

# Brazilian Workers and Mutual Legal Assistance between Brazil and Japan

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## The Centenary of Japanese Immigration to Brazil

The centenary of Japanese immigration to Brazil was celebrated on June 18, 2008. Approximately 1,500 events took place in Brazil and Japan. During the last hundred years, more than 250,000 Japanese immigrants have come to Brazil, 190,000 prior to World War II, and 60,000 after it. Today, the Japanese community in Brazil includes approximately 1.5 million people, from the first to the sixth generation, representing 0.8% of the Brazilian population, which is estimated to be 190 million people. Furthermore, there have been many inter-ethnic marriages since the second and third generations. At present many Japanese descendants might have a relative or a close friend who are married to a non-Japanese descendant. As a result, the largest number of Japanese people and their descendants outside Japan is in Brazil, even though the percentage of mixed race has been increasing in the community. A survey carried out twenty years ago showed that 40% of *niseis* and 60% of *sanseis* had married non-Japanese. No more recent survey has been taken, but it is possible to state with a high degree of confidence that the number of inter-ethnic marriages has increased through the fourth and fifth generations.

Economics was the driving force behind the Japanese government's adoption of the emigration law in the Meiji era.<sup>1</sup> With the population reaching forty million, there was a widespread perception that demographic pressure was high, and the government was interested in decreasing that figure. Prior to Brazil, Japanese people had emigrated to Hawaii, Canada, the United States, Mexico, Peru and Bolivia. Later, they would go to Paraguay, Argentina, and other Latin American countries, not to mention several Asian destinations (not only the Japanese colonies of Taiwan and Chōsen, but also the area known as Manchuria and the Southeast Asian colonies of European powers).

The Japanese immigrants who came to Brazil intended almost without exception to work for three to five years, and at the end of that time, to take financial resources back to their homeland, where they would be able to acquire property with their savings, gaining a level of comfort they would not have been able to enjoy had they not emigrated. However, the reality was completely different from what they had heard in Japan, where promoters said things like "money grows on coffee trees." Moreover, the immigrants faced unknown illnesses such as malaria and other hardships of nature in Brazil. The overwhelming majority of immigrants achieved nothing within the period of time they expected, which made them stay in the country longer. Once World War II started, they were no longer allowed to return to Japan. The defeat of Japan in the military conflict was crucial in the decision of many to live permanently in Brazil.

The immigration process was stopped by the war. It resumed in 1953, two years after the San Francisco Peace Treaty was signed by Japan and most of the allied nations, including Brazil. Through the beginning of the 1960s, a large number of Japanese immigrants arrived in Brazil. Then

with the Japanese economy booming—in part owing to preparations for the 1964 Tokyo Olympics, in part because of other factors that had driven postwar recovery, such as spending related to the wars in Korea (1950-53) and Vietnam (1968-74)—the number of candidates for emigration decreased. In 1973, the *Nippon Maru*, sailing from Yokohama, became the last ship carrying Japanese emigrants bound for South America. After that, the few Japanese who wished to emigrate opted to send their luggage by ship and to make their own voyages by airplane. That number gradually decreased, and declined to fewer than a hundred annually in the 1980s. This led the Japanese government to announce, in 1992, the end of its official support of emigration.

### **The *Dekasegi* Phenomenon**

It is interesting to note that in the mid 1980s, facing a workforce shortage because young Japanese workers did not want to take the “3K” jobs (*kitsui, kitanai, kiken*), which they regarded as “tough, dirty and dangerous,” Japanese industrial companies began recruiting applicants from Brazil. At first, the jobs were directed toward people of Japanese nationality in Brazil, since they would not have to face legal problems to obtain their visas, but soon recruitment was directed toward second second and third generation descendants, called *niseis* and *sanseis*, who entered in Japan with a tourist visa. As it was impossible for the holder of such a visa to work, prospective workers were requested to replace their tourist visas with special visas for visiting relatives, valid for one year, with option of renewal for the same period. These special visas offered no restrictions on work.

