, Theresa May was Home Secretary, she's pretty powerful. Jo Johnson was the Universities Minister, he was very new in post ... the Home Office was very much in the background because of the immigration context (Lawyer).

From recollection, BIS were more successful in the Court of Appeal in saying "this is more a Home Office issue than our issue". And they did try to make this a Home Office issue: "we're just acting on what the Home Office is telling us to do" kind of thing ... But I don't think that was really entertained at that point in the Supreme Court (Lawyer).

The legal case came to the attention of individuals within the organization in two different ways from external sources. At the senior level, a barrister involved with the *Tigere* case in the lower courts was in conversation with one of the Joint Chief Executives at Just for Kids Law, Shauneen Lambe, about potentially intervening. At roughly the same time, similar conversations were happening between Just for Kids Law's Programmes Director, the organisation's Senior Solicitor for Community Care and Education and a Legal and Policy Officers at Coram Children's Legal Centre's Migrant Children's Project (another organisation very active in this space). The latter were aware of the case and knew about Just for Kids Law's work with young people from having sat together on the Access to Higher Education Working Group (AHEWG). The role of networks was highlighted by almost all interviewees in discussing how the case came to their attention. For example:

[A colleague at Coram’s Children’s Legal Centre] basically sent an email saying “would you guys like to intervene?” You’ve got this unique access to all these young people who are affected... (Just for Kids Law Representative).

The fact that news of the case and the possibility to intervene came to those at Just for Kids Law via two independent routes suggests individuals within the organization have solid external networks in place at all levels of the organization which increases opportunities to engage with strategic legal action.

Preparing for a Legal Intervention

In general terms, developing an organization’s legal strategy can involve several various streams of work and engagement. These include: getting to grips with the legal problem and potential solutions; considering what type of role to play in addressing a legal issue in court; considering the pros and cons of various legal arguments and identifying evidence an organization may be able to provide based on their own records or contacts. One tension is the need to balance the legal position of the client and the social change that an organisation is seeking. An advantage of acting as a third party intervener is that this issue is not in play. This section discusses the funding situation, the development of the legal strategy (including evidence gathering) and networking activity in the lead-up to the legal case.

The resources required to undertake legal action can vary significantly. In the *Tigere* case support for Just for Kids Law’s intervention came from three different types of sources. First, the organisation’s work was supported by a range of different philanthropic foundations and trusts. Some of this financial support also continued into the post-legal victory phase discussed in the next section and was also instrumental in supporting the development of Let us Learn. Second, collaboration with a university legal clinic made time and resources available. The case studies of young people in situations similar to that of the claimant that formed part of the legal intervention were collected with the support of law students from University College London as part of their clinical legal education. Several interviewees noted that the 26 case studies Just for Kids Law submitted as evidence were crucial in highlighting the impact and scale of the problem. Without that free resource the range and

volume of evidence would have been impossible to gather. Finally, legal services can be offered *pro bono* by barristers acting for an intervener or claimant. In cases where committed barristers believe there is a potentially important social issue they may offer services at reduced rate or for free.

In the *Tigere* intervention the solicitor leading the legal work at Just for Kids Law spent a good deal of time upfront getting to grips with the legal situation, going over the law, closely reading the previous judgments and considering the pros and cons of different legal positions. She also worked closely with the barristers and others within Just for Kids Law in doing this and, in particular, in thinking through the evidence that would best support the claim that this was an issue that affected a large number of young people.

I was thinking “what could we actually produce that would be useful in terms of an intervention?” And case studies seemed like an obvious thing to do ... And also doing some research into what policy papers might be out there about the benefits of higher education (Just for Kids Law Representative).

[The solicitor at Just for Kids Law] was quite clear from the start that she didn’t want it just to be about the kid with 3 A* going to Cambridge but also the kid going on to do a much less flashy course but which was nonetheless really important to their life ... We wanted to show the range of children that this affected (Lawyer).

Identifying and engaging with stakeholders was also seen as incredibly important in the lead-up to litigation. Engagement took three forms. First, there was coordination within the organisation to ensure that everyone working on the issue – whether in legal work, campaigns work, advocacy or direct support to the client group – was up-to-date on legal developments. Second, external networking was identified as crucial at this stage. Participants were in touch with civil society groups working on similar issues and ran ideas about legal arguments and evidence by them to gain an external perspective. Third, engagement also involved close working practices with barristers: this

involved identifying and working closely with a team that was able to address the range of legal issues raised in the case.

Inclusion of those with Lived Experience

Recent literature on the use of strategic litigation has emphasized the risks of disempowering those who are affected by an issue when litigating (Cummings and Rhode 2009; Gordon 2007). This case study highlights Just for Kids Laws efforts to work closely with the client base.

In the months leading up to the Supreme Court intervention a small team within Just for Kids Law used to meet on a weekly basis to coordinate activities in terms of the campaigning side of things, the support being provided to those affected in terms of access to higher education and the legal case. Several of the young people were involved in these regular meetings in the lead-up to the legal intervention. One of the tensions in pursuing strategic legal action is the distance that can sometime emerge between those with technical legal knowledge and those with lived experience of an issue. This is something that Just for Kids Law staff were all aware of and did their best to address both in the meetings and in communicating with the broader group.

I sat in on a few of them [the meetings] but then sometimes it clashed with Uni ... There were points where I was like “this is all lawyer speak and I’m just a student” ... if I didn’t understand something I’d admit it and for the most part they did try to ensure we understood (Let Us Learn Representative).

