

**Draft Report**

**Quick Evaluation of Migration Project of PRAYAS**

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## **Acknowledgement**

This mid-term evaluation of an SDTT project (2012-2014) of PRAYAS was undertaken during February-March 2014. It examines efforts made by PRAYAS to improve the well-being of seasonal migrant workers in two sectors, namely brick kilns and building construction.

We, at CFDA review team, are thankful to PRAYAS team at the top as well as its project teams, union teams in Surat, Ahmedabad and the team in the source region of Dahod for sharing with us documents, progress reports, studies and also important correspondence related to the project. We are also thankful to them for sparing time for discussions and for organizing field visits. Finally, we are thankful to a large number of brick kiln workers and construction workers for sparing time for us and for sharing their problems and view with us.

We hope that this quick mid-term review will be useful to PRAYAS CLRA for their future activities.

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## Introduction

PRAYAS Centre for Labour Research and Action (CLRA) is a civil society organization which started its activities about 30 years ago in Rajasthan. Its vision is to build a society free from social, cultural, economic, religious, gender, and geographical discrimination; and its mission is to bring in improvement in the lives of the vast number of workers in the unorganized sector in India with a focus on seasonal migrants who are the most deprived.

PRAYAS completed a three year project (funded by Tata Education Trust) that aimed at streamlining recruitment and ensuring social security to seasonal migrant workers to plains of Gujarat in 2011. This project operated in both - the source areas from where workers come and the destination areas in Gujarat. The experience of the project by and large justified the hypotheses of the project that it is possible to organize seasonal migrant workers to increase their wages, improve work conditions, and increase their access to public services. This project covered two large migration streams, each accounting for more than 100,000 workers – cotton seed farms and brick kilns. The project was particularly successful for brick kiln workers.

Following this project, which ended in June 2011, PRAYAS has taken up another project in North Gujarat and Surat for the period from April 2012 to March –2015. This project aims at (1) mobilizing and organizing seasonal migrant workers to promote their well-being, and (2) linking the migrant workers with public services in education, health and ICDS etc. The strategies to be used are getting involved in policy advocacy with the government and partnering with the Government for improving conditions of seasonal migrants. This project covers three migrant streams, namely, brick kilns, construction work and agriculture. The operational area is North Gujarat (Ahmedabad office) and Surat.

This report is a quick mid-term evaluation of this project. This is the second year of this three year project, and this evaluation is expected to help PRAYAS to use the findings in the next part of the project.

### The Present Evaluation

The objectives of this mid-term evaluation are as follows:

- To study the mobilization efforts of PRAYAS and to assess their performance in terms of the strength of organization as well as their achievements in improving wages of seasonal migrants, their working and living status and their safety and security.
- To assess the role of PRAYAS in the field of policy advocacy with the government and partnering with the government
- To assess the achievements in terms of linking migrant workers with public services in the area of education, health, nutrition of children and overall well-being.

- To draw inferences and make recommendations on how PRAYAS can strengthen their work in the future.

This evaluation covers two sectors, namely brick kiln workers and construction workers. The research team at CFDA has undertaken the following tasks for the evaluation.

- Meeting with the two unions (i.e. brick kiln workers' Union and construction workers' union to discuss their approach, experiences and successes
- Meeting workers in their work places: for construction workers, the meetings were held at Nakaa, Bastis and their work sites; and for brick kiln workers the meetings were in the field, near to brick kilns as brick kiln owners usually do not allow outsiders to enter the kilns.
- Meeting workers and unions at the source, i.e. Dahod
- Meetings with government officers (1) in the labour Commissionerate – both rural and urban – (2) officers in charge of the Building Construction Workers Board, Unorganized Workers Board, Rural Workers Welfare Board and (3) officers implementing social security schemes and programmes in the areas of education. ICDS, NRHM etc. and
- Meetings held with the senior teams of PRAYAS – including the persons dealing with public services and other welfare schemes.

### **Approach of Evaluation**

***The Earlier Model:*** The approach of the ongoing project by PRATAS CLRA largely follows the strategy of the earlier project. There are two distinct components of the earlier strategy – (i) mobilization of workers leading to wage hike and improvement in working conditions (ii) linkage with public service like education, health, early child hood care, and social security.

***Mobilization:*** The first component involves several tasks: firstly, to undertake mapping of workers, i.e. to document the specific migration stream as there is no existing information with any agency about seasonal migrant workers. The mapping would include documenting the numbers, the working and living conditions, the social profile, and demographic details. This also provides the base for organizational work as well as advocacy with Government agencies for service linkage.

Mapping is followed by interaction with workers at local bazaar in destinations and origin place. It is not easy as many times migrant workers live in closed spaces provided by employers and entry of outsiders prohibited. Often it is possible to meet workers either early in the morning or in the night as during the day workers are away at work. These interactions are expected to lead to intensive mobilization when the mobilization reaches a peak leading to the stage where ground is set for collective negotiation. This stage will be reached only after workers across the whole

migration stream have been mobilized. The output will be higher wages and improved work conditions. Reaching this phase means that workers have come together into an organization.

Once the organizational entity is established and employers have recognized the power of the workers organization, the intensity of outside intervention can be scaled down. There is now no need to invest extensive resources in mobilization. Employers are also ready to negotiate. This phase is expected to culminate in to the last phase when the workers organization becomes financially and institutionally sustainable and the outside agency can withdraw. This stage requires development of a high level of consciousness amongst workers.

***Access to Public Services:*** The second component of public service linkage-Advocacy with Government leading to issue of orders is for promotion of public service linkage of migrant workers. The first stage after mapping is to share the data with relevant government departments and bring pressure on them to issue orders for linking seasonal migrant workers with public services. The orders will be issued at the very top – the State Directorate level. The order issued by the top functionary has to be followed right until the basic operating unit level for effective implementation of the orders. At times, the orders may need to be physically carried to the field level. Then there is need for constant monitoring in the initial phase to ensure that execution takes place. The orders may direct for provision of services to the implementing authorities, yet no effective mechanism may exist for the same. This may further require more consultations, and even demonstration of pilots for the same. There may also rise a need for gap filling. The delivery of services may be held up because of a crucial missing link. To give an example, PCLRA provided transport for distribution of wet rations in brick kilns to ICDS functionaries as there was no provision for the same in Government budget.