The great change occurred in 1989, with the reform of the Immigration Control and Recognition of Refugee Act (hereinafter referred to as the Immigration Act), which took effect the following year. The amended law created a new status for Japanese nationals called “Long-term Resident” which allowed children and grandchildren of Japanese people, as well as their non-descendant Brazilian spouses, to go to Japan. An overall picture of the impact of that reform could be seen a year after the law became effective, when eighty-four thousand Brazilians arrived in Japan. Subsequent to that, thirty to forty thousand people arrive in Japan from Brazil every year. According to statistics from the Japanese government, on December 31, 2007, the total number of Brazilians had reached 317 thousand. In addition to that number, there were also Brazilians, children of Japanese emigrants born in Brazil who had obtained Brazilian nationality *jus soli*, whose parents registered their births at the Japanese Consulate, allowing them to obtain *jus sanguinis* Japanese nationality simultaneously. These people do not need to obtain visas to enter Japan, since they also hold Japanese passports, and thus they are not included in the government statistics of entrance and stay of foreigners in Japanese territory. However, these people are considered Brazilians in Brazil. Although it is difficult to calculate the exact number, if we also add Japanese emigrants with permanent visas who currently reside in Brazil, there might be about fifteen thousand people with dual nationality or Japanese with permanent visas in addition to the previously mentioned 317,000 Brazilians in Japan.

As previously mentioned, the presence of this enormous contingent of Brazilians in Japan was due to the shortage of workforce in that country, mainly of young workers, to take so-called manual or unskilled jobs. This demand in Japan emerged contemporaneously with the economic and financial crises faced in Brazil from 1982 to 1994, and with the heterodox economic plans which were implemented during those years, particularly the so-called Collor Plan, which included

the freezing of Brazilians' saving accounts. Therefore, Brazilians decided to open up new horizons looking for jobs abroad, including the United States, Europe, and the neighboring countries of South America. Nowadays this figure is estimated to be three million people.

Nonetheless, many Brazilians who live abroad face hardships to stay legally in the country. It is estimated that most Brazilians who went to the United States have remained there as illegal immigrants. So did many Brazilians who live in Europe, save those who travel with a passport from countries such as Italy, which concedes *jus sanguinis* nationality to their emigrants until the third generation, who were born in *jus solis* countries.

Japan is the only country that makes a so-called Long-term Resident visa available. With such a visa, second-generation Brazilians of Japanese descent, called *niseis*, are allowed to stay in Japan for three years, and third-generation descendants, called *sanseis*, as well as their spouses without Japanese ancestry, are allowed to stay for one year. This visa may be renewed for as many periods as it is necessary, provided that the descendants live honestly, under the country legislation. There are about eighty thousand Brazilians who have obtained permanent Japanese visas after spending a few years Long-term Residents. Although it is hard to obtain a precise figure, since there are no official statistics, approximately a million Brazilians have obtained the Japanese nationality through naturalization. These requests have been increasing, especially after the approval of Constitutional Amendment no. 3 of 1993, which states, as already noted, that the acquisition of another nationality should not cause the loss of Brazilian citizenship.<sup>2</sup>

At this moment, however, the world faces an international economic crisis that began in the United States in the middle of 2008, triggered by defaults on a popular type of low-interest rate (subprime) housing mortgage. The crisis has led to the bankruptcy of several companies, not only in the financial, but also in the automotive, electric, and electronic sectors that have been the symbols of American prosperity. Unemployment rates soared and the crisis spread all around the world, including to Japan, whose automotive, electric, and electronic industries and their respective suppliers were forced to cancel temporary contracts with both Japanese and foreign workers; employees of outsourcing firms have also been terminated.

There was already a crisis, in the late 1990s, which caused the decrease of approximately ten thousand Brazilians resident in Japan. In 1998, there was the "economic bubble burst," which resulted in the dismissal of many Brazilians workers. At that time, however, we observed the absorption of those workers by other sectors of the economy, such as outsourcing services. Brazilian workers also went to the food industry, particularly to lunch box factories, where the job schedule, beginning at dawn, made Japanese workers uninterested in taking such jobs.

Nevertheless, it is said that from September 2008 to April 2009, about 190 thousand Japanese and foreign workers, on temporary contract basis, lost their respective jobs. In addition, many recent graduates who had been promised jobs in large Japanese companies were disappointed when the companies did not keep those promises. There was a decrease in employment and some companies simply canceled offers. The unemployment rate in Japan has exceeded 5%, which means that there are more than three million people unemployed in the country.

