

# **A Crime against Nature: Legal Responses to Illicit Wildlife Trading**

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## **Abstract**

*Human beings aided trading and trafficking of endangered wild fauna and flora across the geographical borders of the countries has become a paramount legal concern all around the world, especially for countries like Sri Lanka that has a rich biodiversity. Several attempts were made to prohibit and regulate the trading of such articles through multilateral environmental agreements signed by states. In response to these international obligations, Sri Lanka has enacted laws, established authoritative institutions and undertaken policy measures to combat cross border wildlife trade. These laws have been amended from time to time in accordance with the requirements resulting in increase of sanctions for violations. This review had utilized the doctrinal methodology in assessing the prevailing legal framework in Sri Lanka, relating to unregulated wildlife trade. The effectiveness of the legal measures is still in question as the illicit wildlife trade is still happening at an uncontrollable rate. Therefore, the existing legal regime calls for reforms in order to preserve endangered wild life from illegal trading in Sri Lanka.*

## **Background**

Sri Lanka is an island well known to be a biodiversity hotspot among the global community. Bio-diversity hotspots are ‘the places where exceptional concentrations of endemic species are undergoing exceptional loss of

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habitat'. In simple words the earth's most biologically rich territories that are threatened with extinction are known as biodiversity hot spots. There are two key pre-requisites to become a biodiversity hotspot: Firstly, include at least 1,500 varieties of endemic plants.<sup>1</sup> Secondly, only 30 percent or less of its original vegetation must be leftover.<sup>2</sup> Currently, there are around 36 bio-diversity hotspots identified including Sri Lanka<sup>3</sup>. Therefore, the protection of endemic wildlife in the country and conservation of the precious natural ecosystem for future generations had become a *sine qua non* for the government of Sri Lanka.

Illicit trade in wild fauna and flora is recognized as one of the major illegal activities that threaten the existence of biologically valuable wildlife in the world. Many countries that are in rich bio-diversity try to combat these activities through the regulation of these activities. The statistics provided by the United Nations Environment Program (UNEP) and the INTERPOL illegal wildlife trade is the third-largest illegal trade activity that takes place in the world. When considering the theoretical reasoning behind boost in illegal wildlife trade (IWT), two major causes can be recognized; traditional reasons and contemporary reasons. Consumption of wild animal meat as a source of

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1 N Myers, RA Mittermeier, CG Mittermeier, GAB da Fonseca & J Kent, 'Biodiversity hotspots for conservation priorities' (2000)

2 N Myers, RA Mittermeier, CG Mittermeier, GAB da Fonseca & J Kent, 'Biodiversity hotspots for conservation priorities' (2000) *Nature*. 403 (6772), 853.

3 JB Izzy, 'PC Pets for a Price: Combating Online and Traditional Wildlife Crime Through International Harmonization and Authoritative Policies' (2010) 34(3) *William and Mary Environmental Law and Policy Journal* <<https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1021&context=wmelpr>> accessed 02 May 2020

protein, use of wild life for traditional indigenous medicine, pet trade and mythology of keeping certain parts of animals for good luck are some traditional reasons of increase in IWT. Increase in the global buying capacity, ability of earning high income, population growth, tourism, industrialization, trade liberalization and globalization are some of the modern reasons that have caused the IWT to enhance. Owing to the above grounds, IWT is occurring all around the planet at an alarming rate that will ultimately create a negative impact on the endangered species in the world in near future.

### **What constitutes illicit wildlife trade?**

It can be simply explained as an environmental crime related to the trading of living or dead fauna and flora, parts of such fauna and flora or any product made from such parts without following the proper legal measures. This process of illegal trading has several negative impacts on the whole planet such as the creation of biological imbalance and the frustration of intergenerational equity. Further to that, this could also lead to several indirect illicit activities such as money laundering and terrorist financing that can threaten the national security and economy of a country. Due to the ample amount of biodiversity enriched in the country and due to the geostrategic location of the country, Sri Lanka has become a paradise for illegal wildlife smugglers during the past few decades.

Combating this crime against nature has become a complex challenge for Sri Lanka as well as for many countries.

