MUMBAI DIALOGUE

CONSULTATION ON SAFEGUARDS POLICY FRAMEWORK FOR FINANCIAL INSTITUTIONS

A Report

Need for Environmental & Social Safeguards in Development Finance

7th July 2023 | Mumbai Dialogue

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Place: Mumbai

Participants: **Medha Patkar** (Narmada Bachao Andolan), **Shripad Dharmadhikary** (Manthan), **Ajitha Susan George** (Bindrai Institute for Research Study and Action), **Thomas Franco** (Jan Sarokar), **Ram Wangkheirakpam** (Indigenous Perspectives), **Siddharth Akali** (Coalition of Human Rights in Development), **Priya Dharshini** (Delhi Forum), **Joe Athialy**(Centre for Financial Accountability), **Anirban Bhattacharya** (CFA), **Amitanshu Verma** (CFA), **Nancy Pathak** (CFA)

The discussion commenced with CFA making a presentation on the need for social and environmental safeguards for Indian financial institutions comprising banks and non-banking finance companies. Drawing upon several cases the presentation highlighted the adverse social and environmental impacts of hydropower projects, solar power projects, thermal power projects and port projects. Several Indian and International banks have invested in these projects through loans. The Indian banks comprise both public and private sector banks. The presentation highlighted the need for investment standards and safeguard mechanisms in financial institutions so as to prevent, mitigate and redress the social and environmental impacts of the 'development' projects which they fund. The presentation emphasised the changed role of Indian banks from the beginning of 21st century, and their increased forays into development finance, exposing people's savings to high impact projects. It stressed the absence of environmental and safeguard mechanisms in Indian banks, and highlighted the ethical and institutional responsibility of financial institutions to ensure that people's money entrusted with them does not end up funding the climate crisis, ecological destruction or harm to local communities. The presentation sought views of the invitees on the idea of safeguards for Indian financial institutions and what may be the guiding pillars of the framework for such a policy. CFA is embarking on drafting a safeguards policy framework which can be used for advocacy.

Indian Banks are heavily investing in High Impact 'development' projects (in crores)

Industry (Large)	2477428
Mining and Quarrying (incl. Coal)	55317
Petroleum, Coal Products and Nuclear Fuels	137232
Iron and Steel	224255
Infrastructure	1222702

Banks' exposure till June 2023 as per RBI's Financial Stability Report

The discussion brought up rich insights, questions, suggestions and challenges to the idea of safeguards and how to go about advocating for their implementation. What follows is a thematic summation of the wide-ranging discussions which took place in Mumbai.

The Layers of Safeguarding

The participants drew attention to the fact that environmental and social harm caused by development projects falls into several spheres of protection.
First, Constitutional protection through fundamental rights and laws protecting people's rights and the environment. Some such laws can be listed as under:

- (1) The Wildlife (Protection) Act, 1972
- (2) The Water (Prevention and Control of Pollution) Act, 1974
- (3) The Air (Prevention and Control of Pollution) Act, 1981
- (4) The Forest (Conservation) Act of 1980 (FCA, 1980)
- (4) The Environment (Protection) Act, 1986
  - The ozone-depleting substances (regulation and control) rules, 2000.
  - Coastal Regulation zone notification 2018.
- (5) The energy conservation act, 2001
- (6) Biological diversity act 2002
- (7) Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA)
- (8) The National Green Tribunal Act, 2010
- (9) Compensatory Afforestation Fund Act, 2016

Even though many of these laws have severe limitations they provide ground rules for the process of upholding rights and protecting climate and environment. Crucially for any attempt to strengthen environmental and social safeguards, this is one of the most important levels that advocacy can address.

Government
The application, enforcement and enunciation of laws are very much dependent upon the policy of the government of the day. It is important, for instance, whether the orientation of government policy is supportive of big development projects and looks at environmental or indigenous people protection as a hurdle. Thus, if a government follows a 'clearance-centric' approach environmental, climate and people's issues may take a backseat. Yet, policy-level intervention is an important site for implementing safeguards.

Administration
The local administration which may include district administration, police or the forest department often forms the first interface between state-environment and state-people especially when it comes to the violation of laws. Capacity building and sensitivity at this level are crucial for safeguarding the local environment and people.

Courts

A major site of safeguarding the environment, climate and people is undoubtedly the juridical sphere. Most crucially it is an important site of redressal. The courts in recent years however have practiced measured intervention in social and political rights and abstinence in the issue of economic rights. This has weakened the court's intervention beyond the pale of relief and rehabilitation when it comes to evaluating development projects.

