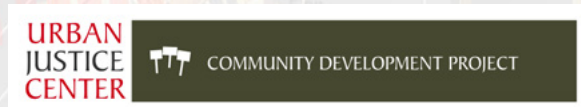
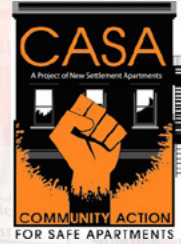


NYC TENANTS CALL FOR THE PROHIBITION OF ALL NON-RENT FEES



A report addendum to **The Burden of Fees: How Affordable Housing is Made Unaffordable**

April 2015



Code	Description	Previous Balance	Current Charges	Amount Due
LEG	LEGAL FEES	3,030.00		3,030.00
MC2	MC1 RETRO #2	445.64	44.00	489.64

1. Introduction

Rent-stabilized tenants in New York City are in jeopardy. Despite laws meant to protect tenants from high rents, landlords use a variety of tactics to seek additional profit and to harass tenants out of their homes. One widespread tactic is the use of non-rent fees. In September of 2013, a report by CASA-New Settlement and the Community Development Project at the Urban Justice Center, *The Burden of Fees: How Affordable Housing is Made Unaffordable*, demonstrated the extent to which non-rent fees increased the rent burdens of rent-stabilized tenants in housing owned by one landlord, Chestnut Holdings, in the Bronx. These fees often appeared on tenants' bills with little or no explanation, and tenants, who felt harassed or threatened, frequently paid the fees to Chestnut Holdings, even though they had a right to refuse to do so. The report also noted that the consistency and pattern of fees suggested that fees were used as a tactic to increase the financial burden on low-income tenants and contributed to pushing tenants out of their homes.

Upon the release of *The Burden of Fees*, tenant-based community organizations across the city noted that non-rent fees were prevalent among their members as well. This led to the foundation of the Fees are Fraud Coalition and the expansion of our initial findings into a citywide study, resulting in this report addendum. Our expanded research is based on more than 500 surveys, nearly 90 rent bills, and an analysis of nearly 50 fee-related overcharge complaints filed with HCR-Homes and Community Renewal's Office of Rent Administration.

Through this extensive research **we find that the practice of charging non-rent fees is not exclusive to one bad-acting landlord in one borough, but rather a widespread problem impacting rent stabilized tenants across New York City.**

Tenants are being charged and are paying a variety of fees that are often confusing and unaffordable. While some of the fees have been made legal under current HCR policy, we know through our organizing experience and the process of talking to hundreds of tenants that many fees are unwarranted and that HCR's regulations are ambiguous and not enforced.¹ Many tenants are paying these fees because they feel pressured by their landlords, they are unaware of their rights and fear eviction or the fees are listed on their bills with no clear justification. The price of fees significantly increases the rent burden of low income tenants.

¹ A note on the legality of fees: While we cannot accurately assess the legality of a given fee through tenant self-report on a survey, we have noted through our organizing experience and discussion with tenants that fees are often added to rent bills illegally (such as a late fee for a tenant who is current on her rent, or a new washing machine fee for a tenant who has had the appliance for years). The confusing nature of fees, landlord harassment, and insufficient enforcement of existing law means that tenants are charged and pay these illegal fees. The analysis of tenant overcharge complaints included in this memo (pages 7-8) supports this knowledge, providing a snapshot of tenants who have been erroneously charged non-rent fees.

Our citywide research shows:

- **Fees are pervasive.**
Nearly two-thirds of surveyed tenants (64%) have been charged at least one kind of non-rent fee.
- **Fees have a real economic impact on tenants.**
Of those who had been charged a fee, most (60%) reported having paid a fee. The average monthly rent amount was \$1055.53; the average tenant had \$518.99 in fees— nearly half the average rent.
- **Fees are often unclear and hard to understand.**
Our organizing experience and analysis of rent bills show that many fees are not clearly labeled or explained, and tenants are not sufficiently informed about their rights.
- **When tenants challenge the legality of fees they are often successful.**
Of the cases that were reviewed for this study and have been decided, 80% of tenants have prevailed. These tenants have been awarded rent credits, treble damages, and money taken off of rent bills.
- **Filing overcharge complaints is not the solution.**
Many tenants are not aware that they are being overcharged or don't know that they have the right to file an overcharge complaint with HCR. In addition, the mechanism to challenge fees—filing an overcharge complaint—is time and resource intensive and not a viable option for many tenants.

