

A policy advocacy paper on amendments to legislation on local government in order to achieve authentic civic participation in urban councils administration and management for improved local governance and service delivery

Zimbabwe United Residents Association & Combined Harare Residents Association
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An audit of the Urban Councils Act and the Regional Town and Country Planning Act¹

The Combined Harare Residents Association (CHRA) under the auspices of Zimbabwe United Residents Association (ZURA) commissioned an audit of the Urban Councils Act [Chapter 29:15] and other related legislation, with a view to discover to what extent public participation in urban local government is entrenched within the legal system.

The results of the audit were presented and discussed at various workshops through out the country as already outlined in the foregoing chapter.

In examining the legislative framework for civic participation in municipal governance, we looked first into the constitution of the Republic of Zimbabwe and other Acts of Parliament in relation to the concepts above. The following are the key points that we note that there are no provisions **for** in the Constitution of Zimbabwe, **and** which enshrine a decentralised system of neither urban nor rural local government. We understand that the Draft Constitution of Zimbabwe, which was rejected by the majority of voters in early 2000, had recognised local government and sought to enshrine decentralisation as a principle.

Having established the sad point above, we then examined the Urban Councils Act and the Regional Town and Country Planning Act 1996, which are the two pieces of legislation that guide the day today management of urban councils and landuse planning and management respectively in urban areas in Zimbabwe.

Urban Councils Act 1995

- The Act is characterised by delegation rather than decentralisation of power and functions.
- The Act is built upon the concept of upward accountability and not local accountability. The Minister responsible for local government has a say in many issues and not the local people or civic groups.
- Related to the above, Central Government, and not the local people, retains firm control over all local authorities with powers to suspend the enabling legislation, suspend a local authority and put in an administrator as has been done in the case of City of Harare, and suspend individual councillors and prohibit them from taking active part in local politics
- We did not find any sections that give recognition and acknowledge the existence of civic groups such as residents and ratepayers associations. In Mozambique, the election of representatives into councils is not restricted to partisanship. Civic groups are allowed to nominate a candidate to stand for election. ²
- The Act provides for the direct election of councillors and mayors by the residents of a town for a term of four years. Residents are therefore free to participate in electing their representatives.

¹ In the review of the Urban Councils Act and other legislation, we have used material compiled by Silas Chekera, as well as results of a study commissioned by the Urban Councils Act and conducted by Shingirayi Mushamba and Luke Mukungatu.

² Irae Baptista Lundin, 1999, Strengthening Civic Participation in Municipal Governance in Mozambique, MDP research work.

- The Act provides that no meeting of council shall commence before half past four o'clock in the afternoon unless it is an exceptional meeting and the majority of members have agreed to it. What this has done is to exclude the participation of women in council meetings, as councils meetings take place during the time that they are expected to be preparing meals for their families at home. The tendency also is for council meetings to finish off late, normally after 7pm, which is risky for women participants relying on public transport to travel from council meetings.
- In relation to land use planning, where the council wishes to use a piece of land for parking purposes which is not zoned for such, the council is required to advertise in two issues of a newspaper for such change of use. The Act is silent on the process of public consultation with regards to planning for parking within the city. Recently, changes by Harare City Council on parking policies have been implemented without consultation of the commuting neither public nor the transport operators.
- The Act provides for the establishment of a procurement Board of between 5 and 7 members, and further allows for a technical committee to be established to assist the board.
- The Act provides for the establishment of co-operative companies and co-operative societies to carry on commercial, industrial, agricultural and other activities such as advance moneys and give other assistance. This is the kind of support that we envisage municipal council can give to CBOs and NGOs as a way of supporting their development.
- In formulating bylaws, the act requires consultation with stakeholders. This means that it is not possible for council to formulate a by-law without seeking the opinion of residents.
- With regards to rating of property, the Act provides for objections to be made by residents. There seems to be a tendency for the Act to provide mainly for objections to certain developments, but not so much for initiating development activities or making contributions. It is assumed that such contributions can be made through the elected representative, but when it comes to objections, they are better made by the aggrieved party,.
- Borrowing powers. The Act also provides for public notice, thorough the press, for an application for borrowing powers. The selected medium for disseminating information in the Act presupposes that residents are literate, and that they gain access to the press advertisements. While this is only but a minimum requirement, there is need for wider consultation on borrowing powers and such application, such that residents are able to understand the impact of the burden of borrowing in terms of additional payments that will be required to service the debt.
- The Act requires that the council bylaws and Act be made available for inspection at its offices. The assumption taken by the authors of the Act that there is a fair understanding of the English language and the legal jargon. The Act should impose a duty to make councils bylaws available in local languages for easy understanding.
- On matters of accounts, no conditions are imposed by the Act for dissemination of information to residents on collection, utilisation and balances of moneys belonging to council.