To be sustainable, the process for delivery of quality services should get institutionalized in service departments. There should not be need for an outside agency to initiate the process every year. This can take some time. Typically, the Government departments will say that they have not budgeted for migrants in their annual budget. Therefore, they will provide service next year. An example of successful institutionalization of service provision for migrant workers is *sakhar shalas* where the Education Department runs schools for children of tribal workers who migrate to sugarcane fields of South Gujarat.

The new project taken up by PRAYAS is expected to follow this above model. This evaluation essentially examines the strength of this model / strategy underlying the project, studies field level experiences in mobilization and unionization of workers and its impacts / achievements; in linking workers with social security schemes of the government and public services; policy advocacy with the government and the achievements; and overall achievements, constraints and problems.

The report is divided into three sections: Section one discusses the activities of the unions; section two assesses social security and public services provided to workers; and section three evaluates the policy and makes recommendations.

This report does not go into detailed descriptions and data, but largely focuses on the achievements, constraints, problems and the strength of the overall strategy.

## 2

### **The Unions - Majur Adhikar Manch & Int Bhatta Majdoor Union**

Project has promoted two Unions – Int Bhatta Majdoor Union and Majdoor Adhikar Manch. Majur Adhikar Manch is a union of workers employed largely in the sectors where migrant workers are predominant. It covers construction workers, ginning mill workers, agricultural workers including child labour and other unorganized sectors. Int Bhatta Majdoor Union is the Union of brick kiln workers.

This report covers activities of the unions in the brick kiln industry and construction work.

#### **1. Brick Kiln Workers Union**

Brick Kiln industry is a fastest growing industry in the country, thanks to the rapid growth of the construction industry. Brick kilns are of three types, Haath Bhatta, Bhatthas using moving chimney, and Bhatthas with fixed chimney. Haath Bhatthas, which create highest environment pollution, are least productive and create 10-15 % wastage, are legally banned in most areas. Moving chimney based Bhatthas are also banned unless they get certain clearances. Bhatthas with fixed chimney are expected to take clearance from GPCB, Panchayat, and Mining department, and has to pay royalty to the Mining department. They also have to have registration as a factory or an SSI unit, and pay PF, SSI, sales tax and follow labour laws. With all these Bhatthas, Gujarat produces about 1000 crores bricks per year and employs about 4 lakh workers.

Workers in this sector mainly belong to SC/ST/OBC castes or Muslims. They migrate from Gujarat (tribal region) and from other states spreading from neighboring states like Rajasthan, Madhya Pradesh, and Maharashtra or from distant states of Uttar Pradesh, Orissa, Jharkhand and even Assam. These workers are mostly recruited by contractors in their home states and brought here to brick kilns, which are usually away from towns and cities. These workers are usually captive workers subjected to multiple exploitations.

**Exploitative System:** The entire system working of brick kilns is highly exploitative. To start with, these workers usually do not have any written contracts either with the contractors or with brick kiln owners, and even the wage rate is determined at the end of the season! They work long hours (12 to 16 hours a day), frequently with wife and children and live on meager advances (Kharchi); and they suffer from violation of almost all labour rights. Almost all the labour laws applicable to them are blatantly violated: The Contract Labour Act is violated as (1) the contractors who bring them usually do not have a license to do so, (2) they do not provide any services / facilities (water, sanitation, housing, etc) to workers and (3) frequently join hand with brick kiln owners to exploit workers. The Payment of Wages Act is violated as many workers are thrown out without the due wages. The Minimum Wages Act is violated as the wages – piece

rated wages – are not based on any proper time and motion study (recommended by NHRC and MW Committee) and production of 1100 bricks is counted as 1000 – for no real reason. The Bonded Labour Act is violated by keeping the workers bonded for years by giving them advances – resulting in their bondage. The Workman’s Compensation Act is violated as in many cases workers do not get adequate compensation for injury and even death on worksites. And finally the Interstate Migrant Workers Act is violated in multiple ways. Workers also receive abuses and harassment from employers, when work is not done well or when workers oppose their misbehavior. There are also cases of sexual harassment noted against contractors and owners.

In addition, the legal rights of these workers under different social security schemes (such as RSBY, AABY, Maternity Benefits etc) and under public services relating to health, education, nutrition etc are also violated in most cases.

The Brick Kiln Workers Union (Int Bhatta Majur Union) was set up in 2007 in Ahmedabad. Recently efforts are being made to set up such union in Surat brick kilns. While the Ahmedabad union has made some achievements, the Surat Union is in the initial stage of development.

**On the positive side**, as seen above, the strategy of the union is well-designed: mapping of workers, contacting them and creating awareness among workers about their condition and rights, strengthening mobilization to make union strong and self reliant, and then promote collective bargaining to enable workers to fight from their own rights. The final stage is to make unions sustainable financially and otherwise. The unionization is also expected to give workers their dues, i.e. higher wages, better living and working conditions and collective strength, as well as access to social security schemes and public services.

Another interesting aspect of the union activity is efforts to mobilize workers at the source- the area of origin, where workers are relatively free and open. Working on both the fronts in the areas of origin and destination – has helped the union to become stronger in terms of their impact. Since the efforts are needed at both the places, more at the source, this strategy has given and is likely to give better results in the future.

When one examines the brick kiln unions in the light of this strategy and the underlying expectations, some achievements are striking:

- There is no doubt that the union has spread good awareness among workers about their legal rights through distributing pamphlets, organizing meetings, get-togethers, really etc and by free distribution of business cards with toll-free telephone number. In addition, capacity building of workers, creating leader from workers and empowering workers to fight for their rights – though in isolated events has been an important achievement.
- What is called “case work” is indeed an important achievement of the union – in releasing workers from bondage, enforcing payment of wages act, and in raising the wage rates paid to brick kiln workers while enforcing the minimum wages act. Though the membership of the union is small and has declined recently, the reach of the union is

across Gujarat and in many states out of Gujarat. Workers from distant places now contact the union in crisis.