Every Monday morning I was with them in terms of strategizing. I was so new to the whole thing ... I didn’t know what they were talking about. I sat there quite cluelessly just trying to listen and take it in ... Eventually I started to understand a lot more ... I didn’t know if I could contribute ... But then they started asking me to speak about my story and how I got here in terms of my journey from Nigeria and having status, not having status, going to university (Let Us Learn Representative).

I would have liked to have even more young people involved ... for them to really have equal say in everything we do because it was their campaign ... Being in those meetings ... I could imagine that would be quite an intimidating experience to be in that situation. Don't get me wrong, there were plenty of cases where they [the young people] were invited to talk but I still wonder if there was a way that we could have been even more inclusive (Just for Kids Law Representative).

Several interviewees spoke about the hesitation among some of the young people about going forward with the legal intervention. Literature on the U.S. youth immigrant movement has referred to the idea of "coming out" about one's status and this was echoed in the research interviews in the UK context.

Some of them weren't comfortable with having their stories public (Just for Kids Law Representative).

Everyone is on a journey from being completely secret, even with their closest friends to – if they want to be – out there and open ... There was lots of young people who wanted to be anonymous, who weren't sure about it, quite a few people who said "what's in it for me?" ... People weren't contacting us to address their immigration stuff. They were contacting us to go to university. They weren't contacting us because they were annoyed at how badly they were being treated as immigrants (Just for Kids Law Representative).

Growing up you're told "shh don't tell anyone about your situation otherwise you'll be deported". But they [the staff of the organization] actually tell you "do this, do that because it's going to get you here and here". It's almost like they flipped my world from having to be quiet and not say anything about my situation to actually speak about your story, because that's how you're going to be exposed to opportunities, that's how you're going to be exposed to things happening for

you, and that's how you're going to be exposed to other young people and [play a role] empowering other young people and becoming a leader (Let Us Learn Representative).

One particular set of networking activities played an important role in the development of the Let Us Learn campaign and in the empowerment of some of the young people. Many interviewees identified the interactions between the Let Us Learn group and young people from the US-based United We Dream (or "DREAMers") movement as catalytic. Several Let Us Learn delegates and youth workers were funded to meet with the DREAMers in March 2015 in Washington D.C. Further funding also allowed several young people to participate in the United We Dream Congress in Houston in June 2016. The inspiration the young people (and those who work with them) took from that experience was palpable in the interviews.

The Dreamers are very much about not being afraid to talk about their status, so there's a lot about how to share your story, how to make people interested in what you're talking about. That brought people together, being brave ... They're all about empowering you to take ownership over your issues and turning it into something positive instead of hiding in the shadows and being afraid (Just for Kids Law Representative).

Their [the Dreamers] tactics were just so different ... more radical than movements here. We want to create change ... through policy. But they create change at the grassroots level and then they build up ... they take risks (Let Us Learn Representative).

[The young people] were reflecting on things like [the Dreamers] being Latino and Let Us Learn being quite black/African: "Is this something you can try and avoid or is it sort of natural? Are we excluding people from Pakistan and India? Are we not appealing to them?" (Just for Kids Law Representative).

Communications and Campaigning

This section focuses on the communications work and the campaigning work undertaken in collaboration with the young people. The first part focuses on the press coverage of the case. The rest focuses on decision-making around the framing of the issue, the activities and resources devoted to engaging with the media and the mobilization activity at the hearing and at the announcement of the judgment.

The data gathered through a review and content analysis of media related to coverage of the *Tigere* case shows that both the case and the affected population were portrayed sympathetically which was striking considering the UK political climate has made it very unusual for there to be coverage sympathetic to immigrants in most newspapers. The articles that were reviewed and coded are listed in Appendix 1. The articles were coded for their portrayal of the individual, the characteristics associated with the claimant and those associated with the wider, similarly-affected group as well as of the outcomes of the case. There was a good degree of press coverage, particularly around the time of the Supreme Court hearing (see figure 1).

[Figure 1 about here]

[Figure 2 about here]

Figure 2 shows that this coverage tended to focus on “the system” rather than the individual in its portrayal of the case. The main frames were about being “barred or denied”, “injustice/inequality”, and this being the “fault of the system”. There was also a good deal of discussion about the negative impact of the situation on the individual, on society and on the economy.

When the wider group of affected young people were mentioned in press coverage it was almost exclusively in a positive light in the articles surveyed (see figure 3). The group was most often referred to as “young people” and commonly referred to as “British Educated” and were commonly described as being “excluded/deprived”. The portrayal of the young people as “migrants” with the connotations that carried in UK society was fairly low down the list of descriptors.

This positive portrayal of the young people involved in the *Tigere* case is even more striking when comparing the coverage of the earlier *Kebede* cases, which dealt with the student finance issues

of two young men who had been unaccompanied minors and were looked after by their local council. *Kebede* had been picked up by the right-leaning *Daily Mail* and the portrayal of the two brothers in that case was particularly harsh. Figure 4 shows the most common descriptors of the outcome in the two cases. In the *Kebede* case there was a lot of very negative rhetoric around the cost of the education of the claimant and the burden on taxpayers. In the *Tigere* case the language was much more about the “widening of opportunities”.

