

National legislation and prevention of illegal trade of wildlife, including Ivory in Sri Lanka

Background

Sri Lanka is an island with a total extent of 65,000 Sq. Km. and blessed with a population of nearly 6000 wild elephants. As far as the national legislation is concerned, it provides the maximum legal protection for the wild elephants and other wild animal populations and does not allow any commercial exploitation of wildlife resources within the country or internationally.

Provisions of the national legislation and the other actions taken to ensure the long term protection of the wildlife resources are outlined in this report.

(a). National Legislation to Combat Wildlife Crimes Including Illegal Trade in Ivory.

Primary legislative tool for regulating use and trade of elephant tusks and tushes is the Fauna and Flora Protection Ordinance (FFPO) (Principle enactment and Amendment Act 2009 is annexed hereto).

Long title of FFPO is “*An ordinance to provide for the protection and conservation of the fauna and Sri Lanka and their habitats; for the prevention of commercial and other misuse of such fauna and flora and their habitats, for the conservation of the biodiversity of Sri Lanka; and to provide for matters connected therewith or incidental thereto*”. In line with the purpose or objective indicated through the long title, special emphasis is given to prevent misuses of elephant tusks and tushes. Chapters 24 and 25 of the FFPO have solely formulated to cater the said purpose while several other Chapters viz. 18, 27, 28, 37, 40, 41, 56, 57, 64 and 66 have supportive provisions to strengthen capability of FFPO to prevent misuse of elephant tusks and tushes.

Hereinafter those provisions are analysed to justify that Sri Lanka is a country which has legislative tools where provisions are attributed to protect elephant tusks and tushes and to combat crimes against elephant tusks and tushes. In addition, through the FFPO, tusks and tushes have been categorized as public property. In that sense violations of rules and regulations stipulated in relation to elephant tusks and tushes are considered as crimes against public property and legal actions are taken accordingly.

Import and Export of Tusks and Tushes (Ivory)		
Section of FFPO	Description	Remarks
19A(1)	Notwithstanding the provisions of section 40, no person shall export from Sri Lanka, (a). any tusk or tusk, or any part of tusk or tush, or any article made out of a tusk or tush or part of a tusk or tush or any article containing ivory from a tusk or tush.	<ul style="list-style-type: none"> Prohibition of export of any part of an elephant is imposed through this paragraph. With this legal background commercial exploitation of elephant tusks is completely prevented in Sri Lanka
19A(2)	Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be on conviction be liable to a fine not less than thirty thousand and not more than fifty thousand rupees or to imprisonment of either description for a term not less than two years and not exceeding five years or to both such fine and imprisonment.	<ul style="list-style-type: none"> Violation of rules and regulations in relation to tusks is considered as a criminal offence under the Fauna and Flora Protection Ordinance.
19A(3)	This section shall have effect as if it formed part of the Customs Ordinance and the Provisions of that Ordinance shall apply accordingly.	<ul style="list-style-type: none"> Border control authorities are empowered to enforce provisions of the Customs Ordinance in relation to tusks and tushes.

		<ul style="list-style-type: none"> In the context of CITES, Customs Department, as an enforcement authority, has the power to act against export of tusks and tushes.
37	<p>(1). No person shall import into Sri Lanka any mammal, bird, reptile, amphibian, fish or invertebrate whether dead or alive, or any part of any such mammal, bird, reptile, amphibian, fish or invertebrate or the eggs, spawn or larva of any such mammal, bird, reptile, amphibian, fish or invertebrate except under the authority of a permit issued in the prescribed form obtained from the prescribed officer on payment of the prescribed fee,</p> <p>(2). This section shall have effect as if it formed part of the Customs Ordinance and the provisions of that Ordinance shall apply accordingly,</p>	<ul style="list-style-type: none"> Prohibition of import of any part of an elephant is imposed through this paragraph. In the context of CITES, Customs Department, as an enforcement authority and a border controlling authority, has the power to act against import of tusks and tushes.
39	<p>(1) Any person who,</p> <p>(a). imports into Sri Lanka any mammal, bird, reptile, amphibian, fish or invertebrate in contravention of the provisions of section 37 shall be guilty of an offence and shall on conviction be liable to a fine not less than five thousand rupees and not more than ten thousand rupees or to imprisonment of either description for a term not less than two years and not exceeding five years or to both such fine and imprisonment.</p>	<ul style="list-style-type: none"> Violation of rules and regulations in relation to tusks is an offence under the Fauna and Flora Protection Ordinance.
Obtaining of Tusks and Tushes (Ivory)		
Section of FFPO	Description	Remarks
18	Subject to such restrictions or conditions as may be prescribed, the Director General may, by sale or otherwise, dispose of the tusks or the carcase, or any part of the carcase, of any dead elephant which is the property of the Crown.	<ul style="list-style-type: none"> Tusks are considered as a public property. Violations are treated as acts against a Public Property Act. Sale of tusks is not practiced by the Director General, in principle.
20	any person who is convicted of an offence mentioned in subsection (a) of this section in respect of killing or taking any elephant is found by the court to be in possession of that elephant or its carcase or tusks or tushes, the court make order directing such elephant, carcase, tusks, the court may make order directing such elephant, carcase, tusks, or tushes to be delivered to the possession of custody of any officer of Government to be held by that officer for and on behalf of the state.	<ul style="list-style-type: none"> Clear guidance is laid out in relation to the tusks taken into the custody. Department of Wildlife Conservation, the CITES Management Authority of Sri Lanka, hold such tusks following the formal procedures in state service. They are not released for any commercial purpose.
21(1)	Subject to the provisions of the subsection (2), any person who takes, dismembers, removes, sells or purchases the carcase, or any part of the carcase, of any dead elephant which is the property of the State shall be guilty of an offence and shall conviction be liable to a fine not less than one hundred thousand rupees and not more than two hundred thousand rupees or to imprisonment of either description for a term not less than two years and not exceeding five years or to both such fine and imprisonment.	<ul style="list-style-type: none"> Removal of tusks from a dead elephant is prohibited. Prescribed fines and imprisonments are highly stringent with respect to the local socio-economic situations.

