

TREATY BETWEEN
JAPAN AND THE FEDERATIVE REPUBLIC OF BRAZIL
ON THE TRANSFER OF SENTENCED PERSONS

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Japan and the Federative Republic of Brazil
(hereinafter referred to as "the Parties");

Desiring to further promote international co-operation
in the field of enforcement of sentences;

Considering that such co-operation should further the
ends of justice and the social rehabilitation of sentenced
persons;

Considering that these objectives require that
foreigners who are deprived of their liberty as a result of
their commission of a criminal offence should be given the
opportunity to serve their sentences within their own
society; and

Considering that this aim can best be achieved by
having them transferred to their own country;

Have agreed as follows:

Article 1

For the purposes of this Treaty:

- (a) "sentence" means any punishment involving
deprivation of liberty ordered by a court for a
limited or unlimited period of time on account of
a criminal offence;
- (b) "sentenced person" means a person on whom the
sentence has been imposed in the territory of
either Party;
- (c) "judgment" means a decision or order of a court
imposing a sentence;
- (d) "sentencing State" means the Party in which the
sentence has been imposed on the person who may
be, or has been, transferred; and
- (e) "administering State" means the Party to which
the sentenced person may be, or has been,
transferred in order to serve his or her
sentence.

Article 2

1. Each Party undertakes to afford the other Party the widest measure of co-operation in respect of the transfer of sentenced persons in accordance with the provisions of this Treaty.
2. A sentenced person may be transferred from the territory of the sentencing State to the territory of the administering State, in accordance with the provisions of this Treaty, in order to serve the sentence imposed on him or her. To that end, the sentenced person may express his or her interest to the sentencing State or to the administering State in being transferred under this Treaty.
3. Transfer may be requested by either the sentencing State or the administering State.

Article 3

1. A sentenced person may be transferred under this Treaty only on the following conditions:
 - (a) where Japan is the administering State, the sentenced person is a person who falls within the scope of its law on transnational transfer of sentenced persons;
 - (b) where the Federative Republic of Brazil is the administering State, the sentenced person is a Brazilian as defined in the Constitution of the Federative Republic of Brazil;
 - (c) if the judgment is final;
 - (d) if, at the time of receipt of the request for transfer, the sentenced person still has at least one year of the sentence to serve or if the sentence is indeterminate;
 - (e) if the transfer is consented to by the sentenced person;
 - (f) if the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute a criminal offence if committed on its territory; and
 - (g) if the sentencing State and the administering State agree to the transfer.

2. In exceptional cases, the Parties may agree to a transfer even if the time of the sentence to be served by the sentenced person is less than that specified in subparagraph (d), paragraph 1 above.

Article 4

1. Any sentenced person to whom this Treaty may apply shall be informed by the sentencing State of the substance of this Treaty and also may be informed by the administering State of the said substance.

2. If the sentenced person has expressed an interest to the sentencing State in being transferred under this Treaty, the sentencing State shall so inform the administering State as soon as practicable after the judgment becomes final.

3. The information shall include:

- (a) the name, date and place of birth of the sentenced person;
- (b) his or her address, if any, in the administering State;
- (c) a statement of the facts upon which the sentence was based; and
- (d) the nature, duration and date of commencement of the sentence.

4. If the sentenced person has expressed his or her interest to the administering State, the sentencing State shall, on request, communicate to the administering State the information referred to in paragraph 3 above.

5. The sentenced person shall be informed, in writing, of any action taken by the sentencing State or by the administering State under the preceding paragraphs of this Article, as well as of any decision taken by either State on a request for his or her transfer.

Article 5

Each Party shall designate a central authority for the purpose of facilitating communications between the Parties under Articles 4, 6, 7 and 14 of this Treaty:

- (a) for Japan, the central authority shall be the Ministry of Foreign Affairs; and

- (b) for the Federative Republic of Brazil, the central authority shall be the Ministry of Justice.

