



## Supreme Court on Wildlife Conservation

# **KAZIRANGA- KARBI ANGLONG LANDSCAPE**

Consistent Usage of Environmental Principles  
in Wildlife Conservation

*Shyama Kuriakose*

CASE BRIEF

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December 2020

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Photographs used in this report were clicked by Debadityo Sinha and were captured during our field visit in and around Kaziranga National Park between 29<sup>th</sup> November-3<sup>rd</sup> December 2019.

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**T**he Supreme Court of India has a stellar track record on environmental protection. It is credited with taking important steps to clean Delhi's air, protecting the Taj Mahal from industrial pollution, preserving forests and halting polluting activities in the Ganga. However, the life of environmental law exists beyond the courtroom and case books. While the recognition of important environmental principles as part of the law of the land is the first step towards environmental protection, we would be failing in our duty as environmental lawyers, activists and academics if we did not scrutinise the practical implementation of these principles. We must examine whether there is compliance with the Court's orders and directions, and if not, identify and address the reasons for this.

With this objective, the Vidhi Centre for Legal Policy has been tracking the implementation of five landmark judgments of the Supreme Court of India and the National Green Tribunal ('NGT') on environmental protection. These judgments span different geographical areas-the rivers of Uttarakhand, industrial areas in Telangana, rhinoceroses' territory in Assam,

and toxic air and landfills in Delhi. They also span different environmental issues-ecological threats posed by dams, efficacy of effluent treatment plants, wildlife conservation, air pollution, and waste management. Through a combination of field research, judgment analysis and interviews with petitioners, lawyers and other stakeholders, Vidhi has produced a set of five case briefs that provide a comprehensive overview of each of these judgments and their implementation on the ground. These briefs provide the legal background for each case, present the key facts, summarise the major orders and directions of the Supreme Court and NGT, and discuss the degree of success with which these have been implemented.

In focus in this case brief, are the judgments on the conservation of the Kaziranga-Karbi Anglong Landscape in Assam. These judgements include a ban on mining in the Karbi Anglong Hills, traffic management on the highway running alongside the park and demolition of the Numaligarh Refinery Ltd. boundary wall which has been creating obstructions in the wildlife corridors. All these directions have been aimed at freeing animal movement within the landscape.

# The Case of Protecting the Kaziranga-Karbi Anglong Landscape

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## Wildlife and Landscape Level Conservation: Legal Background

The Indian subcontinent is teeming with a huge variety of wildlife species. Their habitats are not only considered biologically diverse but are also crucial for ecological services such as watershed conservation and maintenance of biodiversity richness, among others. Given the high priority that should be afforded to conservation of wildlife species and their habitats, Indian states have declared a large network of national parks and wildlife sanctuaries under the Wildlife Protection Act, 1972 (“WPA”), which may also be referred to as ‘protected areas’ (“PA”). The WPA provides for the protection of species of wild animals, plants and their natural habitats. It has also established authorities for the implementation of its provisions and includes regulations on

hunting, management of PA and restrictions on trade in wild animals or animal articles.

Despite such a comprehensive legislation for the conservation of wildlife and its habitats, problems such as poaching, habitat degradation, human-wildlife conflicts and diversion of protected areas for development projects, among others, continue unabated. Another concern for wildlife conservation is threats posed to wildlife habitats and the free movement of animals from various infrastructure development projects. Finding no recourse in the executive/ implementing agencies, wildlife conservationists have approached the judiciary for remedies time and again. For instance, in the case of *Animal and Environment Legal Defence Fund v. Union of India*<sup>1</sup>, the Supreme Court (“SC”) directed that fishing licenses of tribals inside the Pench National Park shall be allowed only if the conditions for implementing licenses are strictly met without any detriment to wildlife.

In *Tarun Bharat Sangh, Alwar vs. Union of India*<sup>2</sup>, mining was banned in areas declared tiger reserves in the Alwar District of Rajasthan and within the Sariska National Park. According to an order under *T.N. Godavarman Thirumulpad vs Union of India*,<sup>3</sup> the state government of Chhattisgarh was directed to take all necessary steps to save the wild buffalo population in the state from extinction. In *Indian Handicrafts Emporium v. Union of India*<sup>4</sup>, the apex court held that ivory trade which is dangerous to ecology should be regulated or totally prohibited. In 1995, the Centre for Environmental Law (“CEL”)-Worldwide Fund for Nature-India approached the apex court to enquire into the manner in which National Parks and Wildlife Sanctuaries are being managed in the country. The case is still ongoing with the court issuing several significant orders.<sup>5</sup> Most recently, the SC allowed the National Tiger Conservation Authority’s (“NTCA”) application seeking permission to introduce

the African Cheetah into a suitable Indian habitat.<sup>6</sup>

In the specific context of Kaziranga National Park (“KNP”), both the SC and National Green Tribunal (“NGT”) have intervened in order to protect the park as well as the landscape abutting this park. These interventions include important directions involving a ban on mining in the Karbi Anglong Hills, traffic management on the highway running alongside the park and other steps to remove man-made obstructions in the wildlife corridors, thereby freeing animal movement within the landscape.

### Relevance of the Kaziranga- Karbi Anglong landscape to wildlife conservation

Kaziranga was notified as a Reserved Forest in 1905, a Game Sanctuary in 1916, a Wildlife Sanctuary in 1950, and a National Park in



Map showing the Kaziranga National Park, and the watershed areas of Karbi Anglong hills. (Map prepared by Debadityo Sinha; Sources- Forest Dept. Assam, Base Map- Google Earth)

1974, the last designation taking place under the WPA. There have been six extensions between 1977 and 1999 to the area under KNP which now stands at 884 sq. km. Kaziranga hosts the single largest population of the One Horned Rhinoceros and has two-thirds of the entire world population. It was declared a world heritage site by United Nations Educational, Scientific and Cultural Organization in 1985. The KNP has one of the highest densities of tigers in India and was declared a Tiger Reserve in 2007. KNP is also part of the 3270 sq. km. large Kaziranga-Karbi Anglong Elephant Reserve. Further, the park has almost the entire population of the Eastern Swamp Deer along with several other wild animals including the Asian Elephant, Wild Buffalo, Gaur, Sambar Deer, Hog Deer, Capped Langur, Hoolock Gibbon, Sloth Bear, etc.<sup>789</sup>

The National Park is spread over two districts of Assam-Golaghat and Nagaon. Most of the park lies on the floodplains of the River Brahmaputra which flows near the northern boundary, with the Karbi Anglong hills towards the southern boundary. River Diphlu is a tributary of the Brahmaputra. The Karbi Anglong Hills act as the catchment for both the wetlands of Kaziranga as well as the Rivers Diphlu and Brahmaputra.

The Karbi Anglong Hills together with the wetlands of KNP are integral to the survival of the wildlife in this landscape. Seasonal flooding causes many animals to disperse outside the park, which is an active floodplain, towards the highlands located in and around the Karbi Anglong Hills. The KNP is surrounded by several notified forests and PAs namely Panbari Reserve Forest and Deopahar Reserve Forest in Golaghat District, Kukurakata Hill Reserve Forest, Bagser Reserve Forest, Kamakhya Hill Reserve Forest and Deosur Hill Reserve Forest (proposed) in Nagaon District, Bhumuraguri Reserve Forest in Sonitpur

District and North Karbi Anglong Wildlife Sanctuary (proposed) in Karbi Anglong district.<sup>10</sup> Thus, maintenance of functional connectivity between KNP and the surrounding forests especially Karbi Anglong Hills is imperative to maintaining the integrity of the park and ensuring the survival of the unique wildlife of the park which evolved with this landscape.