Global Cooperation, powerful domestic legal regulations, appropriate policy measures and strong institutional framework are required to battle against this wildlife crime. Focal purpose of this study is to critically analyze the legal regulations adopted by Sri Lanka in combating illegal trading of ecological resources. The study utilized a doctrinal approach of legal research in examining the written body of legal principles in Sri Lanka. International Multilateral Environmental Agreements, Parliamentary Acts and Ordinances and other legal regulations were used as primary sources, while Books, Journal Articles and Many web-based resources were utilized as secondary resources.

### **International Involvement of Sri Lanka**

United Nations Convention on the International Trade in Endangered Species (CITES) 1973 came in to force in 1975 after obtaining ratification of ten countries. The fundamental objective of this instrument is to promote global cooperation in the regulation and management of the illegal wildlife trade.

A significant feature to be noted is that CITES does not ban all wildlife trade, nevertheless, it regulates the overexploitation of wild fauna and flora through illegal trading activities. This convention also provides that people and states, as trustees of the planet, must be conscious about the value of wild fauna and flora and must conserve them for the generations to come<sup>4</sup>.

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4 Convention on International Trading of Endangered Species 1975, Preamble.

The convention identifies endangered wild fauna and flora in three separate appendixes in the Convention text. Appendix I include all species that are currently threatened with extinction which may be affected by trade. Importation, exportation, and re-exportation of such species is strictly regulated and shall be allowed only in exceptional circumstances such as essential scientific research<sup>5</sup>. Appendix II includes all species that are not necessarily threatened under the current status thus may become threatened unless the trading of such species is restricted. The utilization and over-exploitation of such species need to be controlled for the purpose of protecting the existence of the list of species under Appendix II<sup>6</sup>. Appendix III includes species that are identified by state parties as categories of wildlife that needs protection within their countries and they seek the assistance of other state parties to conserve these wild fauna and flora through restriction of its commercial use<sup>7</sup>. CITES offers different levels of protection to the species identified in the above mentioned three appendixes.

Under the CITES provisions, every state party is under an obligation to undertake appropriate actions to implement and to rule out trade in protected wild species in accordance in accordance with the provisions of CITE<sup>8</sup>. It

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5 Convention on International Trading of Endangered Species 1975, Article II (1).

6 Convention on International Trading of Endangered Species 1975, Article II (2).

7 Convention on International Trading of Endangered Species 1975, Article II (3).

8 Convention on International Trading of Endangered Species 1975, Article VIII (1).

requires that the state parties should enact local legislation, create authoritative bodies, and implement tracking/penalizing mechanisms to regulate international trading of endangered species in their respective countries. Many state parties to CITES had taken necessary steps to enact domestic legislation to regulate import, export, and transition of illegally traded specimens of endangered wild fauna and flora.

Though Sri Lanka became a signatory to the CITES in August 1979, no specific domestic legislation is enacted in attempting to bringing in the Sri Lankan law in line with the international standards. Consequently, smuggling incidents are happening continuously throughout the past decades, especially regarding sandalwood, rosewood, indigenous medicinal plants, live birds, butterflies, elephant tusks, star tortoise, bird feathers and products made of wild animal parts, etc. Even fisheries and aquaculture resources such as protected sea turtles, lobsters, seashells, shark fins, live ornamental fish and corals are subject to illegal possession and trading at domestic as well as at international level.

Sri Lanka had worked hand in hand with the International Criminal Police Organization, which is commonly known as INTERPOL in order to track international criminals and networks involved in illegal wildlife trade. In 2013, when the Sri Lankan Customs seized a consignment of elephant tusks, the technical assistance was provided by the INTERPOL in recognizing the origin of the tusks. The DNA extracted from the tusks was sent to INTERPOL for testing. When the country of origin is identified, it is

convenient to track down the criminal networks engaged in the business<sup>9</sup>.

