

研究方式	自行研究
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計畫名稱	我國與日本收容管理之比較
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研究人員	陳振順
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計畫性質	行政及政策類
研究性質	基礎研究
研究領域	社會 -- 公共行政
獎勵情形	沒有獎勵
研究報告摘要 (中英文)	<p>一、研究緣起按收容管理涵蓋政策研擬、整體規劃、法令修訂、認事用法及實際執行等各個面向，涉及層面甚廣，緣此，政府對於收容管理須考量各種主、客觀因素，方能符合最大多數人之最大利益。如何蒐集法治先進國家收容管理之政策、規畫、法令、解釋及執行等相關體制，俾做為政府決策之參考，實乃當務之急。對於收容管理問題，吾人不應以主觀之判斷預設立場，而應以客觀之角度加以論證。收容管理究應遵守哪些基本原則方屬客觀？殊值探討。憲政改革過程中，人民基本權利益形受到重視；相對於此，政府基於行政效能之提昇與施政目標之遂行，往往損及人民基本權利。而政府研擬收容管理政策、整體規劃收容管理作為、修訂收容管理法令、進行收容管理認事用法及實際執行收容管理工作，應考量哪些因素方不致有所疏失？凡此種種，皆值得吾人加以研究，爰以「我國與日本收容管理之比較」為題，探討收容管理之基本原則，並進行臺日兩國收容管理之比較，俾做為我國日後持續建置及改革收容管理之政策研擬、整體規劃、法令修訂、認事用法及實際執行之參考，以求提昇我國收容管理之品質。</p> <p>二、研究方法及過程 本文為求立論客觀，不致受到主觀意識所桎梏，並求研究架構之周密及組織之嚴謹，爰採用文獻探討法及調查研究法審慎研析。除廣泛蒐集、研讀相關文獻資料，並深入探討以外；在調查研究法方面，由內政部入出國及移民署謝署長立功率團赴日考察，</p>

訪日期間拜會或會晤我駐外館處館長及日本入管高階幹部，且考察相關入出國管理體制。三、重要發現（1）藉由高層赴日考察，達成敦睦臺日邦誼、促進國際合作、督訪駐外業務、參考入管體制及宣示人權立國等實質效益；且此次赴訪計獲致高層赴訪誠屬必要、交流互動重在議題及他山之石可以攻錯等考察心得。（2）經比較我國與日本之收容管理體制，在政策面、組織面、法律面或業務面等各個面向，固有類似之處；惟相異之處更多，值得我方參考者自亦不在少數；此外，亦得到法律因時因地制宜、正義註解端視時空及自由權利須受限制等結論。（3）收容管理涉及人民基本權利，故收容管理應明定於法律或符合「授權明確三要素」之法規命令中，且須符合憲法及行政法上之一般法律原則；並應貫徹政府政策及尊重民意所趨。四、主要建議事項（1）收容管理統一規範：為求法令規定之明確化及相關規定之衡平性，就中長期而言，允宜制定「入出國管理基本法」；而就立即可行而論，得先將「外國人收容管理規則」及「大陸地區人民及香港澳門居民收容處所設置及管理辦法」合併為「外來人口收容管理規則」。（2）雙邊協定亟待簽署：我方應儘速與日方繼續洽談簽署臺日共同打擊犯罪、司法互助及建構人口販運防制平台等相關事宜之備忘錄，俾有效打擊人口販運等跨國性犯罪。（3）基本計畫前瞻可行：我國似可參照日本出入國管理基本計畫之制度，邀集相關機關、單位、民間團體及學者專家，召開會議研商，俾制定基本計畫，做為未來3年、5年或10年推動移民政策之重要依據。（4）鼓勵報到限令出國：我方似可參考日方對於自動向入管單位報到者，採取限令出國並縮短禁止入國期限之方式，鼓勵逾期停留者至本署相關單位報到，嗣以限令出國取代驅逐出國，並降低罰鍰及縮短禁止入國期間，俾求減少在臺逾期停留者。（5）運用科技預防犯罪：日本實施航前旅客資訊系統及生物辨識通關系統之成功案例，殊值我方參考。（6）宣導實驗落實政策：政策之落實執行端賴完善之整體規劃，而政策宣導及實證實驗不失為推動入出境管理措施之不二法門。日本實施生物辨識通關系統及自動化通關系統所進行之政策宣導，以及進行人體掃描系統之實證實驗，均以完善之整體規劃及面面俱到之前置作業，以求貫徹政府政策，相關做法值得做為我方推動各項措施之參考。 Abstract Key Words: Administrative detention; Advanced Passenger Information System; Biometric Verification Clearance System; Automatic

Clearance and Inspection System; Human Body Scanning System.