Highlighting the importance of continuity of KNP with Karbi Anglong Hills, the NTCA in its 2014 report<sup>11</sup> stated:

*“The ecological integrity and long-term survival of wildlife in this area will depend on maintaining Kaziranga flood plain with Karbi-Anglong hills and surrounding hills as single landscape complex. Karbi Anglong hills adjoin the park on the south and constitute an ecological extension of the park.”*

### **Declaration of ESZs as an approach for conserving landscape continuity**

It is quite evident from the previous sections that conservation at the landscape level and protection of buffer areas around wildlife habitats is very important. The Environment (Protection) Act (“EPA”), 1986, is relevant in this context as it empowers the central government to declare areas in which certain industrial activities can be restricted for the purpose of protecting and improving the quality of environment and preventing environmental pollution<sup>12</sup>. As per the Environment (Protection) Rules, 1986, the central government may take into consideration proximity of the concerned site to PAs under the WPA while restricting industrial activities in such areas.<sup>13</sup> Eco-Sensitive Zones (“ESZ”) is one such tool used by the central government to restrict industrial activities around the PAs under the WPA and to ensure protection of wildlife corridors.

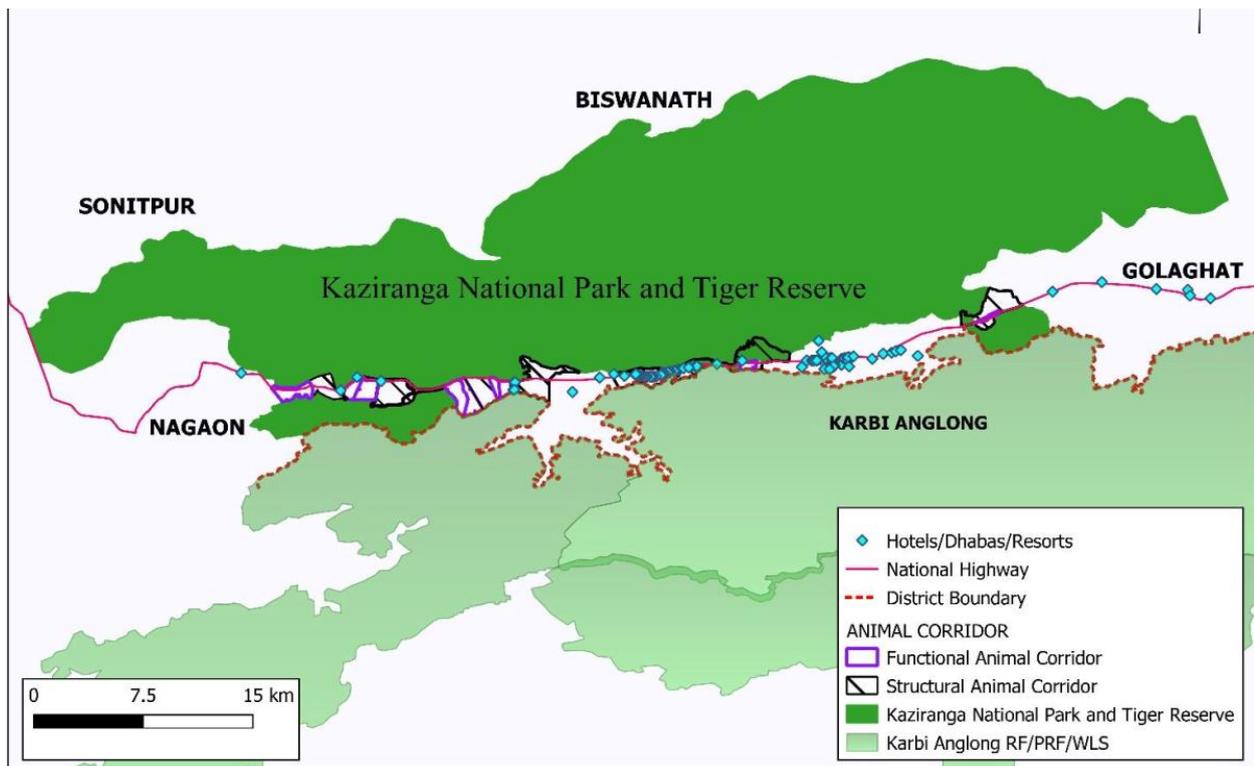
As per MoEFCC's Guidelines for Declaration of ESZ (2011), the ESZs are expected to create some kind of "Shock Absorber" for the PAs. They would also act as a transition zone from areas of high protection to areas involving lesser protection.<sup>14</sup> Parameters for declaring ESZs include the biological diversity of an area, maximum allowable limits of concentration of pollutants for an area, environmentally compatible land use and proximity to national parks and wildlife sanctuaries.<sup>15</sup>

It was the Wildlife Conservation Strategy, 2002 which envisaged for the first time that lands falling within 10 kms of national parks and wildlife sanctuaries should be notified as ESZs under the EPA and its rules.<sup>16</sup> Accordingly, the Chief Wildlife Wardens of all states were directed by the Ministry of Environment, Forest and Climate Change ("MoEFCC") to list these areas and furnish proposals for notifying these areas as ESZs. Very few states responded to this direction citing that human habitation and other development-centric areas will come under the purview of ESZs if this initiative is taken forward.<sup>17</sup>

The National Wildlife Action Plan (2002-2016) also reiterated the need for protection of wildlife corridors in the context of ESZs. Instructions were also issued in 2005 by the National Board of Wildlife ("NBWL") to delineate ESZs in a site-specific context with more focus on regulation rather than on the prohibition of activities. The States/UTs were asked to prepare the ESZ proposals for all PAs in their respective states and forward the same to the MoEFCC. There was barely any progress in the declaration of ESZs by states. This prompted the Supreme Court to intervene in the Goa Foundation case in 2006.<sup>18</sup>

### **Supreme Court's direction on ESZs in Goa Foundation v. Union of India**

The Goa Foundation, through a writ petition approached the Supreme Court to direct the closure of mining units in the state of Goa which continued to operate in violation of environmental laws. The aspect of ESZs was brought up in this matter to ascertain whether mining leases granted in close proximity to national parks and wildlife sanctuaries should be allowed to operate or not. As per its order in 2006, the MoEFCC was directed to provide an update on whether states have responded with proposals on ESZs or not and if not, the states were supposed to respond within a stipulated time frame.<sup>19</sup> In a subsequent order in December, 2006, the court directed the MoEFCC to communicate to the states/UTs that if the states/UTs fail to send proposals on ESZs within four weeks of communication from the ministry, the court may have to consider an area of a radius of 10 kms outside the boundaries of national parks and wildlife sanctuaries as default ESZs.<sup>20</sup> The Supreme Court also directed that all those projects which have been given environmental clearance within the 10 km zone of national parks or wildlife sanctuaries before the declaration of ESZs would have to be referred to the standing committee of the NBWL for further permission. Subsequently, only a few state governments submitted their proposals to the MoEFCC. Another interesting development was the MoEFCC's initiative in issuing a comprehensive set of guidelines laying down parameters and criteria for declaring ESZs in 2011.<sup>21</sup>