Many Brazilians returned to their native country between the end of 2008 and the beginning of 2009, although the exact number is unknown. There are reports that this figure exceeds thirty thousand, but this figure will be only known in June 2009, when the Japanese Ministry of Justice

publishes 2008 statistics on entrance and return of foreigners. According to trustworthy sources, there has been a decrease of over twenty thousand Brazilians compared to 2007.

### **Some Problems Faced by Brazilians in Japan**

The presence of Brazilians in Japan has become a recurrent issue in meetings of Japanese and Brazilian officials. It used to be the presence of Japanese, their descendants, and Japanese companies in Brazil that were the issue. It has been observed that, in addition to investments, technology transfer, and bilateral commerce, the human bonds established by past immigrants and the recent *dekasegi* phenomenon have been under discussion. These issues have been discussed not only among the authorities of both countries, but also by members of the Imperial Family when they have visited Brazil and when they have received the highest-ranking Brazilian dignitaries in Japan.

What makes these discussions urgent is that the large number of Brazilians resident in Japan involves a variety of important issues, including, among others, labor relations and social security, the education of children, criminality and juvenile delinquency, health, divorce and alimony action.

Issues such as saving accounts and remittance are also important. Brazilians who arrived in Japan at the beginning of the *dekasegi* phenomenon, during the late 1980s and the first half of the 1990s, had the firm intention to save. Within a period of three years, before their Long-term Resident visas expired, they were able to save an average of US\$40,000 to US\$50,000, and indeed there are some reports saying that saving accounts exceeded US\$60,000 *per capita* at that time. That was due to the different economic picture in Japan at that time: the country had reached the peak of its economic boom, salaries were high, and there was a lot of overtime work to be done, making it possible for a Brazilian worker to earn monthly wages higher than US\$3,000. Moreover, there was a strong determination to save. Most Brazilian workers were willing to live in company accommodations, often makeshift, to reduce their expenditures to a minimum. They used to limit their leisure activities to gathering at public squares across from train stations to speak Portuguese and exchange information, or offering lunch or dinner at home to small groups of friends. Thus, they were able to achieve their goal of maximizing their saving accounts.

Since the first Brazilians went to Japan, it is said that about 200,000 have already returned to Brazil, remitting their savings, which totaled an estimated \$2 billion a year. Not all of them returned with the amount they expected to, but certainly most had a sum of money which they could have never saved if they had stayed in Brazil. However, many of those who came back to Brazil eventually returned to Japan after having spent all their savings. Many were able to fulfill their dreams of buying real estate or automobiles, or remodeling their own or their parents' houses; others lost their savings in dubious investments. Others started businesses that failed due to their lack of managerial skills. The results of enormous sacrifices and efforts were lost, and there was no means of earning and saving enough in such a short period by working in Brazil. This led many of them eventually to return to Japan, to work once more and save again.

Nevertheless, the picture in Japan was quite different from what it had been at the beginning of the *dekasegi* phenomenon. Commerce and services targeted at Brazilians have considerably increased in recent years. Many imported products from Brazil are now available in Japan, including food products, videos, and clothing. There are also cable TV channels and Portuguese newspapers

and magazines, not to mention Japanese consumer products such as cars, motorcycles, computers and all sorts of electronic products that appeal to Brazilian consumers. If Brazilians succumb to the many enticements to consume, they will probably not be able to keep saving as their fellow countrymen did in the early years of the *dekasegi* phenomenon.

It is crucial to mention here an issue that must be addressed—the education of Brazilian children of Japanese descent in Japan. Some are taken by their parents, and a large number of children have been born there. Those who are born in Japan, arrive prior to school age, or arrive by the early years of the elementary school are generally able to adapt without much difficulty. However, this has meant that many of them simply forget Portuguese, resulting in communication problems with their own families, since some parents have difficulty in learning Japanese. Curiously, in the past a similar phenomenon had already happened to the Japanese immigrants' children who, having been born and raised in Brazil, had communication problems with their parents, who could only speak Japanese, causing conflicts of generations in the post-war period.