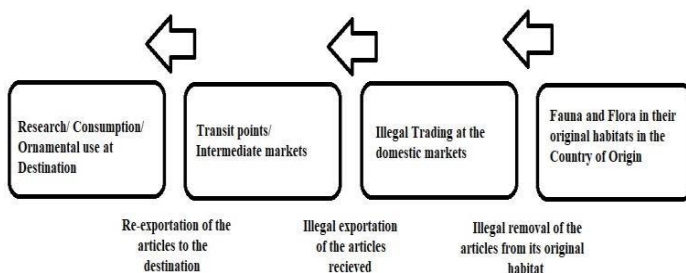
Recently, Sri Lanka once again worked in collaboration with the INTERPOL and World Customs Organization. The world's largest ever wildlife operation, code-named '*Operation Thunderstorm 2018*' which was initiated by the Wildlife Crime Working Group of the INTERPOL, became a successful operation due to the coordinated work of police, customs, wildlife authorities of 92 participating countries.

### **Domestic Legal Regulation of Sri Lanka**

Though Sri Lanka has not enacted any enabling legislation to go in line with the CITES, many other legislative provisions can be utilized for the purpose of fighting this wildlife crime. Common legislative enactments are addressing all wild fauna and flora; thus, Sri Lanka does not have any species-specific legislation except for fisheries.

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9 INTERPOL, 'INTERPOL testing of tusk DNA from seized ivory in Sri Lanka to help combat wildlife crime' (2013) <<https://www.interpol.int/en/News-and-Events/News/2013/INTERPOL-testing-of-tusk-DNA-from-seized-ivory-in-Sri-Lanka-to-help-combat-wildlife-crime>> accessed on 18 March 2020 was involved in this operation as a participating country for capturing the smugglers and criminal networks to combat wildlife trade and trafficking



The above diagram shows the variety of stages in which the illegal wildlife trade happens in a country. It is important to have a legal system that addresses all such significant points in order to combat these wildlife crimes. The existing legislative structure on the illegitimate wildlife trade is discussed below.

### **Fauna and Flora Protection Ordinance**

One important piece of legislation is the Fauna and Flora Protection Ordinance No. 02 of 1937 as amended (FFPO). One of the main objectives of the FFPO as amended in 2009, is to protect bio-diversity in Sri Lanka and to prevent the commercial and other exploitations of the recognized endangered fauna, flora and their habitats<sup>10</sup>. After the amendment of 2009, FFPO includes eight schedules of protected and not protected wild fauna and flora in the text of the legislative enactment as follows;

- Schedule I – Mammals and Reptiles (Not Protected)
- Schedule II – Strictly protected Mammals and

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<sup>10</sup> Fauna and Flora Protection Ordinance (as Amended in 2009), Act No 2 of 1937, Preamble.



Reptiles Schedule III – Birds (Not Protected)  
Schedule IV – Strictly protected Birds Schedule V -  
Amphibians (Not Protected) Schedule VI -  
Protected Fish  
Schedule VII - Protected Invertebrates  
Schedule VIII – Protected Plants

Any wild animals listed in schedule I, III and V are not under the protection of this act. This implies that such wild fauna can be hunted anywhere outside a national reserve or *sanctuary*. Different degrees of protection are offered by the FFPO to the wild animals and plants identified in these schedules.

Section 6 and 7 of the FFPO as amended in 2009, lists out several prohibited activities within the limits of a national reserve and a sanctuary. Accordingly, hunting, shooting, killing, wounding, taking away, keeping alive or dead animals or their parts in the possession and taking, destroying any egg or nests of a bird, reptile or any wild animal is prohibited. In addition to that, burning, destroying, taking, collecting, removing, or keeping a plant or a part of such plant in possession is also prohibited by the law<sup>11</sup>. Any person who contravenes the provisions in section 6 will be held criminally liable and if the person is subsequently convicted for the same offence, a higher criminal sanction will be imposed for repeating the

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11 Fauna and Flora Protection Ordinance (as Amended in 2009), S. 6(1) d & S. 7(1) (c)(i)

offence<sup>12</sup>. For the commission of any other offenses under section 6A or 7, the offender will be liable under the provisions of section 10 of the FFPO. Special provisions

are provided for the protection of elephants under Part II of the FFPO, even when they are outside the national reserves and sanctuaries. These provisions are provided for regulating the very first step of illicit wildlife trade, namely the illegal removal of the endangered fauna or flora from its original environment with the intention of obtaining a commercial benefit. Despite having the legal provisions to protect endangered wild fauna and flora in national reserves and sanctuaries, confiscation of wildlife is still a common phenomenon in these areas.

