

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 current information about the hostilities between the LTTE and the Sri Lankan Government.
2. What is the treatment of deserters from the Sri Lankan Armed Forces (SLAF) as prescribed by law?
3. What is the actual punishment?
4. Are there any current Amnesty arrangements?
5. Are deserters actively pursued by SLAF?
6. Would a deserter cease to be a person of interest after a set time away?
7. Question deleted.
8. Question deleted.
9. Are deserters targeted by the LTTE?
10. Any other relevant information.

RESPONSE

1. Please provide current information about the hostilities between the LTTE and the Sri Lankan Government.

The Crisis Group provides background information on the lead up to the current round of fighting:

The ceasefire agreed in 2002 between the government and the rebel Liberation Tigers of Tamil Eelam (LTTE) has collapsed. Since January 2006 more than 2,500 people have been killed, many of them civilians, and more than 200,000 have been displaced from their homes. As the fighting has intensified, human rights abuses have also escalated, including widespread abductions, assassinations, and massacres of civilians. The humanitarian situation in the north of the island has become acute (International Crisis Group 2006, *Sri Lanka: The Failure of the Peace Process*, 28 November – Attachment 1).

The Economist likewise reports on the return to war, and the displacement and deaths of thousands:

A further 4,000 people have been killed since 2005, a measure of the ceasefire's failure.

The fighting is only getting worse. In the Batticaloa district of eastern Sri Lanka some 160,000 people have been displaced in the past two months. A breakaway Tiger faction, led by a colonel known as Karuna, has enjoyed the tacit backing of the Sri Lankan army, and has helped roll back Tiger control of the area.

Both the Tigers and Karuna's forces press-gang children as soldiers. The government's security forces are guilty of abduction: there have been hundreds of disappearances in the past year ('Give war a chance' 2007, *The Economist*, 4 April, http://www.economist.com/PrinterFriendly.cfm?story_id=8953132 – Accessed 9 May 2007 – Attachment 2).

The *Himal* magazine reports on the return of abductions:

For a citizenry that slid into a virtual war last July despite the existence of a truce to which both the government and the LTTE rebels continue to pay lip service, the past few months have been a nightmare. Beyond the stepped-up military engagements, there have been dramatically increased levels of forced disappearances, extortions, extrajudicial killings, general harassment and intimidation. Amidst widespread human-rights violations in Sri Lanka today, one of the most significant, and most under-reported is the ongoing intimidation, extortion and abduction of affluent Colombo-area Tamil businessmen (Handunnetti, I. 'A thriving industry of Tamil extortion' 2007, *Himal Southasian Magazine*, May, http://www.himalmag.com/2007/may/report_tamil_extortion.htm – Accessed 9 May 2007 – Attachment 3).

In the last week, Colombo airport has been closed at night, and naval raids continue:

A number of Tamil Tiger rebels have been killed in a sea battle off the north-eastern coast. The navy said it sank two Tamil Tiger boats, part of a flotilla of 26 rebel vessels, and killed at least 10 rebels. The Tigers said no boats were sunk and they repelled the attack, although they admitted three members had died ('Rebels die in Sri Lanka navy raid' 2007, *BBC News*, 5 May, http://news.bbc.co.uk/2/hi/south_asia/6627469.stm – Accessed 9 May 2007 – Attachment 4).

The airport closure follows an air raid on Sunday by the Tamil Tigers on oil facilities in Colombo. A fuel storage tank was destroyed and two buildings were damaged. The Tigers carried out their first ever air raid in March. It targeted the military airport near Colombo. They have also carried out an air attack in the north of the island in which six soldiers died. The acting Director General of Civil Aviation, Parakrama Dissanayake, told the AFP news agency that international airlines have a week to reschedule their flights to the island ('Colombo airport in night closure' 2007, *BBC News*, 3 May http://news.bbc.co.uk/2/hi/south_asia/6620185.stm – Accessed 9 May 2007 – Attachment 5).

2. What is the treatment of deserters from the Sri Lankan Armed Forces (SLAF) as prescribed by law?

Under the consolidated law of Sri Lanka, Chapter 625 (which relates to the Army) the following legal penalties and responsibilities relate to deserting:

Calculation of Service:

15. (1) Subject to the provisions of subsection (2) of this section, the service of a soldier of the Regular Force for the purpose of discharge or of transfer to the Regular Reserve shall be

reckoned from the date of his signing the attestation paper.