Children who were ten years old or older on arrival in Japan have often had difficulties in adapting to Japanese schools; as a consequence of their inability to understand what teachers say, they have learning difficulties. Being Brazilian, they also suffered from discrimination by their classmates. Other children, even some of an age that could be expected to make them suited to natural adaptation, did not succeed in the Japanese school environment. Many parents then decided to enroll their children in Brazilian schools that were established in several cities as an educational alternative to Japanese schools, and to pay the high monthly tuition ranged from US\$400 to US\$500.

Prior to the economic crisis that has caused disruption around the world since the third quarter of 2008, there were about 100 Brazilian schools located in cities with high concentrations of Brazilians in Japan, half of them recognized by the Brazilian Ministry of Education. In many cases, due to the high costs, families were able to send just one or two children to a Brazilian school. When there was a third child, which was not unusual, one of them attended a Japanese school.

As a consequence of the crisis, many Brazilians lost their jobs, and it was observed that one of the first expenses they cut was the monthly Brazilian school tuition. It is said that some schools have closed due to the lack of students. The greatest concern is that there are few Brazilian children enrolled in Japanese schools. Many of them returned to Brazil with their parents, but then faced problems such as overcrowded schools or not being admitted into elementary schools. Some who were refused admission were told that the enrollment period ended in October, and they had missed it. A group of volunteers has been trying to assist those children, but they rarely obtain accurate information on the number who are in need, and consequently of the true scale to which these problems happen. Also, providing services can be very difficult.

These problems have led to great frustration for many Brazilian workers in Japan. Many have sought to find relief by spending, using their wages for consumer goods, gambling, betting, or, in some cases, purchasing drugs. As a result, saving becomes impossible and they are forced to stay in Japan. This is not to imply, however, that all long-term Brazilian residents in Japan spend all their salaries. There are Brazilians who have been able to save and succeeded in starting their own businesses. There are also others who decided to stay in Japan because they enjoy living there and do not see equal opportunities in Brazil. The latter obtained permanent visas, and some of them have taken out thirty- to thirty-five-year mortgages to acquire their own houses, a development that was

unanticipated at the beginning of the *dekasegi* phenomenon, when all Brazilians' goal was to return to Brazil with their savings.

What was seen as a symbol of success, however, became a nightmare when the economic crisis started. Houses were purchased as investments, and buyers figured that they would be able to transfer the mortgage debt to someone else if they wanted to return to Brazil; eventually they would get their money, or at least part of it, back. But since the crisis hit, no one has been interested in assuming the debt, and some Brazilian home-owners have had trouble meeting their mortgage payments. Consequently, banks started foreclosing. This situation might not have an immediate solution, but it seems that many of the Brazilian home-owners have been looking for any sort of job which allows them to meet their payments. It is hoped that they can bear the situation until the economic picture improves.

### **Legal Issues Concerned with Brazilians in Japan**

Since the beginning of the *dekasegi* phenomenon, legal issues, both civil and criminal, have arisen. As the number of Brazilians domiciled in the archipelago rose, the problems became more serious.

In civil matters, the most distinct issues are those regarding Family Law, such as legal separation, divorce and alimony or spousal support. In terms of criminal matters, at the beginning there were cases of theft among adults and adolescents, but soon more serious offenses were registered, such as robbery, homicide, armed robbery, and also drug-related crimes. As the number of Brazilians carrying a driver's license increased, problems involving car accidents, vehicle-pedestrian collisions, and other disasters involving vehicles and motorcycles. Crimes committed by Brazilians just before their departure from Japan have been a matter of great concern for authorities of both countries. It is important to point out that certain crimes are planned with deceiving Japanese police officers in mind; the suspects purchase their tickets to return to Brazil and commit the crimes one or two days prior to the departure. There are other cases of manslaughter that are not necessarily premeditated, for example traffic accidents resulting in injury or death, in which the perpetrator escapes to Brazil to avoid the Japanese legal process.

In both civil and criminal matters, legal assistance from both countries is necessary, since from the point of view of respect for sovereignty, police and legal authorities of both countries need the support of their counterparts to better carry out their duties. We will now examine both issues separately, for better comprehension.

