

Legal prosecution and experience in combatting Wildlife Crime in the illegal trade of elephant calves in Sri Lanka

Sujeewa Jasinghe & Sudarshani Fernando [Centre for Eco-cultural Studies (CES), Sri Lanka]

Abstract: The capture of Asian elephants (*Elephas maximus maximus*) – an “endangered” sub-species living in Sri Lanka – for illegal captivity was investigated during a period of 18 months, from March 2014 up to April 2016 when the findings were presented. The outcome of the investigation includes a description of the capture sites, the categories of individuals involved in the Wildlife Crime (WC) networks, methods of capture, preparation of forged documents and prosecution in combatting WC to address legislation in relation to elephants and their “right” to protection in Sri Lanka.

The ongoing investigations have revealed that the majority of elephant calves captured and held illegally for the purpose of commercial use for the tourism trade and driven by “organised” wildlife criminal networks that include the, illegal captors, traders, wildlife officials, legal personnel, monks, businessmen, politicians and local communities among others.

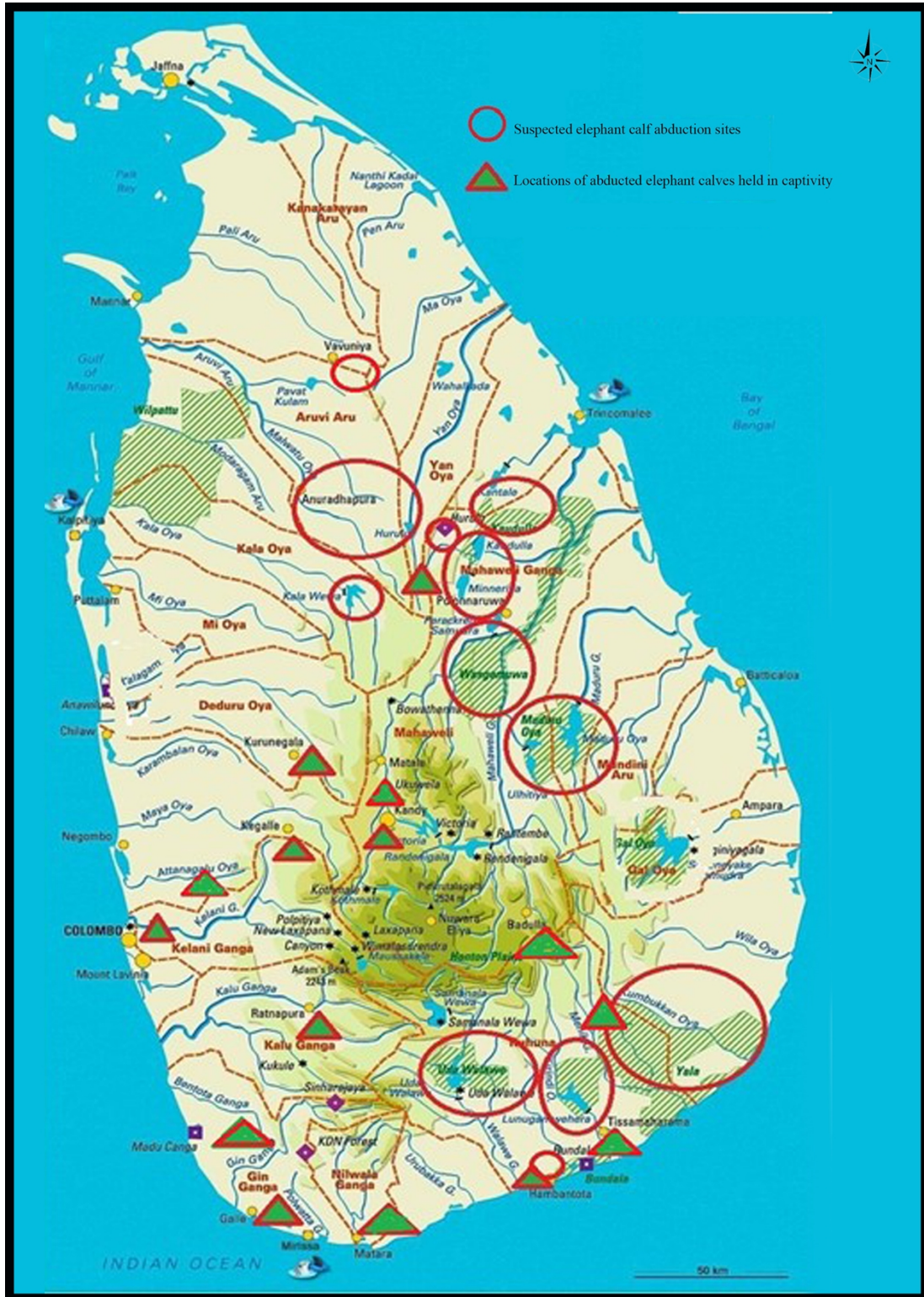
Description of the illegal capture sites