Registration of Tusks and Tushes		
Paragraph of FFPO	Description	Remarks
24	<p>(1). No person shall have in his possession a tusk or tush unless such tusk or tush has been registered with a prescribed officer.</p> <p>(2). Every prescribed officer shall keep a register for the registration of tusks and tushes in such form as may be prescribed.</p> <p>(3). Any person who has in his possession a tusk or tush which has not been registered shall be guilty of an offence and shall on conviction be liable to a fine not less than thirty thousand rupees and not exceeding one hundred thousand rupees or to imprisonment of either description for a term not less than two years and not exceeding five years or to both such fine and imprisonment.</p> <p>(4). The court may, on the conviction of any person of an offence under sub section (3), make order for the disposal of the tusk or tush in respect of which the offence was committed, having regard to the rights of any other person who may appear to the court to be lawfully entitled to the possession of such tusk of tush.</p>	<ul style="list-style-type: none"> • Possession of legally acquired Tusks and Tushes is regulated by prescribing a system of registering and licensing. • Following regulations made under FFPO for registration and licencing are in effect at present. <ul style="list-style-type: none"> a) Extraordinary Gazette notification dated 19.11.1992. b) Extraordinary Gazette notification number 1269/22 dated 03.01.2003. • Director General of Wildlife Conservation maintains records of tusks and tushes. • Seized tusks or tushes are handed over to DWC as per the court order. • DWC maintain the stocks of tusks and tushes seized.
24(5)	<p>Regulations may be made;</p> <p>(a). Specifying the officer who shall have power to register tusks and tushes; and</p> <p>(b). Specifying the form in which prescribed officers shall maintain registers under this section.</p>	<ul style="list-style-type: none"> • Regulation for Registration of Tusks and Tushes was published in the Extraordinary Gazette Number 741/14 dated 19.11.1992 and subsequently amended by the notification published in the Extraordinary Gazette Number 1269/22 dated 03.01.2003. • Procedure for Registration, information and evidence to be submitted by the owner at the registration are prescribed in the gazette notifications. • Director General has been prescribed as the authority to register the tusks and tushes.
24a(1)	<p>1). Upon registration of a tusk or tush in accordance with section 24, every person who has in his possession a tusk or tush shall obtain a licence in respect of such tusk or tush.</p> <p>(2). The licence shall be obtained on application made to the prescribed officer, in the prescribed form, on the payment of prescribed fee;</p> <p>(3). Every prescribed officer shall maintain a register in respect of the licencing of tusks and tushes.</p> <p>(4). Any person who has in his possession a tusk or tush without obtaining a licence in respect of the same, shall be guilty of an offence and shall on conviction be liable to a fine of not less than thirty thousand rupees and not exceeding one hundred thousand rupees or to imprisonment of either description for a term not less than two years and not exceeding five years or to both such fine and imprisonment.</p>	<ul style="list-style-type: none"> • In addition to the registration owners of the tusks should have a license to have them in possession. • Procedure for issuing permits, information and evidence to be submitted to obtain a licence are prescribed in the gazette notification Number 1269/22 dated 19.11.1992 and Number 1269/22 dated 03.01.2003. • Prescribed officer for registering and issuing licence is the Director General of Wildlife Conservation. • DWC and Police have successfully prosecuted a considerable number of cases of unlawful procession of tusk or tushes.

