

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

Questions

- 1. Please provide up to date information about the treatment of deserters from the Sri Lankan army - current punishment, likelihood of punishment, any amnesty's information, etc.**
- 2. Please provide information about conditions under which a person can be released from the army before completion of their period of service.**

RESPONSE

- 1. Please provide up to date information about the treatment of deserters from the Sri Lankan army.**

In desperate attempts to address the chronic problems of desertion, the Sri Lankan army has repeated amnesties for the deserters. The problem was so serious that the army could not afford to apply strictly the legal provisions dealing with desertions, in the face of the looming threat from the Tamil Tiger separatists.

The army declared amnesty five times a year in 2000 alone ('Deserters are Lankan army's next big headache' 2000, *Times of India*, 9 August - Accessed 8 March 2005 – Attachment 1). A 2001 report comments that the Sri Lankan army has declared more than a dozen amnesties in the previous five years to tackle the growing problem of desertions in the 120,000-strong military ('Sri Lankan Army Offers Amnesty to Deserters' 2001, *Associated Press*, 16 April – Attachment 2). Amnesties for the army deserters were announced at regular intervals every year ('Sri Lankan army announces another unconditional amnesty for deserters' 2000, *BBC Monitoring South Asia*, 31 July – Attachment 3).

A survey by the University of Peradeniya indicates that up to 49, 143 Army personnel including 623 officers have been listed as deserters, amounting to one third of the army's total strength (SihalaSHT 2003, 'Over Forty Nine Thousand Army Deserters in Sri Lanka', 6 October <http://www.infolanka.com/ubb/Forum1/HTML/009396.html> - Accessed 4 March 2005 - Attachment 4).

The War Resisters International reported in 1998 that;

Desertion is widespread. Because of the paucity of recruits, punishing deserters does not seem to occur in practice much. According to one source, deserters are normally returned to their units after serving short sentences. Details about sentences received by deserters are not known. [4]

Amnesties have been announced several times, usually in the context of recruitment drives. According to these amnesties deserters are allowed to return to their units without facing further penalties. Deadlines for amnesties are often extended as not all deserters apply in time to meet the initial deadline. [9]

In November 1996 a general amnesty was announced pardoning all deserters who availed themselves before 30 June 1997. More than 1,000 soldiers were said to have applied for amnesty by that date, after which the deadline was extended until 31 July. Arrangements were apparently made by the military and civil police to arrest all deserters who had not reported by that date ('Refusing to Bear Arms: A worldwide survey of conscription and conscientious objection to military service – Sri Lanka' 1998, *War Resisters International*, Conscription and Conscientious Objection Documentation Project, 25 July - <http://www.wri-irg.org/co/rtba/index.html> - Accessed 8 March 2005 – Attachment 5).

In connection with the 2001 amnesty, the army stated that deserters who rejoin the service would face only minimum punishment, although it is not clear what it meant. Previously returnees have gotten away with a severe reprimand ('Sri Lankan army declares new amnesty for deserters' 2001, *AP*, 15 April - Attachment 6).

In connection with the 2003 amnesty, military commanders said that many deserters would be allowed to rejoin the ranks while others would be discharged without facing charges. Those who left their posts less than three years earlier and had not been convicted of any crime would be allowed to rejoin the army ('Sri Lanka's army to allow some deserters to rejoin while discharging others' 2003, *Associated Press*, 4 March – Attachment 7).

Referring to the 2003 amnesty, the Press Trust of India comments that the Defence Ministry was working on extending the amnesty - the immunity from prosecution - to 9,400 deserters in the Air Force and the Navy as part of a major streamlining that will take away the large number of deserters in the books of security forces ('Lanka-Deserters' 2003, *Press Trust of India*, 5 March 2003 - Attachment 8). In the amnesty, 50,000 army deserters were offered the chance of a legal discharge or to rejoin the army assuming they had deserted within the previous three years and had no criminal record (Harrison, Frances 2003, 'Amnesty for Sri Lanka deserters', *BBC*, 4 March http://news.bbc.co.uk/2/hi/south_asia/2819603.stm - Accessed 3 March 2005 - Attachment 9).

An *Asian Tribune* report of 15 December 2004 comments that thirty six deserters who missed the opportunity given them to surrender were imprisoned while those who are still in hiding were given another amnesty starting from 15 December 2004 (Perera, Janaka 2004, 'Sri Lanka: Army deserters court martialled' *Asian Tribune*, 15 December http://www.asiantribune.com/show_news.php?id=12486 – Accessed 3 March 2005 – Attachment 10).