(2) Where a soldier has been guilty of the military offence of desertion or of fraudulent enlistment, then either upon his conviction by a court martial of such offence, or (if, having confessed such offence, he is liable to be tried by a court martial) upon his trial by a court martial being dispensed with by order under section 149, the whole of his prior service shall be forfeited, and he shall be liable to serve as a soldier for the period of his original enlistment, reckoned from the date of such conviction or such order dispensing with trial, in like manner as if he had been enlisted on that date :

Provided that all or any part of the service of a soldier forfeited under this subsection may, in accordance with such regulations as may be made in that behalf, be restored to him if he performs good and faithful service or is otherwise deemed to merit the restoration of such service.

There is no sunset clause for desertion:

56. Where three years have elapsed after the commission of any offence by any person subject to military law, he shall not be tried by a court martial for that offence unless it is the offence of mutiny, desertion, or fraudulent enlistment.

Desertion as an offence, and the penalty of 3 years imprisonment:

103. (1) Every person subject to military law who—

(a) deserts or attempts to desert the army, or

(b) persuades, endeavours to persuade, procures or attempts to procure, any person subject to military law to desert the army, shall be guilty of a military offence and, on conviction by a court martial, shall—

(i) where such offence is committed by him while on active service or under orders for active service, be liable to suffer rigorous imprisonment for a term not less than three years or any less severe punishment in the scale set out in section 133, and

(ii) where such offence is committed by him under any other circumstances, be liable for the first offence to suffer simple or rigorous imprisonment for a term not exceeding three years or any less severe punishment in the scale set out in section 133, and for the second or any subsequent offence to suffer rigorous imprisonment for a term not less than three years or any less severe punishment in the scale set out in section 133,

Inquiry into absence, resulting in conviction for desertion:

148. When any soldier has been absent without leave from his duty for a period of twenty-one days—

(a) a court of inquiry may as soon as practicable be assembled, and inquire in the prescribed manner, on oath or affirmation which such court is hereby authorized to administer, respecting the fact of the soldier's absence, and the deficiency, if any, in the arms, ammunition, equipment, instruments, regimental necessaries or clothing of the soldier, or in any public property issued to him for his use in connexion with his duties or entrusted to his care for military purposes; and

(b) if satisfied of the fact of the soldier's absence without leave or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any; and

(c) the commanding officer of the absent soldier shall enter in the regimental books a record of the declaration of such court; and

(d) if the absent soldier does not afterwards surrender or is not arrested, such record shall have the legal effect of a conviction by a court martial for desertion.

Arrest of a deserter, rights to appear before a Magistrate in certain circumstances:

150. The following provisions shall have effect with respect to deserters and absentees without leave:—

(1) Upon reasonable suspicion that a person is a deserter or absentee without leave, it shall be lawful for any police officer, or if there is no police officer at hand, then for any officer or soldier or other person, to arrest such suspected person, and forthwith to bring him before a Magistrate's Court.

(2) A Magistrate's Court, if satisfied by evidence on oath or affirmation that a deserter or absentee without leave is or is reasonably suspected to be within the jurisdiction of that court, may issue a warrant authorizing such deserter or absentee to be arrested and brought forthwith before that court.

(3) Where a person is brought before a Magistrate's Court charged with being a deserter or absentee without leave under this Act, that court—

(a) if satisfied, either by independent evidence taken on oath or affirmation or by the confession of such person, that he is a deserter or absentee without leave, shall forthwith, as it may seem to that court most expedient with regard to his safe custody, cause him either to be delivered into military custody in such manner as that court may deem most expedient, or, until he can be so delivered, to be committed to some prison, police station, or other place legally provided for the confinement of persons in custody, for such time as appears to that court reasonably necessary for the purpose of delivering him into military custody, and

(b) where such person confesses himself to be a deserter or absentee without leave and that court is not convinced of the truth of the confession, shall remand such person for the purpose of obtaining information as to the truth or falsehood of the confession, and for that purpose that court shall transmit to the Commander of the Army a return (in this Act referred to as a "descriptive return") in such form and containing such particulars as may be prescribed.

(4) The court may, from time to time, remand the person referred to in subsection (3) of this section for a period not exceeding eight days in each instance.

(5) Where under paragraph (3) (a) of this section a court causes a person either to be delivered into military custody or to be committed as a deserter or absentee without leave, the court shall send to the Commander of the Army a descriptive return in relation to such deserter or absentee without leave.