A Review of the Regional Town and Country Planning Act

The RTCP Chapter 29:12 1996 establishes every municipal council, town council, rural district council or local board as the local planning authority for the area under its jurisdiction. The Act gives power to these local planning authorities to prepare, implement, alter, repeal or replace operative master and local plans and approved town schemes. The Act is, in my view, one of the most powerful in Zimbabwe as it deals with land and improvements, regulates land use activities, including the subdivision and consolidation of such land pieces. The extent to which, therefore the act allows for civic participation in urban development is a measure of the prospects for participation in urban development in Zimbabwe.

Regional Planning Councils

The Act provides for the establishment of regional planning councils and their mandate in Part II Section 3 to 9. The Regional Planning Council is established by the President, with the composition of such a council being task of the Minister. Nowhere does the act provide for civic participation in the preparation of the regional plan. Impliedly though, during the

preparation of an inventory of the region, existing civic associations may be identified and become used as a resource. Even when the issue at hand is the environment, environmental groups are not considered an important source of information. Further, the composition of the Regional Council is left as a ministerial task, without guidelines on pressure groups or civic associations that need to be represented. In the preparation of the regional plan, civic participation only becomes an issue at the stage of putting the draft regional plan on public exhibit. Persons that the regional planning council are supposed to consult as in Section 7 [1] are those that the Minister will have directed the council to do so. One wonders then for whom the regional plan will be prepared. The provisions of the RTCP in so far as regional planning are inadequate when it comes to public consultation and civic participation in general.

The importance that women's participation has been accorded in development discourse over the years is yet to find its way in some of the important statutes governing land and development such land. The spirit of the Act is that development is gender neutral, which has been demonstrated in literature that it is not. There is need for the regional plan to be gender sensitive through the inclusion of women representatives, at least.

Master Plans

The preparation of master plans is mandated to local planning authorities as specified earlier on. Before a master plan is prepared, local planning authorities are directed to undertake a study of the planning area. It is through the conduct of the study that the first step of citizen consultation is expected to occur. Further the LPA is directed to consult neighbouring local planning authorities, but not specific interest groups, neither women.

Section 15 of the RTCP dwells on Publicity in Connection with the Master Plan directing that in formulating and determining the contents of the master plan, the LPA shall take steps as will, in its opinion, ensure that there is adequate consultation in connection with the matters proposed to be included in the master plan. This is certainly bounded consultation, first it is the LPA that determines the amount of consultation, and second the consultation is only in connection with matters that are proposed to be included in the master plan. Therefore interest groups that have matters NOT included in the master plan can be ignored during the consultation.

The master plan is then put on public exhibit at places that will have been notified. What is important to note about the RTCP is that it places emphasis on seeking the approval of the public of a draft plan, and does not place sufficient emphasis on wide consultation before the draft plan is produced. This attitude exhibited in the RTCP is based on the premise that planning is a highly technical job, which the officials must be left to proceed to do without public interference. However, the ACT requires that the public appreciate the plan and before the Minister approves it and at best to make objections. What is required therefore is to demystify the planning process. Rather than invite the public to make objections, there should be room for the public to work hand in glove with the LPA such that by the time of public exhibit of the plan, there are not many objections. The argument that citizen participation prolongs the planning process flies in the face of the fact that landuse planning is such an important activity, determine as where 'semi-'permanent development should take place. The planning process should therefore be allowed to be as long as it takes to achieve consensus on the more important decisions regarding the location of activities.

Local Plans

Almost similar steps are followed in the preparation of local plans, hence the same observations as in preparation and implementation of master plans apply.