Carrying out a business of selling, offering to sell or transportation of an endangered wild animal, dead or alive or any parts of such an animal, without a license constitutes an offence under section 49 of FFPO. In addition to that, protected and endemic plants also cannot be sold or displayed for selling under section 42 of the FFPO. Although buying, selling, and engaging in a business of trading endangered wild fauna and flora in the local market is strictly prohibited by the legal regulations, many incidents are reported relating to such activities. Recently, three suspects were arrested by the Police, while they were carrying 100-star tortoises to Colombo for the purpose of handing them over to a dealer for exportation.

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12 Fauna and Flora Protection Ordinance (as Amended in 2009), S. 6 (4)

Regulation of domestic activities of illicit wildlife trade would not be sufficient in order to eradicate this globally established business. Therefore, the FFPO also offers provisions for regulating cross-border transactions related to wildlife. Both importation and exportation of endangered and protected animals and plants are regulated through the provisions of the FFPO. Importing of an endangered wild animal (protected and non-protected) into Sri Lanka without a license<sup>13</sup>, exporting or re-exporting of an animal (protected or non-protected) from Sri Lanka without a license<sup>14</sup> and sale, offer to sell, import, or export any protected plant species<sup>15</sup> would be considered as criminal offences under the FFPO.

Special provisions are provided for the elephants/ tuskers in the country under FFPO, as the elephants are closely related to the history, religion, and the culture of Sri Lanka. According to Section 12 of FFPO killing, hunting, injuring, and taking away an elephant out of a National Reserve or Sanctuary is banned. It further offers protection against the unlawful commercial exportation of the Elephants, Tuskers out of the Country by regulating such activities<sup>16</sup>. Section 19A bans the exportation of any elephant tusk, a part of such tusk and an item made with tusk or item containing ivory. Regardless of having a firm and comprehensive legal rule prohibiting the illegal cross-

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13 Fauna and Flora Protection Ordinance (as Amended in 2009), S.37

14 Fauna and Flora Protection Ordinance (as Amended in 2009), S. 40

15 Fauna and Flora Protection Ordinance (as Amended in 2009), S. 42 & S. 45

16 Fauna and Flora Protection Ordinance (as Amended in 2009), S. 19(2)

border transfer of endangered wild fauna and flora, many individuals tend to get involved in this illegal business of trading species as it has become a lucrative trade in the global context. The most recent incident reported was an individual arrested at the Bandaranayake International Airport while attempting to smuggle 200 live scorpions out of Sri Lanka in January 2020. Later the suspect was produced before the Magistrate and a fine of Rs, 100,000 was imposed for violating the FFPO.

Criminal sanctions imposed for any offenders who commit wildlife crimes, including trading of endangered species, include fines and/or imprisonment. However, the Fauna and Flora Protection (Amendment) Act No. 22 of 2009 drastically increased the criminal sanctions that were imposed by the original FFPO. Though the criminal penalties were increased, there is no evidence of a decline in the unlawful wildlife trade activities.

### **Fisheries and Aquatic Resources Act No. 02 of 1996**

The Fisheries and Aquatic Resources Act (as amended) attempts to offer special protection for the marine fauna and flora by prohibiting the catching, transporting, buying, selling, and possessing such protected categories of fisheries<sup>17</sup>. International trading of Fisheries and aquaculture is regulated through section 30 of the Act, where it makes it essential for individuals to adhere to legal regulations when protected aqua resources are sent out or brought in to the country. In addition to that, export

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17 Fisheries and Aquatic Resources Act No 2 of 1996 , S. 29

Management Regulations. No. 2023/51 dated 15.06.2017 states that all exports, imports, and re-exports of protected species of aquatic fauna and flora must be carried out in accordance with the CITES provisions<sup>18</sup>.

The Sri Lanka Navy arrested an individual with approximately 660kg of Thresher Shark in Negombo on the 16<sup>th</sup> March 2020. Thresher shark is a type of shark that belongs to Alopiidae family and listed as threatened with extinction and therefore is forbidden to be fished. These fish were found to be dead and without fins. It can be assumed that the fins of these sharks were traded to be sent overseas, since sharks fins have a high demand in foreign markets. This incident could be considered as a piece of evidence as to the fact that the catching and trading of endangered aqua resources are still happening in Sri Lanka, though strict regulations are in place.

