

# INSTRUCTION MANUAL FOR PROSECUTORS TO EFFECTIVELY COMBAT WILDLIFE TRAFFICKING IN SRI LANKA

*An output under the initiative*

**"Sri Lanka Counter Wildlife Trafficking Awareness, Capacity & Empowerment (ACE) Program"**



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This Instruction Manual is only a Quick Reference Guide. Kindly peruse the relevant Laws, Acts, Regulations and further reference materials for in-depth information.

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## List of Abbreviations

CCPA	Code of Criminal Procedure Act 1979 as amended
FFPO	Fauna and Flora Protection Ordinance 1937 as amended
OIC	Officer in Charge
UNODC	United Nations Office on Drugs and Crime



## 1. Introduction to the Manual

Sri Lanka harbours invaluable biodiversity and high endemism. However, due to the strategic location of Sri Lanka in the Indian Ocean, Sri Lanka has become a source and a transit hub for illegal wildlife products making their way to wildlife markets across the globe. Among these are a variety of illegally sourced wildlife; such as sharks, sea horses, sea cucumbers and other terrestrial and marine species.

Wildlife trafficking is broadly defined by the United Nations Office on Drugs and Crime (UNODC) as follows:

Wildlife trafficking involves the illegal trade, smuggling, poaching, capture, or collection of endangered species, protected wildlife (including animals or plants that are subject to harvest quotas and regulated by permits), derivatives, or products thereof.

Sri Lanka is also a key source that is often targeted by bio-pirates to source genetic material and therefore, necessity has arisen to empower the prosecutors of Sri Lanka to effectively combat wildlife trafficking through enhanced and strategic prosecution. Thus, this effort is to strengthen the foundation of prosecution in the system of law enforcement in Sri Lanka.

## 2. Definitions

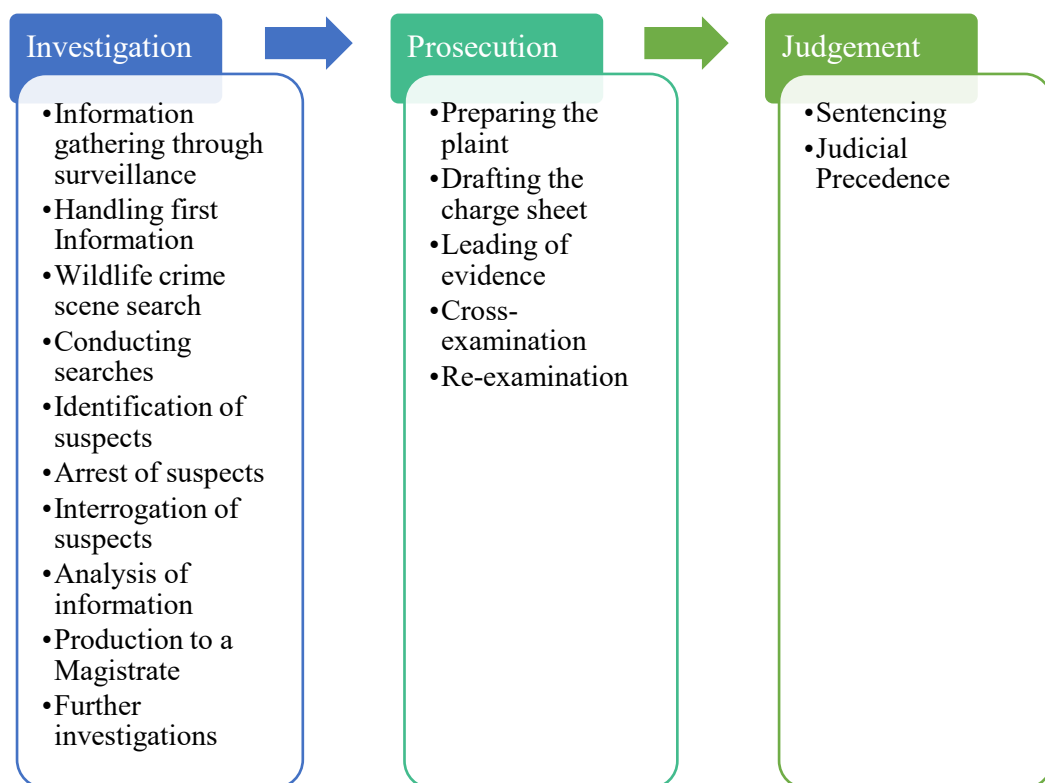
- a. Peace Officer (සාම නිලධාරී) – Code of Criminal Procedure Act (CCPA), section 2
  - "Peace officer" includes a police officer, and a Divisional Assistant Government Agent and a Grama Seva Niladhari appointed by a Government Agent in writing to perform police duties.



b. Cognizable Offence (සංඥාපිත වැරදි) – CCPA, section 2

- "Cognizable offence" means an offence for which a peace officer may in accordance with the First Schedule, arrest without a warrant.

c. Burden Quantum of Proof – Beyond reasonable doubt (සාධාරණ සැකයෙන් ඔබ්බට)



Flow of the Process of a Wildlife Trafficking Case

### Points to Remember

- ❖ A prosecution is instituted only after ensuring that a cogent case is present and after the investigations are concluded and evidence has been gathered to establish the case of the prosecution.
- ❖ A case number has to be obtained from the Registrar of the Court and written on the top right corner of the case file before the ‘A Report’ or ‘B Report’ is filed.
- ❖ Offences under the following laws are criminal offences and require cases to be instituted in the Magistrate’s Court.
  - Fauna and Flora Protection Ordinance, No. 02 of 1937 as amended (FFPO)
  - Forest Conservation Ordinance, No. 16 of 1907 as amended
  - Fisheries and Aquatic Resources Act, No. 02 of 1996 as amended
- ❖ Generally applicable laws in the Magistrate’s Court are:
  - CCPA, No. 15 of 1979 as amended
  - Evidence Ordinance, No. 14 of 1895 as amended
  - Electronic Transactions Act, No. 19 of 2006 as amended
  - Penal Code, No. 02 of 1883 as amended
- ❖ If the series of the offences that have been alleged against the suspect are offences under different Acts/ Ordinances, it is a best practice to give precedence to the Act/ Ordinance that imposes the highest fine/sentence for that charge.
- Note: The forest officers are empowered to enforce the provisions of FFPO as indicated in *Example 01*.