Regulator

The banking regulator i.e. the Reserve Bank of India has so far refrained from prescribing mandatory safeguard measures for financial institutions' lending frameworks. Yet as the central regulator, it can play a crucial role in implementing and initiating safeguard measures. While it has produced several advisories of green financial instruments, social and environmental protection needs to be incorporated into the general corporate lending framework as well.

Financiers

One of the most significant sites where the potential for safeguards has remained largely unexplored is the financial institutions. Indian financial institutions such as banks, and non-banking finance companies, such as LIC or NABARD, have no other mechanisms which mandate protection from adverse social and environmental impacts. It is this level that the work on safeguards intends to address when it comes to loans. Financiers are directly concerned with the financial health of the project, before loan approval, before the release of each tranche of the loan, and throughout the loan period. In effect, they are appropriately placed to monitor project impacts and directly link them to the financial fuel supply of the project.

Views and suggestions expressed at the meeting expressed the need for strengthening safeguards at all these levels. In addition, concern was voiced by a participant that there was a distinction between Multilateral Development Banks and domestic banks. Internal mandatory safeguards, it was pointed out, were important for MDBs in order to produce uniformity in governance and accountability standards across transboundary investments. Strengthening safeguards at the national level, thus, was perhaps better done at the level of government regulations and laws rather than to advocate for internal mechanisms in the bank's lending framework.

Several main reasons were pointed out for putting in place safeguard mechanisms at the level of the bank. First, safeguard mechanisms in banks ensure that each bank can have its own policy taking into account the general focus of its investments. Second, given the fact that Indian banks have high exposures to high environmental and social impact big-ticket projects, it makes sense to have an additional layer of safeguards at the level of lending institutions which provides one more tool in the hands of the people to ensure accountability. Third, for practical reasons, banks are better placed and have better incentives to monitor projects for which they lend money.

Participants' Observations and Inputs

In response to the presentation on safeguard the participants had many rich insights, suggestions and questions on the issue of safeguards for Indian financial institutions"

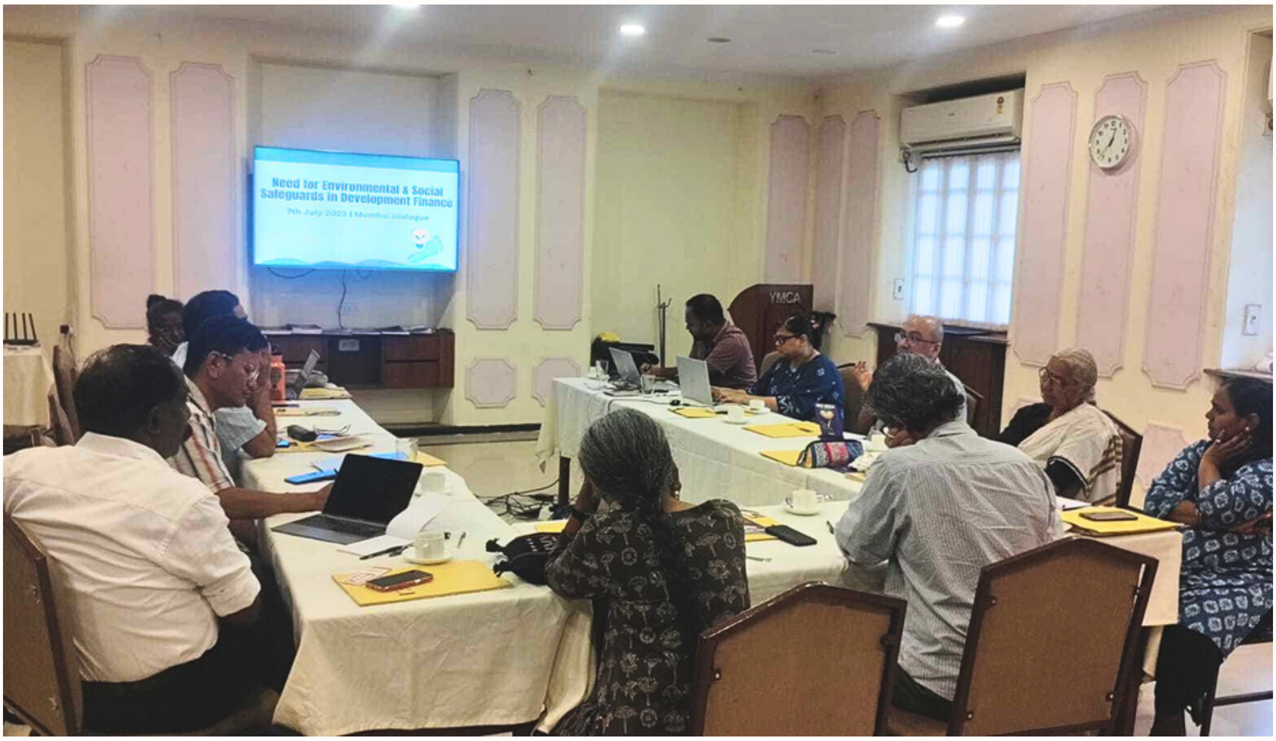
Thomas Franco:
Banks are required by law to not disclose information. There are no mandatory guidelines from the central regulator, the Reserve Bank of India, towards this end. There can be a demand that the RBI brings out guidelines for this.