Our investigations reveal that elephant calf abductions from the wild have occurred throughout most of the country, largely with the exception of the Northern and Eastern Provinces of Sri Lanka. Easy access to the other areas and the civil conflict of the time were no doubt reasons for there being no reports from the North and East, while the established wildlife criminal networks had direct links to potential abduction sites in the areas detailed below.

The abduction of wild-born elephant calves leading to Wildlife Crime has continued for over a decade that largely went unchecked for as long. The majority of abductions in Sri Lanka occurred within, or in the immediate environs of, wildlife Protected Area complexes, in areas geographically termed the “Dry Zone” and the “Intermediate Zone”. A relatively higher population density of both human and elephant populations has resulted in the prevailing critical Human-Elephant Conflict (HEC) through human-induced activities with encroachment of natural habitats. Availability and easy access to palatable food for elephants and abundance of water in and around agricultural lands in the Dry and Intermediate Zones could have enticed elephant captors with abductions there being made easier.

Our preliminary investigations reveal that wild-born elephant calves have been captured from at least 11 to 12 “abduction” sites. Environs of “Protected Areas” in Uda Valava, Habarana, Hambantota, Galgamuva, Kalavava and Vasingamuva are the principal sites of abduction. Uda Valava and Habarana, however, are the “hotspots” for such abductions due to easy access to elephant herds and well-established linkages within the wildlife criminal networks, with a high demand for its tourism industry, particularly in Habarana. Uda Valava on the other hand, is unique as some of the abductions were from the small “rehabilitated” herds released for reintegration into the wilds by the Department of Wildlife Conservation (DWC), under its rehabilitation programme for rescued orphaned, abandoned or injured calves at the Elephant Transit Home (ETH). It is likely that the abductions were much easier here with the calves being accustomed to its human foster-carers during the rehabilitation process. Our studies also reveal that the abducted elephant calves were kept illegally at diverse locations in Kegalle, and Habarana, mainly with “elephant ride” operators, in addition

to others in Colombo, Kalutara and Ratnapura Districts being housed with their abductors. Further, almost all the abducted elephant calves have been used in temple pageants and ceremonies for which they were “hired out”. If they were wounded



Map 1. Suspected elephant calf abduction sites and locations of elephant calves held in captivity

during capture or were physically weak when discovered, the calves were kept with the criminals themselves – with traditional healers or mahouts within the criminal networks or kept at transit sites, until "sold" or healed. It was further observed that the sick or critically wounded elephant calves were held unchecked in government-sponsored institutions, under the observation or care of recognised veterinary surgeons until they were healed or when rescued by the DWC. Other calves died in the hands of their captors or at transit sites and have been buried without reporting, contrary to the law.

Although it is assumed that the use of elephants including the abducted calves is for religious or traditional cultural practices, and that they have been hosted at Buddhist temples or other places of worship such as shrines, the majority of the sites hosting elephants illegally are "tourist" attractions operated by the "illegal" elephant calf "owners" under the pretext of merely housing/caring for them. These groups involve traditional elephant keepers or the nouveau riche, being those who "hire" the elephants for "elephant rides" for events hosted by hotels, for celebratory functions, even weddings, for greeting tourists, etc. and/or cultural pageants, indicating that there is a significant core relationship between the tourism industry and elephant calf abductions – for the lucrative trade it has become!

These abductions have been entirely carried out principally by three to four groups led by traditional and nouveau riche elephant owner-cum-captor/traders and/or established links, at times employed by some traditional elephant owners – who no longer possess elephants of their own – and even temples – from religious leaders, DWC officials, politicians, legal personalities, mahouts, wildlife poachers and traders, traditional healers and veterinary surgeons. They have all played a major role in carrying out "organised" Wildlife Crime unchecked, for a period extending over a decade, leading from abductions from the wild, to official registrations that were legalised through pre-planned legal procedures, using loopholes prevailing in the registration procedures, in wildlife legislation or through deliberate mistakes made in the course of court procedures.