- Another achievement has been in terms of policy advocacy for fixing proper minimum wages and raising the wage rates paid to brick kiln workers. PRAYAS has been able to approach NHRC in this context, organize time and motion study through IIT Bombay (not yet complete) and raising the minimum wages. The union has also acquired recognition and credibility with the state government for organizing policy advocacy, dialogue, solution of cases of injustice etc. This is an important achievement.
- Some brick kiln owners have now become aware of the rights of the labour, and show improvement in their behaviour towards workers. They also cooperate in providing a room for school or for taking care of children. Though this development is not yet wide-spread.
- An important achievement has been in the field of wages. The rate of brick per 1100 was only Rs. 180/- in 2008 which has increased to Rs. 565/- per 1100 in 2013. Also, instead of different wage rates of workers in different areas, the rates have become uniform almost all over State of Gujarat.
- Another important achievement has been in resolving cases through legal aid. Several cases have been resolved in payment of wages act and particularly in bonded labour act. This has been achieved largely through negotiations and threatening to go to courts rather than actually going to labour courts.

**Areas of Concern:** Mobilizing brick kiln workers is not an easy task for several reasons. Firstly, these workers are seasonal workers, who came for 6-8 months and usually stay at the work site. It is not easy to meet them frequently. Even workers are scared of meeting union leaders openly. These workers need to be contacted only on their free day in the local bazaar or towns- once in a week or a fortnight. Secondly, brick kiln owners not only do not like union leaders visiting them in the kiln, but they also go to the extent of beating them or putting false charges to throw them into police custody. And thirdly the aware and organized workers are sometimes discouraged from coming again, and newer sources are explored for new sets of workers. The leaders have to start their work all over again! To strengthen and expand the union in such an environment is not easy. The declining number of union members has its roots in these developments. It is a huge challenge for union leaders to expand and strengthen the union to become powerful enough to bargain strongly as equal with the owners. It is indeed a distant dream!

In such a situation, the union has not been increase the membership. The recent slump in the industry is also responsible to an extent. There is definitely a need to expand the size of the union team, which is not an easy task. Apart from the constraints of funds and space, it is difficult to get committed persons willing to work at odd times and at odd places.

As regards bonded labour, PRAYAS has been able to release quite a few bonded labour (in fact, all bonded labour who approached PRAYAS) from bondage. The approach towards releasing bondage is different: PRAYAS believes that the real rehabilitation is to improved work conditions and wages so that workers find decent employment wherever they are working

## 2. Construction Workers Union

Construction industry is one of the fastest growing industries in India. As most sectors of this industry are labour intensive, there are more than 10 million construction workers in India. Of these 6-8 lakhs are in Gujarat, and more than 1 lakh in Ahmedabad – of the 1 lakh workers in Ahmedabad, about 80% are migrant workers.

PRAYAS CLRA initiated activities for construction workers after BSC and PRAYAS together conducted a systematic study to understand the construction labour market in Ahmedabad (2009). Initially CLRA initiated dialogue with AMC and GOG to provide child care centres for small children and education of school going children. Thereafter another study was done to map the shackled Bastis of these workers to understand these issues. A workshop organized to discuss these findings concluded that the two actions needed to help these workers are to organize and to struggle.

The construction workers union was set up as a part of Majur Adhikar Andolan in 2009. The main objectives of the union are (1) to work for worker's rights and to link them with lab welfare services, (2) to work together with the government to improve life of these workers, and (3) to recommend measures to improve their conditions to the government time to time.

There are basically two types of construction workers: those brought in by contractors, mainly migrant workers, working and living on worksites as captive workers; and Naka workers, who stand on Naka for work and wait for contractors / sub contractors to pick them up for some specific tasks on daily basis but largely on piece-rated basis. Contractors usually prefer migrant Naka workers, as they can be hired for long hours and can be exploited easily.

There are three categories of construction workers based on their skills – manual or unskilled, semi-skilled and skilled. Different categories of contractors are available to get them from different areas. For example, tribal areas are brought in mostly for manual work. Manual workers as well as skilled workers are also brought in from other states, such as Madhya Pradesh, Uttar Pradesh, Maharashtra, Rajasthan, Bihar, Jharkhand, Chhattisgarh etc.

***Exploitative Conditions:*** Working and living conditions of construction workers is not much different from those of brick kiln workers, as they are also trapped in exploitative systems of working and living. Like brick kiln workers the major concerns with construction workers are related to low wage rates, long working hours, sub-human living conditions, unsafe working conditions, almost absence of social protection, as well as blatant violation of labour laws and labour rights.

There are no official records of these Naka, no system of registration of workers and no rotation system in providing work. Living conditions of Naka workers is frequently extremely inhuman -

living in make-shift huts on roadside or near railways tracks without any protection against the rain, heat or cold, and without any basic facilities, such as electricity, water supply, sanitation or safety against thieves and animals, their life is simply miserable. Railway staff frequently charge “rent” for the use of their land. Also, Bastis, localities of migrant workers, are not treated as slums. That is, the presence of these workers is not recognized in official data, and therefore not covered by any official policies. Our visits have shown utter indifference of AMC to these Bastis. Police and Gundas demand money as charges for illegal living. There are 62 such Bastis – but no records. The union usually collects them, makes them aware of their rights, and attracts them to become union members.

Captive workers on worksites on the other hand are expected to get basic amenities, but are also deprived of these facilities. There is usually no inspections made and no monitoring organized to check the situation to see whether these workers get the stipulated facilities.

Ren Baseras are expected to provide shelter and privacy to migrant workers; however none of these are available! The concept of Ren Basera, which is primarily for providing decent place to live to migrant workers, are only for sleeping and to keep luggage. Families cannot stay here as there is no cooking permitted and there is no privacy given. Though these are free Rs 10 is charged per night per person for “maintenance”. Usually these are dirty and unkempt. The Surat Ren Baseras are indeed like hell! As regards AMC, it does not respond to complaints, including the demand for increasing their number and improving their quality. There are 46 Baseras at present while as per the norms the city needs more than 100.

***Strategy of the Union:*** The construction workers union aims at creating awareness of workers about their rights and advantages of unionization; raising their wages as well as improving their living and working conditions; linking them up with social security schemes as well as to basic public services in the areas of health and medical services.

The strategy of the union is to visit Naka, visit Bastis, visit worksites and visit source areas where from the workers come. During Naka visits, organized usually in mornings, union leaders distribute material, ID cards, make members and identify cases where union’s help is needed. Of the total 100 Nakas in Ahmedabad, the union has formed 14 Naka Committees of workers and have member from 24 Nakas. When contractors go to Nakas to get cheap labour in bulk, the union tries to improve bargaining of workers to raise their wage rates.