24b	The director or any officer authorized by him may at any time enter any premises where he has reason to believe that tusks or tushes are being kept, and to make such inquiries and investigation thereon as may be necessary to ascertain whether to provisions of this section are being complied with.	<ul style="list-style-type: none"> • Power to the prescribed officers to investigate and prevent any illegal possession of tusks. • Number of court cases filed against unlawful procession of tusks and tushes by DWC during the period from 2013 to 2017 is 6
25(1)	<p>(1). Where it appears to the Director or to any police officer or other prescribed officer that any person is in unlawful possession of any elephant, tusk or tush, it shall be lawful for the Director or such Police or other prescribed officer to seize such elephant, tusk or tush and detain such elephant, tusk or tush and to apply to the Magistrate having jurisdiction over the place where the elephant, tusk or tush was seized to make order for the disposal of such elephant, tusk or tush and the Magistrate to whom such application is made may, after such inquiry as he may deem necessary, make such order for the disposal of the elephant, tusk or tush as the justice of the case may require.</p> <p>(2). An order made under this section shall not affect the liability of any person to be prosecuted for any offence committed in respect of the elephant, tusk or tush to which the order relates.</p>	<ul style="list-style-type: none"> • Prescribed officers are empowered to seize the elephants, tusks and tushes kept in possession illegally and submit to a Magistrate on suspicion. • Seized tusks or tushes are handed over to DWC as per the order of Magistrate. • DWC maintain stocks of tusks or tushes seized, following the formal procedures.

(b). Court Cases Regarding Ivory Related Offences

Records maintained by the enforcement authorities show that Sri Lanka's contribution to illegal ivory both trade locally and internationally is negligible.

Data on ivory related offences are given below.

Total number of tusks handed over to DWC under court orders during the period of five years from 2013 to 2017 is 78. This includes the tusks and tushes acquired from the wild elephants died naturally.

Total Number of court cases filed by DWC in respect of offences related to Tusks and tushes, from 2013 to 2017 is 5 and the details are as follows;

2013	-	2
2014	-	1
2016	-	1
2017	-	2

Total Number of tusks and tushes recovered from dead elephants in the wild since 2015 to 2017 is 30.

It is noteworthy that in the island wide surveys carried out by DWC has confirmed that the percentage of the Tuskers in the wild in Sri Lanka is 12% of the total population of wild elephants, estimated to be 5670.

(c). National Initiatives to Combat Wildlife Trafficking

Combating against wildlife crimes reach higher success rates when tried as a collective effort. Based on this background and the lessons learnt through the experience gained by the Department of Wildlife Conservation in enforcing FFPO for ivory related offences, local networking of related institutions was done with the leadership of DWC. As a result, Sri Lanka Wildlife Enforcement Network (SLAWEN) was formed. Department of Wildlife Conservation, Sri Lanka Police, Customs Department and several other law enforcement agencies became the

members of SLAWEN. Goal of SLWEN is to network the relevant authorities to work against illegal wildlife trade by ways of information dissemination, intelligence sharing, awareness building and capacity building to curb wildlife trafficking, effectively.

Sri Lanka became the first member country to approve SAWEN statue which enables Sri Lanka to act against illegal wildlife trade with the help and corporation of other SAARC countries. Department of Wildlife Conservation is the focal agency for SAWEN activities in Sri Lanka.

(d). Activities Takes to Discourage the Demand for Wildlife Trade Including Ivory.

Stringent rules and regulations enforced through the provisions of FFPO are in credit of Sri Lanka to reduce demand for wildlife resources. Following landmark steps have significantly contributed to lower down such trade if any.