Map showing animal corridors and commercial tourism establishments (hotels, dhabas, resorts along NH-37 between Kaziranga National Park and Karbi Anglong hills.  
(Source: Committee for delineation of corridors, Govt. of Assam)

Till December 2018, ESZs were declared for 289 National Parks and Wildlife Sanctuaries; draft notifications for 206 sanctuaries and parks were prepared and another 146 cases are in the process of being declared ESZs. The SC directed that 10 kms around the remaining 21 Sanctuaries and Parks should be declared by the MoEFCC as ESZs, with liberty to States to move an application for modification.<sup>22</sup>

### Declaration of ESZ around Kaziranga National Park

The state of Assam submitted its proposal on Eco-sensitive areas for three of the nineteen national parks and wildlife sanctuaries of the state including KNP in 2009. The proposal contained provisions for regulation on tourism, developmental activities, mining and other such environmentally degrading activities. It even provided for the monitoring mechanism, preparation of zonal master plan and zoning of the Eco-sensitive areas into

forest areas, green zones meant for human habitation and agriculture and urbanizable zones.<sup>23 24</sup> (Note: The term eco-sensitive areas and eco-sensitive zones in the context of PAs have been used interchangeably in some publications).

Thereafter, the ESZ proposal for KNP was submitted to the Ministry on 28th July 2015. The State was asked to revise the proposal integrating KNP and its adjoining eight PAs. The proposal was deferred on the request of the state government.<sup>25</sup> Reports prepared by expert bodies such as the NTCA and the Centrally Empowered Committee (“CEC”) have recommended that the Assam Forest Department expedite the declaration of an ESZ around KNP at the earliest.<sup>26 27</sup> According to a news report in 2019, the Assam government had approved a draft proposal for a long pending eco-sensitive zone around KNP at an average distance of 1

km from the park boundary.<sup>28</sup> The proposal for declaration of KNP was last considered by the MoEFCC's expert committee for declaration of ESZ in June 2020 wherein an ESZ of 0-6 Km around KNP was proposed by the State. The proposal was again deferred with the following observations by the committee:

*"The Committee pointed out that in spite of restrictions & ban imposed by Hon'ble Court, the present proposal of ESZ for Kaziranga NP has been submitted in isolated form without integrating with eight adjoining PAs. Further, it was observed that the extent of the ESZ in most of locations are almost zero and it is referred as zero to 6.2 Km in the draft notification. The State Govt representative informed that the standalone ESZ proposal of Kaziranga NP is prepared taking into account the observation of Central Empowered Committee (CEC) constituted by Hon'ble Supreme Court.*

*The Committee members' along with NTCA insisted for integrated ESZ proposal with eight (8) PAs together with reserved forests as the present proposal may have long term negative impacts on the entire biodiversity of the area and need protection and conservation at this stage only. The Chairman expressed that views of the Expert Committee may suitably apprised to CEC for making proposal meaningful on the said measures.*

*It was observed that notifying Kaziranga National Park separately shall result inconsistencies because the ESZ area of one PA may be contagious with the other PA as such. This shall add to environmental concerns and disputes.*

*Based on the presentation made and discussions held, the Committee asked the State Government to formulate integrated proposal including all the eight. The revised*

*proposal should be sent to wildlife division of MoEFCC and also seek concurrence of NTCA."*

Range Officer shall prepare inventory of different land use patterns and types of activities, industries and important corridors around the national park or wildlife sanctuary within 10 kms of his range



Committee comprising of Wildlife Warden, an Ecologist, official from the Local Self Government and an official of the Revenue Department to be formed to deliberate on the ESZ proposal.



Finalized proposal forwarded by state forest department to State Government with copy to MoEFCC for further processing and notification



Based on above deliberations, Chief Wildlife Warden would group activities into prohibited, restricted with safeguards and permissible categories.

*Process of declaring ESZs around Protected Areas*

## **Declaration of the Numaligarh No-Development Zone**

The same criteria used for declaration of ESZs have been used by the government to declare No Development Zone ("NDZ") as well. The NDZ was declared within a radius of 15 km around the refinery site except towards north-west where the NDZ extends up to the eastern boundary of the KNP.<sup>29</sup> According to this notification, expansion of the industrial area, townships, infrastructure facilities and such other activities which could lead to pollution and congestion were not to be allowed, except with the prior approval of the central government.

## **Threats being faced in the Kaziranga Landscape and need for Judicial Intervention**

The Kaziranga-Karbi Anglong landscape was severely plagued by illegal mining and stone crushing. These activities have resulted in degradation of hill slopes, drying up of streams, destruction of habitat and loss of valuable flora and fauna. Vehicular traffic on the NH-37 which passes along the boundary of the KNP and the Karbi Anglong Hills makes it very dangerous for wild animal crossings, especially in flood season. Mushrooming of tourist resorts, dhabas and hotels on the NH 37 alongside the park boundary are also causing further hindrance to free movement of wild animals. News reports of a tiger straying out of the flooded national park and ending up in a house near NH 37, is one of the most discussed instances of obstructions to animal movement.<sup>30</sup> On the other end of the spectrum, several human settlements adjacent to the park boundary are threatened by the incursion of wild animals, especially in the time of floods. Human-wildlife conflict is also common in this landscape with many incidents of big animals like One-Horned Rhinoceros, Tiger, Elephant, Wild Buffalo and Swamp deer straying into the villages. Restoring the connectivity between Karbi-Anglong and KNP is expected to reduce such conflicts for the wild animals of KNP.<sup>31 32</sup>

Given the above challenges, importance of the Kaziranga-Karbi Anglong landscape and the foot-dragging by the state government in declaring an ESZ around KNP, three petitions were filed by a wildlife activist from Assam, Rohit Choudhury in the SC and NGT praying for the following:

- I. Demolition of the Numaligarh Refinery's boundary wall which comes in the way of the elephant corridor in the Numaligarh NDZ (2011)

- II. Restrictions on the speed limits of vehicles plying on the NH-37 which runs alongside KNP (2013)
- III. Ban against illegal mining around KNP in the Karbi Anglong hills and any new construction in the identified animal corridors (2019)

### *I. Demolition of the Numaligarh Refinery Ltd. boundary wall*

The NDZ was declared in Numaligarh, keeping in mind the close proximity of Numaligarh Refinery Limited ("NRL") to the KNP boundary as well as the fact that the area is a prominent elephant corridor. While this is an important executive order, it is not effective in practice because there is no mechanism for enforcing and monitoring the prohibitions within the NDZ. As a result, many stone crushers, tea factories and brick kilns causing air pollution, have mushroomed in the NDZ.<sup>33</sup> Special reference must be made to the 2.2-kilometre boundary wall topped with barbed wire which was constructed in 2011 by NRL seemingly to protect its township from elephant attacks in violation of the NDZ notification and without obtaining any environment clearance. This wall with barbed wire fencing not only obstructed the elephant corridor but also fell within the NDZ and Deopahar Reserve Forest. In May 2015, a 7-years old male elephant died of haemorrhage after trying to break the wall. Reportedly, many elephants have died or been injured trying to cross the wall.<sup>34</sup>

Spurred by this incident as well as the continuance of the illegal activities mentioned above, Rohit Choudhury, in his first petition, approached the NGT in 2011 for action against the alleged illegal activities including operation of stone crushers, brick kilns, tea factories and other polluting activities in the NDZ. The NGT directed the