These findings are particularly important in this current political moment. In the midst of a housing crisis and as the de Blasio administration looks to prioritize the creation of affordable housing, it is critical that we implement measures to preserve the affordable housing we already have. The non-rent fees that burden tenants must also be recognized and addressed. Given the widespread burden of fees and the risk they pose to the stability of rent-stabilized tenants, we call on HCR to do the following:

- **Prohibit landlords from charging non-rent related fees to tenants;**
- **Establish requirements for landlords to justify and bill separately for late or legal fees;**
- **Create more oversight and proactive measures on the part of HCR to address illegally charged fees.**

2. Methodology

Our research provides a snapshot of the experience of low-income tenants burdened by fees citywide. We know this problem extends beyond the hundreds of tenants we connected with for this study, and protecting tenants against the burden of fees will have a significant citywide impact on the lives of low income New Yorkers.

Our findings are based on the following:

- **526 surveys collected from at least 208 different buildings across the city²**
 - For the past year and a half 13 different community-based organizations who work with low-income communities of color collected a total of 526 surveys about non-rent fees with their members.³
 - The surveying was done in tenant association meetings, tenant workshops, overcharge complaint clinics, general membership meetings, and by door-knocking. Most of the neighborhoods represented by survey respondents have high concentrations of rent regulated housing including: Flatbush and Crown Heights in Brooklyn, Jamaica in Queens, Washington Heights in Manhattan, and Highbridge and Kingsbridge in the West Bronx.

- **88 rent bills from 27 buildings and 17 landlords:**
 - The 88 rent bills analyzed in this report were collected from survey respondents. Some bills were collected at the time of surveying (by surveyors in the field). Other bills were collected after surveys had been completed, through follow up with tenants who indicated on the survey that they would be willing to provide a copy of their bill. Tenants were asked to provide the most recent bill available.

- **48 fee-related overcharge complaints filed with HCR's Office of Rent Administration**
 - The Community Development Project, in collaboration with CASA, has filed nearly 50 fee-related overcharge complaints for tenants in the Bronx. These cases were categorized and analyzed for the purposes of this report. The status of each case was documented, and cases were categorized as pending or resolved. Those cases that had a documented outcome were further categorized, which allowed for analysis of which cases were found in favor of the tenant and which were in favor of the landlord.

² Building number reflects a count of unique addresses from survey respondents. Some surveys had an illegible building address and some survey respondents declined to give their building address.

³ The community organizations that helped collect surveys include (in alphabetical order): Bronx Park East Community Association; CASA-New Settlement; Catholic Migration Services; Centro Hispano; Cooper Square Committee; Cuzcatlan; Flatbush Tenant Coalition; Hermanas Mirabal; Make the Road New York; Northwest Bronx Community and Clergy Coalition, Pratt Area Community Council; Tenants and Neighbors; Urban Homesteading Assistance Board; and Woodside on the Move.

3. Demographics of Survey respondents



Key demographics from our diverse group of survey respondents include:

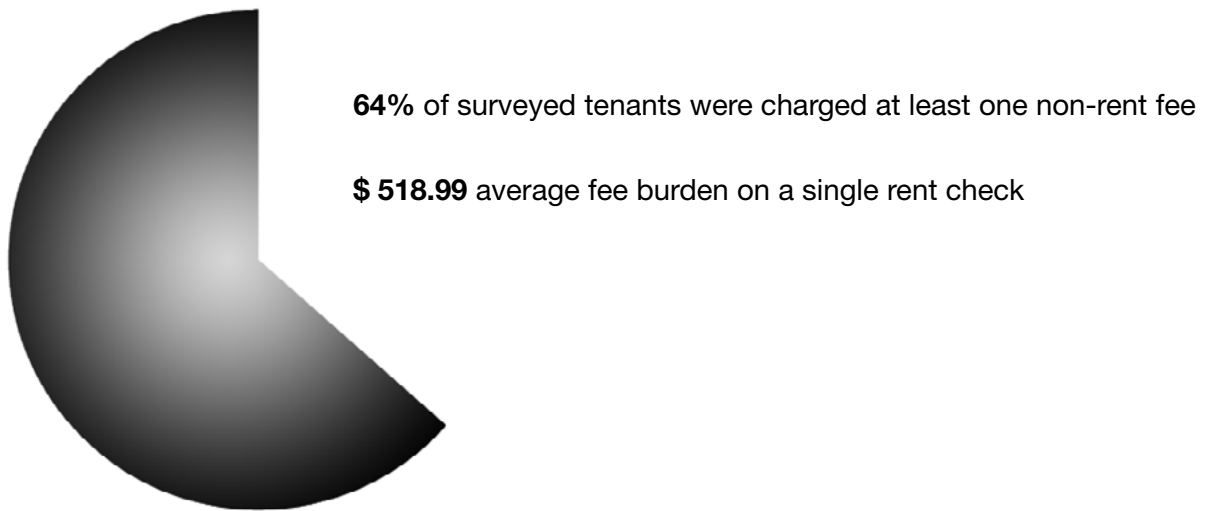
- The majority are people of color. Two-thirds of respondents identified as Hispanic or Latina/o, a quarter identified as Black or African American, 2% identified as Asian and 3% identified as another non-white race or ethnicity. 8% of respondents identified as white.
- More than three quarters are immigrants. 77% of respondents said they were born in a country other than the United States.
- Most are non-English speakers. 61% of respondents listed Spanish as their primary language and 1% listed a different non-English language
- Respondents are very low income. More than three-quarters (78%) reported an annual household income of less than \$35,000; nearly a quarter (23%) reported an annual household income of less than \$10,000.

4. Non-Rent Fees Citywide

“[I am confused] because they do not tell me why they are charging me these charges.”

– Survey comment 450.

Figure 1: Non Rent Fees Citywide



Of the 526 surveyed tenants, nearly two thirds (64%) have been charged at least one kind of non-rent fee, including legal fees, air conditioning fees, washing machine fees, damage fees, late fees and more. These fees are frequently confusing and burdensome to tenants, either because they are unexplained or because they are erroneous, such as a late fee for a tenant who has paid her rent on time.

The average monthly rent on the 88 rent bills we analyzed was \$1,055.53. For tenants who incurred fees, the average fee burden on a rent bill was \$518.99. This means that the average fee burden was nearly half of the average rent. As detailed in the following pages, many tenants faced fees much higher than this average.

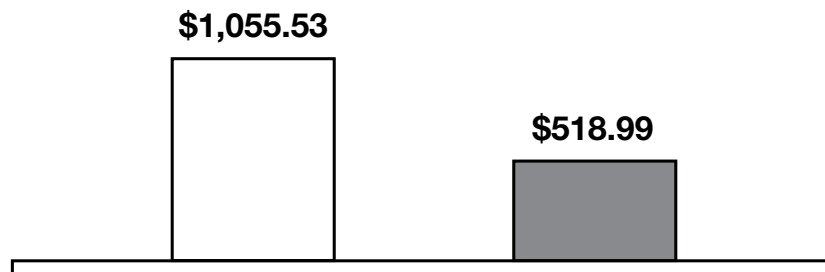


Figure 2: Average tenant is charged nearly half as much in fees as they are in rent, based on collected rent bills

5. Fees by Type

The following section breaks down the fees experienced by tenants into major categories. See [The Burden of Fees](#) report for additional information about each major category.

