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## 2003

*From the early 1980s, custody and repatriation (C&R) centres were one of the cornerstones of the Party-State's control of China's burgeoning migrant workforce. Originally established in 1982 with the purported aim of helping beggars and the homeless in urban areas, by the beginning of the following decade, these centres targeted anyone without proper residence or work permits. The police were granted enormous power, and could arbitrarily detain migrants without papers and subject them to all types of abuse. Criticism of this institution came to a head in 2003. In March that year, a young graphic designer named Sun Zhigang was stopped by police on a street in Guangzhou, where he had arrived just a few weeks earlier. He came from a village in Hunan Province, but had recently graduated from the Wuhan University of Science and Technology. Since he did not have his identity card and residence permit with him at that time, the police officers suspected him of being an illegal migrant and took him to the police station. All attempts by his friends to secure his release were in vain. The following day, he was transferred to a C&R centre, where, two days later, he died, allegedly of heart failure. As the authorities refused to look into the circumstances of his death, a progressive newspaper in Guangzhou took up Sun's cause and started an in-depth investigation. The truths revealed by the journalists, combined with pressure from online public opinion and legal activism, would cause a public uproar that eventually led to the abolition of the C&R centres.*

# The Sun Zhigang Case

Chloé FROISSART

On 17 March 2003, Sun Zhigang, a twenty-seven-year-old graphic designer from a village in Hunan Province, freshly graduated from the Wuhan University of Science and Technology, was stopped by police on a street in Guangzhou, where he had arrived less than a month earlier to work in a private clothing company. Unable to produce his identity card and residence permit, he was taken to the police station on the suspicion of being an illegal migrant. The same evening, his roommate tried to free him by bringing his identity card to the station and offering to pay bail, but the police refused to release him. The following day, Sun was transferred to a custody and repatriation (C&R) centre, from which his employer tried unsuccessfully to have him released. On 20 March, the centre's medical service announced that Sun had died of heart failure. Barely one month later, an autopsy demanded by his father revealed that Sun had actually died from injuries that caused internal bleeding. Faced with the authorities' refusal to investigate the circumstances of his son's death, Sun's father turned for help to the *Southern Metropolis News* (南方都市报), a progressive and outspoken Guangzhou newspaper. On 25 April, after conducting an exhaustive investigation, the outlet broke the story with an article titled 'A University Graduate Was Detained for Failing to Present His Temporary Residence Permit and Beaten to Death'.<sup>1</sup> This was the beginning of what came to be known as the 'Sun Zhigang Case' (孙志刚事件).

The Sun Zhigang Case was significant in several respects. First, it led to the abolition of the C&R centres where migrants who could not produce their permits for the police were arbitrarily detained and sometimes forced to work before being sent back to their home villages. This marked one of the most drastic changes in policing since the establishment of the People's Republic and was a lasting setback for the police state. Second, this success was achieved thanks to the rise of a new protest paradigm combining investigative journalism, pressure from online public opinion, and legal activism. This revealed a new awareness of universal citizenship—with urban citizens identifying with migrants and vice versa—and paved the way for the formation of a new type of legal activism demanding citizen equality before the law, which led to a series of systemic reforms during

the Hu Jintao–Wen Jiabao era. Finally, the case marked a milestone in efforts to achieve greater integration of migrant workers into the cities and their treatment as fully fledged citizens.

#### Factors Leading to the Sun Zhigang Case

In the Sun Zhigang Case, a confluence of events and circumstances created conditions favourable to a positive outcome. The most important was the change in political leadership. Having replaced Jiang Zemin as General Secretary of the Chinese Communist Party (CCP) and President of the People's Republic of China (PRC) in October 2002, Hu Jintao and Wen Jiabao, who replaced Zhu Rongji as Premier in March 2003, were keen to establish a new style of governance that was more 'responsible to the people'. This approach aimed to counter the influence of the former leadership, who maintained important positions within the state.<sup>2</sup> The Hu–Wen administration wanted to stand out from its predecessors—whose government had been defined by all-out economic reforms with great human cost—by emphasising the rule of law, respect for the Constitution, and the reduction of social inequalities. On taking charge, the Hu–Wen administration was put to the test by the SARS (Severe Acute Respiratory Syndrome) crisis, in which lower-level officials were accused of having covered up the scale of the epidemic. The belated response to the epidemic, for which China was criticised internationally, led the regime to put greater emphasis on openness and transparency. The media was also given greater space for accurate and timely reporting.