The union has also tried to improve living conditions in Bastis by demanding for them basic necessities like water, sanitation as well as access to ICDS units and schools to their children. As regards Ren Basera, the activities of the union are related to demanding increase in number, improving the basic facilities and demanding space for cooking and for private life of workers.

Union’s activities in the source- the region from which these workers come has been successful in several respects. These activities have spread to Gujarat (Dahod and Panchmahal), Rajasthan (Dungarpur), Banswala and Udaipur), Madhya Pradesh (Jhabua and Alirajpur) and Maharashtra (Jalgaon and Nandurbar). The major activities here are creating awareness, strengthening union

by expanding membership, and enabling them to access entitlements and benefits. District and block level committees have been set up here.

***Achievements of the Union:*** The major achievements of the union have been as follows: To start with, the strategy adopted is comprehensive in terms of contacting and organizing construction workers at all possible places – Nakas, Bastis, worksites, source regions, and Ren Basera. In addition, there are cases taken up from all over Gujarat and outside as and when there is demand. The union is accessible to workers wherever they are.

The membership has increased continuously in terms of numbers as well as regions covered; however there is a shortfall compared to the target. The union has been successful in resolving cases, particularly under the Bonded Labour Act. There are also successes in raising the wage rates after the campaign in year 2011), and in resolving cases in consultation with employers rather than going to courts.

***Some Concerns:*** There are certain developments in the industry that the union is finding difficult to face. For example, when workers from some regions / states become powerful, contractors hesitate to bring them again, and they look for new workers from new states. This makes the process of unionization very difficult. At present, the number of workers from Rajasthan has declined and new workers are coming from Jharkhand, Chhattisgarh. Adani business house, for example, has this year imported workers from Assam and West Bengal at Rs 150-180 per day. Though the union worked hard to raise the wage rate to Rs. 216 per day for unskilled and Rs 231 for skilled workers, these rates are not applicable to these new workers. How to address this situation is a difficult problem for the union.

### **Regulation by Government**

The state government is expected to play important role for improving conditions of construction workers. Firstly, it is expected to register all construction sites with the Building Construction Workers Board. Secondly they have to provide basic facilities to all workers brought by contractors. These facilities include housing, water supply, electricity, toilets and clean environment to live as well as safety and security on worksites – including equipments for safety.

The employers are expected to implement all the relevant labour laws, such as (1) the Contract Workers Act, (2) The Payment of Wages Act, (3) the Minimum Wages Act, (4) the Interstate Migrant Workers Act, (5) the Bonded Labour Act, (6) The workman's Compensation Act and (7) the Building Construction Worker's Bond / Act. The employers are also expected to provide the stipulated social security and access to public services in the areas of health and education. The details of the main provisions of the laws are described in the Annexure 1 at the end of this report.

***Blatant Violation of Labour Laws:*** One striking feature of these acts is they are violated blatantly. There are no regular inspections carried out, no systematic monitoring or no periodical studies are conducted to understand the violation of the acts. Our meetings and discussions with the concerned government officers as well as the union have revealed the following issues related to the poor enforcement of the labour laws.

Sr. No	Act	Year
1	The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) ACT	1979
2	The Building and other construction workers (Regulation of Employment & Conditions of Service) ACT	1996
3	The Contract Labour (Regulation and Abolition ACT	1970
4	The Minimum Wages ACT	1948
5	The Unorganized Worker Social Security ACT	2008
6	The Bonded Labour System (Abolition) ACT	1976
7	The Child Labour (prohibition and Regulation) ACT	1986
8	The Payment of Wages ACT	1936

Workers are mostly unaware about the provisions of the act. Even when they know their rights, they also do not have the courage to demand the rights. Workers in general therefore do not demand for the enforcement of the laws. The only times they demand the enforcement is when the non-enforcement leads to extreme sufferings: when at the end of the season they are forced to go back home without any wage income or with debt to be repaid in the next season, when they are harassed or injured badly or when somebody is killed and the owner refuses to pay any compensation. Maximum number of cases coming to the union is about non-payment of wages or about bonded workers as well as non-payment of money when injured or death under the Workman's Compensation Act. In the cases of most other violations of the acts, they suffer silently – abuses, bad behaviors, low wages, long working hours, cheating by employers etc. In fact, they feel scared of raising their voices against all these deprivations as they think they would lose the job or harassed if they demanded any work!

**Government's Approach:** One major problem with the state government is that it does not have any well-designed strategy or approach to help seasonal migrant workers coming to the state. To start with, no efforts are made to create awareness among workers about their rights and benefits under different scheme. This is because the government offices do not have proper understanding about the problems of these workers, their constraints and sufferings. They usually take ad hoc actions for social security schemes and public services when demanded, or take some scattered actions when there is pressure from outside by unions, NHRC, or such organizations.

They are never pro-active largely due to their limited commitment as well as due to severe shortage of staff, funds and limited facilities to move around. There is also political pressure from different lobbies – particularly employers lobbies. Overall, they are indifferent, non-committal and frequently defensive. It is observed that many of these officers are not even aware of the details of the acts and details of the activities they are supposed to undertake for the welfare of workers.

## 2

### **Public Services and Social Security**

Entering into public services for migrant workers is a logical extension to the union activities of social mobilization. PRAYAS has focused on three major services: ICDS, school education for children and health services.

The role of PRAYAS has been multifold here: Firstly, it works with the government to make them aware about the legal provisions and rights of workers and undertake advocacy with them for initiating activities in these areas. This could be in terms of passing GR, declaring a policy or designing a scheme. Secondly, it works with workers to motivate them to take advantages of these services for improving their own welfare; and thirdly it requests employers to facilitate the access of workers to these services.

PRAYAS has taken a pro-active role here in the sense that apart from policy advocacy with the government to initiate activities, PRAYAS has implemented some schemes, and also monitored the ongoing efforts with a view to drawing attention of the government about the weaknesses and the further actions required. PRAYAS has also worked in the source regions and worked with those governments particularly demanding hostels for children so that they do not have to migrate with parents and miss school education.

#### **ICDS:**

Thanks to the efforts to PRAYAS and other civil society organizations, the Gujarat Government has accepted that the children and women (pregnant women and new mothers) from migrant workers' households are entitled to the benefits of ICDS. The women and Child Development department, of the State Government issued an order in 2013 to cover all children of migrant workers in all the districts of Gujarat under ICDS.