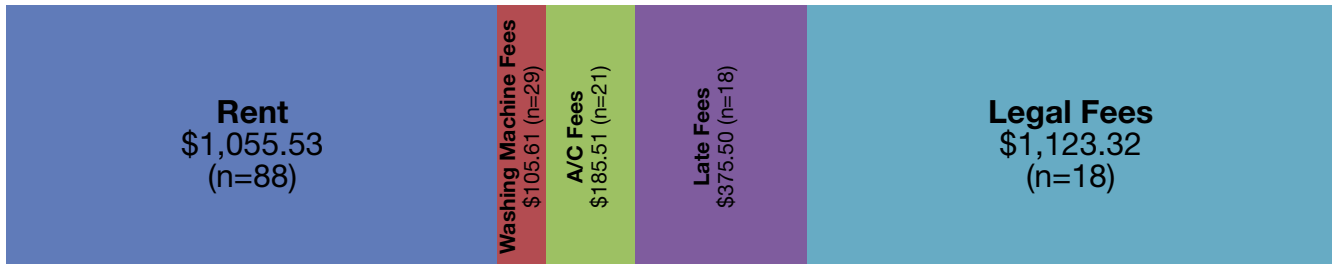


Figure 3: Chart of averages for all bills reviewed for this report

A. Legal Fees

As *The Burden of Fees* details, legal fees are among the most confusing for tenants. Landlords cannot legally impose these fees unless a number of criteria are met, including a legal fees clause in the lease, an actual case in court, and a judge order to pay the fees or consent of the client to pay the fees. These set of rules are often unclear and many tenants are not made aware of their rights. Our organizing experience shows that landlords are adding legal fees to tenants' rent bills even if they don't have the authority to collect them. The confusing nature of legal fees leaves tenants susceptible to being illegally overcharged. See the [Legal Fees](#) section of *The Burden of Fees* for more on legal fees.

Our citywide survey showed that nearly a quarter of tenants were charged a legal fee, and half of those report having paid. Our rent bill analysis showed average legal fees totaling \$1,123.32.

- **23% of tenants were charged a legal fee.**
- Of those who had been charged a legal fee, **50% report having paid.**
- **On average, tenants are being charged \$1, 123.32 in total legal fees.**
- **One tenant had a total of \$7,258.09 in past-due legal fees.**

Code	Description	Previous Balance	Current Charges	Amount Due
A/C	AIRCONDITIONING	621.90	15.00	636.90
GAR	GARAGE	-151.92		-151.92
LEG	LEGAL FEES	7,258.09		7,258.09
WAR	WARRENT ORDERED	85.00		85.00
WRS	WARRANT RE-SERVED	200.00		200.00
WSV	WARRENT SERVED	100.00		100.00

Date Payment Due:	5/1/2014
Incl Pmts Rec'd Thru:	4/14/2014

Figure 4:
Rent bill from a Washington Heights tenant, Hermanas Mirabal member.

B. Air Conditioning Fees

“Charges are different every month.” –Survey Comment 54 (tenant with AC fees)

Under current policy, landlords of rent stabilized apartments are legally allowed to charge a monthly fee for air conditioner units, provided the tenant pays their own electric bill. However, according to current HCR guidelines, if a landlord does not begin charging these fees within a “reasonable time” after learning about the installation of an air conditioner unit, or if a previous landlord waived the right to collect the fees, the right to charge the fee is waived. As our previous report detailed, while this “reasonable time” standard is unclear, many fees are assessed by landlords after the units have been installed for a long period of time, but tenants are not aware of their rights, or feel intimidated into paying the fees. See the [Air Conditioner Fees](#) section of The Burden of Fees for more.

Our survey shows that air conditioning fees are pervasive, with 40% of tenants reporting they had been charged an air conditioning fee. Of those, slightly more than half have paid those fees. On average tenants were charged air conditioning fees saw \$185.51 in current and past due AC fees.

- **40% of tenants were charged an air conditioning fee.**
- Of those who had been charged an AC fee, **53% report having paid.**
- **On average, tenants are being charged \$185.51 in total AC fees.**
- One tenant had a total of **\$1,087.90** in total AC fees.

Date	Description	Charges	Payments	Balance
02/01/14	[REDACTED]	[REDACTED]		[REDACTED]
02/01/14	Air Conditioner (02/2014)	5.00		1,011.08
02/01/14	[REDACTED]	[REDACTED]		[REDACTED]
02/03/14	chk# [REDACTED]		[REDACTED]	61.82
03/01/14	[REDACTED]	[REDACTED]		[REDACTED]
03/01/14	Air Conditioner (03/2014)	5.00		1,013.71
03/01/14	[REDACTED]	[REDACTED]		[REDACTED]

Figure 5:
Rent bill from a Lower Manhattan tenant, Cooper Square Committee member.

C. Washing Machine Fees

“I pay all the fees but they still charge every month.”

–Survey Comment 60, tenant with washing machine and air conditioner fees.

As with air conditioning units, landlords of rent stabilized apartments may charge tenants for recently acquired and installed washing machines, provided they begin charging the fee within a reasonable time, and that the right to charge the fee was not waived by a previous landlord. See the [Washing Machine Fees](#) section of *The Burden of Fees* for more.

Our survey showed that nearly a third (32%) of tenants had been charged a washing machine fee, and nearly 70% of those had paid the fee. These fees accumulate on tenants’ bills: the average tenant who had a washing machine fee saw over \$100.00 in fees on their bill.