One difference between *Tigere* and *Kebede* case is the investment of resources into the communication work. Just for Kids Law had a dedicated and senior communications staff member messaging and coordinating the communications work both on the ground and behind the scenes. This enabled the lawyers to focus on the legal aspects with the communications team focussing on the how the case would be covered. Many law firms do not have access to this level of communications support.

[Figure 3 about here]

[Figure 4 about here]

An important consideration for Just for Kids Law from the outset in terms of the campaigning work was the language used to discuss this population of young people. From the beginning there was a decision, where possible, to focus on the academic achievements and ambitions of these young people rather than focussing on the various complexities of their immigration status in the messaging. Some within the organisation were particularly aware of the reporting on the *Kebede* case.

If you look at the press around the *Kebede* case ... how that was reported by the Daily Mail, it was awful. Really awful ... we didn't want any person we were working with to be subjected to that and we didn't want to jeopardize the campaign by bringing that language and media attention to this (Just for Kids Law Representative)

The research identified a number of tensions between doing the legal work for a strategic intervention and the associated campaigning and communications work. Interviewees identified two key sources of

tension. The first is between the need for legal accuracy and clarity of the message being put out into the press.

Coming from a journalistic background ... you need clarity ... Shauneen [Lambe, Joint CEO of Just for Kids Law] being a lawyer would be adding in caveats [to the press releases] and then I'm running around taking them all out again. But that's actually a really creative relationship and we would invariably end up somewhere in the middle that actually worked ... (Just for Kids Law Representative).

The second tension was the goal of protecting anonymity on one hand in terms of the evidence submitted to the Court in the form of the case studies and the desire to tell a story and/or to be "out and unafraid" among some of the young people.

The young people were learning from the Dreamers at the time, people wanted to take ownership over their stories. So there was the mixture of me going "shhhh" and everyone else going "let them tell their story" (Just for Kids Law Representative).

Anonymity was a big thing for me [in developing the case studies for the legal intervention] ... I could have been a little less obstructive. There are young people who don't care about anonymity and were happy to tell their story ... Just let them if that's what they want to do ... Maybe I am taking away some of that power ... So that was a lesson for me (Just for Kids Law Representative).

On June 24th 2015 the Supreme Court heard the *Tigere* case. A number of young people involved with Let Us Learn and Just for Kids Law demonstrated outside the Supreme Court before the hearing and then attended the hearing. Campaigners had been liaising with MPs and the media in the

lead-up. This resulted in solid attendance at the demonstration both by the young people and politicians.

We have found over time that you can get the media interested in litigation because it's adversarial. Taking the government to court, there's a sense of David and Goliath about it ... in some situations litigation has been our main tool in getting the story out there (Just for Kids Law Representative).

We did a demonstration outside court before the hearing because that was an immediate tactic in the sense that we wanted to get some coverage. We had all the t-shirts, we had the mortarboards, we had the MPs coming down ... I was surprised by how many of them [the young people] actually wanted to come down to court (Just for Kids Law Representative).

The presence of young people at the hearing was viewed very positively by most interviewees.

It was phenomenal ... there was such a rush of excitement. Everyone was buzzing ... People were talking to journalists. People were talking to each other. It was an amazing day. We wanted to go in and they were trying to stop us because we'd been shouting "Let Us Learn, Let Us Learn" ... Eventually they let us in (Let Us Learn Representative).

There was some debate about whether having lots of affected people in the courtroom is a useful tactic in a legal case. The organization undertook discussions with young people to prepare them in terms of appropriate behaviour in the courtroom and their conversations with the media.

They [the young people] had never been into a court before and until somebody tells them, "this is the appropriate mode of behaviour", how would they know? And they've just come from being outside in t-shirts ... having a bit of a laugh and a joke and selfies and David Lammy [a Member of Parliament] doing his "I Have

A Dream speech” ... and then to switch from that to “right, now we’re going into court, phones off, this is where it gets serious” (Just for Kids Law Representative).

I have an instinctive discomfort with how that [having lots of people in the court] is perceived by our judges ... I think the perception is you’re trying to have an impact on the judges, rather than just through the legal issues. And that’s how it’s perceived rightly or wrongly ... it’s something to carefully manage (Lawyer).

Having affected individuals turn up and care can be helpful. It’s just another illustration of the affected group; people care so much they were turning up ... These people sitting in the room might want to go to university that September and might not be able to (Lawyer).

One important angle to this is that Ms Tigere, the litigant, was extremely publicity-averse. This created an opportunity for Just for Kids Law and Let Us Learn to take a lead on the media side with the agreement of the claimant’s legal team. This avoided one of the main tensions that can arise with a third-party intervention: ownership over the issue and the case in the media coverage and in the public consciousness. Interviewees noted that clear communication, planning and a division of labour on this front can help avoid problems down the road.

When you’re representing an individual it [the media strategy] follows from their aversion or attraction to the media. Ms. Tigere is extremely averse to publicity. I remember her being resistant about coming to hearings because she was worried about the attention. That’s quite normal. There was definitely a strategy to manage it in light of what had gone on with the *Kebede* case ... (Lawyer).

Just for Kids Law undertook extensive media preparation with the young people. This included what the organisation calls “defensive briefings” which is a brief note with a series of key points about the issue developed by anticipating what people would say to attack the campaign.

We set out the obvious things people would say to attack this campaign and we had to think about what our answers to those would be ... hone those to a series of bullet points and then circulate those to everybody. Not so that people had to stick to that at all, but people have got that as an aide-memoire (Just for Kids Law Representative).