1. Destruction of Blood Ivory

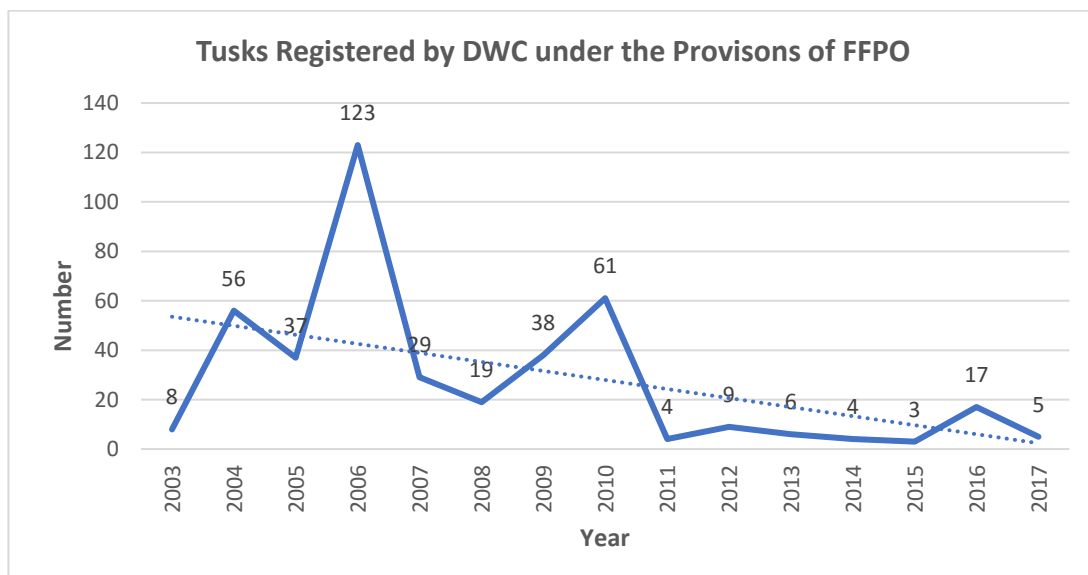
Sri Lanka’s destruction of confiscated stockpile of ivory in 2016 for the first time by a South Asian country, brings the total of such countries to 16 in the world. The ivory was crushed and then burned in an incinerator.

The ivory came from a single shipment of 359 tusks, weighing 1.5 tons, seized by customs authorities at the Port of Colombo in May 2012. The shipment was in transit from Kenya to Dubai. DNA testing later showed that the tusks came from Tanzania.

2. Under the section 19 A of Fauna and Flora Protection Ordinance, export of ivory is a punishable offence. According to the section 39 of FFPO, import of ivory without a permit form a prescribed officer, is also a punishable criminal offence.

3. Registration of legally acquired tusks and tushes with the Department of Wildlife Conservation is mandatory under the provisions of FFPO. This provision has totally prevented the trade of Tusks and tushes acquired from the wild illegally.

Registration data for tusks and tushes indicated by the table and the graph below show that rate of registration has gone down and transferring the ownership is very low indicating that there is no significant ivory related trade in Sri Lanka.



4. In addition, Sri Lanka Customs has confirmed that there are no records of confiscations of tusks, parts of tusks or any other articles made from tusks, since they confiscated the aforesaid stock of African tusks in the year 2014.

(e). Training and Capacity Building for Concerned Officers to tackle Illegal Wildlife Trade including Ivory.

Department of Wildlife Conservation as the CITES management authority in Sri Lanka, Sri Lanka Police and Sri Lanka Customs as the enforcement authorities have taken steps to improve the knowledge and skills of their law enforcement cadre to combat crimes. These institutions have specific programmes for sharing skills, knowledge and in combating illegal wildlife trade. Some of the such programmes implemented by Department of Wildlife Conservation are outlined below.

- Integration of studies on international conventions such as CITES into regular in-service training courses.
- Enhancement of skills of the staff through training on handling weapons, handling modern equipment such as GPS instruments, jungle crafts and basics of martial arts.
- Provision of foreign and local training opportunities for the law enforcement officers.
- Sending DWC officers as the resource persons for the training programmes of other law enforcement agencies such as Sri Lanka Police.

Investment by DWC for training its cadre for the past five years in given below. The figures show reasonable allocation of funds for capacity building.

Financial Year	Allocation for Training (Rs. Million)	Activities Done
2012	4.0	Training Programmes on Identification of Freshwater Fishes, Fire Arms Handling, Court Procedure, GPS handling, First General Meeting of the South Asia Wildlife Enforcement Network (SAWEN)
2013	1.2	Training programmes on Court procedure, Use of GPS / GIS, Identification of Wildlife Specimens, Fire Arms Handling
2014	1.1	Training on GPS / GIS, Court Procedure, Fire Arms Handling.
2015	0.65	Staff Training programmes on Court procedure, Use of GPS, Fire Arms Handling, Workshop to develop a Duty Manual for the field officers of DWC
2016	2.1	Staff Training programmes on Court Procedure, Fire Arms handling

(f) Possession of Elephant Tusks for cultural, religious and traditional purposes

Possession of elephant tusks and various ornamental items with parts of tusks and tushes for cultural and religious purposes is a traditional practice since ancient eras in Sri Lanka. Tusks and tushes obtained from legally possessed domesticated tuskers and elephants are allowed to be kept in the possession, under the regulations made under FFPO as elaborated above.

Regulations to allow legally acquired Tusks and Tushes to be kept in possession were made in the year 1992 and the registration and the licensing procedure was started since then. Presently the registration of new tusks and transaction of ownership has come to lowest level and it is observed that new registrations are applied only when domesticated elephants died. Killing wild tuskers for ivory is minimal.