

CSO CASE STUDY 3

Title: From 'Detention and Repatriation' to 'Salvation and administration': A Policy Change towards the urban vagrants and mendicants in China

Country: China

Author: Xufeng Zhu

Introduction to the case

This case describes a transition of Chinese policies and practices on urban vagrants and mendicants. In 1982, China's State Council enacted the Provisions for Detaining and Repatriating Urban Vagrants and Mendicants (the 'Provisions'), in which the major administrative measures can be generalized as 'detention and repatriation'. This policy had been in effect for 21 years by 2003.

Such policy change was triggered by an incident in which Sun Zhigang, a college graduate who worked in Guangzhou (Guangdong Province), was mistaken as an urban vagrant or mendicant and sent to the local detaining and repatriating post because he was found having no means of identification in the street. Three days later, he was beaten to death by the detaining and repatriating staff during the law enforcement process.

On April 25, 2003, Nanfang Daily first brought Sun's death to light. In May 16 in the same year, three legal experts, (Xu Zhiyong from School of Humanity Law and Economics of Beijing University of Posts and Telecommunications, Yu Jiang from School of Law of Huazhong University of Science and Technology and Teng Biao from School of Law of Beijing University of Politics and Law) submitted written statements in the name of Chinese citizen to the National People's Congress (NPC) Standing Committee. They proposed a constitutionality review of the abovementioned provisions on account of Sun's death. In May 23, five other renowned scholars (He Weifang and Shen Kui from School of Law of Peking University, Sheng Hong and Xiao Han from Beijing Unirule Institute of Economics and He Haibo from National School of Administration), also in the name of Chinese citizens, jointly petitioned to the Standing Committee for a special investigation on Sun's case and on the detaining and repatriating system.

Media coverage on Sun Zhigang's death and the active advocating efforts of think tank experts drew the attention of top government officials. And even though the review of constitutionality of NPC finally failed to be launched, the State Council did initiate an agenda to abolish the previous provisions. Nearly two months after the story broke, (June 18) the 12th executive meeting of State Council adopted new Administrative Provisions for the Salvation of Urban Helpless Vagrants and Mendicants and they came to effect on August 1 when the previous provisions were abolished. The new policy uses salvation and administration as its main measures.

The type and extent of policy change

Based on the previous policy (until August 2003), the government set up detaining and repatriating posts for urban vagrants and mendicants and coercively detained and repatriated them to their domicile of origin.

The new policy, however, stipulates that the government shall set up rescue units for urban vagrants and mendicants, and also specifies the responsibilities of unit's administrators. According to the new policy, staff members of public security organs and other government offices involved shall instruct any urban vagabonds or beggars found to seek help from the rescue units where the government will provide accommodation and medical care services.

Some thoughts on the explanation of the policy change

a) The political context

Since the mid 1990's, Chinese people have been increasingly demanding a constitutional reform. The governance ideology of 'administration by law' promotes the practice of 'administration by constitution'. This means that the government administrative organs and other administrative organizations and employees must observe the provisions and essence of the constitution when exercising administrative power and dealing with administrative affairs. In order to identify problems in the system, the government often commissions some research projects to research institutes and encourages well-meaning criticisms from the media.

To prevent rural people from flooding into urban areas the Chinese government has long maintained a domicile policy by which only a minority of people can permanently live there. Such policy has been highly criticized since its birth because it has created a long term bottle-neck of population movement. However, the detaining and repatriating policy survived until recently, due to the Chinese government's consideration for social stability and other factors. These years, since the previous social welfare systems bounded with the urban citizenship has been increasingly marketized, the Chinese government began to consider releasing control of population movement from rural to urban. Therefore, the government is more willing to hear advice relative to the reform of population movement than it has ever been.

b) The ways Civil Society Organizations (CSOs) tried to affect policy change

When Sun's death became a hotspot in the public opinion, think tank experts seized the opportunity window. Instead of submitting research reports on behalf of researchers, as it is often done, they appealed in the name of ordinary citizens to the Standing Committee within their lawful rights, accusing the current policy of violating the constitution (Section 2, Article 90, the Law of the People's Republic of China on Legislation). This was an unprecedented move in the country. Therefore, the motion itself became a center of public attention with the entire social community closely monitoring any subsequent responses from the central government. The government was being held accountable of its own policy of 'administration by law'.

Researchers caught the essential points of the problems existing in the detaining and repatriating policy in their proposal. They based it on the argument that Article 6 in the Provisions stipulates that the urban vagrants and mendicants to be detained shall submit to the detention and repatriation and the rules and regulations of the detaining and repatriating posts, and Article 13 stipulates that the detaining and repatriating post shall duly carry out repatriation; i.e. within 15 days of their detention if their domiciles of origin are in the province where they are detained, or within 30 days of their detention if their

domiciles of origin outside the province where they are detained. These two provisions conflict with the Article 37 in the Constitution which stipulates that the personal freedom of the citizen of the People's Republic of China shall not be violated. Furthermore, according to Section 2, Article 88 in the Law of the People's Republic of China on Legislation, the NPC Standing Committee has the right to revoke such administrative regulation. Thus, the think tank experts' move to appeal to the Standing Committee for initiating review of constitutionality is highly operable.

Another point to be mentioned is that in this case, researchers and the media established a close relationship to cooperate towards the achievement of a common aim. Nanfang Daily, a newspaper famous for its forthright criticisms, first published this incident. And then experts released comments through the rest of the media. At the same time, when legal experts appealed to the Standing Committee, they gave the copy of the appeals to the media. Therefore, these appeals had not only become a step of an administrative procedure but also a hot issue for public opinion. In that way, the social pressures that urged government to respond these appeals immediately had been formed.

c) The nature of research-based evidence

In this case, the nature of the evidence used was highly legal analysis. Researchers focused on the legal implications of the policy while the media focused on its social aspects.

The types of research include:

- Researchers integrated different legal documents to prove one policy illegal.
- Media reported social problem to arouse attentions of public and researchers.
- Researchers submitted a formal appeal to NPC Standing Committee to start policy process.
- Researchers and Media published the content of appeal to give government public pressure.

d) Any international factors

The criticism of Western countries, especially the U.S., against China's human rights is a potential international factor. However, in this case, due to its short duration of only three months, the Chinese government has taken timely measures before the foreign public opinion has the opportunity to become an immediate cause of such policy change.

Lessons learned

This case is a successful effort by researchers and media to change an old policy. From this case study, we are cognizant of several lessons as follows:

- The media usually serves as the first source of information exposing the problems.
- None of critiques from researchers worked before Sun Zhigang. Only when the opportunity window opens, the efforts of policy entrepreneurs make sense.
- China's reform on constitutionalism creates a relatively relaxed political environment for researchers to oppose active policy and to advocate different policy ideas. Specially, appealing to the NPC Standing Committee is an innovative method for starting a policy changing agenda setting.

- The media following up and reporting the development of affairs can give government pressure and urge government to response rapidly.

Author

Xufeng Zhu
Zhou Enlai College of Government Administration,
Nankai University,
300071 Tianjin, P. R. China

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