(6) Where a person surrenders himself to a police officer as being a deserter or absentee without leave, the officer in charge of the police station to which he is brought shall forthwith inquire into the case, and, if it appears to him from the confession of that person that that person is a deserter or absentee without leave, may cause that person to be delivered into military custody without bringing him before a Magistrate's Court under this section, and in such case shall send to the Commander of the Army a certificate signed by himself as to the fact, date, and place of the surrender of that person. ('Chapter 625 Army', 1971, Commonwealth Legal Information Institute website, http://www.commonlii.org/lk/legis/consol_act/a625117.pdf – Accessed 8 May 2007 – Attachment 6).

Note that military service is voluntary, with no form of conscription:

9.01 Military service is voluntary. (**Europa World Online, Defence**) [1b] As recorded by War Resisters International in their document ‘Refusing to Bear Arms: A worldwide survey of conscription and conscientious objection to military service, 1998-2005 (Sri Lanka Country Report dated 27 July 1998, website accessed on 28 June 2005), conscription does not exist. The legal recruitment age for the armed forces is 18. There is no known legal provision for conscientious objection. [36] (UK Home Office 2007, ‘Country of Origin Information Report: Sri Lanka’, 8 February – Attachment 7).

3. What is the actual punishment?

Jane’s Sentinel Security Assessment reported “There has hardly ever been a risk of punishment for deserters. Instead, some of them reap enormous benefits by engaging in crime, often under the patronage and protection of politicians.” (UK Home Office 2007, ‘Country of Origin Information Report: Sri Lanka’, 8 February – Attachment 7).

War Resisters International reported that whilst punishable, deserters are rarely convicted:

9.02 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] (UK Home Office 2007, ‘Country of Origin Information Report: Sri Lanka’, 8 February – Attachment 7).

During an amnesty in 2003, deserters who surrendered would be discharged:

The defence ministry said deserters will be “legally discharged” from the security forces after they pay any money they owe the military, while those wanting to rejoin will also be considered. The sweeping move was in sharp contrast to earlier crackdowns against deserters and warnings to the country’s private sector not to employ soldiers who had run away from their units in the military.

...

Under the proposal those who had been absent without leave for less than three years would have the option of rejoining their units without facing disciplinary action. (Jayasinghe A. ‘Sri Lanka offers amnesty to 51,000 army deserters amid truce’ 2003, *AFP*, 4 March – Attachment 8).

In 2005 a similar offer was made to de-list deserters who surrender during an amnesty (‘Sri Lanka army makes another offer to deserters’ 2005, *Lanka Newspapers website*, 2 April, <http://www.lankanewspapers.com/news/2005/4/1397.html> – Accessed 8 May 2007 – Attachment 9).

There is an unconfirmed report from CNN that severe punishment, including death, is often inflicted. “Desertions generally result in severe punishment, including jail sentences and even the death penalty” (Athas, I. ‘Sri Lanka army deserters win second chance’ 2001, *CNN*, 4 March, <http://edition.cnn.com/2001/WORLD/asiapcf/south/03/03/srilanka.amnesty/> – Accessed 8 May 2007 – Attachment 10).

A *Reuters* report states that punishment ranges from a pay cut to jail time ('Sri Lanka military offers amnesty to deserters' 2007, *Reuters*, 12 January. <http://in.news.yahoo.com/070112/137/6b2n5.html> – Accessed 8 May 2007 – Attachment 11).

War Resisters International reports "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]" ('Sri Lanka' 1998, War Resisters International Website, 25 July, <http://www.wri-irg.org/co/rtba/srilanka.htm> – Accessed 8 May 2007 – Attachment 12).

There is one report of a deserter being tortured to death by police:

The Court accordingly granted relief to the wife of an army deserter, (claiming compensation on behalf of herself and her minor child), who had been lawfully arrested by the police but severely tortured thereafter, as a result of which he died eight days later ('Views of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)' 2003, Law & Society Trust website, August, <http://www.lawandsocietytrust.org/LSTRReview.asp?VolNo=31&List=True> – Accessed 8 May 2007 – Attachment 13).

4. Are there any current Amnesty arrangements?

The most recent amnesty was in January this year:

Meanwhile the Army has offered a general amnesty for the deserters from 31st of January. The deserters have been notified to surrender to any Army camp and they will not be subjected to any disciplinary action and the salaries will be paid from the day they surrender ('Sri Lanka Army strengthening forces' Siber News website, 30 January, <http://www.sibernews.com/news/sri-lanka/-200701307431/> – Accessed 8 May 2007 – Attachment 14).