### Example 01:

17. එදින එකී ස්ථානයකදී, එකී අවස්ථාවේදී ඉහත ක්‍රියා කලාපයේදීම පුවෙර්ස්ක්ක වන සංරක්ෂණ ආඥා පනතේ 7(1)(එ) වගන්තිය උල්ලංඝනය කරමින් රට තෙර (Senna alata) ශාක නියැදියක් අනවසරයෙන් සත්තකයේ තබා ගැනීමෙන් දණ්ඩ නීති සංග්‍රහයේ 32 වැනි වගන්තිය සමඟ කියැවෙන වන සංරක්ෂණ ආඥා පනතේ 7(1) වැනි වගන්තිය යටතේ දඬුවම් ලැබිය යුතු වරදක් කළ බවටද,

18. එදින එකී ස්ථානයකදී, එකී අවස්ථාවේදී වෂර් 1970 අංක 01, වෂර් 1993 අංක 49 හා වෂර් 2009 අංක 22 දරණ පනත් වලින් සංශෝධිත 469 වැනි අධිකාරිය වූ 1937 අංක 02 දරණ වන සත්ව හා වෘක්ෂලතා ආරක්ෂණ ආඥා පනතේ 31ආ. (අ),(ආ),(ඇ),(ඊ) සහ (උ) වගන්ති උල්ලංඝනය කරමින් Ltpidoptera ගෝත්‍රයට අයත් සමනළු / සලබයින් (Butterflies and Moths) 771 ක සංඛ්‍යාවක්, ඔවුන්ගේ බිත්තර හා පිලවු දැන දැනම මරණයට පත් කර, තුවාල කර, හානි සිදු කර, අල්ලා ගැනීම හා ඒ සඳහා උගුල් ඇටවීමෙන්ද, කල් තබා ගැනීම සඳහා සකස් කිරීමෙන් ද, සත්තකයේ තබා ගැනීමෙන්ද, දණ්ඩ නීති සංග්‍රහයේ 32 වැනි වගන්තිය සමඟ කියැවෙන පුවෙර්ස්ක්ක පනතේ 31ආ. වගන්තිය යටතේ දඬුවම් ලැබිය යුතු වරදක් කළ බවටද,

**Credits: Department of Forest Conservation**

### 3. Jurisdiction of the Magistrate's Court (අධිකරණ බලය නිර්ණය කිරීම)

- CCPA, section 128(1) - The Magistrate's Court within whose jurisdiction the offence was committed has the power to inquire into and hear the case against the accused.
- CCPA, section 128(2) - Any Magistrate's Court within whose local limits of jurisdiction an accused may be or be found shall have jurisdiction respectively in all cases of offences.
- CCPA, section 128(3) - An offence committed on the territorial waters of Sri Lanka or an offence committed on the high seas, or on board any ship or upon any aircraft may be tried or inquired into by the Magistrate's Court of Colombo, if it otherwise has jurisdiction or on indictment by the High Court.

- CCPA, section 129 – The accused can be tried at the Magistrate’s Court within whose local limits of jurisdiction the offence was committed, or at the Magistrate’s Court within whose local limits of jurisdiction the consequences of the offence ensued.
- CCPA, section 130 – When an act is an offence, but in relation to the same act, another offence has been committed, the accused could be tried at the Magistrate’s Court within whose local limits of jurisdiction the first offence took place, or where the subsequent offence took place.
  - e.g. ‘A’ captures a pangolin within a protected area within the local limits of the jurisdiction of Magistrate’s Court ‘X’ and tries to sell it within the local limits of jurisdiction of the Magistrate’s Court ‘Y.’ Either the Magistrate’s Court ‘X’ or the Magistrate’s Court ‘Y’ has the power to hear the case.

#### 4. Using the First Information (මුල් තොරතුරු)

- CCPA, section 109 - Every information relating to the commission of an offence may be given orally or in writing to a police officer or an inquirer.
- First information can be given by any person, even via a telephone call. First information could be anonymous.
- The first information must be entered into the **Information Book** maintained at the Police Station, or a true copy of the first information shall be included into the Information Book. The Information Book serves to record statements.
- The accused also has a right to have a copy of the first information if the person who gave the first information is named as a witness. Furthermore, the provisions in the Evidence Ordinance make an accused entitled to have a certified copy of the first information as it is a public document.

- *Attorney General v Geetin Singho* [1956] 57 NLR 289 – The accused has a right to inspect the information book subject to any claim of privilege laid down by the Evidence Ordinance.
- If the information has been given orally, it shall be written in the language in which it is given, then read over to the informant.
- However, if it is not possible for the officer to take down the information in writing, he shall request the informant to provide the information in writing.
- Where the informant is unable to write, the officer shall write the information in a national language after recording the reasons to do so. Thereafter, he shall read the record to the informant or interpret it in the language the informant understands.
- Every such information given in writing or reduced to writing has to be signed by the informant and an entry has to be made in the information book.
- If the first information was not communicated to the Officer in Charge (OIC) at the Police Station, the officer who made the first information entry has to inform the former.

