

"Voices of the Small Handful: 1989 Student Movement Leaders Assess Human Rights in Today's China"

Testimony before the Congressional-Executive Commission on China
Roundtable on
June 02, 2003

Kidnapping by Police: The Sun Zhigang Case Exposes "Custody and Repatriation"

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June 2, 2003

Introduction

While the SARS outbreak has drawn attention all around the world, an individual murder case has attracted attention inside China. The case exposes the serious police abuse that routinely takes place within the PRC's Custody and Repatriation (C & R) system. My own personal impressions of this system are vivid, because in 1996 I spent a hellish 11 days within its clutches. I am now glad for the opportunity to call your attention to this system of police-sponsored kidnapping that relies on "regulations" that are unconstitutional even by PRC legal standards. On the C & R issue, China's human rights certainly have not improved since 1989. They clearly have gone the other direction.

The Sun Zhigang Case

Sun Zhigang, a college graduate from Hubei Province, went to Guangzhou early this year to take up employment. On the night of March 17, police in Guangzhou detained him for failing to show a temporary resident permit and sent him to a C & R center. Three days later, a friend of Sun's was notified to collect his body from the center's infirmary.

Sun's parents in Hubei, incredulous at what had happened to their son, traveled to Guangdong and approached government agencies seeking a "reason" why their son had died. After a month of watching their inquires fall upon deaf ears, they decided to bring the story to the *Southern Metropolitan News*, which did its own investigation and then published a full account on April 25. Other local and national newspapers then picked up the story and it quickly became a national issue. Controversy now centers on three questions: 1) the criminal investigation of cases like this; 2) the prevalence of police abuse; and 3) the constitutionality of the C & R system.

The Government's Stated Reasons for a C & R System

The C & R system arose from a 1961 Party directive entitled "Forbidding Free Movement of the Population." In 1982 the State Council added "Measures for the Custody and Repatriation of Vagrant Beggars in Cities." The ostensible purpose of these orders was to provide shelter for homeless people in cities. More fundamentally, though, the goal was to strengthen the "*hukou*" registry system, which privileges urban over rural residents in many ways. A full account of the evils of the *hukou* system is beyond my scope here, but the system's fundamental purpose, from the government's viewpoint, has always been to enforce the social stability upon which the security of its political rule depends. The Party and State Council

directives provide a warrant for arresting and deporting back to the countryside any farmer who enters a city “illegally.”

Because of the original claim of a connection between C & R and welfare, the day-to-day activities of C&R centers fall under the Ministry of Civil Affairs. In practice, however, the Public Security apparatus, especially local police, run the system. The official language of the Ministry of Civil Affairs says:

Custody and Repatriation is a forcible administrative apparatus under which the Civil Affairs departments and Public Security bureaus may send back to their places of *hukou* registration any persons whose homes are in the rural areas and who have entered cities to beg; urban residents who are roaming the streets and begging; and other persons who are sleeping in the open or have no means of livelihood. This measure is employed by the state to provide relief, education and resettlement to those persons who are indigent and begging in the cities, so as to protect urban social order and stability and unity.

In practice, detainees in C & R centers tend to be the poor; the mentally ill; migrant workers; women who have been kidnapped for sale on an underground market; and “petitioners”-- meaning people who have entered cities to seek redress of injustices from government officials. Estimates of the numbers detained, since 1989, run into the millions.

The C & R System in Practice

High-sounding language about “welfare” notwithstanding, the C & R system for more than a decade has been dominated by extortion. Police use it to kidnap the powerless and demand ransom from their families or friends. The state goes along with this because it serves “stability,” and because the system can be used to clean up riffraff and thereby “beautify” city streets in advance of august events like a Party Congress, the visit of a foreign dignitary, or a bid to host the Olympics. All such values trump the rights of ordinary citizens.

Arbitrary detention. The most vulnerable citizens are “Three No’s” people—those with no ID card, no temporary resident permit, and no work permit. Even people who have such documents can be swept up if they dress shabbily, have funny-sounding accents, or seem to loiter. Recently a migrant worker who was picked up for his outlandish accent made the mistake of showing his documents--only to have the police rip them up and bring him to a C & R Center anyway.

Physical Abuse. The conditions in the C & R Centers are about as bad as one can imagine. Food and sanitary conditions are abominable, worse than in regular prisons and labor camps. Detainees are routinely subjected to beatings by police or by cell bosses. Sun Zhigang is by no means the only detainee to have died from the torture and beatings.