This amnesty was only for those who had deserted since the end of 2003:

Around 50,000 soldiers have deserted the Sri Lankan military since the war began in 1983, but the military's offer only stands for those who have gone absent without leave since the end of 2003 in the belief that they are fit for retraining ('Sri Lanka military offers amnesty to deserters' 2007, *Reuters*, 12 January. <http://in.news.yahoo.com/070112/137/6b2n5.html> – Accessed 8 May 2007 – Attachment 11).

There have been numerous amnesties in the past:

Next week's general amnesty is the 13th since the People's Alliance government of Kumaratunga was voted to power in 1994.

Military spokesman Brigadier Sanath Karunaratne told CNN that more than 48,500 deserters surrendered during past amnesties. (Athas, I. 'Sri Lanka army deserters win second chance' 2001, *CNN*, 4 March, <http://edition.cnn.com/2001/WORLD/asiapcf/south/03/03/srilanka.amnesty/> – Accessed 8 May 2007 – Attachment 10).

5. Are deserters actively pursued by SLAF?

The police often search for deserters who are involved in criminal activities:

Earlier, district officials and police had been used to hunt down deserters who were known to be involved in criminal activities.

Officials said that the army's records had 51,000 deserters in their books since the Sri Lankan army was formed some 53 years ago, but the bulk of desertions came during the heavy fighting with Tamil rebels in the past two decades.

In recent years, the annual desertion rate has been as high as 4,000, officials said. (Jayasinghe A. 'Sri Lanka offers amnesty to 51,000 army deserters amid truce' 2003, *AFP*, 4 March – Attachment 8)

The police have also had mass drives following amnesties:

The end of a general amnesty period has often been followed by police conducting mass arrests of deserters who do not give themselves up (Athas, I. 'Sri Lanka army deserters win second chance' 2001, *CNN*, 4 March, <http://edition.cnn.com/2001/WORLD/asiapcf/south/03/03/srilanka.amnesty/> – Accessed 8 May 2007 – Attachment 10).

There is also a report from 2003 of a deserter being arrested as part of a patrol, who subsequently died:

DIG Liyanage said that the deceased suspect described as an army deserter was arrested by the Kadawatha Police Mobile Unit while patrolling the area on the night of August 28.

...

The suspect had used his belt to hang himself inside the cell. Police negligence had caused this death, therefore the two persons who were on duty on that day had to be interdicted immediately. An inquiry will be held in this connection, the DIG said ('Two policemen interdicted for negligence of duty' 2003, *Daily News*, 2 September <http://www.dailynews.lk/2003/09/02/new30.html> – Accessed 3 September 2003 CISNET Sri Lanka CX84388 Attachment 15).

6. Would a deserter cease to be a person of interest after a set time away?

As noted in question 4, soldiers who deserted more than 3 years ago are no longer of immediate military use. As noted in question 2, there is no legal time limit on bringing desertion charges. And as noted in Question 5, records are kept of deserters back to 1950. A search of the Tribunal's resources did not identify any other reports relevant to this question.

7. Question deleted.

8. Question deleted.

9. Are deserters targeted by the LTTE?

The Sri Lankan army is viewed as an occupying force in "Tamil" areas:

"Unlike in the early post-independence decades, the army, navy and the air force are now almost exclusively Sinhalese institutions. In consequence the army is regarded by most northern and eastern Tamils as a foreign force. Their excesses, especially in operations that have involved confrontations with guerrilla fighters who found shelter among civilians, have had the effect of reinforcing this perception. There have been attempts to improve civilian-military relations in the northeast, although these are yet to have a perceptible impact. In the past few years, however the government has cracked down hard on military personnel accused of crimes committed against the civilians." (Jane's Sentinel Security Assessments, Country profile – At a glance, Sri Lanka, 3 November 2006) [5a] (Armed Forces, 28 December 2005) (UK Home Office 2007, 'Country of Origin Information Report: Sri Lanka', 8 February – Attachment 7).

In 2005 it was reported that a deserter was shot dead by the Tamil Tigers, though it does not specify if he was targeted because he was a deserter:

Another civilian, who was a deserter of the Army, succumbed to injuries on 1 March 2005 after he was fired upon by LTTE gunmen while he was in the general area of BATTICALOA ('LTTE killing spree re-commences after cease-fire anniversary' 2005, Sri Lanka Army, 7 March <http://www.army.lk/news/index.html> – Accessed 8 March 2005. CISNET Sri Lanka CX116261 – Attachment 16).