***Legal assistance in civil matters.*** The earliest bilateral document that we found regarding legal assistance in civil matters is dated September 23, 1940. This is an agreement on legal assistance that includes citations of the parts and production of proofs in civil actions, based on an Oral Diplomatic Communication of the former Embassy of Japan in Rio de Janeiro to Chancellor Osvaldo Aranha and signed by Ambassador Kazue Kuwashima. It provides that procedures should follow the respective internal legislations. For instance, in the case of citations, in Brazil those are served by Court Officials in Brazil, while in Japan, they are served through registered letters. Likewise, the legal proceedings of documents must be carried out via diplomatic channels.

The agreement was signed just before the rupture of diplomatic relations between both countries, which occurred on January 29, 1942, and due to the subsequent declaration of war by Brazil against Japan, dated January 6, 1944, it became technically void. After the conclusion of the San Francisco Treaty of Peace in 1952, the agreement once again became valid. It should be noted that it was mainly intended to cover the sending of Letters Rogatory from Japan to Brazil, given the large number of Japanese immigrants residing in Brazil.<sup>3</sup>

After 1990, the picture reversed, owing to the precipitous increase of Brazilians in Japan. Growing numbers of Letters Rogatory were sent from Brazil to Japan, mostly related to Family Law, especially alimony or spousal support. These requests were based on promises of reciprocity. The rise in the number of letters has been accompanied by problems of execution, often the fault of unskilled translators who had difficulties in translating the legal terminology accurately, and these problems have given Japanese legal authorities the impression that their sovereignty was being offended. Another problem is delays in sending and returning Letters Rogatory that have been sent by Brazilian state judges to the federal Ministry of Justice in Brasilia. Those have been transmitted to the Ministry of Foreign Affairs, which then sent them on to the Brazilian Embassy in Tokyo. After processing at the Embassy, the Letters Rogatory should be delivered at the Supreme Court in Japan, through the Ministry of Foreign Affairs, as stipulated by Japanese Law No. 63 of 1905, which provides for mutual jurisdictional assistance with foreign countries. To deal with the large quantity of Letters Rogatory that started to arrive, and in an effort at debureaucratizing the process, the two nations entered into an agreement whereby the Japanese Supreme Court receives the letters directly from the Brazilian Embassy, then sends them to the District Courts—the lower courts—for delivery to addressees residing within their jurisdiction. It was discovered then that there are cases in which it is impossible to deliver a letter, either because the address is incorrect or because the addressee no longer lives there. Residents move either as a consequence of change of employment or based on a fraudulent intention of avoiding receiving a citation.

According to Japan's Alien Registration Law, Law No. 125 of April 28, 1952, as amended by Law No. 134 of August 18, 1999, foreigners who change their place of residence must report that change to the local authorities within fourteen days. This requirement has not always been followed by the Brazilians, even though infringers face penalties including prison or a fine. The fact is that it may take a year or longer until the lower court judge receives back the Letter Rogatory that had been sent, either due to a mistake or change of the addressee's place of residence. According to a verbal statement of the Supreme Court, it takes a maximum of two months for documents to pass through its legal channels and be returned to the Brazilian Embassy in Japan. Assuming this is true, we have to conclude that that the remainder of the delay is due to internal procedures in Brazil, including the time it takes the diplomatic bag to pass between the Ministry of Foreign Affairs and the Embassy in Japan.

As this situation has persisted for nearly twenty years, the Brazilian government is about to negotiate with the Japanese government a structural evaluation of the legal international assistance in Brazil, aiming at becoming part of a multilateral treaty such as the Hague Convention of 1965, to which Japan is a party, or alternatively, reviewing the Legal Assistance Agreement between Brazil and Japan. Either of these would contribute significantly to achievement of the purpose of the Letter Rogatory, thereby reaffirming the appropriate and necessary protections of legal rights.

*Legal assistance in criminal matters.* As the number of foreigners in Japan increased to more than two million people, the impact on Japanese society of crimes committed by foreigners—some involving Brazilians residing in Japan—has become a topic of widespread discussion, and demands for justice have been expressed. In 2007, according to the Japanese police authorities, 7,289 crimes were committed by Brazilians. There are about 500 Brazilians serving sentences in Japanese prisons, plus fifteen Brazilian minors in the Kurihama Juvenile Reformatory near Tokyo, although the number of juvenile delinquents is much higher. In most cases, they stay in other recovery programs before being confined.