Emphasising the building of a 'harmonious society' (和谐社会) over the 'efficiency-first' motto that had dominated under Jiang Zemin's rule, Hu and Wen launched a number of initiatives to assist marginalised groups. Migrant workers were the first beneficiaries. In January 2003, Document No. 1, which traditionally sets the political priorities for the year, acknowledged that China's industrialisation must necessarily go hand-in-hand with urbanisation and urged municipalities to work towards granting equal social and economic rights to migrants and urban residents. The document also called for severe punishment of any attack on the dignity of migrants and any violation of their personal rights. Local authorities, backed by the media, were encouraged to promote societal respect for migrants.<sup>3</sup> The document marked a turning point in the management of migration and the perception of migrant workers, and paved the way for demands for equal treatment of citizens.

Document No. 1 also stipulated the need to end the arrest and improper detention of migrant workers in C&R centres. During 2002, there was a flourishing of critical reports written by influential think tanks and well-known social scientists about how these centres had been diverted from their original social welfare purpose. Established in 1982, the C&R centres were originally intended to assist people in need, especially beggars and vagrants, and repatriate them to their place of residence, since the authorities in the localities where they had household registration (户口, *hukou*) were responsible for their social care. However, municipalities increasingly used such places to control migration and ‘maintain social order.’ Together with the system of permits, which migrants had to navigate to live and work legally in the cities, and the ‘Strike Hard’ (严打) campaigns carried out regularly by the police to rid cities of undocumented migrants, C&R centres had become part of a police-state apparatus that criminalised migration and migrants.

During this time, the All-China Women’s Federation and the Communist Youth League also published migrants’ testimonies denouncing the arbitrariness of police roundups and the appalling conditions of detention.<sup>4</sup> Crammed in overcrowded cells, migrants were not properly fed, frequently physically abused, insulted, subjected to extortion, and forced to work to meet the costs of their stay and repatriation. In 2001, after the central government issued a circular urging municipalities to abolish all taxes levied on migrants, local governments compensated for the lost revenue by multiplying police checks and increasing detentions in C&R centres. Although the cost of permits decreased, the overall number of permits issued increased supposedly as a means for migrants to finance their use of urban facilities and compensate for the strain management of them put on city administrations.<sup>5</sup>

All the ingredients for an explosion were therefore present: a situation that was getting out of control, the political will of the central government to rein in the abuses of the municipalities, and an informed public. The only thing that was missing was the detonator: this was to be the Sun Zhigang Case.

#### The Apex of Investigative Journalism

The Sun Zhigang Case gave birth to a new protest paradigm combining investigative journalism, the internet as a forum for public debate and a means of creating public pressure, and legal activism striving to tran-

sform the state's ideological discourse on the 'rule of law' into legal and institutional reality.<sup>6</sup>

By carrying out its own investigation, the *Southern Metropolis News* acted as a counterweight to the abuses of power by the Chinese Party-State, not only by providing independent information, but also by placing the case in the legal field at the outset. The newspaper's detailed report on the death of Sun made it clear, with reference to the C&R Regulations of Guangdong Province, that Sun's detention was illegal as long as he could produce his identification card and attest to having a home and a job. In other words, the mere fact of not being able to produce a temporary residence permit did not constitute sufficient reason for placement in a C&R centre. The report also raised concerns about a coverup. An aggressive editorial signed with the pseudonym 'The Master Said' (子曰) accompanying the report concluded that Sun clearly died after being beaten in custody, criticised local authorities for the death, and implored readers to recognise that the tragedy could have happened to anyone.<sup>7</sup>

The *Southern Metropolis News* thus played a fundamental role in first exposing the tragedy and then addressing the authorities and the public. Although the Guangdong Department of Propaganda tried to prevent local newspapers from publishing further reports on the case, soon other media took up the story. The article was reprinted the same day by another Guangzhou daily newspaper and, in the following days, *Xinhua*, the *People's Daily*, and other major state-run media outlets quickly highlighted the story in their headlines and on their very popular websites.<sup>8</sup> The case then took on a national dimension.

#### The Power of the Internet

This case revealed the crucial role played by the internet as a site for public debate and a means of putting pressure on authorities. As reported by media scholar Xiao Qiang, 'two hours after being posted on China's largest news portal, sina.com, this news item generated 4,000 comments from readers. Almost immediately, the case was being discussed throughout Chinese cyberspace, from official sites to personal Web logs and e-mail groups.'<sup>9</sup> Commentary on the case included not only expressions of outrage over Sun's death and demands for punishment, but also broader complaints about the C&R system and pervasive abuses by law enforcement officials. Online reactions mixed moral judgements with legal

statements referring to the Constitution. The main themes touched on were the need to respect human life and protect citizens from the arbitrariness of power.<sup>10</sup>

However, the complaints did not call the regime into question but rather asked for the Party-State to find solutions and implement measures to guarantee the rights of citizens. These criticisms fell within the framework of the Party's legalistic discourse, which was, moreover, the precondition for their effectiveness. There is no doubt though that the scale and content of the protests expressed on the internet went beyond the limits set by the authorities. Although internet censorship prevents us from speaking of a 'public sphere' in the normative sense of the term, the internet appeared as a space for interaction where individuals could express themselves, exchange opinions, and make critical judgements, as long as the leading role of the Party was not called into question. In short, a 'public' came into being by exerting pressure on the authorities and attempting to influence public policy.