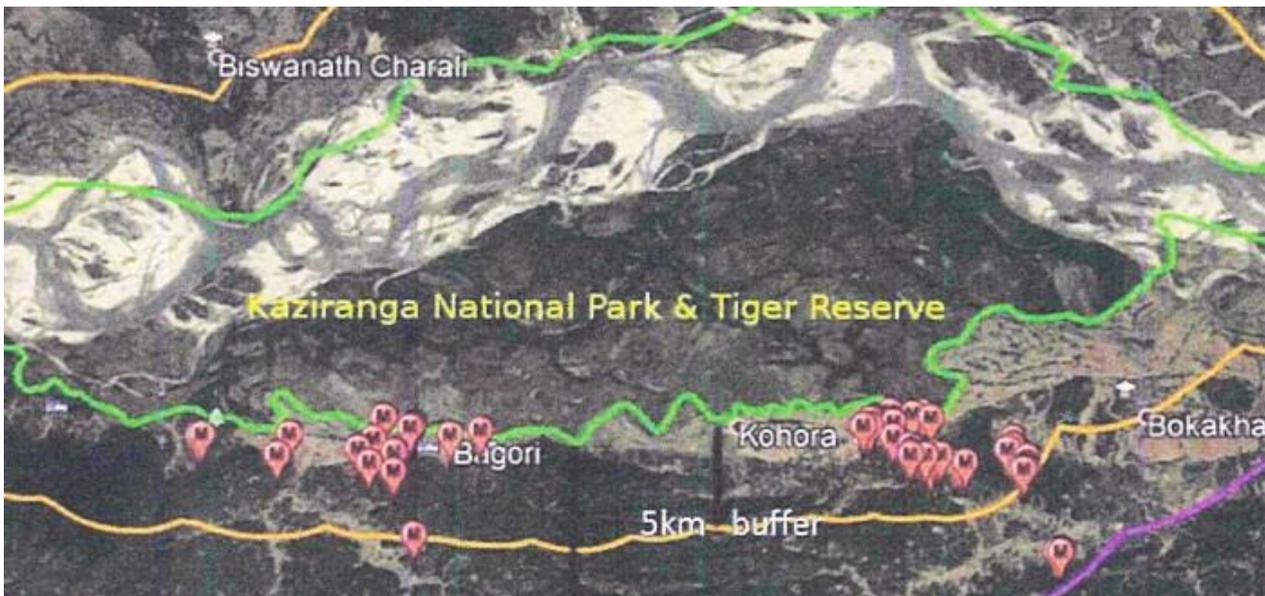


Though the wall has been claimed to be demolished by NRL, environmentalists claim that it has been demolished partially and barbed wires are yet to be removed which still poses danger to the pachyderms. Photo taken during our field visit in December 2019.

removal of all encroachments in 2012.<sup>35</sup> Owing to non-compliance of the 2012 judgement, the Applicant approached the NGT again in 2015 to ask for relief, especially in the case of construction of the boundary wall. The NGT in its 2016 judgement held that the wall was in clear violation of the NDZ notification.<sup>36</sup> The NGT directed this wall to be demolished within a period of one month from its judgment. NRL was also ordered to pay an environmental compensation of 25 lakhs to Assam Forest Department for restoration of the area as well as to take measures to reduce man-animal conflict. The NRL filed a review application in the NGT against the 2016 judgement but the NGT did not entertain it. In response, the company appealed in the SC against the NGT's order dated August 3, 2018. The apex court upheld the NGT's decision pertaining to demolition of the wall on January 18, 2019 with the Bench orally observing that elephants have the first right on the forest.<sup>3738</sup>

## *II. Regulating traffic on NH 37 abutting Kaziranga National Park*

The NH 37 remains one of the linear obstructions to free animal movement from KNP to the Karbi Anglong Hills. Several animal casualties have occurred because of speeding vehicles on the highway, especially during the annual flooding season. This led to Mr. Choudhury's second petition in the NGT in 2013 in which expansion of the NH 37 stretch between Jakhlabandha to Bokakhat through the KNP was opposed on the ground that it would lead to more deaths of wild animals. In an order in 2017, the NGT noted the observations submitted by the field director that there had been no deaths in the places where such sensors and automatic barriers were fully operational. However,



Map showing stone mining and crusher units (red balloons) which were active in Karbi Anglong hills. The yellow border is 5 km buffer around Kaziranga NP depicted in green border. (Source- CEC Report No. 6 of 2019)

areas with no barriers were still experiencing animal deaths. Hearing this, the NGT gave the following directions to the state government<sup>39</sup>:

- Speed breakers to be constructed on all those locations in the highway, where animal deaths have occurred; and
- Challan of Rs. 5000/- for over speeding and killing of animals over and above the amount to be paid for the offence under the Motor Vehicles Act.

### *III. Ban against illegal mining in the Karbi Anglong hills and new construction in the identified animal corridors*

Mr. Choudhury's third petition was pertaining to illegal mining, quarrying and stone crushing activities in the Karbi Anglong hills adjoining KNP. The petitioner had written several letters to the state government as well as MoEFCC regarding this problem. Even the KNP authorities had brought up the issue of illegal mining with the state government from time to time. There was no concrete action by the officials of the Assam and Karbi Anglong Autonomous Council ("KAAC") forest departments despite all those letters.

Reports prepared by the Comptroller and Auditor General of India ("CAG") in 2011 and NTCA in 2018 pointed towards the incessant mining happening in the Karbi Anglong hills adjacent to the NH-37 which had led to drastic reduction in forest cover, compelling the wild animals to enter human settlements. Both these reports recommended a ban on mining in the Karbi Anglong hills.<sup>40,41</sup>

Mr. Choudhury filed another complaint on 16 March 2018 with the CEC, which is a Supreme Court appointed committee set up under the long running forest case of *TN Godavarman v. Union of India*.<sup>42</sup> The complaint prompted a visit by CEC members to the affected mining sites. The CEC's report in 2019 highlighted the proliferation of illegal mining in Karbi Anglong hills.<sup>43</sup> Based on the CEC report findings, Supreme Court passed an order in April 2019 directing the following<sup>44</sup>:

*"that all kinds of mining and related activities along the aforesaid Kaziranga National Park area and in the entire catchment area of rivers/streams and rivulets originating in Karbi Anglong Hill ranges and flowing into Kaziranga*



Construction activities were found to be ongoing unabated despite the ban. This photo was taken in Amguri corridor during our field visit in December 2019.

*National Park, including Tiger Reserve are restrained.”*

*“It further directed the Director General of Police, Assam and the concerned Superintendent of Police to ensure that no illegal mining takes place in the landscape and no transportation of illegally mined material takes place from Karbi Anglong Hills.”*

The 2019 CEC report also highlighted the significance of animal corridors between KNP and the Karbi Anglong Hills. The report acknowledged that uncontrolled and ever-increasing construction/ human settlements/ dhabas/ tourist lodges and hotels/ truck parking terminals had contributed to blocking the majority of the stretch of NH 37 including the designated animal corridors. Taking cognizance of the CEC findings, the Supreme Court in the same order banned all new construction on private lands connecting KNP with Karbi Anglong Hills which form part of the nine identified animal corridors namely Panbari, Hathodandy, Deosur, Haldhibari, Harmoti, Kanchanjuri, Siring, Aamguri and Bagori.