- **32% of tenants were charged a washing machine fee.**
- Of those who had been charged a washing machine fee, **69% report having paid.**
- **On average tenants are being charged \$105.61 in total washing machine fees.**
- **One tenant had a total of \$1,464.24** in washing machine fees on their bill.

D. Late Fees

“They keep adding late fees to my balance even though I pay on time, and add a ‘balance forward’ without explaining what it is for.” – Survey Comment 516

The terms under which a landlord can charge a late fee are memorialized in the vacancy (first lease) when a tenant moves into the apartment. A lease determines whether a landlord can charge the fee, how much the fee is and by which date the rent is considered late. A landlord of a rent-regulated apartment cannot change those terms and conditions. Thus, if a lease was silent as to late fees, a rent regulated tenant cannot ever be charged a late fee.

Our research showed that at least 15% of tenants had a late fee on their bill. This number is likely an under-report, as these fees were captured as write-ins on our survey. Through our organizing we find that many tenants incur late fees despite paying their rent on time. Thus, these fees can be confusing for tenants, and accumulate on their rent bills.

- **15% of tenants were charged a late fee.**
Note that late fees were captured through write-ins in our survey (under “other”) so it is likely that they were underreported.
- On average, tenants had **\$375.50 in late fees.**
- One tenant had **\$2,005.50** in late fees.

6. Overcharge Complaints: Tenants Prevail When Fees Are Challenged

In partnership with CASA, the Community Development Project has filed 48 overcharge complaints related to fees. For this report we analyzed these 48 complaints, 35 of which have been decided (the remaining are pending). **Of those cases that have been decided, 80% of tenants have prevailed**—either because a landlord conceded the case (37%) or because DHCR found in their favor (43%). Tenants were awarded rent credits, treble damages, and money taken off of rent bills. Notably, of the cases that were denied, more than half were denied because of the 4 year statute of limitations on overcharge claims, which dictates that if an illegal overcharge is not discovered within 4 years of the event first occurring (the fee appearing on a bill) a tenant is barred from bringing a claim.



These findings show that four out of five tenants who challenge fees are successful. However, **the overcharge complaint process is time and resource-intensive**. Filing complaints requires tenants to collect numerous documents (such as leases, rent bills, proof of appliance installation, and proof of payment). A legal team must then review these documents and draft a legal brief outlining the facts and the legal basis to show that the tenant is entitled to either a credit or to have a fee removed from their bill. This information gathering and drafting must be done for each tenant, and requires extensive coordination and significant time on both sides. Such a process is additionally hard to navigate for a tenant filing an overcharge complaint pro se (without a lawyer). Moreover, it takes months or even years for a case to be resolved, and even a positive outcome for a tenant (such as the removal of a fee) requires compliance of the landlord. **Systemic reform would allow these tenants to have the same positive outcome—that is, not being charged erroneous fees—without the time and resources of filing complaints.**

7. Recommendations

Affordable housing is a critical need in New York City. As rents rise and the landscape of the city changes, strong protections for current tenants of rent stabilized apartments is crucial. Our expanded study shows that low income, rent stabilized tenants across the city are burdened by non-rent fees. Nearly two-thirds of the tenants we surveyed were charged at least one non-rent fee. These fees—frequently confusing and potentially unlawful—add significantly to the rent burden of these tenants. Our analysis of tenant rent bills shows that the average fee burden is nearly half the average rent. This type of financial impact can make it challenging or even impossible for tenants to remain in their homes.

We are pleased that different levels of government have recognized the urgent need to preserve existing affordable housing in the city, and have joined forces to work together by creating the Tenant Harassment Prevention Task Force. The task force, in collaboration with tenants and community groups, needs to act quickly to address the negative impact of gentrification and real estate speculation in various communities. There is an urgent need to take bold action and create policy changes that protect tenants from landlord harassment and preserve their ability to live with dignity and stay in their homes.

We call on HCR to take the following urgent action:

1. Prohibit all non-rent fees⁴, including:

- Elimination of fees for the installation or use of air conditioners, especially for those tenants who pay their own electricity.
- Elimination of fees for the installation or use of washing machines, dryers or dishwashers.
- Elimination of any other charges that appear on bills that are not related to rent such as repair fees, painting fees, re-painting fees, cleaning fees, HPD fees, and damage fees.
- Tenants should have the right to continue to have and install washing machine, dryers or dishwashers and air conditioners in their apartments.