The question is: why did the news of Sun Zhigang's death arouse such public indignation when the press had already revealed many cases of migrants who died in C&R centres due to physical abuse? The answer can be found in the widespread identification with Sun, which was the real force driving this mobilisation.<sup>11</sup> The fact that the media focused on Sun as a university graduate and a skilled employee of a private company was instrumental in allowing a large urban audience to identify with this rural migrant. Ai Xiaoming, a professor at Sun Yatsen University in Guangzhou and one of the first Chinese intellectuals to publicly comment on this case, summed it up well: 'It could have happened to my son, to one of my students or to anyone.'<sup>12</sup> At the same time, the case was an important step in making migrant workers aware of their citizenship status and helped them challenge their identity as mere 'peasants'. In the words of one migrant worker in Guangzhou: 'We are all Chinese and Chinese people beat another Chinese to death.'<sup>13</sup> The Sun Zhigang Case thus marked a rising awareness of universal citizenship beyond the division between urban and rural status.<sup>14</sup>

#### Legal Mobilisation

On 14 May 2003, three young legal scholars in Beijing named Xu Zhiyong, Teng Biao, and Yu Jiang submitted a petition to the National People's Congress (NPC) challenging the legality and constitutionality of the

C&R Measures promulgated by the State Council in 1982 and calling for their repeal. They addressed their request as ‘citizens of the People’s Republic of China’ and relied on the Law on Legislation of 2000, which gave the right to any court and to any Chinese citizen to propose the repeal of unconstitutional laws. In an interview with *The New York Times*, Xu Zhiyong explained that the ultimate goal of the process was to clarify who in China had the right to interpret the law.<sup>15</sup>

Ultimately, the authors of the petition wished to see the establishment of an independent constitutional court separate from the NPC, whose standing committee—rather than the judiciary—had the power to invalidate laws and regulations that conflicted with the Constitution. This purely legalistic approach, which pursued a ‘change from within’, had a truly revolutionary scope, which Xu distinguished from the strategy of the Tiananmen demonstrators in 1989: ‘I have respect for those who raised human rights issues in the past, but now we hope to work in a constructive way within the space afforded by the legal system. Concrete but gradual change—I think that’s what most Chinese people want.’<sup>16</sup> Less than a week after this first petition was addressed to the NPC, a second was written by five well-known jurists from Beijing University calling for the creation of a special commission to inquire into the death of Sun Zhigang and to explore possible reforms of the C&R system. The petition initiated a debate on the history of the C&R centres, their primary purpose, and the ways in which they had facilitated abuse. Both petitions were supported by the media and collected hundreds of signatures online, where they were widely commented on.

Such mobilisation would not have been possible if the Party had not reiterated its wish to promote the rule of law and had not provided the legal means through which this new form of contestation was conducted. As a struggle for ‘the right to defend and assert all citizen rights on the basis of equality and by fair legal procedure’, the Sun Zhigang Case revealed the assertion of Chinese civic citizenship in both conscience and deed.<sup>17</sup>

### A Half-Victory

In May, central government leaders took steps to address the public outcry over Sun’s death. They ordered Guangdong authorities to conduct a thorough investigation. It revealed that guards at the clinic attached to the C&R centre, annoyed by Sun’s insubordination, had forced eight detainees to beat him up as punishment. The trial led to the conviction



of twelve defendants charged with beating or inciting the beating of Sun Zhigang, with sentences ranging from three years' imprisonment to death. In separate trials, an additional six public security officers were convicted of dereliction of duty and sentenced to prison terms ranging from two to three years. Twenty-three other officials received administrative punishments. The harsh sanctions, the swiftness of the investigation, and the trials were not enough, however, to quell concerns about a coverup. Nor did the convictions put an end to public complaints about law enforcement abuses, the treatment of migrants, and the legality of the C&R system.<sup>18</sup>