In another report, a deserter was handed over to the International Committee of the Red Cross by the Tamil Tigers:

A soldier who had deserted the army found himself in trouble on Wednesday when he was nabbed by some LTTE cadres and handed over to the ICRC to be handed back to the Army. Jaffna Police said the soldier who had joined the Army in 2001 had deserted the Army within months. Having surrendered again the soldier deserted the Army once more and rejoined later. The soldier had claimed that domestic problems faced by him had forced him to desert the Army several times and rejoin again ('LTTE nabs Army deserter' 2005, Lanka Newspapers website, 18 March, <http://www.lankanewspapers.com/news/2005/3/1142.html> – Accessed 8 May 2007 – Attachment 17).

10. Any other relevant information.

Many deserters have resorted to crime, being unable to be legally employed:

'Army deserters cannot find jobs legally. They have no civil status as long as they are considered as absconding from duty. Naturally, given their sheer number, they take to crime or get themselves hired out as assassins and body guards for gangster lords. We are unable to control the growth and activities of well armed criminal gangs in this country because there is a vast pool of army deserters from which criminal dons are able to recruit freely', a retired senior Police officer in Colombo commented, asked about the fifth SLA offer to de-list the men (and a some women) who deserted [sic] their ranks.

SLA said that names of those deserters considered eligible for de-listing would be available at all Divisional Secretaries' offices. ('ri Lanka army makes another offer to deserters' 2005, *Lanka Newspapers website*, 2 April, <http://www.lankanewspapers.com/news/2005/4/1397.html> – Accessed 8 May 2007 – Attachment 9).

This inability to be legally employed is confirmed by *CNN* (Athas, I. 'Sri Lanka army deserters win second chance' 2001, *CNN*, 4 March, <http://edition.cnn.com/2001/WORLD/asiapcf/south/03/03/srilanka.amnesty/> – Accessed 8 May 2007 – Attachment 10).

A study found that 51,000 soldiers have deserted, which is about one out of every three soldiers ('51,000 soldiers desert the Army' 2003, *Silumina news*, 15 September. <http://www.abooda.com/news/Snippets150903.asp> – Accessed 8 May 2007 – Attachment 18).

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War Resisters International <http://www.wri-irg.org/>

International News & Politics

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The Economist <http://www.economist.com>

Himal Southasia <http://www.himalmag.com>

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CNN <http://www.cnn.com>

Silumina news <http://www.abooda.com/>

Daily News, <http://www.dailynews.lk/>

Search Engines

Google <http://www.google.com.au/>

Copernic <http://www.copernic.com/>

Yahoo <http://www.yahoo.com>

Databases:

FACTIVA (news database)

CISNET (Department of Immigration Country Information database)

ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)

List of Attachments

1. International Crisis Group 2006, *Sri Lanka: The Failure of the Peace Process*, 28 November.
2. 'Give war a chance' 2007, *The Economist*, 4 April, http://www.economist.com/PrinterFriendly.cfm?story_id=8953132 – Accessed 9 May 2007.
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4. 'Rebels die in Sri Lanka navy raid' 2007, *BBC News*, 5 May, http://news.bbc.co.uk/2/hi/south_asia/6627469.stm – Accessed 9 May 2007.
5. 'Colombo airport in night closure' 2007, *BBC News*, 3 May http://news.bbc.co.uk/2/hi/south_asia/6620185.stm – Accessed 9 May 2007.
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14. 'Sri Lanka Army strengthening forces' Siber News website, 30 January, <http://www.sibernews.com/news/sri-lanka/-200701307431/> – Accessed 8 May 2007.
15. 'Two policemen interdicted for negligence of duty' 2003, *Daily News*, 2 September <http://www.dailynews.lk/2003/09/02/new30.html> – Accessed 3 September 2003. (CISNET Sri Lanka CX84388)
16. 'LTTE killing spree re-commences after cease-fire anniversary' 2005, Sri Lanka Army, 7 March <http://www.army.lk/news/index.html> – Accessed 8 March 2005. (CISNET Sri Lanka CX116261)
17. 'LTTE nabs Army deserter' 2005, Lanka Newspapers website, 18 March, <http://www.lankanewspapers.com/news/2005/3/1142.html> – Accessed 8 May 2007.
18. '51,000 soldiers desert the Army' 2003, *Silumina news*, 15 September. <http://www.abooda.com/news/Snippets150903.asp> – Accessed 8 May 2007.