When my head's in the litigation ... I need those bits of paper to pull me back to what the key messages are ... I clear my mind about everything else and just have those to keep me on point ... (Just for Kids Law Representative).

I asked one of the young people what her first experiences of speaking to the media were like.

Scary, very scary ... I did the worst thing ever: I read the comments at the end of it and I was just like, “Wow. People are vile, people are ignorant”. And I don't know how they managed to turn a story that I felt was my story and personal to me and not in any way victimizing myself to trying to portray me as someone I wasn't ... when I read that I called Shauneen and I was like, “I'm not doing this anymore. The campaign is great and I obviously feel passionate about it but I can't do this personal attacks stuff.” She let me cry about it. She then said this quote to me: “don't be afraid of what you are doing if what you are doing is right”. So that's Rosa Parks right there. So Shauneen led with that. I felt, “Okay. Great. I know this is right”. Obviously not everyone is going to agree with you (Let Us Learn Representative).

Just for Kids Law are reflective about this and have put strategies in place for handling it and supporting the individual.

I always tell people, “I really strongly advise you not to read the [below-the-line] comments. There’s nothing in it for you. Even the supportive comments are as ill-informed as the critical ones. So my advice is don’t bother to read them” (Just for Kids Law Representative).

There’s always a moment ... we’ve supported and encouraged somebody to do something like that and then the horrible backlash kicks in and there’s a moment for me where I think, “oh god what have I done?” I’ve exposed them to all this bile and general horribleness... And that doesn’t go away. Every single time it happens, I’m like “oh god” (Just for Kids Law Representative).

On 29 July 2015, over a month after the original hearing, the Supreme Court issued a judgment in the case. There was a good deal of work put in to manage the expectations of the young people in anticipation of a potentially negative result in the Supreme Court.

In the end, the Court ruled that it would be unlawful to refuse Ms Tigere a student loan solely on the basis that she was not permanently settled in the United Kingdom. Many of the young people and the communications team were present in the Court on the day of the judgment. One of the surprising victories of the campaign was favourable coverage in the online version of the *Daily Mail*, *the Mail Online* (though some interviewees noted that coverage in the paper version of the newspaper was less positive).

The judgment was definitely the best day. I mean, it was only five minutes but it was the most amazing five minutes. To know that maybe not all of us would be able to go to uni at that time but at least some of us ... It was bittersweet (Let Us Learn Representative).

We always knew that there was a risk that the Daily Mail, for example, might seize on the story ... And then on the day of the judgment there was a photographer and a reporter [from the Mail] and I thought I'm going to confront this head on. I ran up to him and I gave him the information sheet and I talked to him about the issue as if he was someone who was going to be really sympathetic ... I introduced him to the young people we had prepared as spokespeople, gave him my number, got his number and then just when he was going to go I said "look I understand why you've been sent here, I know the kind of story they want you to write. If there is any way you can influence and give these kids a fair run at it, I think that would be great" ... They have these pictures of these kids embracing and being really emotional over the fact that they could go to university (Just for Kids Law Representative).

The campaigning around the *Tigere* case also highlights the fact that a certain amount of serendipity is inevitable in campaigning activity.

I always say to people it's not science, we just do what we do. Sometimes it works and sometimes it doesn't ... At one point there was a film crew there and then they were pulled off to go to Calais ... really apologetic but it's just "there's only one migrant story today and it's not you". A bunch of high achieving kids protesting peacefully at the Supreme Court is not going to win out over a bunch of men in Calais trying to get on trains to the UK (Just for Kids Law Representative).

A number of interviewees stressed how demanding of time and resources the media side of the strategic legal campaign was, and the high level of specialist skills and knowledge needed, to maximise the chances of generating the level and tenor of coverage sought.

Legacy Activities

It is often difficult to define an endpoint to strategic litigation. Providing legal advice to the affected population after the judgment, undertaking follow-up litigation, lobbying government and networking and strategizing with other stakeholders may be necessary and can require an organization “being in it for the long haul”. Identifying and planning for this type of work can improve the likelihood that a court judgment is translated into changing practices on the ground. This section considers the types of issues that may arise during the “legacy phase” and what types of activities can help create the conditions by which a court victory will translate into real change for the affected population.

Interpreting the judgment

Legal cases are commonly presented as clear victories or losses but more often than not the judgments are not clear cut (Vanhala 2012). A range of issues may be addressed in a case and a group may win some and may lose others. Or the victory does not go as far as the affected group would like it to go. This was true with the *Tigere* case for many of the young people Just for Kids Law was working with.

Before *Tigere*, the issue was really clear cut and could be explained pretty simply ... At the time we presented *Tigere* as this great victory. But then after closer analysis ... for a lot of people it didn't change anything because of the three year settled status rule ... It didn't benefit as many of the Let Us Learners as we initially assumed that it would (Just for Kids Law Representative).

Obviously it was a fantastic victory. But in terms of messaging and campaigning it definitely complicated things ... in terms of building a campaign it's almost like we peaked too quickly ... Now if we approach them [journalists] about things they'll often say, “I thought this was all resolved”. That has stopped us being able to get more coverage recently because it's a much more muddied message (Just for Kids Law Representative).