On 18 June, Premier Wen called a special meeting of the State Council, during which he declared that the 1982 C&R Measures were no longer adequate for the current situation, resulting from the new forms of migration that had developed over the previous twenty years, and announced their repeal. On 22 June, the State Council published new measures to replace the C&R centres with social aid centres, which were placed under the direction of the Ministry of Civil Affairs and its local bureaus instead of the Ministry of Public Security. This was a fundamental change, which emphasised that these centres no longer aimed to maintain public order and limit migration. The implementation of the measures was set for 1 August 2003.<sup>19</sup>

On 21 July, the Ministry of Civil Affairs published an implementation decree confirming that the new centres were intended only for beggars and vagrants who could not afford to support themselves—especially children, the elderly, and the disabled without housing or resources. According to the new rules, people had to be informed of the assistance they could receive in these centres and be 'guided' there, but they could not be forced to attend or stay there (except for minors and people who were incapacitated in some way). The assistance was temporary and could not 'generally' exceed ten days, at the end of which the centre had to organise the care of the person by their relatives, work unit, or the authorities in their place of residence, financing their repatriation if necessary. The decree prohibited the staff of the centres from asking for payments from their charges and their relatives. It also banned organising, 'under any pretext whatsoever', production activities within the premises. In short, the new measures put much more emphasis on the centres as a form of social service and on the rights of the people who were to be accommodated there.

The measures were accompanied by a real political will to implement them. From the date the measures were issued, China's largest cities announced the conversion of C&R centres into social assistance centres.<sup>20</sup> However, by calling a special meeting of the State Council, the premier had bypassed the NPC, which had no opportunity to adjudicate on the legality and constitutionality of the measures as demanded by the three jurists who had lodged the petition. Contrary to the wishes of the jurists, the interpretation of the law remained in the hands of the Party-State (and subject to the decision of one man, in the person of the then premier). The reform thus remained strictly legal and not political, but even in the legal field it remained quite limited. One of the main points made by the jurists in their petition was that, according to the Law on Legislation, coercive measures and penalties involving the deprivation of personal freedom of citizens should be addressed through the law and not by administrative regulation. Had the NPC ruled in accordance with the Law on Legislation, it would have created a precedent, threatening state regulations relating to other forms of administrative detention, such as reeducation through labour. Moreover, had the NPC accepted the arguments on personal freedom, citizens could have used this precedent to challenge the *hukou* system and other administrative control mechanisms.<sup>21</sup>

Premier Wen's handling of the petition of the three jurists avoided a domino effect while giving a timely response to the public outcry, which in turn bolstered the new leadership's legitimacy. The Sun Zhigang Case became an opportunity for the central government to reaffirm its authority over the municipalities and to put an end to practices that were increasingly perceived negatively by the population, and which threatened social order. Nevertheless, by imprisoning several *Southern Metropolis News* journalists, the government of the Guangzhou municipality gave a clear signal that the experience should not be repeated. The editor-in-chief of the newspaper, Chen Yizhong, and two of his colleagues were sentenced to five-month prison terms on unfounded corruption charges. In addition, Chen was dismissed from his post and expelled from the Communist Party in October 2004. He has since been prevented from practising as a journalist.<sup>22</sup> Altogether, this reform illustrates well the definition of the 'rule of law' coined by the government: an adaptation of the system in small touches with the aim of making it more efficient and more legitimate to better maintain it.

## The Aftermath of the Case

The Sun Zhigang Case was a milestone towards the greater integration of migrant workers into cities and their treatment as fully fledged citizens. It sparked momentum for the abolition of the temporary residence permit in the name of equality for all Chinese citizens. Many intellectuals and academics supported reforms ensuring that every citizen could legally reside in their place of choice or that, at the very least, a registration system be put in place that did not make rights conditional on residence.

In the years that followed, Chinese cities gradually repealed some of the many permits that constrained migrants' legal stay in urban areas, such as the work permit, the employment permit, and restrictions on the opening of businesses by migrant workers and their access to housing. The temporary residence permit (暂住证) was replaced with a residence permit (居住证). To this day, migrants are still supposed to register with the Public Security Bureau within months of their arrival in a city, but the deadline has been extended from three to six months, the cost of this permit has been reduced to a few yuan, and the authorities try to enforce this measure by relying more on incentives than on constraints.<sup>23</sup>

Indeed, no more 'strike hard' campaigns have been organised since then, although Beijing authorities periodically reserve the right to 'clean' the capital of its migrants, as was the case before the Olympic Games in 2008 and during the winter of 2017–18, when a fire provided a convenient excuse for redeveloping the districts inhabited by migrant workers. More than anything, the Sun Zhigang Case was a watershed in the development of legal activism and constitutionalism, which led to a series of reforms in the legal system, pertaining to labour issues as well as other fields.<sup>24</sup>