#### 4.1 Evidentiary value of First Information

- First information can be used to corroborate or contradict a witness.
- It can be used to establish consistency and credibility of a statement made by a witness.
- However, if the informant having perused the information and then uses it as a means of supporting his evidence, the value that first information holds is negligible.
- To corroborate a witness, the respective first information has to be based on the informant's personal knowledge. Hearsay is not accepted unless the hearsay matter is relevant to the facts.
  - Evidence Ordinance, section 157 - Any former statement made by such witness, whether written or verbal, relating to the same fact at or about the

time when the fact took place or before any authority legally competent to investigate the fact, may be proved.

- Thereby, where the first information was given by a person, it may be proved that either he has given false information about an alleged offence or, that he had made a different statement to which he made later when giving evidence in court.
- Verified first information can sustain a charge against an accused.

## 5. Filing of the 'B Report' (අ වාර්තාව)

- CCPA, section 115-

Whenever an investigation under Chapter XI cannot be completed within the period of twenty-four hours fixed by section 37, and there are grounds for believing that further investigation is necessary, the OIC of the police station or the inquirer shall forward the suspect to the Magistrate having jurisdiction in the case.

At the same time, a report of the case, together with a summary of the statements, if any, made by each of the witnesses examined in the course of such investigation relating to the case shall be transmitted to the Magistrate.

### 5.1 Purposes of a 'B report'

- Reporting of the offence to the court.
- Presenting the productions detained related to the offence.
- Requesting further time to conduct investigations.
- To obtain orders relevant to the suspects and productions.
- 

### 5.2 Contents of a 'B Report'

- The Magistrate's Court jurisdiction in which the offence was committed has to be stated.

- Date, time and the location the offence was committed need to be mentioned.
- The name of the officer who reports the offence and his designation are required.
- Name of the Law, the relevant provision that has been violated and the penalty provision shall be added.
- The name and address of the suspect shall be mentioned.
- A list of productions needs to be included
- CCPA, section 116 –
  - When an OIC or an inquirer forwards the suspect to the Magistrate or accepts the security, he shall send the weapons or other articles to be produced in court, and require the complainant/ witnesses to execute a bond to appear at court and give evidence.
  - The said bonds shall be sent to the Magistrate.
  - The Magistrate may on the application of a police officer or inquirer, forward the weapons or samples to the relevant authorities for analysis and submission of reports to the court.
  - Where a complainant or witness refuses to execute the bond, the officer or inquirer shall report it to the Magistrate's Court having jurisdiction, which may thereupon issue a warrant or summons to the complainant or witness to give evidence.

## 6. Drafting of the Complaint (පැමිණිලි පත්‍රය)

- Date, the name of the court and the name of the person who reports the offence with his designation shall be mentioned.
- The name and address of the suspect shall be mentioned.
- Place of the offence and the date the offence was committed shall be included.
  - If the offence has been committed in a protected area, the Gazette Extraordinary by which it was declared a protected area and its date have to be stated.
- Name of the Law, the relevant provision that has been violated and the penalty provision shall be added.
- Additionally, the names and addresses of the witnesses and the list of productions shall also be included in the complaint.
- It is a good practice to attach few copies of the charge sheet, orders to hold the accused in remand custody and a blank sheet of paper to the complaint.

### a. CCPA, section 136 -

(1) Proceedings in a Magistrate's Court shall be instituted in one of the following ways: -

(a) on a complaint being made orally or in writing to a Magistrate having jurisdiction:

A written complaint countersigned by a pleader and signed by the complainant; or

(b) on a written report to the like effect being made to a Magistrate of such court by an inquirer appointed under Chapter XI or by a peace officer or a public servant or a servant of a Municipal Council or of an Urban Council or of a Town Council; or

Note: This is referred to as the 'Complaint.'



- (c) upon the knowledge or suspicion of a Magistrate of such court to the like effect;
  - (d) on any person being brought before a Magistrate of such court in custody without process, accused of having committed an offence which such court has jurisdiction either to, inquire into or try; or
  - (e) upon a warrant under the hand of the Attorney-General requiring a Magistrate of such court to hold an inquiry, or
  - (f) on a written complaint made by a court under section 135.
- Also note that if **common intention** is apparent, it can also be mentioned in the plaint. The Penal Code defines common intention as follows:
    - Penal Code, section 32 - When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for the act in the same manner as if it were done by him alone. (*Refer Example 03*).
  - The orders that can be prayed for from the Magistrate in the Plaint are as follows:
    - A calling date to present the plaint at court (At least 03 convenient dates of the prosecutor to be present for the case shall be mentioned.)
    - Order to remand the suspects.
    - Order to dispose the productions (especially live specimens/ perishables).
    - If it is the court vacation/ court is not functional, an order directing the production officer to retain the productions in his custody.
    - Order to obtain expert evidence via reports.
    - Order to require the presence of suspects/ witnesses by way of summons.

## 7. Drafting of the Charge Sheet (චෝදනා පත්‍රය)

- The charge sheet is a document delivered to the accused under the signature of the Magistrate. For the convenience of the court, the charge sheet is drafted by the pleader and submitted for the perusal and signature of the Magistrate.
- It should include the names of the accused, date of the offence, and the date of filing the charge sheet.
- CCPA, section 164 – Every charge under the Code of Criminal Procedure shall:
  - State the charge and the law that made it an offence.
    - If the law provides a specific name for the charge, use that name specifically.
    - If the law does not specify the name, definition of the offence shall be stated to give sufficient notice to the accused.
  - State the penalising law and the section.
- CCPA, section 165 – The charge shall also contain-
  - Time and place of the offence.
    - Note: If the offence has been committed inside a protected area, the Gazette Extraordinary that declared the area as protected and the date of declaration shall be added.
  - Against whom the offence was committed (name of the person or thing).
  - If necessary, the manner in which the offence was committed.
- CCPA, section 166 – Unless the accused had been misled, an erroneous charge regarding the offence or the particulars required is not material.
- CCPA, section 167 – The court has the power to alter the charge before the judgement is pronounced in Magistrate's Courts. Substitution of a charge or an addition of a new charge is considered as an alteration. Every such alteration shall be read and explained to the accused.