Extralegal ransom. For the police, the possibility of using the C & R system to collect ransom becomes an incentive to detain as many people as possible. With the collapse of public morality during China’s post-Mao years, added to the devil-take-the-hindmost pursuit of money, there are no effective brakes on this kind of abuse of police power. C & R becomes an open field from which police rip off whatever they can. I experienced a small taste of this practice in my own case. In late 1996, when I was released from two and a half years of Reeducation through Labor, I traveled from Wuhan to Beijing to see my sister. Police met me at the Beijing railway station and sent me straight to a C & R center. No explanation. I spent 11 days without enough food and in filthy conditions. Then the police “repatriated” me back to Wuhan, and when I arrived, my parents were forced to pay for my room and board during C & R and my train ticket back home.

The Investigation of the Sun Zhigang Case

After the media publicized Sun's story, the Central Government ordered the "relevant authorities" to investigate the case and punish the perpetrators as seriously and as quickly as possible. The criminal investigation was then passed down to Guangdong provincial authorities, where it went forward in secret. There is every reason to believe--because it happens in similar cases--that the "investigation" eventually fell near or directly to the same authorities who were responsible for the original crime. In any case, very quickly, on May 13, the New China News Agency reported that 13 suspects had been arrested. Five were workers at the infirmary where Sun died, and eight were other detainees at the same infirmary. None of them were police officers.

Few serious analysts take this official report as much more than a whitewashing. There is no explanation, for example, for why Sun was moved to an infirmary in the first place. He had arrived at the C & R center 24 hours before his move to an infirmary. What happened during those 24 hours? What caused his symptoms, apparently of a beating? Records show that Sun was unconscious during his stay in the infirmary--and yet the official investigation claims that other detainees at the infirmary had beaten him. Other sick people were beating an unconscious man?

From a legal point of view, the huge problem that this case points up is that there is no separation of power between the administrative authority and the investigative authority. Essentially, the police are charged with investigating the police. This systemic flaw spawns many other abuses: judgment is rushed, innocents are scapegoated, the true perpetrators are protected, a false story is publicized, and, after it is announced, only leads to widespread public cynicism.

Constitutional Scrutiny of C & R

On or around May 16, three citizens with Ph.D. degrees in law from Beijing University submitted a petition to the National People's Congress to re-examine the constitutionality of the 1982 "Measures for the Custody of Repatriation of Vagrant Beggars in the Cities." Their petition held that the PRC's Administrative Punishment Act as well as its Legislature Act provide that deprivation of a citizen's freedom can be done only by laws, and that such laws must be passed by the National People's Congress or its Standing Committee. The State Council and the various Provinces have no power to make regulations that in effect deprive citizens of their personal freedom.

This petition highlights the sad fact that, in China, when rulers violate the Constitution nothing happens, but when ordinary citizens violate a local regulation, they can have hell to pay. For this reason some observers feel that the current petition, if successfully pressed, can have at least as large an impact as the publication of the Sun Zhigang case. It is the first example in PRC history in which ordinary citizens are trying to use the Constitution to constrain the power of state organs. Since the core of the rule of law is to restrain governmental power, this petition deserves the careful attention of anyone interested in the rule of law in China.

Conclusions

In view of the expansion of the C & R system in China over the last fourteen years, one can only conclude that the human rights of personal freedom and freedom of movement have suffered setbacks. C & R, like the Reeducation through Labor system, has no legal basis even under PRC standards. It clearly violates international human rights norms. It should be abolished in its entirety.

Sun Zhigang's death has alarmed many people and redirected their attention to the C & R issue. Some even have begun to use the Constitution to challenge the whole system. Whether or not this ferment might possibly lead to an end of the C & R system is hard to say. I sincerely hope that this Commission can help to highlight the issue and do whatever it can to bring pressure to abolish the system.

For more information on C & R in China, please go to Human Rights in China's website: www.hrichina.org, where it posts two detailed reports:

- 1) Not Welcome at the Party: Behind the "Clean-Up" of China's Cities—A Report on Administrative Detention Under "Custody and Repatriation" (1999);
- 2) Institutionalized Exclusion: The Tenuous Legal Status of Internal Migrants in China's Major Cities (2002).