2. Prohibit landlords from including legal or late fees on a rent bill. Rather, landlords should be required to bill for these fees separately and include relevant documentation to show the fees are justified.

- When billing for legal fees, landlords should be required to attach a copy of a court order as proof of their authority to collect legal fees and reference the section of a tenant's lease which allows for legal fees to be charged.

⁴ We call for the prohibition of all non-rent fees, excluding documented and justified legal fees and late fees, as outlined below.

7. Recommendations (con't)

- When billing for late fees, landlords should be required to document the basis for charging the late fees, and reference the section of a tenant's lease which allows for late fees to be charged.

3. Send a written notification to all rent stabilized landlords ordering them to comply with the above changes, and implement a process to document compliance.

- Upon implementation of the policy changes above, all rent stabilized landlords should be notified in writing. HCR should develop and implement a process to document landlord compliance.

4. Create fact sheets for tenants explaining these policy changes, and outlining how to make a complaint for fee-related violations.

5. The Tenant Protection Unit should enforce these fee regulations and proactively investigate all landlords that are charging unauthorized non-rent related fees.

- The TPU's proactive investigation efforts are a crucial tool for identifying landlords that attempt to violate rent stabilization laws or harass tenants. The issue of unauthorized non-rent fees should be of significant concern to the TPU, and part of their investigation efforts.
- All tenants of landlords who are found to charge unauthorized fees should be notified of their rights, and assisted in making overcharge complaints.

6. The 4 year rule should not be applied to fee-related overcharge complaints.

- Currently, fee-related overcharge complaints are subject to the 4 year statute of limitations, which dictates that if an illegal overcharge is not discovered within 4 years of the event first occurring (the fee appearing on a bill) a tenant is barred from bringing a claim. Given the confusing nature of fees and the lack of clarity around regulations, it often takes a significant amount of time for tenants to identify that they are being charged fees illegally. It then takes additional time to connect with appropriate legal services to file a complaint (or to attempt to navigate the complaint process pro se). These factors can be compounded by fear of harassment by landlords. Thus, tenants filing fee-related overcharge complaints should not be limited by the 4 year rule.

7. Create a watch list of rent stabilized landlords and monitor their behavior and actions by working with tenant associations, interviewing tenants and proactively sending out notices to tenants about their rights.

Acknowledgements

We would like to thank the staff and tenant members from the following organizations for their support in helping collect surveys and rent bills for this citywide research.

Bronx Park East Community Association

CASA-New Settlement

Catholic Migration Services

Centro Hispano Cuzcatlán

Cooper Square Committee

Flatbush Tenant Coalition

Hermanas Mirabal

Make the Road New York

Northwest Bronx Community and Clergy Coalition

Pratt Area Community Council

Tenants and Neighbors

Urban Homesteading Assistance Board

Woodside on the Move

About the Authors

Fees Are Fraud Coalition

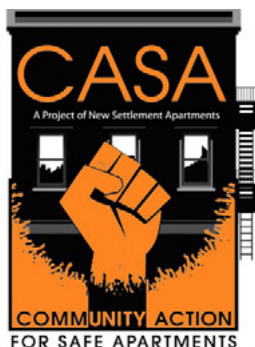
The Fees Are Fraud Coalition is made up of tenant-based community organizations across the city dedicated to preserving affordable housing and preventing displacement of low-income and rent stabilized tenants. The group coalesced around the issue of non-rent fees, which are burdening tenants, making housing unaffordable, and contributing to harassment and displacement, therefore the Fees are Fraud Coalition is calling the prohibition of all non-rent fees. Committee members are: CASA-New Settlement, Flatbush Tenant Coalition, Northwest Bronx Community and Clergy Coalition, Pratt Area Community Council, and the Urban Homesteading Assistance Board.

Research Partner



The Community Development Project at the Urban Justice Center

The Community Development Project at the Urban Justice Center strengthens the impact of grassroots organizations in New York City's low-income and other excluded communities. We partner with community organizations to win legal cases, publish community-driven research reports, assist with the formation of new organizations and cooperatives, and provide technical and transactional assistance in support of their work towards social justice.



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