Following the *Tigere* judgment an interim policy was put into place by the government department responsible for higher education. Let Us Learn did a blog offering clear guidance on the eligibility

criteria and instructions on how to apply for student finance. Yet there were extensive delays by Student Finance England in incorporating the new changes. Their online application system did not include an option for those with limited or discretionary leave to remain to apply and the advice they were providing on their helplines was often incorrect or out of date.

Because we generated so much coverage everybody came to us as this sort of guru. Initially there was no guidance from the Secretary of State ... People were desperate to know because they wanted to go to university that September (Just for Kids Law Representative).

Because the student loans company was so useless at coherently passing on the information to people, we became the point of contact for people asking the questions and trying to understand what their circumstances were. So we were effectively advising hundreds and hundreds of people on where they stood (Just for Kids Law Representative).

The first year [after the case] was a nightmare [in terms of the requests for information] ... The second year was still pretty bad. This year ... schools might know, university advisors might know. Student finance should know but they don't ... so in practice people get the wrong information (Just for Kids Law Representative).

The student loan company apparently didn't tell its employees about the change. I don't think we dealt with that very well. I think we could have kicked up a lot more fuss, a lot more quickly ... But again, you hear about it in ones or twos ... by the time you realize "no, this is systemic" ... We could have really gone to town on them (Just for Kids Law Representative).

The Secretary of State held a consultation on the creation of a new category of eligibility for student support based on long residence in the UK. The Consultation opened on 2 December 2015 for response by 30 December 2015. The deadline was extended to 8 January 2016 at the request of some respondents, including Just for Kids Law/Let Us Learn. On 15 December 2015 the Department met representatives of Just for Kids Law and Let Us Learn, Coram Children's Legal Centre, Student Action for Refugees (STAR) and UKCISA to discuss the proposals. Several interviewees noted the range of groups riding the wave of the legal victory and some political tensions between groups.

After the decision came down we knew BIS would have to put out a consultation.

That's when other NGOs started to get involved ... We had a few strategic meetings about how we were going to respond to the consultation because we wanted to be consistent in the things that we were going to concede, as a movement, and things that we weren't going to budge on (Just for Kids Law Representative).

I have observed that within those collaborations of NGOs it can become very competitive. So if you articulate where everyone should be on the spectrum – “are you happy with being good cop, are you happy with being bad cop?” That's fine as long as we communicate with each other. That's much more likely to be effective (Just for Kids Law Representative).

The government proposal out for consultation would have meant those over 24 years old would have faced the tougher criteria of having lived in the UK for 20 years in order to qualify. The Let Us Learn representatives played an important role in highlighting the problem with the proposed criterion.

So [the civil servant at BIS] was able to hear our stories ... And I said to him “if you go through with this [proposal regarding those 25 or over] you're basically putting me back about three years ... I've been waiting to go to uni since I was 18,

can you see the effect it's having on me?" And I remember breaking down, I didn't intentionally mean to it's just the way you think about your life and you had hopes and dreams and every time the goal post keeps moving ... I think that's what changed his mind. He didn't say it in that moment but you could see it and you could feel it in the room. And he really looked apologetic, like "oh shit what are we doing to these people?". And so ... they didn't put that in the rules ... So it was good to know that they actually listened and heard (Let Us Learn Representative).

After the consultation the government introduced a new 'long residency' qualification for student loans, allowing over 18s who were born abroad but have lived in the UK half their life to apply. Applicants' time in this country must include at least 'three years lawful ordinary residence', in order for them to be eligible for a loan. The Government's responses states that "we were persuaded by the argument respondents made about the marked difference in treatment between those aged 24 and those aged 25 or over."

The Coalescing of the Let Us Learn Movement

Interviewees across the board identified the catalytic role that involvement with the *Tigere* case played in the development of Let Us Learn. At the time of the *Tigere* hearing the group was in contact with about 100 people. Figure 5 shows that there was a marked spike in the number of people who got in touch immediately after the Supreme Court case. According to the Programmes Director, at last count, the organisation has supported more than 800 people.

[Figure 5 about here]

This figure does not include those young people who may have accessed advice available on the Let Us Learn web page without getting in touch with the group. In addition to quantitative growth in the number of individuals contacting the Let Us Learn team around the time of the Supreme Court case, interviewees also commented on the way in which involvement in *Tigere* deepened the young people's engagement with the issue and the campaign.

There's something hugely empowering for the young people to be able to be involved in a win. They saw that they can effect change. And that has to be a gift for life. When you ask people why they don't get involved in politics, why people are apathetic about social change, it's because they don't believe they have any way of making social change (Just for Kids Law Representative).

No matter what the outcome of the Supreme Court case ... people would have felt empowered by the fact that we were migrants, we were young and we created a platform where we could speak about our own stories and not let someone else take that away from us (Let Us Learn Representative).

For me that [the Supreme Court case] was probably the highlight of Let Us Learn ... It wasn't until the *Tigere* case that I knew this is a campaign to fight for equal rights and equal access. I started seeing what could be done ... young people being organized to fight for a cause and to say "listen it's not just one person in this situation, it's actually quite a lot of people. And if you're going to listen to her you're going to listen to all of us as well". And so that's why it felt powerful in that moment, really powerful (Let Us Learn Representative).

Conclusion

A number of key lessons have emerged based on this review of Just for Kids Law's experience with the *Tigere* case that can be applied more generally when mobilizing the law for human rights.

