

# KIDNAPPING BY POLICE: CUSTODY & REPATRIATION

BY TONG YI

The recent unexplained death of a young man in Guangzhou has inspired a constitutional challenge to the much-abused Custody & Repatriation system.<sup>1</sup>

With most of the outside world focused on China's SARS outbreak, an individual murder case has raised acute attention inside China. The case exposes the serious abuse that routinely takes place within the PRC's Custody and Repatriation (C & R) system, which has developed from an ostensible welfare tool into little more than a system of police-sponsored kidnapping.

## The Case of Sun Zhigang

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 residence permit and sent him to a C & R center. Three days later a friend was notified to collect Sun's body from the center's infirmary.

Sun's parents in Hubei, incredulous over the fate of their son, traveled to Guangdong and approached government agencies seeking the cause of Sun's death. After a month of watching their inquiries fall on deaf ears, they took their 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 such as this;
- 2) the prevalence of police abuse; and
- 3) the constitutionality of the C & R system.

## The C & R System in Theory

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 allows police to

arrest and send back any rural resident who enters a city without authorization. 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.

Because of the original claim of a connection between C & R and welfare, the day-to-day oversight of C&R centers falls 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 states:

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 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 has been dominated by extortion for more than a decade. 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 clear out "riffraff" and thereby "beautify" city streets in advance of events such as a Party Congress, the visit of a foreign dignitary or a bid to host the Olympics. The C&R system allows officials to abuse the rights of ordinary citizens in three ways:

*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 peculiar accent showed that he in fact had the necessary official documents, only to have the police rip them up and bring him to a C & R Center anyway.

**Physical Abuse.** The conditions in C & R Centers are about as bad as one can imagine. Food and sanitary conditions are abominable, even worse than in regular prisons and labor camps. Detainees are routinely subjected to beatings by police or cell bosses, sometimes resulting in death.

**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. The collapse of public morality during China's post-Mao years and the prevailing obsession with riches has removed all effective impediments to this kind of abuse of police power.

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 with no explanation. I spent 11 days with inadequate food and in filthy conditions. Then the police "repatriated" me to Wuhan, and upon my arrival 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 Zhigang'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 proceeded in secret. There is every reason to believe – based on previous cases – that the "investigation" eventually fell near or directly to the same authorities who were implicated in the original crime. In any case, already 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 whitewash. For example, no reason is given for Sun's presence in the infirmary in the first place. What happened during the 24 hours between Sun's arrest and his removal to the infirmary? What caused his symptoms, consistent with a beating? Records show that Sun was unconscious during his stay in the infirmary, but the official investigation claims that other detainees at the infirmary had beaten him. There was no explanation as to why sick people would beat an unconscious man.

From a legal point of view, the main problem that this case raises 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 made into scapegoats, genuine

perpetrators are protected and a fabricated story is publicized, inevitably meeting with widespread public cynicism.

### **Constitutional Scrutiny of C & R**

On May 16 three citizens with law degrees from Peking University submitted a petition to the National People's Congress to re-examine the constitutionality of the 1982 "Measures for the Custody and Repatriation of Vagrant Beggars in the Cities." Their petition held that under the PRC's Administrative Punishment Act and its Legislature Act citizens can only be deprived of their freedom 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, and therefore C&R, arising from Party and State Council directives, is unlawful.

This petition highlights the inequity of a legal system under which China's rulers have violated the Constitution for decades with impunity, while ordinary citizens pay an onerous price for violating local regulations. For this reason some observers feel that the current petition, if successful, could have at least as large an impact as the publication of the Sun Zhigang case. It is seen as the first example in PRC history of ordinary citizens 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**

Personal freedom and freedom of movement have suffered continual setbacks through expansion of the C & R system in China over the last fourteen years. C & R, like the Reeducation through Labor system, has no legal basis even under PRC standards and it clearly violates international human rights norms. Now Sun Zhigang's death has alarmed many people and redirected their attention to the C & R issue. It can only be hoped that the resulting social ferment and constitutional challenge will lead to this system being abolished in its entirety.<sup>2</sup>

1. This is an edited version of a paper presented to the Congressional Executive Commission on China on June 2, 2003.
2. For more information on C & R in China, refer to HRIC's detailed reports: "Not Welcome at the Party: Behind the 'Clean-Up' of China's Cities—A Report on Administrative Detention Under 'Custody and Repatriation'" (1999); and "Institutionalized Exclusion: The Tenuous Legal Status of Internal Migrants in China's Major Cities" (2002). Both reports are available on the HRIC website: [www.hrichina.org](http://www.hrichina.org).