See Annexure for office correspondences and reports related to mining, summary of all judicial interventions for protection of animal corridors around KNP.

### **Successes and challenges in implementation of court orders**

Regular follow up by Rohit Choudhury, the petitioner, with local and national agencies has helped implementation of court orders to a great extent. Concerted actions from the forest department, district administration, CEC and NTCA have also been useful to this end. During our field visits from November 28- December 3, 2019, we observed that the Field Director of KNP has been actively monitoring the situation alongside the KNP boundary. Much of the appreciation goes to the pro-active role of the NTCA and CEC which acted on the complaints filed by Mr Choudhury with a field visit and a report to the Supreme Court.

Further observations from our field visit to Kaziranga between November 28, 2019 and December 3, 2019 are as follows:

- After the April, 2019 order of the SC banning mining in Karbi Anglong area, the district administration has been successful in implementing the same in an effective manner. Even though small-scale mining continues in some parts of the region, the large-scale mechanised mining has completely stopped. Visits to a few mining sites revealed that the hills previously scarred by this activity are showing signs of natural regeneration. Assam Forest department officials, especially the park authorities are also planning activities around assisted natural regeneration of the hills and water bodies in the affected region.
- This same order had also directed a ban on new constructions in the private lands which form part of the nine identified animal corridors. We observed in the course of our field visits, several such illegal constructions across the length and breadth of NH 37 including the corridor areas.
- Pursuant to NGT's 2017 order on vehicular movement in the highway, it has

been observed that challans are being issued, but not to all over speeding vehicles. Speed cameras have not been installed anywhere till now despite earlier orders of the NGT. As per information received from the park administration, two interceptor vehicles are in operation for a few hours in the day monitoring the 66 km stretch of the highway running along the park to check that vehicle speed does not exceed the 40 kmph limit.

- According to the 2016 NGT judgement, the boundary wall of the NRL was directed to be demolished. We observed on the ground that the wall has only been partially demolished till now despite the Supreme Court judgement in 2019. A portion of the wall still stands with barbed wire fencing protruding at several places. This continues to pose danger to the elephants. Furthermore, the NRL is yet to start any restoration work as per NGT's order from 2016.

Some of the ongoing challenges which act as a hurdle towards complete implementation are as follows:



Similar truck terminals and private parking of vehicles were observed at several places on NH-37 on animal corridor areas. Photo taken during our field visit in December 2019. Reportedly, local authorities have issued office order banning parking of heavy vehicles later that month.

- There has been continued opposition and obstruction by the mining industry stakeholders to the mining ban through interventions in the Guwahati High Court and public pressure from erstwhile mine owners and workers.
- Owners of resorts and other commercial establishments continue to create new buildings on NH 37 including the animal corridor areas. The district and forest administration have been unable to restrict these activities as we found out from our field interactions and observations.
- According to CEC findings in its report from 2019, the forest department under the Karbi Anglong Autonomous Council was allowing illegal mining to carry on inside the forest tracts instead of cooperating with the KNP authorities in deterring the practice. This was being done under the pretext that stone is the prime material used for the construction of roads and bridges and the council derives the power for making laws on roads and bridges as per para 3(A)(1)(b) of the 6th Schedule to the Constitution.



A Royal Bengal Tiger took refuge inside a junk dealer's shop on NH-37 during floods of 2019 (Photo- Mohammad Rafiqur Islam, owner of the shop)



An underconstruction building alongside NH-37. The signboard on right states 'Animal Corridor-Hatidandi, Go Slow. Photo taken during our field visit in December 2019.

# Environmental Principles Used by Courts for Wildlife Conservation

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The directions of the SC and the NGT in the three petitions related to conservation of Karbi-Anglong Hills/KNP are based on certain key environmental principles. Their use in these cases should be examined in the broader context of their deployment in Indian environmental jurisprudence. The foremost environmental obligation of the state is enshrined in Article 48A of the Constitution according to which, “*The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.*” Apart from Article 48A, the Courts have also placed reliance on a few environmental principles such as the *public trust doctrine*, *precautionary principle* and *sustainable development* when it comes to wildlife management.

Article 48A read with the PTD imposes a solemn duty on the state to protect its national parks and wildlife sanctuaries in trusteeship for its citizens and their coming generations. Judicial bodies have reiterated this duty of the state through landmark judgements. In *MC Mehta v. Kamal Nath*, the Supreme Court held the public trust to encompass ‘*all eco-systems operating in our natural resources*’ with the state, as a trustee, having a legal duty to protect all of these resources.<sup>45</sup> The Court reiterated the ratio of this iconic case in an order in *TN Godavarman v. Union of India* stating that it is the duty of the state to preserve natural resources such as forests in their pristine purity.<sup>46</sup>

The principle of sustainable development was espoused in the *Vellore Citizens’ Welfare*

*Forum v. Union of India and Ors.*<sup>47</sup> When there is a genuine need to balance wildlife conservation with development concerns of the region, as seen in the case of the Kaziranga-Karbi Anglong landscape, this principle becomes important.

The other significant principle i.e. precautionary principle also plays a role in wildlife conservation especially in light of the yearly emergence of infectious diseases such as Ebola, HIV, dengue, Nipah and the now prevalent Covid 19.<sup>48</sup> Experts suggest that emerging infectious diseases, like the ones mentioned above have come about in the last 30 or 40 years as a result of encroachment into wild lands and changes in demography.<sup>49</sup> Thus, the need for a buffer zone between humans and wildlife species becomes all the more important. This principle was used in the *Goa Foundation case* when the Court insisted on the declaration of areas “*within 10 km. of the boundaries of the sanctuaries and national parks as eco-sensitive areas with a view to conserve the forest, wildlife and environment.*”<sup>50</sup> This suggests that courts in India have used the precautionary principle to justify the imposition of blanket protections to avert irreversible risk to ecosystems. The use of the precautionary principle in wildlife conservation is unusual, at least from an international conception of the principle, but is an indication of how courts have expanded or adapted environmental principles to support their orders.<sup>51</sup>

### **Application of these principles in the context of Kaziranga Karbi Anglong landscape**

Even though these principles have not been specifically cited in the orders which are under the purview of this case study, it is interesting to see how the court's larger environmental jurisprudence has influenced some of its decisions here. The three key decisions pertaining to demolition of the NRL boundary wall, regulation of traffic on NH 37 and ban on mining as well as new constructions on the animal corridors are clearly a result of the courts' reliance on all three principles. In this context, the recommendations provided in the CEC report of 2019 are also important. *(Please see Annexure for status of implementation of these recommendations.)*

The recommendations pertaining to expediting the notification of ESZ of KNP with ground demarcation; notifying animal corridors connecting Karbi Anglong hills and KNP; and creation of a special purpose vehicle with funds for facilitating rehabilitation of degraded mining sites within the wildlife corridors and restoration of ecosystem are examples of what PTD requires the state to do, given its stewardship over the landscape.