Organisations can really know the issues on the ground but still be hesitant about using the law for a variety of reasons: the costs, the risks and trustees or staff who are reluctant about turning to adversarial processes. While these obstacles are real they are by no means immovable and this case study offers some guidance on how to anticipate and manage some of these risks and costs.

At the initiation stage there are important lessons about the source of legal issues and legal cases. The research has shown that organizations working directly with those with lived experience of

a problem are likely to be able to identify systemic issues that can then be translated into “legal problems”. A strong external network with those in advice service roles and legal practice is likely to expand opportunities for identifying strong potential cases when they arise. This knowledge can also be deployed later in the process by highlighting the breadth of the problem and the nature of the affected population in the litigation in the form of e.g. witness statements, case studies or expert witnesses. Interviewees also observed that problems often arise when an issue spans two areas of law/policy-making. If this is the case it is important to work with solicitors and barristers who have familiarity with all of these areas. A political diagnosis of some of the power struggles (whether explicit or implicit) can help to understand some of the dynamics at play that may lead to the policy problem in the first place.

At the planning stage interviewees identified many benefits to including individuals facing an issue in decision-making about a strategic intervention. These relate to both legitimacy of acting on behalf of a group and the expertise and knowledge that comes with this relationship. Nonetheless, there are challenges to including affected individuals in strategizing including 1) issues of availability and the burden that attending many meetings can put on individuals and 2) levels of technical understanding. The literature on cause lawyers has identified the risk of lawyers hijacking an issue and having a disempowering impact on the affected population (Gordon 2007). Promoting meaningful participation in strategizing and evidence-gathering can reduce the likelihood of this form of demobilization.

Interviewees also noted that the communication strategy requires investment of both time and resources throughout the course of the legal case and well into the legacy phase. Being aware of the tone of reporting on previous cases or issues can help to guide planning. The work should also anticipate critiques and backlash and plan a way of responding to that. Training key spokespeople can also help in putting the organisation’s best foot forward. Disagreements within an organisation about how to frame an issue can be creative. Negotiation and compromise is crucial both with the message in the courtroom and outside. Anticipating the types of critiques that may come and crafting concise responses to them can help to shape the narrative.

Finally, this case study has highlighted how much what Michael McCann (2006) calls the “legacy stage” of a legal case matters. Even a victory in the Supreme Court won’t automatically translate to change on the ground. A lot of work may need to be done to achieve an effective remedy even for the individual claimant let alone for the others in similar situations. Groups should do as much as they can to prepare for a range of enquiries after a legal case, particularly when there is media attention on the organisation. Preparing for this could include: resourcing an organisation to ensure they can manage the workload in terms of advising clients and capturing information about the scale and nature of the problem and undertaking follow-on work with relevant partners, such as e.g. raising awareness among relevant communities of the result of the case and training those practitioners who may play an important role in translating the legal change into changing practices on the ground. The research also showed how other organizations may try to seize on the critical juncture a change in law offers to either broaden or narrow the legal/policy framework. It is important to be aware of what the agenda of these groups will be, what meetings they are hoping to set up with government and to coordinate in advance.

Litigation can be expensive, risky and time consuming. Yet as this research has shown those downsides can be minimized and under some circumstances strategic litigation can be very effective in driving systemic changes and transforming policy and practice and media discourse. This case study has highlighted a number of potential pathways to success in achieving legal victories, policy change and, importantly, the empowerment of those with lived experience of a systemic problem.

APPENDIX 1 CONTENT ANALYSIS

This section lists the articles included in the content analysis comparing the coverage of the *Kebede* and *Tigere* cases.

Source	Headline	Publication Date
<i>Coverage of Tigere Case</i>		
Guardian	School-leaver overturns immigration-related blanket ban on student loan	29/07/2015
Express	Zambian who lived in UK illegally WINS court battle for student loan	30/07/2015
Mail	Zambian student who came to the UK when she was six has won high court battle to be granted a student loan	29/07/2015
Independent	Court overturns ban on student loans for resident migrants	24/09/2015
Independent	Migrants legally living in UK being deprived of chance to go to university, says teachers' leader	21/06/2015
Telegraph	British-educated teens finally granted student loans to go to university	30/07/2015
Telegraph	Young, gifted and blocked: Meet the young people denied student loans in Britain	25/06/2015
Times	Migrant who became star pupil wins human rights fight for student loan	31/07/2015
Morning Star	Student Loan Access Opened to Migrants	30/07/2015
BBC	Student loans: The talented state school pupils denied funding	31/10/2014
Guardian	Pupils denied university place due to immigration status 'should get loans'	24/06/2015
Guardian	Schooled in UK but denied student loan: 'It's heartbreaking to be cheated of this'	21/06/2015
Independent	Britain's immigration hysteria is hindering the progress of our best pupils	16/08/2015
<i>Coverage of Kebede Cases</i>		
Express	Outrage as taxpayers fork out £10,000 bill to teach Ethiopian asylum seeker to fly	05/11/2013
Mail	Taxpayers' £10,000 bill to teach failed asylum seeker to fly: Ethiopian given lessons despite Government saying he must leave country next year	05/11/2013
Mail	Revealed: Asylum seeker given £10,000 flying lessons on the taxpayer lied about his age to be cared for as a child and falsely claimed his parents were dead or missing	09/11/2013
Times	Council liable for university fees	28/10/2013
Independent	Giving the other side: the story behind the asylum seeker's flying lessons that caused fuss in the 'Daily Mail'	07/11/2013
Newcastle Chronicle	Tyneside taxpayer money paying for Ethiopian flying lessons	03/11/2013
Mirror	Asylum seeker will have £10,000 flying lessons paid for by TAXPAYERS	04/11/2013