The problem that is of greatest concern to the Japanese population, particularly in Shizuoka Prefecture, is that crimes involving homicide, armed robbery, robbery, theft, and drug dealing have been relatively frequent. Likewise, we have seen several misdemeanors, such as car accidents with or without fatal victims. When Brazilians are arrested, they are tried in the Japanese courts, which are more severe than those in Brazil; penalties in Japan even include capital punishment or life imprisonment in cases of homicide with more than one victim. In cases of manslaughter, the Japanese government has recently revised the penalty from five to seven years of imprisonment, although in cases in which it is proved that the convicted person was driving under the influence of alcohol or drugs, the sentence may be up to twenty years, according to Article 208 (2) of the Japanese Penal Code.

The fact that Brazilian suspects seem to plan crimes and commit them just before returning to Brazil has concerned both Japanese and Brazilian society. Whether their criminal acts were premeditated or not, many suspects fly to Brazil to escape imprisonment. Needless to say, the Japanese police routinely pass information on such cases to INTERPOL, which in turn communicates with all members of its organization so as to assure that the accused Brazilian will be arrested in any member country and returned to the Japanese authorities. However, nothing will occur if the accused Brazilian stays in Brazil.

There are about a hundred accused Brazilians who have absconded from Japan, and for the last five years, the families of the victims of the crimes have fiercely demanded that the Japanese government sign a treaty of prisoners' extradition with Brazil. However, this cannot be done so long as the current Brazilian constitution is in force. Article 5, Incise LI, of the Federal Constitution of 1988, prohibits the extradition of Brazilian nationals or naturalized foreigners unless the alleged crime was committed prior to the naturalization or the accused is charged with participating in illegal drug traffic, regardless of the date on which the crime was committed.

This situation has affected the Japanese society, and Kitawaki Yasuyuki, mayor of the city of Hamamatsu, the municipality with the highest number of Brazilians in Japan, requested Professor Kazuo Watanabe, president of the Institute of Comparative Law Brazil-Japan, lead a study on the feasibility of a bilateral assistance agreement in criminal matters between both countries. A committee of professors, judges, prosecutors, and attorneys was then established, chaired by Professor Ada Pellegrini Grinover, with the aim of discussing and formulating a proposal for agreement. The proposal was presented on September 24, 2006, in Hamamatsu, during a Judicial Panel for analysis, and then submitted to both countries. At present, this issue is under negotiation between both countries, as well as the judicial assistance in civil matters.



Meanwhile, the Japanese government requested the Brazilian government to punish these suspects based on Article 7 of the Brazilian Penal Code, which extends the application of the extraterritorial Brazilian criminal law to crimes committed overseas. In two of the (many) cases submitted by the Japanese government, with all the documents and proofs attached and translated into Portuguese, sentences have been pronounced. One of those was an armed robbery that occurred in Hamamatsu; the sentence was handed down in Belo Horizonte, Minas Gerais. The other was a manslaughter case—a pedestrian collision without rendering aid—that also occurred in Hamamatsu, and the sentence was handed down in São Paulo.

It is hoped that the negotiations on judicial agreements in civil and criminal matters will soon reach a conclusion that will accelerate the proceedings of both Letters Rogatory and trials of Brazilian fugitive criminals. As for the latter, since punishment in Brazil is the only legally feasible resolution under the present constitution, the objective is that sentences be pronounced more swiftly. That would demonstrate to persons accused of crimes that escaping to Brazil will not exempt them from being tried in a court and convicted, although they would, of course, have the right to a legal defense.

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#### NOTES

1 After almost 250 years of isolationism, Japan capitulated to the gunboat diplomacy of the United States and acceded to the Japanese-American Treaty of Friendship in 1854. The treaty was hurriedly signed, without the authorization of the emperor, giving rise to dissatisfaction with the Tokugawa shogunate and contributing to the eventual downfall of the shogunate.

2 It is worth observing that since adoption of Constitutional Amendment no. 3 of 2003, Brazilians who obtain citizenship in other nations for reasons of employment no longer lose Brazilian citizenship.

3 A Letter Rogatory is a formal request from a court to a foreign court for some type of judicial assistance. The most common remedies sought by Letters Rogatory are service of process and taking of evidence. For a definition and some examples, see [http://en.wikipedia.org/wiki/Letter\\_Rogatory](http://en.wikipedia.org/wiki/Letter_Rogatory).