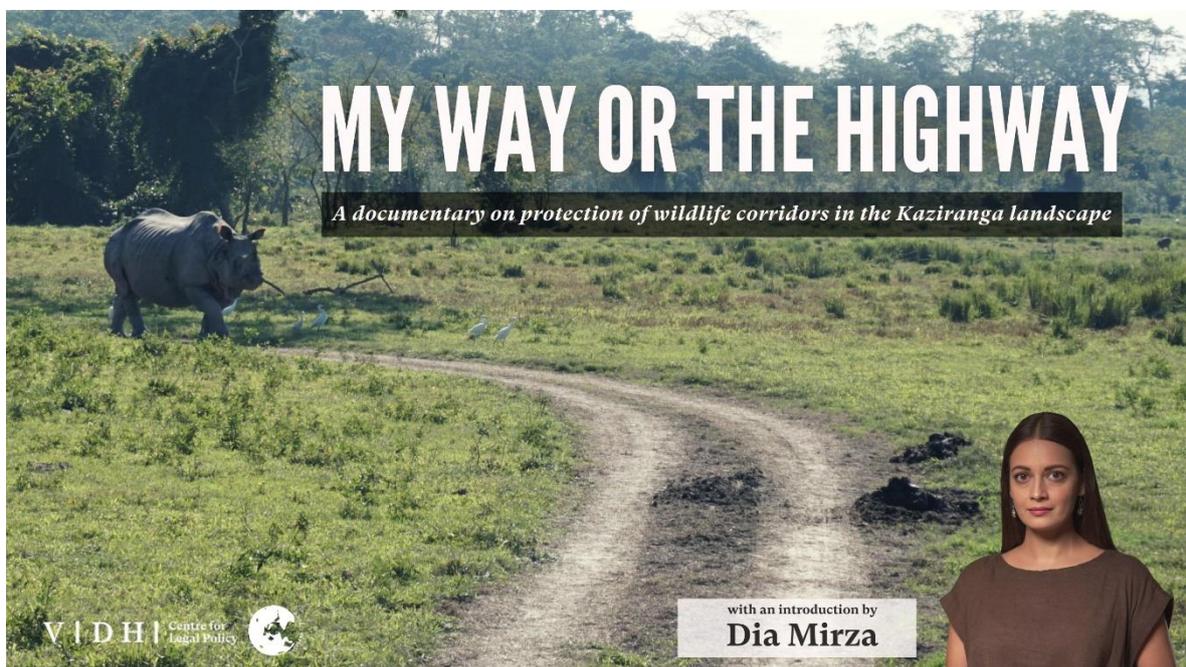
The courts were also supposed to conduct a balancing act between the economic interests of the region and wildlife conservation. CEC's recommendation on planning tourism activities keeping in mind the carrying capacity of KNP seems to be a very clear example of the sustainable development principle.<sup>52</sup> The court would have to balance the risks from tourism with the benefits that it might have for the management of wildlife within KNP.

The recommendation for total cancellation of mining permits and ban on parking are of a sweeping nature; but it is likely that the court had in mind the precautionary principle and the irreversible damage that these activities might cause to the wildlife in the region.

# Conclusion

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This case brief highlighting the judicial interventions for protection of the Kaziranga- Karbi Anglong landscape is especially important in the context of how competing interests of different kinds of stakeholders, be it tourism, industrial activities, livelihoods of local communities or wildlife conservation, must be balanced to obtain benefits for all. It surely is a tightrope walk for the government and courts while they try to achieve such a balance. In the specific context of this landscape, one can see that wildlife conservation has been successful to some degree inside the KNP. However, the real test of these measures is in the declaration of ESZs and protection of the wildlife corridors around the KNP without causing too much disturbance to the local communities.



**My Way or the Highway** is a film produced by Vidhi Centre for Legal Policy which tracks the judicial interventions for protection of wildlife corridors in Kaziranga- Karbi Anglong landscape. It is part of five films produced in association with Riverbank Studios on the implementation of environmental judgments.

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# Annexure

## A. Official Correspondence pertaining to Mining

Date	Details
25/02/1996	Letter from Forest Ranger, Kohora Range to DFO, Assam Wildlife Division objecting to installation of stone crushing units outside the park boundaries
18/06/2003	Letter from Director, KNP to CCF, Wildlife, Assam highlighting the impact of quarrying along hills in Karbi Anglong Hills
25/07/2007	Letter from Director, KNP to CF, Karbi Anglong Hills pointing out impact of dusts emanating from crusher units resulting in the drying up of streams
03/07/2015	Letter from Circle Officer, Bokakhat Revenue Circle to SDO, Bokakhat informing the latter about large-scale earth cutting and stone crushing activities resulting in blocking of natural outlets
07/11/2016	Letter from DFO, Bokakhat to DFO Karbi Anglong, Diphu referring to the ESZ judgement of Goa Foundation in 2006 stating that no mining activity should be permitted within 10 kms from National Park and Wildlife Sanctuary boundaries
16/11/2016	Letter from Director, KNP to PCCF, Karbi Anglong Autonomous Council, Diphu to direct Divisional Officer, Karbi Anglong to stop mining activities within a distance of 10 kms. from the boundary of KNP till the ESZ is notified.
09/10/2017	Letter from Director, KNP to PCCF, HOFF requesting for closure of stone quarries operating under the jurisdiction of Karbi Anglong Autonomous Council
07/12/2017	Letter from Director, KNP to PCCF, Karbi Anglong Autonomous Council to take necessary action
06/07/2018	Letter from Director, KNP to PCCF, HOFF observing rampant mining in the Karbi Anglong hills despite recent visit by CEC in 2018 to the mining sites in Karbi Anglong

## B. Relevant Judicial Interventions

Date	Event
07/12/2012	<p>Judgement of the National Green Tribunal in the matter Rohit Choudhury vs. Union of India(O.A. 38/2011) industrial activities in the No-Development Zone.</p> <p>The Court directed:</p> <ol style="list-style-type: none"> <li>The state government to take immediate steps to remove all illegal 11 stone crushers located within the NDZ. Additionally, relocate M/S Assam Stone Crushers as it was installed prior to the 1996 NDZ Notification.</li> <li>The State Government to not allow operations of 23 stone crusher units existing in the vicinity of NDZ till the necessary pollution control equipment is installed.</li> <li>The State Government to close down 33 Brick Kilns located within the NDZ. Relocation of the 1 Brick Kiln established prior to the 1996 Notification.</li> <li>The State Government to immediately shut down 11 miscellaneous industries (petrol pumps, saw mills, restaurant, etc.) located within the NDZ.</li> <li>The SPCB to ensure no tea processing units having boiler using fossil fuel operates within the NDZ and take steps to stop the operations.</li> <li>The MOEF and State Gov. to prepare a Comprehensive Action Plan and Monitoring</li> </ol>