- CCPA, section 168 – If the court deems that the alteration of the charge under section 167 does not prejudice the accused or the prosecutor, the court may proceed with the trial as if it had been the original charge.

### Example 02: A sample charge

#### විවිධ භූමි භූමි

01. ඔබලා, ක්‍රි.ව. 2022 මාර්තු මස 26 වන දින හෝ ඊට පසුව ආයතනිකව දිනක මෙම අධිකරණ බලය යටතේ ඇතුළත් වී එනම්, දෙතියාය, විහාරයේ, කුරුල්ලා පිහිටි සිංහරාජ කුරුල්ලා ඇල්ලා එකතු කරන ලද්දේ බවට හෝ වෙනත් විවිධ වෙනත් පොදු අරමුණකින් යුක්තව ශ්‍රී ලංකාවේ ආවේණික ආරක්ෂිත උභයජීවී විශේෂයක් වන *Bufoide* කුලයට අයත් *Duttaphrynus atukoralei* විද්‍යාත්මක නාමයෙන් හඳුන්වන අතුරුකරුණයේ ගෙවතු (Atukorala's Toad) ඇල්ලා ගැනීමෙන් අත්වි නීති සංග්‍රහයේ 32 වන වගන්තිය යටතේ එක්ව කියවිය යුතු ක්‍රි.ව. 1964 අංක 44, ක්‍රි.ව. 1970 අංක 01, ක්‍රි.ව. 1993 අංක 49 හා ක්‍රි.ව. 2009 අංක 22 දරණ පනත් ද්විත් සංශෝධන 469 වන අධිකාරයේ, වනයන්ට හා වානජජීවී ආරක්ෂක ආඥා පනතේ V වන උපදේශනයේ ඇතුළත්ව නොමැති ආරක්ෂිත උභයජීවී විශේෂයක් ඇල්ලා ගැනීමෙන් එකී ආඥා පනතේ 31අ (අ) වගන්තියට පටහැනිව කටයුතු කිරීමෙන්, වරදක් සිදු කර ඇති බවින් එකී ආඥා පනතේ 31අ වගන්තිය ප්‍රකාරව දඬුවම් ලැබිය යුතු වරදක් කර ඇති බවට ද,

Credits: Department of Wildlife Conservation

- CCPA, section 169 – If the court deems that the alteration under section 167 is substantial, the court may either direct a new trial or adjourn the trial for a period as fit.
- CCPA, section 171 - When the charge had been altered after the commencement of the trial, the prosecutor and the accused are allowed to recall or re-summon and examine any witnesses who may have been examined with reference to such alteration.

### 7.1 Joinder of Charges

- CCPA, section 173 – For every distinct offence which any person is accused of, a separate charge shall be made. Every such charge shall be tried separately except in the instances mentioned in sections 174, 175, 176 and 180 where these sections can be applied severally or in combination.

- CCPA, section 174 – When same kind of offences are committed in a span of 12 months, the person may be charged for three of the same offences at one trial.
  - ‘Same kind’ offences are: Where the offence is punishable with the same amount of punishment under the same section of the law applicable.
- CCPA, section 175(1) – If the same person has committed two or more offences in one series of acts in the same transaction, he may be charged with and tried at one trial.
- CCPA, section 175(2) - If the alleged acts are offences under different laws applicable, he may be charged with each of them and be tried at the same trial.

### Example 03:

02. එකී දින එකී වෙලාවේ එකී ස්ථානයේ එකී ක්‍රියා කලාපයේදී ඔබලා විසින් පොදු අරමුණකින් යුක්තව ශ්‍රී ලංකාවට ආවේණික ආරක්ෂිත උභයජීවී විශේෂයක් වන Bufonide කුලයට අයත් Duttaphrynus atukoralei විද්‍යාත්මක නාමයෙන් හඳුන්වන අතුකෝරාලගේ ගෙම්බකු (Atukorala's Toad) නම සන්නයනය හෝ පාලනයේ තබා ගැනීමෙන් දණ්ඩ නීති සංග්‍රහයේ 32 වන වගන්තිය සමග එක්ව කියවිය යුතු ක්‍රි.ව. 1964 අංක 44, ක්‍රි.ව. 1970 අංක 01, ක්‍රි.ව. 1993 අංක 49 හා ක්‍රි.ව. 2009 අංක 22 දරණ පනත් වලින් සංශෝධිත 469 වන අධිකාරයේ, වනසත්ව හා වෘක්ෂලතා ආරක්ෂක ආඥා පනතේ V වන උපලේඛනයේ ඇතුළත්ව නොමැති ආරක්ෂිත උභයජීවී විශේෂයක් නම සන්නයනය හෝ පාලනයේ තබා ගැනීමෙන්, එකී ආඥා පනතේ 31අ (ඇ) වගන්තියට පටහැනිව කටයුතු කිරීමෙන්, වරදක් සිදු කර ඇති බැවින් එකී ආඥා පනතේ 31අ වගන්තිය ප්‍රකාරව දඬුවම් ලැබිය යුතු වරදක් කර ඇති බවට ද,
03. එකී දින එකී වෙලාවේ එකී ස්ථානයේ එකී ක්‍රියා කලාපයේදී ඔබලා විසින් පොදු අරමුණකින් යුක්තව ශ්‍රී ලංකාවට ආවේණික ආරක්ෂිත උභයජීවී විශේෂයක් වන Bufonide කුලයට අයත් Duttaphrynus atukoralei විද්‍යාත්මක නාමයෙන් හඳුන්වන අතුකෝරාලගේ ගෙම්බකු (Atukorala's Toad) අපනයනය කිරීමට තැන් කිරීමෙන් දණ්ඩ නීති සංග්‍රහයේ 32 වන වගන්තිය සමග එක්ව කියවිය යුතු ක්‍රි.ව. 1964 අංක 44, ක්‍රි.ව. 1970 අංක 01, ක්‍රි.ව. 1993 අංක 49 හා ක්‍රි.ව. 2009 අංක 22 දරණ පනත් වලින් සංශෝධිත 469 වන අධිකාරයේ, වනසත්ව හා වෘක්ෂලතා ආරක්ෂක ආඥා පනතේ V වන උපලේඛනයේ ඇතුළත්ව නොමැති ආරක්ෂිත උභයජීවී විශේෂයක් අපනයනය කිරීමට තැන් කිරීමෙන්, එකී ආඥා පනතේ 59 වන වගන්තිය හා එක්ව කියවිය යුතු 40(1) (අ) වගන්තියට පටහැනිව කටයුතු කිරීමෙන් වරදක් සිදු කර ඇති බැවින් එකී ආඥා පනතේ 41 වගන්තිය ප්‍රකාරව දඬුවම් ලැබිය යුතු වරදක් කර ඇති බවට ද,