In credit policy, climate risk needs to be incorporated. Environmental impacts must be made part of audit mechanisms. CIBIL score should have environmental criteria.
Transparency in bank loans is much needed. We see that large projects requiring loans go to a small set of corporations only.

We need safeguard mechanisms so that they could be invoked by affected communities.
Public Sector Banks are considered extended arms of the state. Banks need environmental and social safeguards because, after all, it's the banks' loan and responsibility. And state clearances may not suffice.

There needs to be a demand for a depositor's forum.

Need to study international best practices.



Sripad Dharmadhikary

Projects can lead to harmful impacts even after the operation. Financiers need to be held accountable for that too.

In addition to the inclusion of safeguard mechanisms in the pre-lending phase, we need structures to monitor and address the impacts of ongoing violations by projects.

What we are looking at then is monitoring mechanisms covering the life cycle of projects.
While depositors are important stakeholders, it is important to look into how their interests are represented. For example, there is an officer who oversees pension investments. A similar, model can be thought of for depositors.

Transparency is crucial. Are the banks assessing whether the project proponents have the capacity to follow laws? What due diligence procedures are there within banks? These are questions that a safeguard policy ought to address.

Safeguard measures should ensure that in case of adverse impact reports by pollution control boards, for instance, the bank should take steps on whether to disburse loan instalments or not.

Medha Patkar

At the time of protests against the Sardar Sarovar Dam at Narmada, in the face of criticism, the World Bank had said that the responsibility of addressing violations is of the borrower.

We need a forum or a board where all stakeholders such as financiers, beneficiaries, project developers, and the affected communities, are a part.

Public Sector Banks have an extent of autonomy. Even if banks say that state-level agencies have to monitor violations and impacts by projects, we have to assert that they too are responsible and accountable. Without community consent, no project should be undertaken.
Public participation in planning is required. If financiers have to do consultation they may raise questions but even the World Bank had raised questions at first and then was compelled to make mechanisms. If international finance institutions have mechanisms, should not national finance institutions have them?

Banks should ensure that their investments are equitable, sustainable and just.

There's already an institutional hierarchy of safeguards starting from fundamental rights protected under the preamble to the Constitution, then the law which derives from it and the policy that governments make.

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At a time when laws are getting weakened how far will safeguards be able to function? This is why institutional safeguards available at the level of laws and rights too need to be strengthened.

The issue of making the RTI Act applicable to bank loans needs to be taken up.

There should be one framework of safeguards which should be applicable to all banks.
Compensation to displaced communities should be in the form of livelihood rather than cash.

Ram Wangkheirakpam
It is important to make a robust argument for safeguards through case studies. Then we need to approach banks and regulators.

A comparative study of private banks can be undertaken.

We need to aim towards a future where projects result in the replenishment of people's lives and environment.

Siddharth Akali
Safeguards were a response by MDBs to the absence of an international law regime to regulate lending.

We often find that International Finance Institutions do not implement safeguards well. There are international guidelines too such as the United Nations Guiding Principles of Business and Human Rights. Often safeguard mechanisms of International Finance Institutions are weaker than such guidelines.

A question that arises is about how we are imagining such safeguard mechanisms for national financial institutions. A mechanism internal to banks or perhaps a mechanism like the National Green Tribunal? If we are thinking of mechanisms at the level of banks then will it be one framework for all the banks or a separate one for each bank?

Given the existence of domestic regulations and laws on the environmental and social impacts of development projects, isn't the need of the hour to strengthen these accountability mechanisms, rather than asking for a second set of mechanisms at the level of banks?
Chinese Green Credits is a possible example of safeguards of this nature.