In the course of the search for deserters in 1997, the army court-marshalled four soldiers and jailed them for three years, and a soldier was given three years' rigorous imprisonment for deserting in one of the first examples of stricter penalties ('Sri Lanka declares amnesty for army deserters' 1997, *Reuters*, 10 July - Attachment 11; 'Sri Lanka hunts more than 10,000

deserters – paper’, 1997, *Reuters*, 6 July - Attachment 12; ‘Sri Lanka army cracks down on deserters’ 1997, *Reuters*, 3 July - Attachment 13) .

In contrast to the above, the two *Xinhua* reports state that soldiers who returned during the amnesties would be taken back for service without any punishment. The first report of 2001 comments that the Operational Headquarters said that all returnees would be taken back for service without any punishment after a short period of training (‘Over 1,400 Sri Lankan Army Deserters Back in Service’ 2001, *Xinhua*, 15 March – Attachment 14). The second one says that under the amnesty granted on the occasion of the country's 50th anniversary of independence on February 4, those who report to their former ranks would receive no inquiries or penalties (‘600 Deserters Return to Sri Lankan Army’ 1998, *Xinhua*, 13 February – Attachment 15).

The UK Home Office Immigration & Nationality Directorate comments on the issue of desertions as follows:

5.31 War Resisters International also reported that desertion is punishable under article 103 of the Army Act by up to three years' imprisonment. Although desertion has been widespread, because of the paucity of recruits, the punishment of deserters rarely occurs. Amnesties for deserters have been announced several times, usually in the context of recruitment drives. According to these amnesties, deserters are allowed to return to their units without facing further penalties. Deadlines for amnesties are often extended as not all deserters apply in time to meet the initial deadline. [36] [see Attachment 5 above]

5.32 On 4 March 2003, BBC News reported that the Sri Lankan military had said it would offer 50,000 army deserters the chance of a legal discharge rather than issuing the usual amnesty. Previously, deserters had remained on the army's books, but had become a serious social problem, blamed for the rise in armed crime. Those who wished to rejoin the army would still have a chance, assuming they had deserted within the last three years and they had no criminal record. [9at]

5.33 On 14 May 2004 it was reported by Daily News that the army headquarters had announced that those who deserted the ranks of the Sri Lanka Army until 1 August 2003 and the recruits who deserted during training sessions would get a chance to get their legitimate resignation. According to a press release from army headquarters the opportunity would be provided for those who had failed to receive their legitimate resignation during the previous de-listing period. [16ah](UK Home Office Immigration & Nationality Directorate 2004, *Sri Lanka: Country Report*, October and April – Attachment 16).

A similar comment by the UK Home Office in April 2004 is also attached (UK Home Office Immigration & Nationality Directorate 2004, *Sri Lanka: Country Report*, October and April – Attachment 16).

In response to a DIMIA request, DFAT commented in 1999 on the likely punishment for the Sri Lankan army deserters as follows:

[It] would depend on the reasons for leaving before completion of a minimum required term. There is no punishment for soldiers who are discharged or retired. At any time, a person could make a request for an early release on compassionate or medical grounds and each case is taken on a case by case basis. Approval is given if the person meets the criteria for a specific type of discharge or other requirements for retirement.

Officers who fail their training period would also leave the army before completion of the minimum required term but, again, there is no punishment for this.

If a person has committed an offence under the army act s/he would be charged, following which he may be discharged if found unsuitable for service.

A period of absence without leave is referred to as desertion. This is a punishable offence under the army act. Deserters are court-martialled, summarily tried and face prison term of 3 to more than 36 months depending on the circumstances of the case and the reasons for desertion.

A large number of these cases are "technical" desertions - where a soldier has completed a tour or gone on leave, and was supposed to report back for reassignment, but has failed to do so - rather than desertions in the battlefield. The distinction is of relevance to the attitude of the security services: there appears to be a far greater acceptance of the technical desertions.

Of course, deserters would still be punished as this is considered a serious offence (DFAT 1999, *DFAT Report No. 299/99 - Sri Lanka: Military Service*, 17 August – Attachment 17).

Immigration and Refugee Board of Canada comments that the Sri Lankan Ministry of Defence stated in 1999 that the penalties of desertion are simple or rigorous imprisonment or dismissal from the armed forces. The Ministry of Defence did not provide more specific details (Immigration and Refugee Board of Canada 1999, *LKA32047.E – Sri Lanka: Whether service in the armed forces is mandatory or voluntary; the usual terms of service (initial enlistment and re-enlistment); and the penalties for desertion*, 9 June – Attachment 18).

Referring to the situation up to 1999, the Board comments as follows:

According to an 11 October 1997 Ministry of Defence press release, a general amnesty was declared for all army deserters effective immediately until 24 October 1997 (*Daily News* 11 Oct. 1997). According to the press release, all deserters who reported back to duty would not be punished and would be "entitled to their earlier held ranks, pay and allowances" effective upon their return (*ibid.*).