Credits: Department of Wildlife Conservation

- CCPA, section 175(3) – If the alleged offence is a composite offence, whereas the offences that constitute it, are also individual offences, he may be charged at one trial for the composite offence and the individual offences.
- CCPA, section 176 – If in a single act or a series of acts it is difficult to identify which specific offence was committed, he may be charged with all or any one or more of such offences; or he may be charged with having committed one of the said offences without specifying which one.
- CCPA, section 177 – If the accused is charged with one offence and it appears in evidence that he committed a different offence under section 176, he may be convicted of the offence which he is shown to have committed although he was not charged with it.
- CCPA, section 178(1) – When a person is charged with an offence, but only several of the ingredients of the offence are proved and that constitutes a minor offence, he may be convicted of the minor offence although he was not charged with it.
- CCPA, section 178(2) – Although a person was not charged with, but when the proven facts of an offence reduce the offence to a minor offence, he may be convicted of the minor offence even though the jurisdiction to try such minor offence is exclusively vested in a different court.
- CCPA, section 179 – When a person is charged with an offence and it is proved that he attempted to commit that offence, he may be convicted of the attempt, even though he was not initially charged with it. Such an attempt shall be specified in law to be punishable.

### Example 04:

18. එකී දින එකී වෙලාවේ එකී ස්ථානයේ එකී ක්‍රියා කලාපයේදී ඔබලා විසින් පොදු අරමුණකින් යුක්තව ආරක්ෂිත දේශීය ශාක විශේෂයක් වන Orchidaceae ශාක කුලයට අයත් Dendrobium sp උද්භිද විද්‍යාත්මක නාමයෙන් හඳුන්වන ඕකිඩ් ශාක කොටස් අපනයනය කිරීමට තැත්කිරීමෙන් දඬුවම් නීති සංග්‍රහයේ 32 වන වගන්තිය සමඟ එක්ව කියවිය යුතු ක්‍රි.ව. 1964 අංක 44, ක්‍රි.ව. 1970 අංක 01, ක්‍රි.ව. 1993 අංක 49 හා ක්‍රි.ව. 2009 අංක 22 දරණ පනත් වලින් සංශෝධිත 469 වන අධිකාරයේ, වනසත්ව හා වෘක්ෂලතා ආරක්ෂක ආඥා පනතේ 59 වන වගන්තිය හා එක්ව කියවිය යුතු 45 (අ) වගන්තියට පටහැනිව කටයුතු කිරීමෙන් වරදක් සිදු කර ඇති බැවින් එකී ආඥා පනතේ 46 වගන්තිය ප්‍රකාරව දඬුවම් ලැබිය යුතු වරදක් කර ඇති බවට ද,

**Credits: Department of Wildlife Conservation**

The relevant provision in FFPO is section 59: Any person who attempts to commit or abets the commission of any offence under this Ordinance or any regulation made thereunder shall himself be guilty of the same offence.

- CCPA, section 180 – When more persons are charged with jointly committing the same offence, or different offences in the same transaction, or one of such is charged with committing the offence and another is charged with abetment of the offence or attempt to commit the offence; they may be charged and tried together or separately as the court deems fit.
  - CCPA, section 181 – Officer conducting the prosecution may withdraw the remaining charges with the consent of the court where a person has been convicted of several charges, but he has not been convicted of the rest of the charges. If not, the court may of its discretion stay the inquiry into or trial of such charge or charges. Such a withdrawal has the effect of an acquittal unless the conviction is set aside.
- ❖ It has to be noted that the plaint is prepared by the pleader to report an offence to the court, therefore appropriate language shall be used.
- ❖ However, as the charge sheet informs the accused of the charges he/she has been accused of, appropriate language shall be used.

## 8. Summary Trials by the Magistrate

### ○ Powers of the Magistrate

- Conducting summary trials and adjudication
  - Calling and examination of witnesses
  - Issuance of search warrants and arrest warrants
  - Issuance of orders directing *inter alia* to remand the suspects, disposal of the productions, to obtain expert evidence in the form of reports etc.
- CCPA, section 182(1) - When the accused is brought before the Magistrate, the Magistrate shall frame the charge against the accused if there is sufficient ground for proceeding against him.
  - CCPA, section 182(2) – Magistrate shall read such charge to the accused and ask him if he has any cause to show why he should not be convicted.
  - CCPA, section 183(1) – If the accused makes an unqualified admission that he is guilty of the offence, his statement shall be recorded in the same words he uses as much as possible. The Magistrate shall pass the verdict of guilty and pass the sentence upon him according to the law, and shall record such sentence.
    - However, the accused may withdraw his plea of guilt with the leave of the Magistrate at any time before the sentence is passed. In such an event, the Magistrate shall proceed as if no conviction had been entered against him.
  - CCPA, section 183(2) – Where the accused does not make any statement or does not make an unqualified admission of guilt, the Magistrate shall ask if he is ready for trial and –
    - (a) if the accused replies that he is ready for trial shall proceed to try the case, but
    - (b) if the accused replies that he is not ready for trial by reason of the absence of witnesses or otherwise the Magistrate shall, subject to the provisions of subsection (3) of section 263, either postpone the trial to a day to be then fixed or proceed forthwith to try the case.