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Tables and Figures

Figure 1: Publication of Articles relating to Tigere

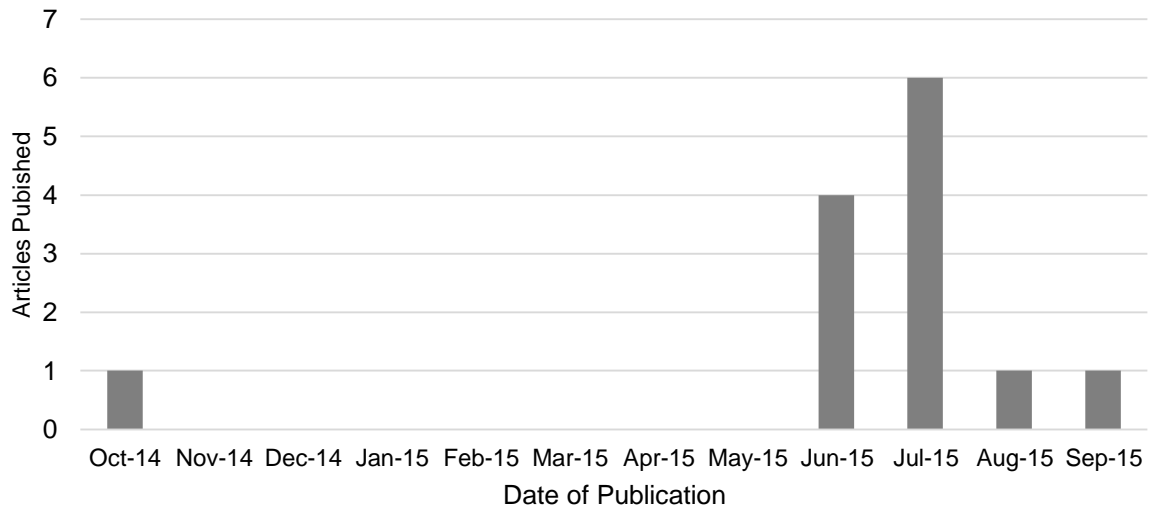


Figure 2: Framing of the Tigere Case in the Press

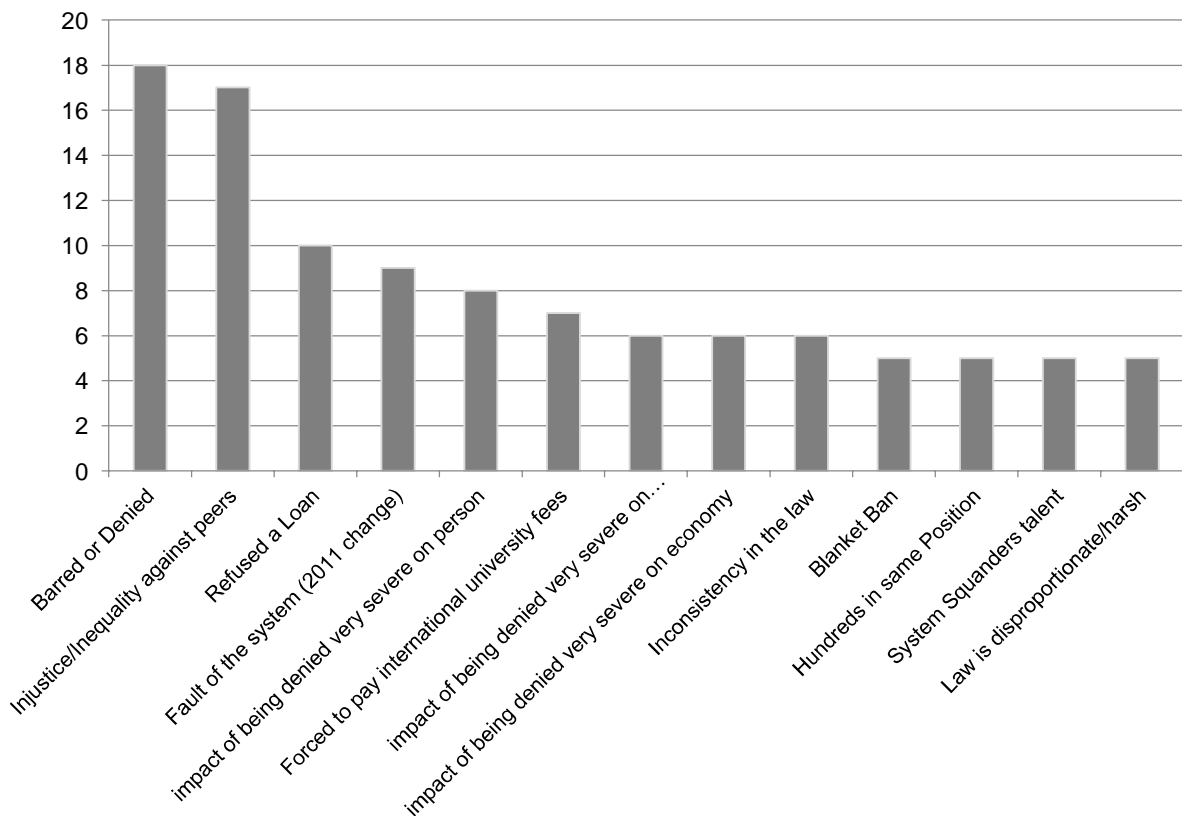


Figure 3: Framing of the Wider Group of Affected Young People in the Tigere case in the Press