According to a 5-20 February 1998 amnesty extended to deserters from the armed forces, those deserters who returned to duty would not be punished, would keep their original rank, would not lose any of their privileges, including their right to promotion, and would not face any inquiries (*Daily News* 14 Feb. 1998). However, the names and addresses of those deserters who failed to return would be provided to the appropriate authorities and the deserters would eventually be arrested (*ibid.*). Furthermore, anyone who employed a deserter would be prosecuted under the Army Act (*ibid.*).

In October 1998, the government instituted a nation-wide program aimed at apprehending deserters from the armed forces (*Daily News* 22 Oct. 1998). According to this program, the names of all deserters would be made publicly available and citizens were encouraged to provide any information on deserters to the closest police station or military base (*ibid.*). Anyone offering a deserter employment would be given the harshest penalties under Sections 132 and 133 of the Penal Code (*ibid.*). Any soldiers who were arrested as a result were required to take rehabilitation courses in military training schools, but continued to receive their pay and other benefits (*ibid.*)

The most recent amnesty offered by the Ministry of Defence ran from 1-5 January 1999 and offered the same conditions to deserters who returned but added that deserters would be posted to their respective parent regiments following a refresher course in military subjects (*Daily News* 31 Dec. 1998) (Immigration and Refugee Board of Canada 1999, *LKA32047.E – Sri Lanka: Whether service in the armed forces is mandatory or voluntary; the usual terms of*

service (initial enlistment and re-enlistment); and the penalties for desertion, 9 June – Attachment 18).

The legal framework for dealing with the army desertion is given in *Army Act No. 17 of 1949* as amended and the two regulations under the Act, *Army Discipline Regulations, 1950* and *Court Martial (General and District) Regulations, 1950* (Wijayatilake, Dharani S. and Perera, Lalani S. 2000, 'Laws Governing the Public Service in Sri Lanka', July <http://www.ilo.org/public/english/region/asro/colombo/report/dhrpub00.pdf> - Accessed 9 March 2005 – Attachment 19). The *Army Ordinance* and the *Law of Compulsory Conscription: Mobilisation and Supplementary Forces Act No. 40 of 1985* are also relevant in dealing with desertions (Immigration and Refugee Board of Canada 1999, LKA32045.E – Sri Lanka: *The identification of relevant sections of any legislation pertaining to desertion from the armed forces*, 9 June – Attachment 20).

Section 70(1) of the *Army Discipline Regulations, 1950* stipulates that up to twenty one days, no absentee shall be considered as a deserter, unless there are good reasons to the satisfaction of his commanding officer for supposing that he is a deserter. Section 70(2) states that after twenty-one days, every absentee, be considered as a deserter ('Are deserters cowards?' 1999, *Sunday Leader*, 24 October <http://www.lanka.net/sundayleader/1999/oct/24/issues.html> - Accessed 9 March 2005 – Attachment 21). The source further comments that those absent for over 21 days and even declared by the courts of inquiry as 'deserters' may not be under the category of 'deserter' once he reports back for duties. What really matters in deciding the status of a 'deserter' is the intention of the soldier (*op. cit*).

Quoting in part a retired commander of the Sri Lankan army, the Immigration and Refugee Board of Canada comments on the relevant statutory sections dealing with desertions as follows:

The Discipline Regulations of the Sri Lanka Army require a Court of Inquiry to be held after 21 days of a soldier's absence without leave and he is declared a deserter and such desertion should be notified to the Police Gazette.

In the Sri Lanka Army, Section 103 of the Army Act provides for persons found guilty of desertion, whilst on active service to be sentenced to rigorous imprisonment for a term not less than three years or any less severe punishment as prescribed in section 133 of the Army Act.

There are various provisions in section 134 of the Army Act, which also have to be considered before punishment is determined. Inducing or assisting officers or soldiers to desert or absent themselves without leave is an offence also for persons not subject to Military Law.

Such persons can be tried under section 138 of the Army Act before a Magistrate and be liable to a sentence of simple or rigorous imprisonment not exceeding six months, if found guilty of the offence. The procedure for dealing with absentees or deserters is comprehensively covered in Part XVI of the Army Act.

In July 1997, the Colombo-based weekly *The Sunday Leader* reported military officials saying that army deserters who were caught after the closing of an amnesty period would face court-martial under section 3 of the Army Ordinance (*The Sunday Leader* 6 July 1997).

For information on the punishment for reserves who fail to show up for duty, please consult the Law of Compulsory Conscription: Mobilisation and Supplementary Forces Act No. 40 of 1985 (Immigration and Refugee Board of Canada 1999, LKA32045.E – Sri Lanka: *The identification of relevant sections of any legislation pertaining to desertion from the armed forces*, 9 June – Attachment 20).