Article 6

1. Requests for transfer and replies shall be made in writing.
2. Requests shall be addressed by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State.
3. Requests for transfer and replies shall be communicated through the central authority referred to in Article 5 of this Treaty. Notwithstanding the above, in relation to Japan, the Ministry of Justice may send and receive requests for transfer as well as documents and information referred to in Article 4, 6, 7 and 14 of this Treaty in case of emergency or other extraordinary circumstances in accordance with the laws and regulations of Japan.
4. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

Article 7

1. The administering State, if requested by the sentencing State, shall furnish it with:
 - (a) a document or statement indicating that the sentenced person meets the conditions of subparagraph (a) or (b), paragraph 1 of Article 3; and
 - (b) a copy of the relevant law of the administering State which provides that the acts or omissions on account of which the sentence has been imposed in the sentencing State constitute a criminal offence according to the law of the administering State, or would constitute a criminal offence if committed on its territory.
2. If a transfer is requested, the sentencing State shall provide the following documents to the administering State, unless either State has already indicated that it will not agree to the transfer:
 - (a) a copy of the judgment and the law on which it is based;

- (b) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, and any other factor relevant to the enforcement of the sentence;
- (c) a statement containing the consent to the transfer as referred to in sub-paragraph (e), paragraph 1 of Article 3; and
- (d) whenever appropriate, any medical or social reports or behavior report in prison on the sentenced person, information about his or her treatment in the sentencing State, and any recommendation for his or her further treatment in the administering State.

3. Either State may ask to be provided with any of the documents or statements referred to in paragraph 1 or 2 above before making a request for transfer or taking a decision on whether or not to agree to the transfer.

Article 8

1. The sentencing State shall ensure that the sentenced person who gives consent to the transfer in accordance with sub-paragraph (e), paragraph 1 of Article 3 does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the sentencing State.

2. The sentencing State shall afford an opportunity to the administering State to verify through a consul or other official designated by the administering State, that the consent is given in accordance with the conditions set out in paragraph 1 above.

Article 9

1. The taking into charge of the sentenced person by the authorities of the administering State shall have the effect of suspending the enforcement of the sentence in the sentencing State.

2. The sentencing State may no longer enforce the sentence if the administering State considers enforcement of the sentence to have been completed.

Article 10

1. The competent authorities of the administering State shall continue the enforcement of the sentence immediately or through a court or administrative order.

2. The continued enforcement of the sentence after the transfer shall be governed by the laws and regulations of the administering State, including those governing conditions for service of imprisonment or other form of deprivation of liberty and those providing for the reduction of the term of imprisonment or other form of deprivation of liberty by parole, remission or otherwise.

3. The administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State.

4. If, however, this sentence is by its nature or duration incompatible with the law of the administering State, or its law so requires, that State may, by a court or administrative order, adapt the sanction imposed in the sentencing State to a sanction prescribed by its own law for a similar offense. As to its nature and duration, the adapted sanction shall, as far as possible, correspond with the sanction imposed in the sentencing State. It shall not be severer than that imposed in the sentencing State, in terms of nature and duration.

Article 11

The sentencing State alone may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution, laws and regulations.

Article 12

The sentencing State alone shall have the right to decide on any application for review of the judgment.

Article 13

The administering State shall terminate enforcement of the sentence as soon as it is informed by the sentencing State of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 14

The administering State shall provide information to the sentencing State concerning the enforcement of the sentence:

- (a) when it considers enforcement of the sentence to have been completed;
- (b) if the sentenced person has escaped from custody before enforcement of the sentence has been completed; or
- (c) if the sentencing State requests a special report.

Article 15

1. Information referred to in paragraphs 2 to 4 of Article 4 and requests for the transfer and replies referred to in Article 6 shall be furnished in the language of the Party to which they are addressed. Documents and statements referred to in Article 7 shall be accompanied by translations into the language of the Party to which they are addressed upon request by such Party.

2. Any costs incurred in the application of this Treaty shall be borne by the administering State, except costs incurred exclusively in the territory of the sentencing State.

Article 16

The Parties shall consult, at the request of either Party, concerning the interpretation and the application of this Treaty.

Article 17

1. This Treaty shall enter into force on the thirtieth day after the date on which the Parties exchange diplomatic notes informing each other that their respective constitutional requirements necessary to give effect to this Treaty have been complied with.

2. This Treaty shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

3. Either Party may terminate this Treaty at any time by notice in writing to the other Party through diplomatic channels. Termination shall take effect on the one hundred and eightieth day after the date on which the notice is given.

4. This Treaty shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred in conformity with the provisions of this Treaty prior to the date of termination.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Treaty.

Done at Tokyo, in duplicate, in the Japanese, Portuguese and English languages, all texts being equally authentic, this twenty-fourth day of January, 2014. In case of any divergence of interpretation, the English text shall prevail.

For Japan:

岸田文雄

For the Federative Republic
of Brazil:

ANDRÉ ARANHA CORRÊA DO LAGO