According to the state government these services should be provided at the worksites and if required mobile vans should be used to provide these services in scattered areas where migrant workers are employed.

One major role of PRAYAS has been to survey different districts to find out (1) whether children of brick kiln and construction workers get these benefits, i.e. whether adequate number of ICDS units have started (when workers arrive), (2) whether the units are working well –whether staff is employed, food is provided and there are proper facilities have been provided to run the school

and (3) to monitor whether the quality of services are satisfactory and whether parents send their children to ICDS units, and if not why.

This process of continuous policy advocacy-implementation-monitoring has yielded good results in terms of creating awareness among the government department about their role and employers and workers about the importance of these services. The use of RTI has helped significantly here. PRAYAS has covered good number of brick kilns sites as well as construction workers in Ahmedabad and Surat districts.

On the positive side there are three major achievements: (1) the government has recognized the rights of the migrant workers to ICDS and other facilities, (2) the strategy of PRAYAS encompassing all the three inputs – policy advocacy – implementation – monitoring is a sound strategy and (3) there is now considerable awareness among employers and workers about the rights of workers and the need to provide these services.

However, the coverage is still very limited – in terms of number of well-running ICDS, children covered and pregnant women and mothers getting services. The first major reason is the government: discussions with them have revealed that even committed officers have constraints such as small number of staff for inspection, implementation and monitoring; small funds and discouragement from above. Also, there is overall limited appreciation on the part of the government of the need to cover these workers and to implement the programme well. They also find it difficult to go to sites without facilities.

In this context, we would like to suggest that the strategy that PRAYAS is advocating is not good enough for migrant workers:

- ICDS is not good enough for these migrant workers. These children need not just ICDS services but they need day care, care for the full day under professional care and clean environment. The location could be away from worksites, may be in regular ICDS centers so that the staff and other facilities are easily accessible. .
- A special fund should be created, with the contribution of employers and government to meet this expenditure. This fund will also enable government staff to perform their functions.
- PRAYAS may think of networking with other unions and organizations to expand the coverage and impact of their activities, and to bring children under the main stream of services.

### **School Education:**

According to the Right to Education, all children are entitled to free elementary education. This implies that the children above the ICDS age (6-14 years) should have an access to good schooling either in the place of migration of their parents or in the place of origin where from they migrate.

Studies have shown that children between 6 and 14 years do go to school in the source region (up to 70% children); however when they migrate with parents they remain absent for 8-10 months from these schools. In order to complete education for the year, they need access to good schooling. Usually they come with parents because (1) there is nobody in the source region to take care of them, (2) parents expect them to help in the work where piece rated wages are paid – particularly after the age of 10 years, (3) they take care of young siblings when parents are working or because (4) their parents do not view their education as useful.

Like several other states, Gujarat has a scheme of seasonal schools with Para-teachers, operating usually in make shift school rooms. It is not easy to collect children from different kilns and to motivate parents to send their children to these schools. PRAYAS undertook a project called Escort Project under which an escort, usually from among the workers, would be selected to collect children and take them to school and also bring them back after the school is over. This project started with brick kiln children in 2012-13. The escort project covered about 81 brick kilns. After doing advocacy with the government to undertake the scheme PRAYAS also studied the functioning of the project. It pointed out several limitations, and made recommendations for improving the performance of these seasonal schools:

- Schools are frequently run under a tree – not clean environment. It is important to provide them proper school and infrastructure.
- The language and curriculum in these schools is an important concern. It will help if teachers as well books are brought from the source area.
- These schools are taken very lightly – casually. Frequently all children are put in one class room and one teacher, attendance is not taken, and no monitoring – inspections organized periodically. There is a need to treat these schools as proper schools and pay attention to all the details.
- The quality of education is found to be very unsatisfactory. There is a need to add games and fun in curriculum and all crafts and skill that may help them in the future.
- Many children came for the mid-day meal and left the school after the meal. There is a lot of absenteeism also. There is a need to explore why this happens and address the reasons!
- Since the schools are seasonal, it takes time to start there as the time depends on when the workers came and the information is sent to the government about it. Not much attention is paid to complete the curriculum and maintain professional quality of teaching. Giving uniforms, involving parents, giving scholarships.
- There is no consistency in lesson plans – these results in breaks in studies and poor quality of learning.

- If Gujarati teachers are brought in, there are language and cultural barriers, and if para teachers from workers are brought in the quality of education suffers. Para teachers are described to be unclean, drinkers and a little casual about teaching.

In short, there is a need to bring them to mainstream schooling, professional teaching and quality environment.

Student's hostels in source areas appear to be a better solution, as the curriculum and the language of instruction remains the same. PRAYAS has done advocacy for such schools in Dahod. The results however are not very good as per the team members.

### **Health Services:**

Brick Kiln workers and construction workers are subjected to many health hazards including occupational diseases. Injury is very common as safety equipments as well as safety measure are usually not undertaken. Apart from this, there are other health problems, such as back pain, musculoskeletal symptoms, respiratory problems, digestive problems, weakness and related morbidity. Women workers need medical help during pregnancy and motherhood as well as general support in the form of nutrition and rest. Children, who usually move around also suffer from respiratory and digestive problems and malnourishment.

These workers need regular health checkups, medical help in the cases of injury as well as medical services in the events of diseases, pain and illness. Legally speaking, these workers are entitled to (1) regular medical camps for health check, (2) access to ESIS for medical problems and (3) all the support under NRHM.

Though no comprehensive studies on the health concerns of these workers are available (except for a study of health camps), PRAYAS has attempted to collect information under RTI on medical camps and participated in district level meetings with the collector on health services to these workers.

### **Basic Services at Worksites and at Living Places:**

According to the law, employers are expected to provide drinking water, toilets, clean environment, a room for children's education and first-aid kit. They are also expected to organize regular medical camps with all major specialist doctors. And finally government officials are expected to prepare action plans on health camps & checkups of workers. PRAYAS has used RTI to get this information, studied implementation of these provisions and made recommendations.

Employers / contractors are also expected to provide compensation when injury (WCA), compensation in the event of death and bear the expenditure on injury and sickness. It is the duty of the government officers to see that employers follow these rules.