- CCPA, section 184 – When the Magistrate proceeds to try the accused, he shall take all such evidence as may be produced for the prosecution or defence respectively. The accused is also permitted to cross-examine all witnesses called for the prosecution and/ or recalled by the Magistrate.
  - The complainant and accused or their pleaders shall be entitled to open their respective cases, but the complainant/ his pleader shall not be entitled to make any observations in reply upon the evidence given by or on behalf of the accuse



## 9. Types of Evidence

It is the task of the prosecutor to prove the case against the accused beyond reasonable doubt.

### 9.1 Oral Evidence (කථිත සාක්ෂි)

- Evidence Ordinance, section 59 – All facts except the contents of the documents may be proved by oral evidence.
- Evidence Ordinance, section 60 – Oral evidence must be direct in all cases:
  - If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw that fact;
  - If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard that fact;
  - If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived that fact by that sense or in that manner;
  - If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

*eg.: Evidence of an expert*

Provided also that, if oral evidence refers to the existence or conditions of any material thing other than a document, the court may, if it thinks fit, require the production of such material thing for its inspection.

### 9.2 Documentary Evidence (ලේඛනමත සාක්ෂි)

- Evidence Ordinance, section 61 - The contents of documents may be proved either by primary or by secondary evidence.
- Evidence Ordinance, section 62 – ‘**Primary evidence**’ means the document itself produced for the inspection of the court.
- Evidence Ordinance, section 63 – ‘**Secondary evidence**’ means and includes –

1. certified copies given under the provisions hereinafter contained;
2. copies made from the original by mechanical process which in themselves ensure the accuracy of the copy, and copies compared with such copies;
3. copies made from or compared with the original;
4. counterparts of documents as against the parties who did not execute them;
5. oral accounts of the contents of a document given by some person who has himself seen it.

### 9.3 Expert Evidence (විශේෂඥ සාක්ෂි):

- ❖ Before the evidence is led, the prosecuting officer shall ensure what expert evidence needs to be led and obtain orders from the court, directing the experts to provide the reports. For the identification of wildlife, the prescribed State institutions shall be contacted and regarding the firearms used, the evidence from the Government Analyst shall be obtained.

### 9.4 Admissions (පිළිගැනීම)

- Evidence Ordinance, section 17(1) - An ‘**admission**’ is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons relevant to the case.
- Gestures and signs are not admissions.
  - *Appuhamy’s Case* [1938] 40 NLR 372 – Verbal means, by means of words, but it is not necessary that the words are spoken. However, ‘oral’ indicates that the words shall be spoken by the mouth. The meaning of ‘verbal’ is wider.
- However, an admission is not conclusive proof of the matters admitted, but it can act as estoppel under the provisions of the Evidence Ordinance.
- An admission can be made by the following persons:
  - A party to the proceedings/ by a duly authorised agent to such party.

- A party to the suit (suing/ being sued) in representative character.
- A person who has a proprietary or pecuniary interest in the subject matter of the proceedings in that character.
- A person from whom the party to the suit has derived his interest in the subject matter to the suit.

#### 9.5 Confessions (වරද කියාපෑම්/ අපරාධෝච්චාරණ/ පාපෝච්චාරණ)

- Evidence Ordinance, section 17(2) - A ‘**confession**’ is an admission made at any time by a person accused of an offence, stating or suggesting the inference that he committed that offence.
  - *Martin Singho Case* [1964] 66 NLR 391 – A confession being a species of the genus admission, is relevant and may under section 21 of the Evidence Ordinance, be proved against the person who makes it, unless it is a confession barred by sections 24, 25 and 26 of the Evidence Ordinance.
  - *Anandagoda Case* [1960] 62 NLR 241– “An admission by an accused of facts which can establish motive or opportunity, or knowledge of a death does not suggest an inference that the offence was committed by him. The inference which such a fact suggests is only that he may have had a reason or an opportunity for, or knowledge as to the commission of the offence.”
    - At the Privy Council, *Anandagoda Case* [1962] 64 NLR 73 – From a confession, a guilt is directly deducible. A confession imports guilt; it is not an admission of particular acts/ circumstances which may or may not involve guilt, and which is dependant for such result upon other facts or circumstances to be established.
- Evidence Ordinance, section 25 - A confession made to a police officer or a forest officer is not admissible against the accused.

- Evidence Ordinance, section 26 - If a confession has been made by the accused while he was in the custody of a police officer or a forest officer (unless it was made in the immediate presence of a Magistrate), it is not admissible against the accused.
- Evidence Ordinance, section 24 - However, if the court deems that:
  - An inducement, threat, or promise having reference to the charge against the accused person,
  - has proceeded from a person in authority, or proceeding from another person in the presence of a person in authority and with his sanction,
  - and which inducement, threat, or promise is sufficient in the opinion of the court,
  - to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him, the confession of such nature is irrelevant in criminal proceedings against the accused.
    - *Gnanaseeha Thero's Case* [1968] 73 NLR 154 – The burden is on the prosecution to adduce evidence that the confession was made voluntarily and it was not caused by any ground mentioned in section 24 of the Evidence Ordinance.
- Evidence Ordinance, section 28 - If such a confession as referred to in section 24 is made after the impression caused by any such inducement, threat, or promise has been fully removed in the opinion of the Court, it is relevant.
- Evidence Ordinance, section 27 – Even though information was received from a person in police custody or a person in the custody of a forest officer, so much of such information, whether it amounts to a confession or not, as it relates distinctly to the facts thereby discovered may be proved.