Method and materials of elephant calf abductions

Our pilot studies also reveal that the suspected so-called "owners" captured most of the calves who were found abandoned, injured or trapped in illegal agricultural wells, from encroached and abandoned farmlands or community farmlands bordering "Protected Areas" or along seasonal elephant migration routes. It has been subsequently revealed that the suspects set up systematic traps, snares using ropes, iron tow-ropes and car seat belts, among others to capture the calves from their herds. It has also been observed that the criminals received the assistance of trained veterinary surgeons or trained personnel, as the use of tranquilisers is far easier in capture, with less injuries caused, wounds being more concealed, relatively lower stress levels, etc.

It has also been revealed that some of the captures were carried out in an ad-hoc manner with sedatives and/or tranquiliser guns, resulting in prominent wounds and scars that have remained for several years – due to over-dosage, lack of proper care/sterilisation/treatment and/or use of improper equipment. Almost all the illegally captured and abducted elephant calves have very prominent wounds or scars on their legs – particularly on the hind legs, in efforts to escape from the noose in a desperate struggle or aided by their herd members forcibly trying to free the trapped calf, enduring severe trauma at both ends. Traditional healers, veterinarians and trained mahouts with home remedies have been involved in treating the wounded elephant calves during the process of abduction. On one occasion in mid-2014, a sick elephant calf was kept at an established government-sponsored Veterinary Teaching Hospital, while the calf was released having been made to walk along the hot tarmac road to a

transit site operated by the criminal networks, when the DWC raid was carried out, on a tip-off.



Figure 1: Evidence of method and materials used in the capture and abduction of elephant calves. *Pics. 1-3:* Use of tranquilisers; *Pics. 4-6:* Use of traps, snares ropes, iron tow-ropes and car seat belts; *Pics. 7-9:* Calves abducted, abandoned, injured and/or trapped in illegal agricultural wells; *Pic. 9-12:* Use of sedatives

Further information uncovered is that the criminal networks have been involved in the removal of micro-chips implanted in elephant calves by the DWC for identification of rehabilitated calves on their release into the wilds. This further indicates that the criminal network has had very close association with trained veterinary personnel, wildlife officers and/or mahouts for removal of “identification” – of micro-chips – when abducting the rehabilitated baby elephants from the wilds. Such cases have, thus far, been observed and detailed investigations are pending for legal prosecution involving such criminal undertakings.

It is evident that the monetary value of the elephant calves following capture has varied in their transactions, with some having been donated outright to political

leaders and legal personalities, or given for a nominal sum of approximately four to five million Sri Lankan Rupees (LKR) to their fellow members within the criminal networks with or without forged registration documents; depending on their association with the networks or availability of a potential permit of an older deceased elephant. The value of calves sold to an outsider varies between ten and seventeen million LKR, with registration documents having been prepared illegally.

Legal prosecution

Nineteen court cases in 16 Magistrate Courts, 3 in the High Court and 2 writs in the Supreme Court have been filed and are being heard before the courts at present. Approximately fifty-five illegally captured elephant calves and 8 suspected forged permits have been issued by the DWC to the present respondents, devoid of the physical presence of elephants. These permits, thus, do not tally with the actual elephants physically under investigation. Prosecution is before the Magistrate Courts involving the DWC or by the Criminal Investigations Department (CID) of the Police, led by the intervention of a few conservation agencies as the interested third party, with its provision under Section 60 (E) of the Fauna and Flora Protection Ordinance (FFPO 2009 Amendment Act).

Section 60E: "Proceedings may be instituted by any person in any court of law for an order to remedy or restrain any contravention of any provision of this Act whether or not any right of such person has been infringed by or as a consequence of, such contravention: Provided that such person has given not less than sixty days' notice to the Director-General of his intention to institute such proceedings."

Thus, all abducted elephant calves were registered with the DWC using illegal, altered, forged documentation aided by some of its officials, officials of the District Secretariats and veterinary surgeons, among others. The forgeries have been made even before the actual elephant calves were abducted, as the permit details do not tally with the actual elephant calves being rescued from illegal captivity or are being investigated at present, for potential rescues by the CID and DWC with the guidance of the Attorney General's Department through the court process. It is evident that the documentation was manipulatively carried out and backdated to suit Section 22 (9) and (10) of the FFPO requirement – that of informing the DWC when a she-elephant falls pregnant.