As regards social security, the government is expected to provide a number of benefits under different acts: compensation for injury and death under Workman's Compensation Act,

maternity benefits under MB Act, provided fund and poison under the EPF Act and Employee's Family Pension Schemes. In addition, the Gujarat Rural Worker's Welfare Board, the Gujarat unorganized worker's welfare board, the building and construction workers board have several schemes for social security and welfare of these workers. In addition the schemes like RSBY, AABY, maternity benefit schemes are use for the protection of these workers.

### 3

## Assessment and Recommendations

### Assessment of the PRAYAS-CLRA Project

This second project of PRAYAS has basically followed the model which has emerged from the first project. This tested model has definitely proved to be very useful.

The experience of the project once more confirms the validity of the model adopted by PRAYAS for improving the well being of seasonal migrant workers. This multi-pronged strategy includes

*Unionization of Workers* by following proper steps, such as, mapping, contacting workers and creating awareness among them about their problems and rights, solving their problems and rights, solving their legal cases and helping them in crisis, making them members and ultimately strengthening the union.

*Working with the Government* in different departments and boards to educate them motivates them to work for these workers and to policy advocacy for implementing labour laws, social security, schemes and public services. The strategy of motivating them to pass GR or to design schemes, taking up pilot projects of implementation if required, monitoring the working of these rules and schemes and again advocating steps for improvement involves continuous work for PRAYAS Team, but it also helps in moving ahead in providing social security and public services to workers.

*PRAYAS has developed contacts* and support form not only government departments, but also research institutions (IIT Bombay), national commissions like NHRC, and civil society organizations and their state level and national networks. Tapping expertise for different areas such as occupational safety and diseases (Jagdish Patel and Rohit Prajapati), education and nutrition, health services, also has helped in strengthening the working of the project.

*Activities at the Source:* Conducting activities and strengthening these in the source regions has been an important strength of the strategy. Workers are relatively free in their own region, are also accessible, and as they are in the region their problems can be viewed in a better way. These activities started in Gujarat (tribal region) and in selected source districts in Rajasthan, Madhya Pradesh and Maharashtra have yielded new ideas and programmes.

*All these efforts have resulted in several positive achievements:* it has highlighted the problem of seasonal migrant workers in Gujarat and made the government realize the need to address these problems; the efforts have also created awareness among workers (thanks to free distribution of business cards and toll-free telephone numbers) and spread the reach of the union in different ways and strengthened the union; it has highlighted the rights of migrant workers to get higher wages and better working conditions; and it has also established rights of these workers to good working and living conditions, to basic social security's and to basic public services in the areas of health, nutrition, education etc. The project has also increased pressure on the governments of the source areas to take note of these workers and work for their well-being and welfare.

There is ample evidence on the working of the project in the right direction – in terms of work done for Naka Workers and Basits, improving wages and working conditions of some workers, membership of the unions, training programmes conducted, workshops – seminars – conferences organized, case work taken up and resolved and other activities. Though there are some shortfalls here and there (with respect to some targets of the project), unresolved cases etc the overall performance appears to be satisfactory.

### **Areas of Concern and Moving Forward**

There are several areas of concern that need to be addressed seriously.

1. The activities undertaken by the union with the support of the PRAYAS team are basically of three kinds: (1) addressing cases from all over Gujarat and outside Gujarat, (2) the regular union activities mobilizing workers, expanding membership, creating awareness and capacity building etc and (3) linking workers with social services and public services. Each of the activities requires huge efforts, time and money.

Can a small team of PRAYAS perform these activities simultaneously and successfully? Is it possible to keep a balance among these three sets of activities? It seems to us that the focus frequently shifts to cases (which are emergency calls) and other activities take a backseat. There is a need to have a separate team for cases, so that the team can adopt even a pro-active role in identifying and solving the cases.

Whatever are the difficulties, expansion of the two union teams is essential and steps should be taken in this context. The overall environment is not very friendly and a small team cannot go a long way.

The union activities have not been able to network with employers and contractors so far. Our discussions with the BK owner's association and Builder's association have revealed that they do not recognize or appreciate the unions and their activities. In fact, our discussions have revealed that they consider these unions as "obstacles" and "tools of troubling workers". Though one can understand their approach, this situation definitely means that PRAYAS has not been able to generate confidence among these association leaders and has not been able to ensure support from them. There are isolated instances of favors extended by some owners (giving one room for children, or allowing ICDS or school unit it start in or around work sites), however these are

exceptions rather than rule. It will be desirable if the associations are kept in the loop while conducting negotiations with the government.

**2. *Networking with other Unions and Promoting Federation:*** The overall achievements, though positive, address only a small part of the problem. Its quantitative impact at the macro level is limited. For example, if one asks as to how many years will it take to develop sustainable autonomous unions of migrant workers; the answer would be “long period”. Is it possible to expedite the process?

It seems to us that networking with other such unions and preferably setting up a federation of unions could be a good idea. Also, if unions of other streams of migrant workers can come together, there can have a more effective voice and they can lobby much better with the government as well as with employers and their associations.

**3. *Activities at the Source:*** It appears that undertaking activities at the source, in the area of origin, appears to be relatively easy as workers are in a free environment and there are no constraints in meeting them. PRAYAS has done good work in source region. However, we would like to consider the following suggestions:

- It will be useful if efforts are made to activate NREGA in the source areas. This will reduce distress migration. It will also improve bargaining power of workers with contractors.
- As regards schooling of migrant children there are many problems with seasonal schools in Gujarat. There is a need to advocate policy of setting up a large number of Ashram Shalas that provides all facilities to school going children from migrant worker’s households. PRAYAS has facilitated opening of migrant hostels for children of brick kiln workers in Nagaur district in Rajasthan.
- At present the role of the state government at the source is limited but important. It will help to insist on this role by the union.

**4. *Think Long-term:*** It seems that the present official provisions are far from adequate, in terms of contents as well as in terms of punishment for violation of the provisions. It is important therefore to take a quantum jump in this area to develop a system which, at least on paper, is able to meet the needs of migrant workers. PRAYAS as well as many other CSO and unions have made recommendations in this context. There is a need to develop a much more effective system based on these. In this context, we would like to recommend the following:

- *Legal Recognition of Unions:* The unions of brick kiln workers and construction workers (and workers from other such sectors) should get legal recognition as unions once they fulfil the conditions as a union. These union members should have a right to enter kilns or work-sites, meet contractors and owners officially to negotiate and to propose measures for worker’s rights and well-being.
- Like Building and Construction Workers’ Board, board should be set up for brick kilns workers (and other such sector) where a less from producers should be charged. However, such

Boards should be autonomous with the representatives of workers, employers and the government as Board members. Such autonomous boards would be able to do much more work than the present boards with no staff and not much accountability.