A. Introduction Administrative detention is many-faceted and broad which includes the framing of policies, plans integration, amendments of laws and enactments as well as practical enforcement. To meet the demand for the majority in Taiwan, Taiwan government ought to consider both subjective and objective factors upon administrative detention. Therefore, this research is to collect advanced and developed countries' administrative detention policies, plans, laws and enactments, explanation and enforcement to regard as Taiwan government' s references. As for problems of administrative detention, we should not be subjective and judgmental; nevertheless, we should be objective to expound and prove basic principles upon administrative detention. In this research, we are to discuss what basic objective principles of administrative detention should be complied with. During the reform of Taiwan' s constitution, people had paid great attention to their basic rights. However, Taiwan government often causes damage to people' s basic rights on account of the promotion of administrative efficacy and the enforcement of administrative goals. As we mentioned earlier, Taiwan government has framed the policies, integrated the plans, amended the laws and enactments and implemented practical enforcement upon administrative detention. On the strength of these factors, what factors should Taiwan government considered first to avoid inducing any inappropriate defects? All in all, the above questions are worth further analyzing. In this research, I will discuss basic principles upon administrative detention through the comparison between Taiwan and Japan' s administrative detention. The result of this research will be conducted in building and reforming the framing of policies, plans integration, amendments of laws and enactments as well as practical enforcement upon Taiwan' s administrative detention in the future, also, to improve better the qualities of Taiwan' s administrative detention.

B. Methodology The purpose of this research is mainly strive for objectivity and not to restrained by subjective consciousness. The structures and the frames of the research are careful and thorough and have adopted relevant references and survey research method. In addition to the broad data collection and relevant references study, this research

methodology also involved the visit to Japan led by Director-General of National Immigration Agency (hereafter, NIA), Hsieh Li-Kung. During the visit in Japan, the Director-General of NIA met with the Heads of Taiwan Economic and Cultural Representative Offices in Japan and senior officials of Japan Immigration Bureau, also toured the immigration administrative system.

C. Research Result

1. By way of the trip to Japan, Taiwan built a good rapport with Japan government and encouraged the international cooperation. Taiwan officials also supervised NIA's oversea service departments and consulted the immigration system in the spirit of human rights declaration. During this visit, both countries focused mostly on interactions and exchange of mutual information.
2. Through the comparison between Taiwan and Japan's administrative detention, we found there is much similarity in both of our policies, organizations, laws and practices. However, there are many differences as well. Among these differences, many of them ought to be subsumed.
3. Administrative detention affects people's basic rights, thus it should be stipulated in laws and most importantly, must meet the explicitness principle and general principles of the Constitution and the administrative laws.

D. Suggestions

1. Unify the rules of administrative detention: In a long run, we could enact the "Basic Law of Immigration Administration". However, currently, we could first unify the "Foreigner Administrative Detention Rules" and the "Allocation and Administration of Detention Centers for People from Mainland China, Hong Kong and Macau" into the "Foreigner Administrative Detention Rules".
2. Sign bilateral agreements: To combat efficiently the transnational crimes, Taiwan can immediately discuss with Japan government in signing the memorandum in combating crimes, judiciary assistances and building anti-human trafficking platforms.
3. Enforce basic plans: Taiwan could refer to the Japan Immigration Administration Basic Plans System first. Furthermore, we could hold meetings for authorities, NGOs and professional experts for the enactments of the basic plans. The basic plans could be the important reference for promoting in the next three, five and ten years' immigration policies.
4. Encourage one to report in for duty and Ordered exit within a certain time: We could refer to the way Japan has done.

	<p>For those who report in for duty by themselves, we could order exit for them within a certain time. We could encourage those who overstay in Taiwan to report in for duty at the National Immigration Agency, and apply “Order exit within a certain time” to replace deportation, we could also lower the penalty and shorten the time for forbidding them to go abroad. By doing so, we hope to decrease the number of people who overstay in Taiwan. 5. Apply technology to crime prevention: Japan has successfully in enforcing the Advanced Passenger Information System and Biometric Verification Clearance System. Taiwan could refer to their methods. 6. Promote experimental implementation policy: To enforce government policies, we need complete and comprehensive plans. Both promotion of policies and empirical experiments are very important to Taiwan’s immigration administration measures. For instance, Japan has enforced the policies of the Biometric Verification Clearance System, the Automatic Clearance System and the empirical experiment of the Human Body Scanning System. All these experiments need a sound and well-rounded plan to implement government’s policies. Taiwan could refer to Japan’s measures upon administrative detention in the future.</p>
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期末報告 電子檔下載	<p>我國與日本收容管理之比較.doc (下載檔案時，在檔名上按右鍵，請選擇「另存目標」。)</p> <p>(若無法下載檔案，請安裝 FlashGet 軟體之後再下載檔案。下載檔案時，在檔名上按右鍵，請不要選擇「另存目標」，請選擇「使用 FlashGet 下載」。)</p>
備註說明	
建議事項處理情形	參考
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