An important serious omission of the RTCP Act is that it does not see the role of civil society or in its language the 'public', beyond preparation of the plans. There are no provisions through which the public can follow the implementation of the master or local plan, and evaluate jointly with the LPA the success or failure of one plan before the next one is prepared. The inherent assumption of the RTCP is that the LPA does not fail in implementing the plan, but instead physical plans become obsolete with time, as conditions under which they were prepared may have changed. The weakness of this system is that the LPA will

proceed to prepare another plan, without accounting to anyone on what happened with the other plan.

Development Control

Part V of the RTCP deals with development control. The main point to raise about the RTCP is that it establishes the role of LPA in controlling development, but does not specifically define the role of LPA in promoting development. This is left to a separate Act, the Urban Councils Act, [and RDC ACT] which gives a range of powers to the LPA to engage in estate development etc. The effect of this is that planners have been criticised unfairly for development control and doing nothing about promoting development.

Another identifiable weakness in the RTCP is that it is silent on mobilised representation in favour of or against certain developments. The ACT takes a narrow view in dealing with the role of pressure groups or civic associations, as it does not recognise their existence nor give weight to mass protests or demonstrations. For example, associations have made representation against the opening of some night-clubs to no avail. This does not mean that some protests or petitions are representative of sectarian and at times selfish interests.

Need to Decentralise Powers of the Minister in the Residents

We have highlighted, but may be not sufficiently, that fact that the Minister responsible for the two Acts [Minister of Local Government, Public Works and National Housing], wields tremendous power. In the Act, this power is vested in the Minister in the interest of the public. There is an inherent assumption that the civil society is weak, hence requires that protection of the Minister. This could have been true in the past, but it requires review today given the literacy levels achieved in most urban settlements. The residents of a local authority can not dissolve their council, but the Minister. There is need for review, so that the powers vested in the Minister can be ploughed back to the residents and citizens. For example, the power to dissolve a council.

The above requires detailed study of the Urban Councils Act and the Regional Town and Country Planning Act, and recommendations have to be made on the institutional structures to which the powers of the Minister have to be devolved.

Summary of Findings of the Audit

Following the audits of relevant pieces of legislation in the above section, the following observations are made.

Representative Democracy

The system of representative democracy is entrenched in our legal system. Residents in any urban local authority have a right to elect representatives into a council. The elected agents, (the councillors) will then administer the affairs of the city on behalf of the residents. Residents are therefore conferred with the right to vote at elections that are held at a four-year interval. Further, there are provisions in the Urban Councils Act that allow residents to directly participate in the decision making process of a council. This process gives the residents the right to object to certain decisions made by the council.

These mechanisms are however not fool proof. On a closer look, there are certain weaknesses in the systems that inhibit effective public participation. Below are some of the weaknesses that were identified: -

Powers of Recall

It was observed that although on paper, the residents have a right to elect agents of their choice into office, they do not have the corresponding right to recall them (vote of no confidence) should they wish to do so. As such they are often stuck until the next election with representatives who no longer represent their interests and aspirations, or worse still who abuse their offices and betray the electorate.

It was observed that the only person who, in terms of the law, could reach out to an erstwhile council is the Minister of Local Government, exercising his powers in terms of section 114 of

the Act. The exercise of these powers by the Minister, it was observed, is entirely discretionary. Further, it is restricted to a situation where the Minister has reason to believe that a particular council is guilty of some misdemeanour/misconduct.

The residents therefore advocated a system under which they would be given the power to vote out of office a council that abandons their mandate or that is involved in any corrupt practices. It was felt that this should not be left to the Minister, because the residents are closer to their councillors than the Minister and are therefore in a better place to monitor their performance and conduct.

Transparency and Accountability

The residents further advocated an Anti Corruption Commission to monitor the operations of local authorities.

Ministerial Commissions

It was further observed that, even though residents have the right to regularly elect their representatives, the Minister of Justice could subvert this right using power conferred upon him in terms of section 103K of the Local Authorities Electoral Laws Amendment Act that allows him to postpone elections. The Minister of Local Government could also subvert this right in terms of section 80 of the Act. This provision empowers him to appoint a commission to run the affairs of a local authority for a period of up to six months where there is no council in place. This applies where he would have suspended or dismissed a council using his powers as discussed earlier.

This observation was made against a background where the Minister had used his powers in terms of that section to appoint a commission to run the affairs of the City of Harare, which Commission was then kept in office way beyond its statutory tenure.