Ajitha Susan George
Areas need to be demarcated where no mining activity can take place. Also, agricultural zones need to be demarcated.

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Pillars of Safeguards

The discussion coalesced around a safeguard policy which may comprise the following elements

- **Transparency**

This is one of the most crucial spheres of accountability. Banks need to be transparent about their lending to high-impact projects. Transparency is the basis of ensuring public accountability by putting loan information, assessment reports etc. in the public domain.

- **Participatory Planning**

A precursor to safeguards is ensuring public participation at the planning stage itself. The dialogue highlighted this point.

- **Consent**

Consent from the community which potentially stands to be affected by the development project is essential and should be made mandatory for proceeding with the project.

- **Compensation in terms of land and livelihoods**

In cases of displacement, adequate arrangements are to be made for compensation in terms of both land and livelihoods. Compensation should be thought of as per the wishes of the people.

- **Assessment at the planning and operational stage**

Impact assessment at both planning and operational stages to be ensured

- **Grievance Redressal**

Banks and financial institutions have a grievance redressal mechanism where people can raise complaints and concerns about the impacts of the project financed by them.

Advocacy Strategy

It was pointed out that there was a need to cogently convey and make a strong argument for why a safeguards policy was needed for financial institutions. The **advocacy strategy should be able to incorporate all stakeholders** which may comprise banks, NBFCs, regulators, depositors, impacted communities, civil society, researchers and community workers.

More importantly, it was highlighted that in addition to identifying key elements of a safeguard policy, there was a need to bring together a broad set of researchers, community workers, academics and members of marginalised groups to discuss and provide recommendations on key aspects of such a policy. A number of such themes which should be covered by a safeguard policy were identified and prospective names of those who could be invited for contributing to them were suggested. One of the main reasons for doing a multi-stakeholder engagement is to ensure that the draft policy is tailor-made for the specific needs of India, and draws upon the wealth of experience of those who have worked at the intersection of development projects, community and ecology.

Important points raised at the meeting:

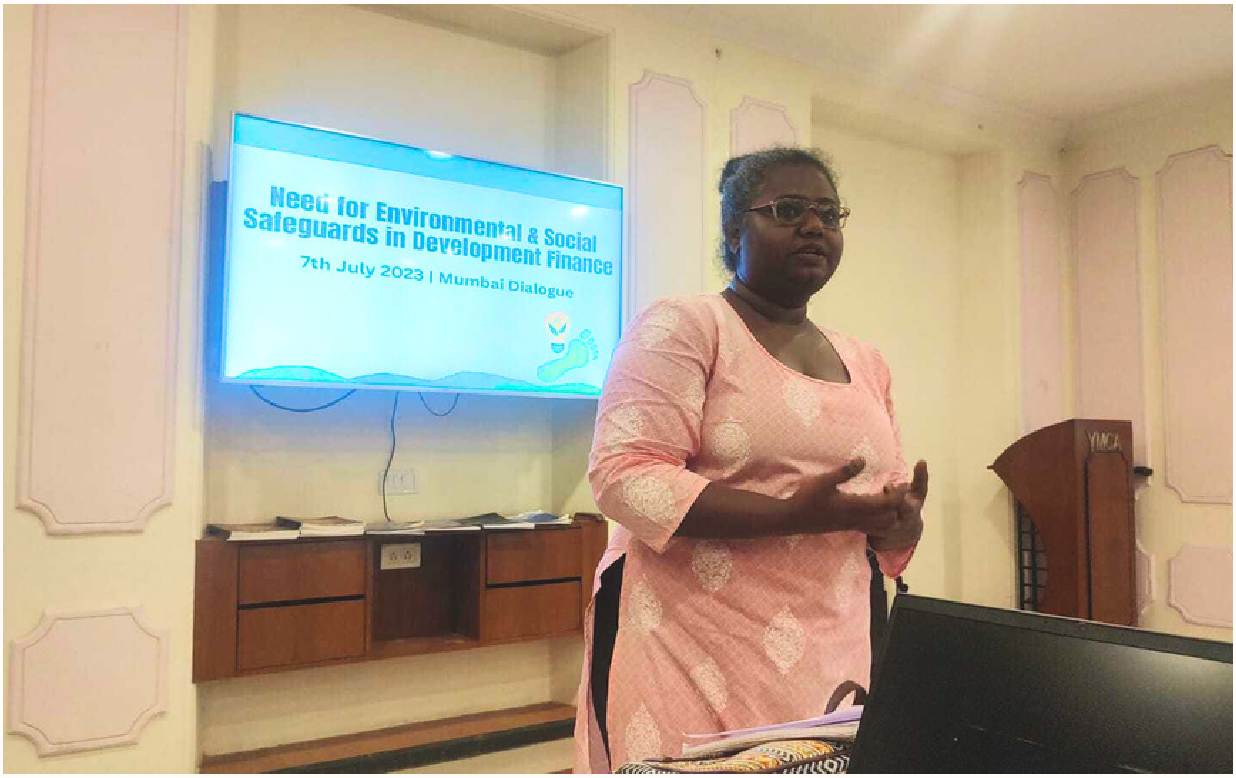
- Establish a comprehensive safeguards policy that encompasses not only banks but all investors in the development sectors, addressing the impact on ecology, ethical accountability, and livelihoods.
- Mandate impact assessments for investments in thermal power plants, dams, and other projects, ensuring that banks and investors have a clear understanding of the potential environmental and social risks before proceeding.
- Introduce accountability measures for banks, including the requirement to submit annual audit reports specifically addressing environmental and climate risks associated with their investments.
- Encourage the Reserve Bank and other financial regulators to proactively monitor and evaluate the climate finance implications of banks' investments, ensuring that environmental concerns are adequately addressed.
- Promote transparency in the banking sector by allowing the disclosure of the list of creditors, defaulters, and write-offs, fostering greater accountability and public awareness. Advocate for the availability of basic information to depositors regarding their investments while maintaining necessary security measures.
- Enforce the need for clearance before banks can invest in development projects, ensuring that potential risks and impacts are assessed and mitigated before financial commitments are made.
- Establish mechanisms to monitor ongoing violations during the operational period of projects, implementing safeguards to address and rectify any environmental or social violations.
- Create a multi-stakeholder forum or board responsible for reviewing project clearances from an environmental and social safeguard perspective, involving representatives from various sectors and communities affected by the projects.
- Consider the applicability of Indian banking laws to foreign bank investments and ensure that the same level of environmental and social safeguards are upheld regardless of the origin of the investment.
- Emphasize the importance of obtaining community consent in the planning exercise of development projects, recognizing the rights of local communities and their resources.
- Consider including national banks as part of the state, allowing for greater regulation and accountability in their operations.
- Strengthen the role of the National Green Tribunal (NGT) in questioning and addressing environmental concerns related to development projects.
- Explore the modification of the Right to Information Act (RTI) under Section 4 to cover information related to banks' investments, defaulters, and environmental impacts.
- Establish a depositor forum to represent the interests of depositors and enable them to raise concerns and demands at the regional level.