A copy of the Law of Compulsory Conscription: Mobilisation and Supplementary Forces Act No. 40 of 1985 is attached (Sri Lankan Law of Compulsory Conscription: Mobilisation and

Supplementary Forces Act No. 40 of 1985 – Attachment 22). Other relevant statutes could not be located within the time constraints.

2. Please provide information about conditions under which a person can be released from the army before completion of their period of service.

In a search through the sources consulted, no definitive/comprehensive information has been found on the issue. DFAT advice of 21 July 1999 comments that at any time a person could make a request for an early release on compassionate or medical grounds and each case is taken on a case by case basis (DFAT 1999, *DFAT Report No. 299/99 - Sri Lanka: Military Service*, 17 August – Attachment 17).

List of Sources Consulted

Internet Sources: AltaVista, Google, Vivisimo & Copernic 2001 Personal Agent

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- Sri Lanka Ministry of Defence <http://www.gov.lk/public/office42.asp?xi=73>
- Sri Lanka Attorney General’s Department <http://www.attorneygeneral.gov.lk/>
- ANU Research website <http://rspas.anu.edu.au/>
- Asia Week <http://www.asiaweek.com/asiaweek/>
- BBC News website <http://www.bbc.co.uk>
- The Guardian website <http://www.guardian.co.uk/>
- CNN website <http://www.cnn.com/>
- Minorities At Risk (MAR) Project <http://www.cidcm.umd.edu/inscr/mar/home.htm>
- Minority Rights Group International <http://www.minorityrights.org/>

<u>Databases:</u>		
Public	<i>FACTIVA</i>	Reuters Business Briefing
RRT	<i>ISYS</i>	RRT Country Research database, including Amnesty Internal, Human Rights Watch, U.S. Department of State <i>Country Reports on Human Rights Practices</i>
RRT Library	<i>FIRST</i>	RRT Library Catalogue
DIMIA	<i>BASICS</i>	Country Information
	<i>REFINFO</i>	IRBDC Research Responses (Canada)

List of Attachments

1. ‘Deserters are Lankan army's next big headache’ 2000, *Times of India*, 9 August - Accessed 8 March 2005. (FACTIVA)
2. ‘Sri Lankan Army Offers Amnesty to Deserters’ 2001, *Associated Press*, 16 April. (FACTIVA)
3. ‘Sri Lankan army announces another unconditional amnesty for deserters’ 2000, *BBC Monitoring South Asia*, 31 July. (FACTIVA)

4. SihalaSHT 2003, 'Over Forty Nine Thousand Army Deserters in Sri Lanka', 6 October. (<http://www.infolanka.com/ubb/Forum1/HTML/009396.html> - Accessed 4 March 2005)
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6. 'Sri Lankan army declares new amnesty for deserters' 2001, *AP*, 15 April. (FACTIVA)
7. 'Sri Lanka's army to allow some deserters to rejoin while discharging others' 2003, *Associated Press*, 4 March. (FACTIVA)
8. 'Lanka-Deserters' 2003, *Press Trust of India*, 5 March 2003. (FACTIVA)
9. Harrison, Frances 2003, 'Amnesty for Sri Lanka deserters', *BBC*, 4 March. (http://news.bbc.co.uk/2/hi/south_asia/2819603.stm - Accessed 3 March 2005)
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11. 'Sri Lanka declares amnesty for army deserters' 1997, *Reuters*, 10 July. (FACTIVA)
12. 'Sri Lanka hunts more than 10,000 deserters – paper', 1997, *Reuters*, 6 July. (FACTIVA)
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15. '600 Deserters Return to Sri Lankan Army' 1998, *Xinhua*, 13 February. (FACTIVA)
16. UK Home Office Immigration & Nationality Directorate 2004, *Sri Lanka: Country Report*, October and April.
17. DFAT 1999, *DFAT Report No. 299/99 - Sri Lanka: Military Service*, 17 August. (CISNET Sri Lanka CX36827)
18. Immigration and Refugee Board of Canada 1999, *LKA32047.E – Sri Lanka: Whether service in the armed forces is mandatory or voluntary; the usual terms of service (initial enlistment and re-enlistment); and the penalties for desertion*, 9 June. (REFINFO)

19. Wijayatilake, Dharani S. and Perera, Lalani S. 2000, 'Laws Governing the Public Service in Sri Lanka', July.
(<http://www.ilo.org/public/english/region/asro/colombo/report/dhrpub00.pdf> - Accessed 9 March 2005)
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21. 'Are deserters cowards?' 1999, *Sunday Leader*, 24 October
<http://www.lanka.net/sundayleader/1999/oct/24/issues.html> - Accessed 9 March 2005.
22. Sri Lankan Law of Compulsory Conscription: Mobilisation and Supplementary Forces Act No. 40 of 1985.
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