- *Murugan Ramasamy Case* [1964] 66 NLR 265 – “These are those statements that have led to the actual discovery of a proven fact when the information supplied by the accused has been the cause of discovery.”
- *Piyadasa’s Case* [1967] 72 NLR 434 – “... if a fact is actually discovered in consequence of the information given, some guarantee is afforded thereby that the information was true, and accordingly, can be safely allowed to be given in evidence.

#### 9.6 Evidence of an Accomplice (අපසහායකගේ/ අපරාධ සහායකගේ සාක්ෂි)

- Evidence Ordinance, section 133 - An accomplice shall be a competent witness against an accused person. A conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.
- Evidence Ordinance, section 114(b) - However, the court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars.

#### 9.7 Evidence given by the Accused on his behalf (විත්තිකරු තමා වෙනුවෙන් දෙනු ලබන සාක්ෂි)

- Evidence Ordinance, section 120(6) - In criminal trials, the accused shall be a competent witness in his own behalf, and may give evidence in the same manner and with the like effect and consequences as any other witness.
- However, such statements can be cross-examined and limitations can be imposed by the court if it relates to the credit of the accused.

#### 9.8 Previous Convictions (පෙර වැරදි වාර්තා)

- When an accused is presented to court and there have been previous convictions for the same accused, the list of previous convictions can be presented in the court for the perusal of the judges.

- The information records available at the regional offices of Department of Wildlife Conservation, and Police Divisions would be useful in this regard.
  - When a vehicle/ equipment has been used for previous offences, a list of previous convictions need to be filed in the court.
- If the case needs to be called at any event before the next hearing date of the case, the request can be done by way of a **motion** addressed to the court.

#### 9.9 Electronic Evidence (පරිගණක සාක්ෂි)

- Electronic Transactions Act, section 3 – Data messages, electronic documents, electronic records or other communication are provided legal recognition, effect, validity and enforceability.
- Electronic Transactions Act, section 4 – If the Sri Lankan laws attach legal validity only if such instruments have been reduced to writing, such requirement shall be deemed to be satisfied by a data message, electronic document, electronic record or other communication in electronic form if it is accessible for subsequent reference.
- Electronic Transactions Act, section 7 – Where any law requires that a communication or any other document shall, be signed or bear the signature of any person, that requirement is satisfied if a method is used to identify that person and to indicate that person's intention in respect of the information contained in the electronic communication (data message, electronic document, electronic record) and the method used is reliable and sufficient for the purposes of the Act.
- Electronic Transactions Act, section 21 - Any information contained in a data message, or any electronic document, electronic record or other communication touching any fact in issue or relevant fact; and when compiled, received or obtained during the course of any business, trade or profession or other regularly conducted activity, is admissible in any proceedings.

○ Proviso -

- Direct oral evidence of such fact in issue or relevant fact if available, shall be admissible if there is no reason to believe that the data contained in the electronic communication is unreliable or inaccurate.
- If any information is contained in a data message, electronic document, electronic record or other communication made by a person:
  - (i) who is dead or who by reason of his bodily or mental condition is unfit to attend as a witness; or
  - (ii) who is outside Sri Lanka and where reasonable steps have been taken to find such person and he cannot be found; or
  - (iii) who does not wish to give oral evidence due to fear; or
  - (iv) who is prevented from so giving evidence,evidence relating to such information shall, if available, be admissible.

## 10. Leading of Evidence (සාක්ෂි මෙහෙයවීම)

- The objective of leading of evidence is to precisely and concisely present the facts disclosed at the investigation to the court.
- Evidence shall be led in a manner to prove each charge made against the accused.
- Before the trial, it is advised to have the productions and expert reports prepared and ready.
- According to the Evidence Ordinance, leading of evidence happens in three stages.

### 10.1 Examination-in-Chief (මූලික සාක්ෂි විමසීම)

- Evidence Ordinance, section 137(1)- ‘**Examination-in-chief**’ refers to the examination of a witness by the party who calls him.
- It is advised to commence the leading of evidence by asking the designation, tenure in service, and the current place of work of the witness.
- The witness provides an account of the tasks he undertook/ followed for the case. Where necessary, the identification of the suspects shall be done via an identification parade.
- The productions relevant to the case shall be identified through the witness and be marked in court as ‘P1’, ‘P2’ etc. at the same time of the leading the evidence. It is important to ensure whether the seals are intact or have been tampered with.
- When a witness identifies the productions, it shall be given to him at the court for inspection and then do the identification.
- If the evidence to be led is raising contradictions, or if it is lengthy, it shall not be led at the examination-in-chief.
- The prosecuting officer shall avoid asking leading questions (උත්තරය හඟවන/ ප්‍රාපණ ප්‍රශ්න).



- Evidence Ordinance, section 141 - **Leading Questions:** Any question that suggests the answer which the person putting it wishes or expects to receive is a ‘leading question.’
- Evidence Ordinance, section 142- Leading questions must not be asked if objected to by the adverse party in the examination-in-chief or in a re-examination without the permission of the court.
- Evidence Ordinance, section 143 - However, leading questions may be asked in cross examinations subject to the following:
  - Question must not put words into the mouth of the witness.
  - Question must not assume that facts have been proved.
  - The question must not imply that answers have been given contrary to the fact.
  - Furthermore, the court in its discretion may prohibit leading questions from being put to a witness who shows a strong interest or bias in favour of the cross-examining party.
- Evidence should be led in a manner to establish the charges against the accused. It is better to be mindful of the facts that need to be proved from the evidence of the relevant witness.

## 10.2 Cross Examination (හරස් ප්‍රශ්න විමසීම)

- Evidence Ordinance, section 137(2) - The examination of a witness by the adverse party is called ‘**cross-examination**’.
- The prosecutor should pay attention to the questions asked in the cross examination by the defendant’s counsel and be mindful about the contradictions made by the witness.
- Objections shall be made by the prosecutor as fit.