Section 22:

(9) "In the event of a pregnancy of a registered she elephant, the owner or the person having the custody of such she elephant shall inform the Director-General of such pregnancy together with details of the sire.

(10) It shall be the duty of the owner or the person having custody of a registered she elephant to inform the Director-General or any authorized officer of the fact of any birth, miscarriage or still birth of elephants within seven days of the date of the occurrence of any of the said events."

Based on the forged permit details, it is observed that most she-elephants are reported to have died, after giving birth to calves. This information is provided by the suspects to mislead, in evading the above FFPO requirement, as they cannot provide evidence to indicate that the calf was born in captivity. According to a written submission provided by a former Director General (DG) of the DWC to the Horana Magistrate Court, none of the captive elephant "owners" or any government agency including the Department of National Zoological Gardens have informed the DWC of any captive births or pregnancies, as per the obligatory duty under the FFPO. The above submission further declares that any attempt made to register any elephant calves or those who have been registered as "captive-born" is to be considered as having been captured from the wild.

Thus, it is evident that all the elephant calves registered during the period under investigation, are to be considered as having been captured from the wild. As established in our literature review and interviews conducted among local communities and selected mahouts, published documents and media reports, all confirm that there have been no “captive births” recorded with private parties at any location in Sri Lanka; pertaining to the approximately 50-60 elephants calves, during the period under investigation. If such births took place, it would have been a highlight and one that would have received considerable media coverage globally, as much as the supposed “deaths” of their mothers, as indicated in the forged documents submitted for registration.

The court cases filed under the FFPO (Amendment to the Act No. 22 of 2009) involve action for the rescue of the suspected illegally-held elephant calves in the custody of the DWC, with prosecution under the provisions of the offences against Public Property Act No. 12 of 1982.

Section 22 (12): “Any elephant which has not been registered under this section shall be presumed to be taken or removed from the wild without lawful authority or approval and such elephants shall be deemed to be public property. The provisions of the offences against Public Property Act, No. 12 of 1982 shall accordingly apply in respect of such elephants.”

In such circumstances, the fine is, thus estimated at three times the given value of the elephant calves concerned. Further, the value is generally to be estimated by the Department of National Zoological Gardens.

Furthermore, the suspects are produced in court under the provisions of the Bail Act No. 30 of 1997 and the Code of Criminal Procedure Act No. 15 of 1979, according to the directives given under Section 21 (2) of the FFPO:

(2) Any offence committed under the Act involving an elephant shall be a non-bailable offence and the provisions of the Bail Act No. 30 of 1997 and the Code of Criminal Procedure Act No. 15 of 1979 shall apply in respect of such offence."

Our experience at Magistrate and High Court levels as the intervening Third Party under section 60 (E) of the FFPO is that the relevant authorities neglect to follow the proper legal procedures required in litigation. Consequently, such inadequacies and unnecessary delays have adverse consequences on the elephant calves in view of their ultimate rehabilitation / possible reintegration into the wild, owing to the time factor in respect of natural justice. Having said that, it is for this very reason that the Centre for Eco-cultural Studies (CES) joined hands with concerned individuals and conservation agencies in filing three cases in rights violations of elephants at the Human Rights Commission as “fellow citizens” of Sri Lanka (HRCSL), presently under investigation. These cases are filed against relevant State officials suspected of having committed offences by way of dereliction of duties, in not having prosecuted illegal elephant owners, having left room for the evasion of court procedures and in aiding and abetting through violation of legislation.

The DWC and CID are conducting a joint operation in the rescue of elephant calves, assigned with suspected forged documentation in cases with Court Orders already obtained against the respondents; with the majority of surviving calves having already been taken into state custody. The facilities in which they are held include one that was especially built for the purpose and serves as an elephant “holding” ground and rehabilitation centre, located in Uda Valava, adjacent to the Elephant Transit Home (ETH), for use as Phase 2, as an extension of ETH. A few of the larger – but not necessarily older – sub-adults are temporarily hosted by the Pinnavala Elephant Orphanage (PEO) owing to logistic issues, while they are to be transferred to the facility at Uda Valava as soon as they can be accommodated and cared for; inclusive

of trained staff and required facilities to keep the said larger elephants, until the court cases are concluded and the final judgment is delivered. These wild-born elephant calves should be rehabilitated and fostered in a chain-free environment and/or with ultimate, possible reintegration into the wild to ensure the “right” to live in their origin of place, as sentient beings – given their individual capacities, in terms of adaptation; and if not, to a suitable chain-free elephant sanctuary, in the near future.