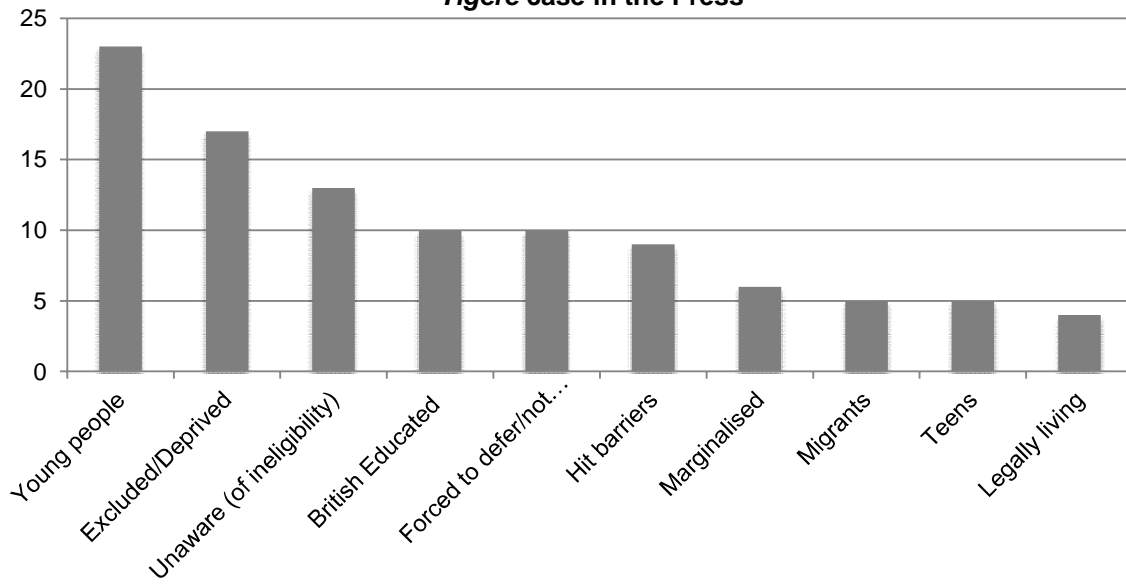


Figure 4: Framing of Case Outcome in Press Reporting on Tigere and Kebede

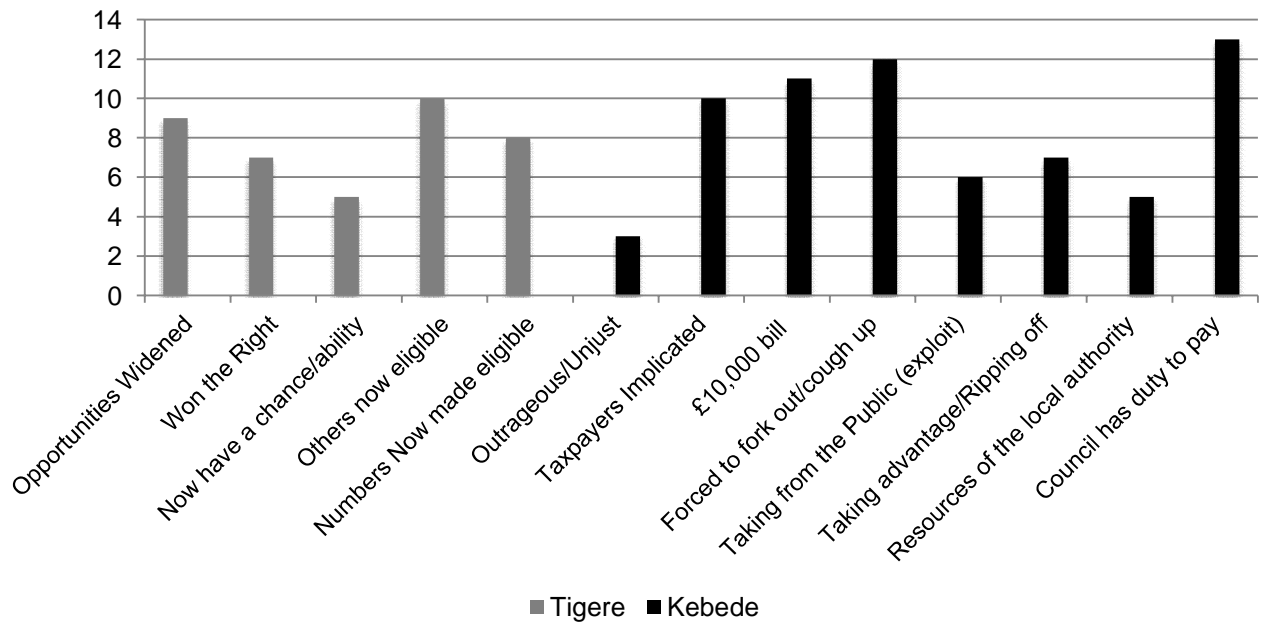


Figure 5 Number of referrals to Let us Learn/Just for Kids Law