- Evidence Ordinance, section 138(2) - Cross-examination need not be confined to the facts to which the witness testified in his examination-in-chief.
- Evidence Ordinance, section 146 - The following questions can also be raised in cross examination. Questions-
  - (a) to test his accuracy, veracity, or credibility;
  - (b) to discover who he is, and what is his position in life; or
  - (c) to shake his credit, by injuring his character.

### 10.3 Re-examination (නැවත ප්‍රශ්න ඇසීම)

- Evidence Ordinance, section 138(3) - The re-examination shall be directed to the explanation of matters referred to in cross-examination. If a new matter is introduced in re-examination, with the permission of the Court, the adverse party may further cross-examine upon that matter.
- If contradictions arise, the opportunity to re-examine can be used to clear them.
- If the prosecutor feels that the re-examination is not necessary, he can avoid conducting the same.

#### 10.3.1 Inquiry into the Productions (හාණ්ඩ විමසීම)

- Once the case is proven beyond reasonable doubt, the court inquires into the productions. If the court finds that the productions at the court have been used by the owners of the productions with the intention of committing a crime, the court has the power to order confiscation of the same.
- In the inquiry into the productions, the prosecutor shall present to the court whether: the productions have been used for previous offences, whether the accused intentionally used the productions to commit the crime, if the productions are returned to the owner, and/or if there is any possibility for the productions to be used in another crime.

- The aforementioned shall be elucidated in the cross-examination of the witnesses.
- Confiscation of the productions can only be averted if the owner of the production is an innocent third party and if he had taken reasonable measures to prevent the productions from being used for any crime.

## 11. Disposal of Property

- CCPA, section 425(4) – "**Property**" includes in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise.
- CCPA, section 425(1) – When the trial/ inquiry in a criminal court has concluded, the court may make such order as it thinks fit for the disposal of any document or property produced before it, regarding which any offence appears to have been committed or which has been used for the commission of any offence.
- CCPA, section 425(2) – When the High Court makes such order and cannot through its officers deliver the property to the person entitled to under such order, such court may direct that the order be carried out by a Magistrate.
- CCPA, section 425(3) – When an order is made under this section where an appeal lies, such order shall not (except when the property is livestock or is subject to speedy and natural decay) be carried out until the appeal period has lapsed or where an appeal has been preferred, within such period until such appeal has been disposed of.

## 12. Fines

- The fine is determined by the Court based on three factors.
  - Fine mentioned in the Act/ Ordinance
  - Fine mentioned in the charge sheet
  - Discretion of the Judiciary

## 13. Duties of a Prosecutor

- The prosecutor should have adequate knowledge of the applicable laws and the procedure to be followed at the Court.
- Whenever the court requires, the prosecutor shall be ready to answer the questions of the court and where necessary, elaborate on the laws applicable.
- The prosecutor shall also carry copies of the relevant laws and the relevant reports of experts and should have marked them for the convenient perusal of the Court.
- The prosecutor should be thorough with his case.
- Where expert evidence or reports are required, the prosecutor shall be mindful to pray for an order from the court to call for the same and ensure that these expert evidence/ reports are obtained in time.

## 14. List of References

### Laws

- Code of Criminal Procedure Act, No. 15 of 1979 as amended
- Electronic Transactions Act, No. 19 of 2006 as amended
- Evidence Ordinance, No. 14 of 1895 as amended
- Fauna and Flora Protection Ordinance, No. 02 of 1937 as amended
- Fisheries and Aquatic Resources Act, No. 02 of 1996 as amended
- Forest Conservation Ordinance, No. 16 of 1907 as amended
- Penal Code, No. 02 of 1883 as amended

### Books

- Department of Wildlife Conservation, *Operational Manual II – Wildlife Crime Investigations and the Court Procedure* (1<sup>st</sup> edn, Law Enforcement Division, Department of Wildlife Conservation 2012)
- Peiris GL, *Criminal Procedure in Sri Lanka* (2<sup>nd</sup> edn, Stamford Lake Publications 1998)
- Peiris GL, *The Law of Evidence in Sri Lanka* (3<sup>rd</sup> edn, Stamford Lake Publications 1998)

### Websites

- ‘Criminalization of wildlife trafficking’ (*UNODC*, as updated)  
<<https://www.unodc.org/e4j/en/wildlife-crime/module-3/key-issues/criminalization-of-wildlife-trafficking.html#:~:text=Wildlife%20trafficking%20involves%20the%20illegal,%2C%20derivatives%2C%20or%20products%20thereof>> accessed 06 June 2023

### Image Credits

A lone thresher shark

Alexey Komissarov on Pexels

Extracts of Complaints and Charge Sheets

Department of Wildlife Conservation

Department of Forest Conservation

## **Notes**

## **Notes**

## ***Sri Lanka Counter Wildlife Trafficking Awareness, Capacity & Empowerment (ACE) Program***

*Funded by the U.S. Department of State – Bureau of International Narcotics and Law Enforcement Affairs (INL), Sri Lanka Counter Wildlife Trafficking Awareness, Capacity & Empowerment (ACE) Program is a project implemented by The Environmental Foundation (Guarantee) Limited to facilitate formal and informal interactions between law enforcement authorities, prosecution, the judiciary, and civil society in the detection of wildlife trafficking to the seizure of assets and prosecution of wildlife traffickers.*

*It also aims to establish systems that actively operate beyond the grant period by developing locally contextualized Counter Wildlife Trafficking (CWT) tools, legal guidelines, interagency mechanisms, and national and cross-border networks working with local stakeholders and international experts. The combined efforts will aim to result in a long-term CWT program activated by the Sri Lanka government with a sustainable CWT strategy to combat wildlife traffickers operating in and beyond Sri Lankan borders.*