Whilst it was conceded that there may arise situations when it may be prudent for the Minister to exercise his powers in terms of the said provision, his continued re-appointments of the City of Harare Commission amounted to a denial of the residents' right to an elected council. It was therefore resolved that the legislation should make it clear that the term of office of a commission can not be extended after the initial period of six months. The commission must be there solely to facilitate the elections, and a quota system must be put in place to ensure that marginalized groups are represented.

Objections and Referenda

On the right conferred on residents to object to certain decision by a council, particularly the issue of raising of rates and other charges, a process that affects the residents most, a number of shortcomings were observed.

To start with, most residents were not aware that they have a right to make representations and objections to the raising of rates and other related charges. This was attributed to lack of civic education strategies on the part of local authorities. It was observed that this was due to the fact that there is no obligation on the part of local authorities to do so. It was proposed that local authorities should be obliged to put in place civic education programmes.

Further, it was observed that in certain instances, even though the residents were given the right to raise objections, the objections they raise are not adjudicated over by a partial body. They are instead adjudicated over by the same council against whom they are raised. It was resolved that an independent arbiter should deal with the objections.

Further proposals were made based on parallels drawn from other legal systems. Drawing examples from jurisdictions in the Western world, for instance Germany and Switzerland, it was proposed that we should introduce a referendum system where certain important civic issues and decisions are referred to a referendum for public approval.

Representation

Further, following the realization that almost all the councils were dominated by certain quarters, for example men, it was proposed that there be affirmative action in favour of

disadvantaged groups. Inspiration was drawn from countries like Uganda where there is affirmative action in favour of women, the youth and the disabled, in local authorities.

Civic Participation

We observe that for there to be an effective monitoring system of local authorities, Residents Associations should be recognized in terms of the relevant laws.

Further, we argue that in keeping with the purpose and spirit of decentralization, the affairs of local authorities should be decentralized.

Decentralisation

Closely related to the issue of decentralization was also the long-standing issue of a one-city concept. It was once again reiterated that there was need to abolish the two tier system for the levying of rates that draws a distinction between the high density and the low suburbs.

The above observations having been made, this paper shall in the next chapter suggest some key policy proposals to give effect to some of the proposals that were made. It will be underlined that some of the proposals that require further research could be subject of a separate inquiry, and may therefore be achieved in the long term. These include the decentralisation process and the recognition of residents associations. We shall focus in this discussion on what are conceived as short-term policy proposals, that is, those that it is believed can easily be realized.

An audit of the Urban Councils from the gender perspective

Introduction

The Urban Councils Act governs the administration on urban authorities in Zimbabwe. It purports to be gender-neutral instrument by its silence on gender issues. It does not refer, in any of its provisions to men and women as groups requiring different treatment in order to achieve equality between them. It presupposes that men and women are equals and therefore the provisions of the Act will apply to them as a homogenous group. This is the position with the majority of Acts and other legal instruments in Zimbabwe. They are gender blind in that they refuse to take into account the differences between men and women, which may result in unfair or unequal application of the law.

This brief seeks to outline some of the gender issues arising from the provisions of the Act and their impact on women, who are a marginalized group. The issues arose mainly from the consultative meetings held by CHRA with different stakeholders, i.e. its members, the executive NGOs working in the area of local government.