- Such boards should simplify the procedure of issuing ID cards: allow unions and make it mandatory to contractors to issue ID cards to migrant workers. Also, one window should be set up for all services, laws and legal aid and other benefits. Stringent punishment should be incorporated in the laws and rules. The present level of punishments does not at all prevent them from violation of acts and rules.
- The government machinery including the boards suffer from three sets of problems: (1) they operate at a low level, primarily because they do not have adequate staff, funds or facilities to cover larger areas, (2) they do not appear to be committed to these tasks, and the low level of functioning does not bother them much. The very slow progress do not matter to them, as they have not made strong demand from their bosses for funds, staff etc and (3) they become defensive when it comes to justifying their action and role.
- Labour department requires quantum jump in size, funds, coverage and motivation. There is a need to appoint adequate number of officers who can inspect, monitor and punish violation of acts. Special programmes for capacity building.
- There are several problems with respect to designing of the schemes for workers: (1) there are multiple agencies / departments involved including independent boards / officers to implement the schemes. This lack of coordination creates problems with workers to access different benefits, (2) some of the conditions are difficult (for example, a certificate of 90 days of work from employers for accessing benefits under WCA or social security schemes, registration as Contract Workers Act, and (3) procedures of registration for NRHM and health schemes are not easy to fulfill.

## **5. Migration and Development:**

Migration or mobility of labour is a natural phenomenon in the development process. The question is about the outcome of migration. If migration is distress migration and the workers are exploited in the process, this has to be stopped. It is unjust and unfair that the poor workers of poor region work for economic growth of prosperous regions just of miserable survival. The state receiving migrant workers has to realize the contribution of migrant workers to its economy and has to pay the workers at least as per the laws and rules.

These workers in the long run have to settle down to a decent living either in the state where they are migrating or in the state of the origin. Policies should be designed in both the states that workers are able to take a free decision. There is no harm if they settle down in Gujarat, because (1) they are contributing to its growth and (2) if they get their legal labour rights and access to all public services. They can also settle down in their home state if the earnings from Gujarat help them in developing their own livelihoods in their own state. Or the government of the source state creates productive employment opportunities for them. It is a myth that reduction in

migration will create problems for the construction industry in Gujarat, because they are free to hire the same workers at higher wage rates and with better working and living conditions.

CSOs working for migrant workers have to take a long term view and address the problems in this context.

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## **ANNEXURE 1**

### **Legal Provisions**

#### **1 -The Contract Labour (Regulation and Abolition) Act, 1970.**

- Every Contractor engaging 20 or more workers should obtain License from the Authority by required fees and keeping specified Security Deposit. The License is issued for specified period
- Only by the appropriate Government through issue of notification after consultation with the Board (and not Courts) can order the prohibition of employment of contract labour
- A Canteen in every establishment employing 100 or more workers
- Rest Rooms or other suitable alternative accommodation where the contract labour is required to halt at night in connection with the work of an establishment
- Provision for a sufficient supply of wholesome drinking water, sufficient number of latrines and urinals of prescribed types and washing facilities
- Provision for first aid boxes equipped with the prescribed contents
- Records and Registers

#### **Non statutory benefits, also called voluntary benefits, include**

- loan for house building,
- education of children,
- leave travel concession,
- Fair price shops, Loans for purchasing personal vehicle / conveyance and a host of other facilities.
- Liability of Principal Employer—1) To ensure provision for canteen, restrooms, sufficient supply of drinking water, latrines and urinals, washing facilities.2) Principal employer entitled to recover from the contractor for providing such amenities or to make deductions from amount payable
- For contraventions of Provisions of the Act, imprisonment up to 3 months or fine up to Rs.1,000/-.

#### **2-Minimum Wages Act, 1948**

- The appropriate government to fix minimum rates of wages from time to time for various industries/schedule of employments

- Employer to pay to every employee engaged in schedule employment at rate not less than minimum rates of wages as fixed by Notification by not making deduction other than prescribed.
- Minimum time rate wages for piece work -Not less than minimum rates wages as fixed
- For Overtime work, the wages to be paid at double the normal rate. (1½ times or for agriculture labour)
- Maintenance of registers and records-Annual Returns, Register for Overtime, Register of Wages, Wages slip, Muster Roll  
For breach of provisions of the Act, the employer shall be punishable with imprisonment up to 6 months and/or fine up to Rs.500/

### **3-Payment of wages Act 1936**

- The wages of every person employed be paid: 1- When less than 1000 persons are employed shall be paid before the expiry of the 7th day of the following month. 2- When more than 1000 workers, before the expiry of the 10th day of the following month.
- Deduction from wages – The maximum permissible deductions is 50% of the wages
- Penal Provision
  - Penalties for breach of provisions are from Rs.200/- to Rs.1000/-
  - Repeat offences attract 1 month to 6 months imprisonment and fine from Rs.500/- to Rs.3000/.
  - Delayed wage payments attract penalty f Rs.100/- per day

**4 Maternity Benefits Act 1961-** This Act shall not be applicable when and where ESI Act is applicable.)

#### **Benefits**

- ❖ Leave with average pay for six weeks before the delivery.
- ❖ Leave with average pay for six weeks after the delivery
- ❖ A medical bonus of Rs.3500/- if the employer does not provide free medical care to the woman
- ❖ An additional leave with pay up to one month if the woman shows proof of illness due to the pregnancy, delivery, miscarriage, or premature birth
- ❖ In case of miscarriage, six weeks leave with average pay from the date of miscarriage

#### **Non-Cash Benefits/Privilege**

- ❖ Light work for ten weeks (six weeks plus one month) before the date of her expected delivery, if she asks for it.
- ❖ Two nursing breaks in the course of her daily work until the child is 15 months old.
- ❖ No discharge or dismissal while she is on maternity leave
- ❖ No change to her disadvantage in any of the conditions of her employment while on maternity leave
- ❖ Pregnant women discharged or dismissed may still claim maternity benefit from the employer