Challenges faced

- Limited human and related resources are the most challenging issues faced in combatting Wildlife Crime, as the trade is nourished with ample financial resources accumulated from the illegal “captive” elephant industry through “organised” crime by its networks, led by wildlife criminals including government officials concerned.
- The usual delays in the court procedures are a major setback that lead to stressful situations for the captive-held elephant calves for potential rehabilitation, facing continued exploitation by their illegal captors, contrary to their rightful “protection” as a species of the wild.
- A lack of skilled staff and legal personnel versed in the law concerned and who may work on a *pro bono* basis. The principal issue is that most conservation agencies are unable to stand before the courts due to a lack of financial resources and the difficulty in making a long-term commitment towards legal procedures.
- A lack of proper understanding and mutual relationship among the relevant parties that serve as a barrier to effective prosecution within a multi-stakeholder network, in addition to the attitudes of the relevant authorities / government officials towards conservation agencies and individuals.
- A further major setback is limited access to state-of-the-art wildlife criminal investigation techniques, equipment, facilities and a lack of professionally trained staff suited for obtaining evidence involving modern forensic science methodologies, in particular.
- Limited facilities and professionally trained staff for rehabilitation of captive elephants to enable their successful systematic reintegration into the wild, as their birthright, in respect of natural justice.
- A lack of moral value and accountability of both government agencies and public concerns in bringing natural justice to a fellow species.

Acknowledgements

We owe a special thanks to the officers of the Auditor General’s Department for their investigative work and the work of the Ministry of Wildlife’s former Deputy Minister Mr Wasantha Senanayake and former Ministers Mr Gamini Jayawickrama-Perera and Mr Gamani V. Vijithamuni Soysa who are recognised for their political leadership and commitment to the cause. Mr Gamini Karunatilake and Ms. Ishara De Silva for technical and necessary coordination. Further acknowledgement is due the Attorney General’s Department, Criminal Investigations Department of the Police; Department of National Zoological Gardens and staff of Pinnavala Elephant Orphanage; and the mahouts. The Director General and committed officers of the Department of Wildlife Conservation, with special appreciation of Mr W.A.A.D.U Indrajith, Mr A.M.C.P Athanayaka and staff of the Western Zonal Assistant Director’s Office in recognition of their professionalism, leadership role and initiative in combatting elephant-related Wildlife Crime in Sri Lanka. The staff of the DWC Legal Division and Health Management Division for their commitment in following prosecution procedures. Special thanks are extended to colleagues at the DWC Elephant Transit Homes/Wildlife Rehabilitation Centres at Uda Valave, Ritigala and Giritale, the local communities, our media colleagues for their partnership; and the many informants serving in intelligence for this vital shared cause, including members of conservation

agencies who have risked their lives in playing a major role in combatting organised elephant-related Wildlife Crime in Sri Lanka.

Further appreciation of the National Steering Committee and UNDP GEF-SGP team led by Ms Shireen Samarasuriya for their assistance, commitment and advice. The core legal advisors of CES – Mr A. L Unawatuna and Ms H Balasooriya without whose advice and commitment in legal prosecution on behalf of the third intervening party, among many other legal counsels, this mission would not have not been accomplished; and the CES Research and Investigation team. Last but not least, we owe a debt of gratitude to Ms Fahima Sahabdeen for her efforts and overall concern for this cause and for liaising with the organisers of the Elephant Conference held at the Indian Institute of Science (IISc) in Bangalore. We are grateful to Mr Ed Emery of the School of Oriental & African Studies (SOAS) for his coordination and perseverance leading up to this publication and Professor Rahman Sukumar of the Centre for Ecological Sciences (CES-IISc) – the hosts of the conference – for the technical services provided and the welcoming CES-IISc team for familiarising us with its hands-on elephant-related research and conservation efforts.

E-mail : sufernado1@yahoo.com

sujeewa2000@hotmail.com

Centre for Eco-cultural Studies (CES), P. O Box 03, Diyakapilla, Sri Lanka

www.cessrilanka.org

[Return to top](#)