### **Imports and Exports (Control) Act No 1 of 1969**

Imports and Exports (Control) Act also offers several legal regulations relating to the carriage of goods from and into the country. The importation or exportation of any goods, unless under the authority of license or conditions, is banned by section 04 of this Act. Since the act should be interpreted and construed together with the Customs Ordinance<sup>19</sup>, provisions related to the regulation

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18 Fish and Fishery Products, Export, Import and Re-export Management Regulations .No. 2023/51 -15.06.2017, S.04

19 Import and Export (Control) Act No. 01 of 1969, S. 21

of trading, if endangered fauna and flora shall be applicable for Imports and Exports (Control), Act as well.

### **Customs Ordinance**

Many of the above-mentioned statutory provisions are also considered as a part of the Customs Ordinance as it empowers the Customs Department in regulating the international carriage of unlawfully obtained wildlife in and out of the state. Customs Ordinance No.17 of 1869 is a heavily amended piece of legislation that provides regulations regarding the import and export activities of the country. Certain types of wild fauna and flora are identified by the Schedule B to the Act and they are being prohibited from importing to the country and exporting from the country<sup>20</sup>. If a person export or attempts to export any goods listed in schedule B of the Act, in violation of the provisions of this Act, the Customs is empowered to seize such items and destroy or dispose of them.<sup>21</sup> Further to that any suspect who possesses or smuggles any prohibited item can be arrested under the section 127 of the Act and would be submitted before a Magistrate for committing a criminal offense under the law of Sri Lanka<sup>24</sup>. Once these sections are read jointly with the rules in FFPO, the Sri Lanka customs is provided with greater authority to deal with illicit wildlife smugglers who try to transport endangered fauna and flora from and to the country.

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20 Customs Ordinance, Act No 83 of 1988, S. 12 (1)

21 CITES, 'STATUS OF LEGISLATIVE PROGRESS FOR IMPLEMENTING CITES' (NOVEMBER)

Though many laws are in place to protect the rights of the voiceless wild fauna and flora, the unlawful activities are still taking place. According to the CITES National Legislation Project, the above-discussed laws do not meet the international standard requirements of implementing the CITES. Therefore, Sri Lanka is yet again being categorized under the Category III during the 18<sup>th</sup> Conference of Parties that was held in Geneva, Switzerland in 2019.

### **Institutional and Policy Framework**

The main Institutional body that is responsible for the conservation of wild fauna, flora, and their habitats under FFPO is the Department of Wildlife Conservation (DWC). The vision of the DWC is to preserve the biodiversity and natural resources for the betterment of the future generations of the country. Especially regulating international trading of wildlife, issuing of import license, and issuing of an export license under the CITES provisions are carried out by the DWC in Sri Lanka. The DWC together with experts in multiple disciplines had developed a Wildlife Policy with the objective of sustainable utilization of wildlife, maintenance of biodiversity and forest cover. This policy also can be utilized as a document in encouraging legitimate wildlife trade while eliminating the illegal trading of biological resources.

DWC recently launched an electronic-based management system called e-CITES to enhance the protection provided

to the threatened flora and fauna due to illegal trading. The system allows issuing electronic permits for import, export and transit activities allowing the authorities to closely monitor the trading activities through an electronic platform. It facilitates networking among CITES authorities of other countries placing an opportunity for tracking and monitoring in collaboration with them. It will further aid in controlling the activities and networks involved in the business of the illegal trading of wildlife.

Department of Fisheries and Aquatic Resources is another government institution, established for the purpose of promoting rational use of fisheries and aquatic resources while preserving the same for the generations yet unborn. Implementation of the trade, import/ export provisions under FARA and related regulations on the protection of fish species and marine ecosystems is one of the main tasks of this Department. Monitoring and surveillance of fishing vessels for the purpose of tracking illegal trading of fish is one significant contribution done by the Department.