- ❖ For breach of provisions of the Act, the employer shall be punishable with imprisonment up to one year and/or fine not exceeding Rs.5,000

## **5-EMPLOYEE'S COMPENSATION ACT, 1923**

### **Benefits**

- ❖ In case of death results from injury, 50% of monthly wages X relevant factor OR Rs.1,20,000/- whichever is more
- ❖ In case of Permanent total disablement resulted from the injury, 60% of monthly wages X relevant factor OR Rs.1,40,000/- whichever is more
- ❖ Where permanent, partial disablement or temporary disablement results from injury, as per prescribed schedule
- ❖ In case of death funeral expenses of Rs.5,000/
- ❖ Relevant factor is based on the age of workman
- ❖ For the purpose of calculation of compensation, the monthly salary ceiling is Rs.8000/-, as per Central Govt. Notification dated 31.05.2010
- ❖ In the event of death or in the event of any dispute, the compensation to be deposited with the Commissioner within one month

### **When an employee is not liable for compensation**

- ❖ In respect of any injury which does result in the total or partial disablement of the workman for a period exceeding three days
- ❖ In respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to-
  - ❖ The workman having been at the time thereof under the influence of drink or drugs
  - ❖ Willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen or
  - ❖ Willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman
  - ❖ Report of fatal Accident and Serious Injury within 7 days to the Commissioner-(not applicable t when ECI act applies)

In case of default by employer 50% of the compensation amount +interest to be paid to the workman or his dependents as the case may be. Other offences attract fine up to Rs.5000

## **6- Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979**

- As with the Contract Labour Act, the ISMW Act bars any employer or contractor from employing inter-state migrant workmen except with a registration or a license respectively. These provisions are similar to those in the Contract Labour Act
- Wages should be similar to that of local workers (and in all cases above the minimum wage), should always be paid in cash, and must include an allowance for the journey and for displacement from their home area
- The Act provides that any loan obtained by a migrant worker from their employer / contractor during employment will be cancelled automatically when employment ends. As

in the Contract Labour Act, the ISMW Act also holds the principal employer responsible for ensuring that these wage payments and facilities are provided in case the contractor fails to do

- Keeping records of workers , payment through bank account, issuing pass book, providing all amenities on site

### **7-Bonded Labour System (Abolition) Act, 1976**

- The Act outlaws all forms of bonded labour. It states that, on the date of commencement of the Act and hence forth afterwards, all debts that require people to perform bonded labour (in the terms given above) are automatically cancelled.
- The Act further provides that any property held by the lender in connection with a 'bonded debt' must be restored to the bonded labourer. Any mortgage, lien, or other claim on the property of the bonded labourer by the lender will also be cancelled automatically. Moreover, a bonded labourer cannot be evicted from his/her residential premises or homestead after being freed from bondage.
- Finally, lenders are actually barred from accepting any further payment from bonded labourers in connection with the debt to be paid, and it is a criminal offence for them to do so. After a bonded labourer is freed from bondage, the District Magistrate is to ensure "as far as is practicable" that his/her economic interests are "secured" so as to ensure that the worker does not end up in bondage again. This includes providing credit, etc.

### **8-Rashtriya Swasthya Bima Yojana (RSBY)**

- It is a government-run health insurance scheme for the Indian poor. Every BPL family holding a yellow ration card pays 30 rupees registration fee to get a biometric-enabled smart card containing their fingerprints and photographs. This enables them to receive inpatient medical care of up to ₹ 30,000 per family per year in any of the empanelled hospitals. Pre-existing illnesses are covered from day one, for head of household, spouse and up to three dependent children or parents.
- A Cashless treatment in any of the empanelled hospitals. This means that when a family accesses treatment, they do not pay the hospital anything.
- Pre-existing conditions/diseases are covered from day one. Pre-existing disease relate to a disease that was present at any time in the past (including any disease, which the insured person may not have been aware of) and prior to the enrollment of the beneficiary under RSBY.
- Pre-hospitalization up to 1 day before hospitalization and Post-hospitalization up to 5 days from the date of discharge.
- All expenses related to the delivery of the baby (normal or cesarean) in the hospital/nursing home are covered. A coverage of up to 2,500 rupees for normal delivery & Coverage up to Rs 4,500 for caesarean section or complicated delivery. An involuntary termination of pregnancy or other medical emergency.
- Newborn coverage from day one up to the end of the policy, even if the newborn is the sixth member of the enrolled family (Upon renewal, the head of household must decide which dependents are to be enrolled; only 5 family members are covered)
- Normal hospitalization period for both mother and child should not be less than 48 hours post delivery and Maximum benefit for maternity coverage is Rs. 4.500/- including transportation

charge of Rs. 100/- per hospitalization. Transportation costs are covered with a maximum of Rs. 100 per visit and an annual limit of 1000 rupees.

- Family size: up to five members of a household can be covered. If there are more than three children, the head of the household must decide which three to be insured. Extended family cannot be included in the family even if the beneficiary family consists of less than five persons. Enrollment of the head of the household and the spouse is compulsory.
- Benefit is on a family floater basis, which means that the total benefit amount (Rs. 30,000) can be used by one person or jointly with other members of the family.

### **9-Aam Aadmi Bima Yojana**

- The member should be aged between 18 and 59 years and should be either the head of the rural landless household or an earning member in the family. In the event of death of a member prior to the terminal date, the sum assured of Rs. 30,000/- will become payable to the nominee.
- Accident benefits: In the event of death by accident or total/partial permanent disability due to accident, the following benefits shall become payable.
  - ❖ A) On death due to accident Rs. 75,000/- B) Permanent total disability due to accident Rs. 76,000/- C) Loss of two eyes or two limbs or one eye Rs. 75,000/- and one limb in an accident D) Loss of one eye or one limb in accident Rs. 37,500/-
- A free add on scholarship benefit for the children of the members of AABY is provided under the scheme. A scholarship at the rate of Rs. 100/- per month will be given to maximum two children studying between 9th to 12th standard. This scholarship is payable half yearly-on 1st July and on 1st January each year.
- The premium under the scheme shall be Rs. 200/- out of which 50% shall be subsidized from the Fund created for this purpose by the Central Government and the remaining 50% shall be contributed by the State Government.