Issues on Women's Participation in Urban Councils

1. The language of the Act is not friendly in the sense that the ordinary person cannot readily understand it. This is the case with all legislation. It was recommended that CHRA should simply and translates the Act in to local languages so that it is more accessible to the public. This would be a big advantage to women, the majority of whom do not have a high literacy level. In Zimbabwe two out every three illiterate persons are women.
2. The language of the Act was viewed as not being gender sensitive because it refers to both men and women as "he".
3. Whilst the Act states that any person can be voted in as a councillor or Mayor, (as long as they meet the other general requirements), the situation on the ground was not conducive for women to effectively participate. In recent years there has been increased political violence making it difficult for women to participate. Women are also disadvantaged in that they do not have the resources to finance a campaign and therefore lose out because of this. Mechanisms must be put in place to ensure that women also participate in election processes as candidates. There were suggestions of a quota system so that a certain percentage of council seats are reserved for women. This can be between 30 and 50%. According to the SADC Declaration on gender governments must ensure that 30% of Parliamentary seats are reserved for women. The same could be recommended for councils.
4. A quota will ensure that their voices and issues are expressed to council and council acts on them. The Harare Council has only 6 women, whilst they are 46 women councillors out of the 333 Urban Councillors.
5. Due to their low numbers in urban councils it becomes difficult for women to effectively participate in council matters. This refers to the committees and other business of council. The concerns of women may fail to be articulated and defended in council.
6. The budgetary process is not gender sensitive in that there is no effort made to ensure that women input into the process. Further, in terms of allocations it is not mandatory to make specific allocations for "women things" or to ensure that the services that are used more by women are given priority. These include issues of health services; sewer services, education and provisions of child care facilities. If the council does not make provision for this it impacts more on women than men because women will then be burdened with caring for the sick, looking after the children, ensuring that the refuse from the burst sewer does not get into the house, e.t.c. This takes them off more productive work like selling the wares and vegetables to supplement the family income. There is need for council to ensure that the budget allocations take into account the different needs of men and women in the community.
7. In light of the AIDS pandemic a lot of women are burdened with home based care because Councils and central government do not make meaningful allocations to this area. In countries such as the Philippines Councils are mandated to make a certain

percentage of its allocations to “women things” the councils determine in consultation with the women what areas should be granted the resources.

8. The provision of the Act fails to provide for the general participation of citizens in council matters and decision-making. These matters include the making of bylaws, budgeting and appointment of commissioners. The fact that these processes are not participatory worsens the situations for women who are traditionally not perceived as people who should participate in the public sphere, such that where the consultation does take place women are generally excluded. The recommendation was that the Act should make consultations a must and make specific provisions for the consultation of disadvantaged groups including women. There is need for the Act to provide for citizen participation and ensure the participation of women as a constituency.
9. The appointment of Commissioners as provided for by the Act does not talk about a gender balanced Commission. Women can be excluded and there is no resource to the Act to ensure that women too participate.
10. There were other problematic areas such as the Ministerial powers, which the stakeholders were of the view that they were excessive.

Conclusion

Local government is the first port of entry into the public arena of politics and decision-making. It is crucial that women are included at this stage so that they are groomed to participate in national decision-making.

The proposed policy changes and amendments

In this chapter, we present the specific policy proposals and the necessary amendments to the urban councils act aimed at enhancing civic participation in municipal governance. Attempts have been made to carefully analyse the changes proposed in terms of institutional capacity to see their execution and implementation, the resultant outcomes and impacts, financial implications on the national and local authority fiscus and other factors. The proposed changes are numbered for easy reference.

Proposal that the Residents be conferred with the Power of Recall

Whilst the power of recall is commonplace in most democracies, it is not legally entrenched in our Zimbabwean legal system. The right by an electorate to vote out of office elected agents is not legally entrenched even in the Constitution of the country.

Before that right is recognized in municipal laws as was suggested, it is proposed that this has to start with the ***national Constitution itself***. It is therefore suggested that this issue be taken up as a constitutional issue, which unfortunately appears to be a long-term issue.

In the immediate term, it is however suggested that one could still utilize the existing provisions to achieve the same result, that is, to enable residents to hold accountable their elected representatives.

It is therefore proposed that the powers conferred upon the Minister to act as the upper guardian of the rights and interests of the residents be shared with the residents.

In terms of section 311, of the Act, the Minister has the power to appoint an investigator to investigate any affairs of a local authority and to act on the findings of any such investigation. In terms of section 114, as discussed earlier, s/he may in his/her discretion suspend (or ultimately dismiss) a council.

It is proposed that further to the ministerial discretion in invoking this provision, this section may be amended to provide for a ***public petition system***. The amendments would make it compulsory for the Minister to act once a petition by a particular percentage of the electorate is presented to him.

For administrative expediency, the mobilization of the necessary numbers for the purposes of the petition would be left to the residents concerned. The threshold requirement, it will be observed, guarantees against abuse of the system. This amendment it is argued, can easily be implemented, as it does not entail institutional changes but is merely a matter of legal reform.

Establishment of an Anti Corruption Commission

This proposal, it is suggested, must be looked at in light of amendment number 16 to the Constitution of Zimbabwe. This amendment established the Anti Corruption Commission to deal with issues of corruption both in the private and public sector.