Sri Lanka Customs is protecting the endangered wildlife at all entry/exit points of the country, being the frontline protectors of Bio-diversity. A special body called Biodiversity Protection Unit (BPU) was established in 1993 as the main unit under the Customs Department that specialized in monitoring and detecting illegal biodiversity trafficking from and to Sri Lanka. After a reorganization in 2010 the Unit is now called as Biodiversity, Cultural and National Heritage Protection Unit and is working in cooperation with many national and international



organizations in order to eradicate unlawful smuggling of endangered wildlife across the country borders. The dedicated effort of Sri Lanka Customs had backed in uncovering illegal smuggling activities and international criminal networks that are engaged in illicit wildlife trade.

## **Discussion**

An analysis of the above mentioned legal, institutional and policy framework shows that Sri Lanka has not imposed specific legislation to implement the provisions of CITES. However, the legal system is enriched with several legislations that afford safeguard measures to endangered species against illegal trading at varying degrees of levels. Despite having a comprehensive legal framework, Illegal commercial exploitation of wild fauna and flora is still a constant phenomenon.

One reason for this can be, the laws that regulate this area are too complicated and confusing, making it difficult for the layman to understand the consequences of violating the provisions. The simplicity of the black letter of law a country is a critical factor in bringing the law closer to the citizen's hearts.

The sanctions imposed for such offenses are extensively outdated and do not match with the present-day scenario. As the profits that the offenders earn from the illicit wildlife trade outweigh the risk being exposed, they are not reluctant to get engaged in such illegal activities. As IWT had become an extremely lucrative business in the global market, the sanctions imposed for offenders also must be

proportionate with the possible profit that they earn.

Sri Lanka is not only recognized as a country of origin; the ports can be identified as transit hub for transporting of illegally traded endangered species by maritime means. Therefore, there is an urgent necessity to impose specific legal regulations to scrutinize and detect illegal wildlife articles in transit in Sri Lanka.

According to CITES obligation, every state party must undertake to establish an authoritative institution to specifically manage the illegal trading activities and to cooperate with other state agencies. In Sri Lanka, no single authoritative body that deals with matters of such nature. Many governmental and nongovernmental institutions work on an individual basis. Therefore, there is a need of establishing a single body that specifically deals with matters of illegal wildlife trade, which also has the power to coordinate with other local and global institutions. Eradication of malpractices such as undue political influence, bribery and corruption from these institutions is another important prerequisite.

The status of human and physical resources available for detecting illegal wildlife trading activities is not satisfactory. Awareness and fundamental understanding of botany, zoology and legal framework are of the essence in implementing the action plans related to the conservation of protected species. Employees who lack a comprehensive knowledge regarding the legal rules and biological importance of the endangered species need to be adequately equipped and trained to detect wildlife crimes

at the local and trans-boundary level. Modern equipment and strategies could also be used at all exit and entry point to Sri Lanka, for the purpose of uplifting the monitoring capacity of incoming and outgoing cargo. It would improve the surveillance of the legal wildlife trade activities and provide the opportunity to diminish illegal trade.

Inability and delay in protecting the species that are threatened with extinction by regulating domestic and international trade would frustrate the principles of sustainable development as well as inter-generational equity. Thus, public awareness on the matters of such nature must be raised. Especially many local inhabitants are arrested for collecting/ taking/removing/ transporting or trading as first-hand offenders since they do not know it is illegal to catch and sell protected species. The significance in conserving endangered species for the generations yet unborn must be explained to them.

## **Conclusion**

The above doctrinal analysis on the legal framework of regulating IWT clearly point out that having a comprehensive legal regime does not necessarily provide a solution to certain problems. The strength of such legal principles, awareness of such principles, and effective execution of such principles are also significant in achieving the objectives of such laws. Analysis of the above work constructs the reality that Sri Lanka is still in the actual necessity of imposing stringent legal rules in order to combat wildlife crimes. Apart from that the need

for a strong legal and institutional framework and active community involvement in eradicating the illicit trading of wild fauna and flora, also marks a vital point. As IWT is a global black-market business, the global corporation among nations and effective adoption of international obligations are of utmost importance for developing countries rich in bio diversity. Subsequently, Sri Lanka would be able to create a sustainable eco-system with global cooperation.