	<p>Mechanism for implementation of the conditions stipulated in the 1996 Notification specifying "No Development Zone".</p> <p>g. MOEF and State Gov. to deposit Rs. 1,00,000/- each with the Director, KNP for conservation and restoration of flora and fauna as well as eco-sensitive zone, biodiversity of the vicinity of KNP and NDZ.</p>
26/11/2015	Order of the National Green Tribunal in the matter Rohit Choudhury vs. Union of India (R.A. No. 25 of 2015 in O.A. No. 174 of 2013). The Tribunal directed the Director of Kaziranga National Park to conduct a surprise inspection of the road abutting Kaziranga National Park and steps that have been taken by the State of Assam in regard to prevention of animal deaths on the road by vehicular traffic.
24/08/2016	<p>Judgement of the National Green Tribunal (Misc. App. No. 787/2015 &amp; 1006/2015 in O.A. No. 38/2011) on Numaligarh boundary wall.</p> <p>The NGT directed:</p> <ol style="list-style-type: none"> <li>Demolishing the wall with barbed wire fencing which comes in the way of the Elephant Corridor. Wall should be demolished within a period of one month.</li> <li>Numaligarh Refinery Limited (NRL) to pay an environmental compensation of Rs. 25,00,000 for causing environmental damage by destruction of forest cover to build a golf course. The amount to be used to restore the environment around the NRL.</li> <li>NRL to make compensatory afforestation, ten times the number of trees felled.</li> <li>Adhering to the NDZ Notification, the Govt. of Assam and MOEF to ensure no development activities to take place within a radius of 15 kms of the NRL.</li> <li>Govt. of Assam to take the necessary steps to notify Deopahar 'PRF' into Reserved Forest under Sec. 17 of the Assam forest Regulations 1891, which is in close proximity to KNP and used as an elephant Corridor.</li> </ol>
17/05/2017	<p>Order of the National Green Tribunal (Original Application No. 174 of 2013) in Rohit Choudhury Vs. Union of India &amp; Ors.</p> <ol style="list-style-type: none"> <li>Let on all those locations in the national highway where barriers are absent and animals died, speed breakers be provided within two weeks from today.</li> <li>Every vehicle which is challaned, particularly for over speeding and for killing of animals, would be required to pay environmental compensation of Rs. 5000/- per accident, over and above the amount to be paid for offence under Motor Vehicle Act.</li> </ol>
03/09/2018	Order by the Guwahati High Court in the matter Numaligarh Refinery Ltd vs. Union of India (W.P.(C) 5985/2019) in pursuant to the NGT Order dated 24.08.2016 directed the demolition of the wall with barbed wire fencing constructed by NRL. The HC directed an interim stay order on the demolition of the remaining boundary wall covering 8 hectares of land.
18/01/2019	Order of the Supreme Court in the matter Numaligarh Refinery Limited vs. Rohit Choudhury & Ors.(Civ Appeal Diary No. 41203 of 2018 ). The Court found no merit in the appeal and the same was dismissed.
12/04/2019	<p>Order of the Supreme Court in the matter T.N. Godavarman vs. Union of India (I.A. No. 42944/2019 in W.P (C) No. 202/1995)</p> <p>The Court directed:</p> <ol style="list-style-type: none"> <li>that all kinds of mining and related activities along the aforesaid Kaziranga National Park area and in the entire catchment area of rivers/streams and rivulets originating in Karbi Anglong Hill ranges and flowing into Kaziranga National Park, including Tiger Reserve are restrained. No new construction shall be permitted on private lands which form part of the nine identified animal corridors.</li> <li>The Director General of Police, Assam and the concerned Superintendent of Police shall also ensure that no illegal mining takes place in the landscape and no transportation of illegally mined material takes place from Karbi Anglong Hills.</li> </ol>

### C. Relevant Reports pertaining to mining and declaration of ESZ and animal corridors

Date	Event
14/02/2011	<p>Controller and Auditor General of India had conducted a "Performance Audit of <i>Kaziranga National Park - Issues and Challenges</i>" (Report No. 3 of 2014).</p> <p>The Report observed the following:</p> <ol style="list-style-type: none"> <li>a. Large Scale construction of resorts, dhabas with a large amount of land retained for parking lots.</li> <li>b. The portion of the animal corridor on the NH also used by animals for shelter during floods.</li> <li>c. Continuous construction was found on both sides of NH 37.</li> <li>d. Number of crushers and brick kilns were located within 10km of the boundary and some were found right on the animal corridors, which blocked the path of the elephants.</li> <li>e. Constant mining on the Karbi Anglong Hills adjacent to the NH-37. This in turn has reduced the forest cover in the area and due to continuous noise pollution has compelled the elephants to enter human settlements.</li> <li>f. Non declaration of ESZ has had a direct bearing on such activities detrimental to the well-being of animals due to rampant construction activities.</li> </ol> <p>The Report recommended:</p> <ol style="list-style-type: none"> <li>a. Clearing of stretch of NH 37 from Burapahar to Bokakhat from illegal encroachments and the dhabas/restaurants need to be cleared immediately.</li> <li>b. Banning of parking of trucks, restaurants, construction without prior permission from KNP authorities and mining activities in the Karbi Anglong Hills that causes further disturbance to the wildlife habitat.</li> </ol>
January 2014	<p>Committee Report reviewing Proposal submitted by Assam Government in the interest of wildlife conservation with respect to NH 37 in response to NGT direction in <i>Rohit Choudhury v. State of Assam</i> (OA 174/2013)</p>
2014	<p>Report No. 3 of 2014 of CAG observed the following: Mining in Karbi Anglong hills, unregulated growth of tourism infrastructure along NH-37, movement of traffic, parking of heavy vehicles along the highway and non-declaration of ESZ have seriously affected the movement of animals along their corridors.</p>
06/04/2018	<p>NTCA Report pertaining to complaint against rampant mining in Karbi Anglong Hills adjoining Kaziranga Tiger Reserve.</p> <p>The Report observed the following:</p> <ol style="list-style-type: none"> <li>a. Stone mining activities taking place in the Kaziranga-Karbi Anglong landscape. Sound of heavy machinery busy breaking heavy boulders in the northern facing hill of Karbi Anglong Hills.</li> <li>b. Mining and quarrying activities take place during the day time, while the transportation of broken stones to nearby stone crushers takes place at night.</li> <li>c. Stone crushing units situated in Panbari RF and the animal corridors. The construction activities and dumping of wastes had dried up the rivulets in and around these sites.</li> <li>d. The Southern part of Kaziranga is experiencing fast paced urbanisation, the northern and eastern ban is continuously eroded by the Brahmaputra every year, thus affected the flora and fauna population in the NP.</li> </ol> <p>Recommendations:</p> <ol style="list-style-type: none"> <li>a. Stop all mining and mining activities operating in the Kaziranga-Karbi Anglong landscape.</li> <li>b. Committee to be formed by the MoEFCC to review all the permissions, clearances given to stone crushers units and mining units.</li> </ol>