- Consider the formation of an oversight commission or regulatory commission with unquestionable legitimacy to oversee the adherence to safeguards and accountability in the banking sector.
- The Chinese green credit guidelines should be looked at to get some ideas about similar frameworks in other countries. These guidelines in China are for domestic and international investments.
- Ensure that banks have robust due diligence procedures in place to assess the social and environmental impacts of their investments before disbursing loans at different stages.
- Develop model policies and approaches for implementing safeguards, tailored to the specific needs and characteristics of different financial institutions.
- Use case studies to build a strong argument highlighting the necessity of safeguards mechanisms in addressing the environmental, social, and economic impacts of development projects.
- Conduct thorough assessments of environmental impacts with the participation of affected communities, incorporating public hearings and adhering to robust laws and guidelines.
- Establish mandatory guidelines for the implementation of safeguards at different stages of projects, prioritizing mitigation measures based on comparative assessments of alternatives.
- Develop sector-specific assessment frameworks with defined parameters for each project, ensuring a comprehensive evaluation of potential risks and impacts.
- Enforce zero discharge policies by pollution control boards, promoting environmentally responsible practices in development projects.
- Include specific sections in the safeguards policy addressing depositor rights, health, tribal rights, labour rights, land, grievance redressal mechanisms, climate crisis, gender rights, cultural heritage, biodiversity, and establishing no-go zones for activities such as child labour and dams.
- Form working groups dedicated to addressing key issues identified within the safeguards policy, fostering collaboration and expertise in each area.

Issues Identified and working groups (ongoing)

Issues:

- Social and Livelihoods
- Environmental
- Health
- Labour
- Biodiversity
- Adivasi Rights
- Gender Justice & Sexual Minorities
- Climate Crisis
- Cultural Heritage
- Transparency and Disclosure
- Marginalised Communities
- Disability Rights
- No go zones
- Life cycle accountability and assessment
- Grievance Redressal
- Land
- Depositors' Rights



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