It is submitted that this Commission is sufficient to deal with issues of corruption in local authorities. These shall include among many, the gender procedures and use of council property. What is required is for residents to lobby for the appointment of the commission that, notwithstanding the amendment, is not yet functional.

The issue here is therefore one of implementation rather than policy.

Term of office of a Commission

The Harare Commission saga, with respect, was either an issue of misinterpretation of the law or abuse of statutory powers.

The issue of the duration of the term of office of a commission has since been clarified in the case of **Samudzimu and Others vs. The Minister of Local Government and Others**.

However, for clarity if not brevity's sake it is proposed that section 80 of the Act be amended so that it is read together with Part XIXA of the Local Authorities Election Laws Amendment Act 21/97 on the conduct of local authority elections. It should be made clear that during the tenure of office of a commission, there should put in place mechanisms for the holding of elections. We need to emphasise that a commission is a stoppage measure and therefore its tenure should be strictly limited for purposes of facilitating the elections of a council.

Establishment of an Independent Arbiter

This proposal is very easy to achieve as the institution is already provided for in terms of section 312 of the Act. Section 312 provides for the appointment of an independent board to deal with objections where any provision of the Act enjoins the Minister to do so.

If any provision of the Act requires that any objections raised should be referred to arbitration, then the Minister is enjoined to appoint the board constituted in terms of section 312.

It is therefore suggested that all provisions conferring on the residents the right to raise objections, unless if they refer to other independent arbitrating bodies such as the courts, then such provisions should be amended to the effect that, **any objections raised shall be referred for independent arbitration in terms of the Act**. That way all such objections would fall for determination by the board appointed in terms of section 312.

It is proposed that these amendments be effected particularly to sections 219(7) (b) and 228 (7) (b) of the Act.

Civic Education

This appears to be more an issue for civic organizations to take up than for local authorities. Moreover, even if it were argued to be the responsibility of local authorities, this issue may be dealt with administratively.

Proposal for a Referendum System and Recognition of Residents Associations

If the proposals that have been made above were implemented, they would firmly entrench the participation of the residents in the management of their affairs to such an extent that it may not be necessary to pursue this proposal. Although this proposal is not necessarily inconsistent with the others proposed above, if the ones proposed above were adopted, this may render the proposal superfluous. It would amount, in the writer's view, to chewing more than we can swallow.

If however, the proposal were to be adopted, then it would be in the long term. The proposal envisages not just legal reform but also institutional changes with far reaching logistical and financial implications.

The same predicament bedevils the proposals on the recognition of Residents Associations.

If these were to be adopted, there would be need to amend the Act, by the introduction of enabling provisions, establishing (creating) the institutions. The amendments would have to go further to deal with such complex issues as how the systems would be synchronized with existing ones. Regulations must be put in place to deal with the modalities of the operations of the systems. For instance on the question of the recognition of Residents Associations, there would be need to define their function, composition, election system, the extent of their powers, their relationship with council, how they will be financed etc.

All these issues need to be investigated further and are in themselves subject of a separate inquiry. The starting point however is that these proposals be embraced.

Decentralization

Decentralization of services can be achieved administratively once the residents put in place an efficient, effective and accountable council. All that is required is that the council equips its district offices with the necessary equipment for them to be able to respond to the urgent needs of their localities. This can therefore be achieved, if the residents insist on an efficient, affective and transparent local authority.

Affirmative Action

This may be a medium term proposal as it entails an unprecedented re-orientation of our system of local government. It will be pointed out that we do not have the concept of affirmative action at parliamentary level and as such its introduction at local government level would be some what, novel. Given this fact, it is difficult to say whether there will be the necessary political will to do so. Charity always begins at home.

At national level this again would entail amendment of the Constitution. At local government it would entail introducing new clauses in the Act, providing for among other things, affirmative action for defined disadvantaged groups e.g. the disabled, youths and women, how they obtain office and what percentages of the seats are reserved for each particular group. This is mainly an issue of legal reform and depending on the political will, can be easier to implement, although further homework would need to be done on it.

There should therefore be introduced a quota system over and above the normal council seats.

Conclusion

As indicated earlier, the proposals herein emphasized are those that can easily be implemented. These are mainly those that require amendments to the law, for them to be effective. Their implementation therefore only requires the political will of those in authority. On the part of the residents, the challenge is for them to prevail upon those on whom the power to realize the amendments lie, so that they identify with the cause.

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