	<ul style="list-style-type: none"> <li>c. Assam Forest Dept. must take steps for preparation of Tiger Conservation Plan. for core, buffer and corridor and for notifying ESZ around KNP.</li> <li>d. Reserve boundary may be rationalized by including areas of Karbi Anglong adjoining Kaziranga.</li> </ul>
20.04.2018	<p>Report of NTCA regarding illegal mining in Karbi Anglong area after making field visits</p> <ul style="list-style-type: none"> <li>▪ Extensive sound and dust pollution at the stone crusher site making it difficult for animals to move between wildlife corridors</li> <li>▪ All past complaints regarding mining were referred to, in this report</li> <li>▪ If the stone quarrying/mining activities are not checked and regulated, then Kaziranga may become physically isolated from Karbi Anglong forest areas resulting in choking of animal migration path which is very vital for Kaziranga with high density of wildlife.</li> <li>▪ Adverse impact on environment and soil quality of agricultural lands</li> <li>▪ Small streams and rivulets in and around the mining and crusher units had dried up due to siltation.</li> </ul> <p>Recommendations</p> <ul style="list-style-type: none"> <li>▪ Stop all mining, quarrying, stone crushing activity in the Kaziranga – Karbi Anglong landscape with immediate effect.</li> <li>▪ A committee may be constituted by MoEFCC, Government of India to review all the permissions, clearances given to stone crushers units and stone quarrying / mining units operating in the Kaziranga – Karbi Anglong landscape.</li> <li>▪ The Assam Forest Department may take necessary steps for preparation of Tiger Conservation Plan for core, buffer and corridor and for notifying Eco-sensitive Zone around Kaziranga National Park &amp; Tiger Reserve.</li> <li>▪ Keeping in view the long-term conservation of species like rhinoceros, elephant and tiger, the Kaziranga Tiger Reserve boundary may be rationalized by including areas of Karbi-Anglong adjoining Kaziranga.</li> </ul>
18/07/2018	<p>Report of Director, KNP in response to Rohit Choudhury's RTI Application made the following observations:</p> <ul style="list-style-type: none"> <li>▪ Rampant mining in areas located below 1.5 km from the Southern boundary of KNP.</li> <li>▪ Stone mining appears unscientific as huge quantity of rubble and mining waste dumped in the mining sites.</li> <li>▪ Mining waste also dumped along banks of streams.</li> <li>▪ Despite closure orders from PCCF, KAAC, regular movement of stone and boulder laden dumpers in the Karbi Anglong area continues, unhindered.</li> <li>▪ Mining is causing disturbance to animal movement in the corridor areas.</li> </ul> <p>He thereby requested concerned authorities to take necessary action for closure of mines in the animal corridors of Karbi Anglong Hills adjoining KNP.</p>
01/03/2019	<p>CEC Report No. 6 of 2019 in W.P.(C) No. 202 of 1995 based on Rohit Choudhary's application under Godavarman case</p> <ul style="list-style-type: none"> <li>▪ Took cognizance of all past complaints and letters sent to various concerned agencies to order closure of illegal mining</li> <li>▪ Unregulated Growth of Tourism Related Infrastructure, have a serious impediment to the free movement of wildlife along the corridors between KNP and Karbi Anglong Hills.</li> <li>▪ Issue of Mining Permits in Karbi Anglong Hill Autonomous Council- Not a single mining proposal was forwarded by State to NBWL which violated the SC order of 2006 on ESZs.</li> <li>▪ Conditions stipulated under Mining Plan and Environment Clearance not being complied with.</li> <li>▪ Blatant violation of the Supreme Court order dated 04.12.2006 directing States to declare an area of 10kms around NPs and Sanctuaries as eco-sensitive zones.</li> <li>▪ Permitted mining is in violation of the Forest Conservation Act, 1980 and is being carried out in thickly wooded areas that as per SC order dated 12.12.1996 fall in the category of deemed/recorded forests land. Despite that mining is being permitted</li> </ul>

	<p>without obtaining clearances under the FC Act- Mining permitted under the guise of private ownership</p> <ul style="list-style-type: none"> <li>▪ 9 Corridors highlighted by CEC are all blocked by housing/dhabas: Lack of corridors and habitat contiguity has serious long term implications for wide ranging animals such as elephants and tigers.</li> <li>▪ Rivers and streams drying up as a result of stone mining causing drinking water shortage in the dry months</li> <li>▪ Agricultural lands around the hills have become unfit for cultivation</li> <li>▪ Concerns raised by park authorities have not been given necessary attention by the state government and Karbi Anglong autonomous council (KAAC)</li> <li>▪ In KAAC area, there is no mechanism in place either with the Mining and Geology Department or with the Environment Department to ensure compliance of the conditions of approval imposed while approving Mining Plan or Environment Clearance</li> <li>▪ Mining not among subjects transferred to the KAAC inspite of which mining proposals are being permitted by the Forest Department of KAAC</li> </ul> <p>Recommendations</p> <ul style="list-style-type: none"> <li>▪ Notify ESZ of KNP with ground demarcation</li> <li>▪ Notify all 9 animal corridors connecting Karbi Anglong hills and KNP</li> <li>▪ Cancel mining permits issued for mining by the KAAC and State of Assam</li> <li>▪ Ban all types of mining along the southern boundary of KNP in the Karbi Anglong hills</li> <li>▪ Remove all encroachments and illegal construction on NH 37 along the KNP</li> <li>▪ Not permit any more new construction even on private lands within the animal corridors</li> <li>▪ Acquire private lands forming part of animal corridors with appropriate rehabilitation packages</li> <li>▪ Prohibit parking of all vehicles along NH 37 falling in the animal corridors</li> <li>▪ Plan tourism activities considering carrying capacity of KNP</li> <li>▪ Create a special purpose vehicle with funds for facilitating rehabilitation of degraded mining sites within the wildlife corridors and restoration of ecosystem</li> <li>▪ DGP Assam, SP of Karbi Anglong Hills district, Nagaon District and Golaghat District to be responsible for preventing illegal mining in the wildlife corridors.</li> </ul>
07.08.2019	<p>Report on Delineation of Nine Animal Corridors Connecting Kaziranga National Park to Karbi Anglong submitted by the Committee for Delineation of Corridors constituted by Govt. of Assam Vide Order No.FRS.142/2018/474 dtd. 4th May 2019</p> <p>The nine identified corridors are listed below:</p> <ol style="list-style-type: none"> <li>1. Panbari</li> <li>2. Haldhibari</li> <li>3. Bagori</li> <li>4. Harmati</li> <li>5. Kanchanjuri</li> <li>6. Hatidandi</li> <li>7. Deosur</li> <li>8. Chirang</li> <li>9. Amguri</li> </ol>

#### D. Status of Implementation of Recommendations in CEC Report No. 6 of 2019

Sl. No.	Recommendations	Status of implementation
1	Notify ESZ of KNP with ground demarcation	Draft proposal on ESZs has been approved by the state government and sent to the Centre. <sup>1</sup>

<sup>1</sup> <https://www.hindustantimes.com/india-news/assam-approves-kaziranga-eco-sensitive-zone-proposal-sends-it-to-centre/story-qlhqpDe9tb7oxvhipYQqcN.html>

2	Notify all 9 animal corridors connecting Karbi Anglong hills and KNP	A Committee for Delineation of Corridors <sup>2</sup> came out with a Report on Delineation of Nine Animal Corridors Connecting Kaziranga National Park to Karbi-Anglong. Official notification on these identified corridors is pending.
3	Cancel mining permits issued by the Karbi Anglong Autonomous Council (KAAC) and State of Assam	No information available.
4	Prohibit parking of all vehicles along NH 37 falling in the animal corridors	District Magistrate of Golaghat issued an order on 3rd December 2019 declaring Borjuri to Bagori as a 'No Parking Zone' and prohibited parking of trucks, tankers, and trailers along both sides of the said stretch of NH 37 under section 144 CrPC <sup>3</sup> . However, as per the latest information from Mr. Chaudhury, parking of heavy trucks on the highway continues unhindered.
5	Plan tourism activities considering carrying capacity of KNP	No information available.
6	Create a special purpose vehicle with funds for facilitating rehabilitation of degraded mining sites within the wildlife corridors and restoration of ecosystem	No information available.

<sup>2</sup>Constituted by Govt. of Assam Vide Order No.FRS.142/2018/474 dtd. 4th May 2019

<sup>3</sup><https://www.sentinelassam.com/north-east-india-news/assam-news/prohibition-on-parking-vehicles-in-animal-corridors-at-golaghat-district/>

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