

HOW MANY LI WENJUANS NEED PROTECTION?

BY FAN BAIHUA

The most widely recognized rights defenders are those who fight infringements of specific human rights. But at a more basic level, whistle-blowers identify and expose incidents of corruption that lie at the foundation of many human rights infringements. These whistle-blowers often find their own human rights in need of defense.

China Central Television's popular "News Investigation" program recently exposed the tragedy of Li Wenjuan of the State Administration of Taxation (SAT) in Anshan City, Liaoning Province. Li suffered retaliation after reporting that Anshan's SAT bureau head was illegally withholding, failing to collect and under-collecting state tax. Her case aroused strong public response on the discussion boards of the Tianya Web site and other similar forums.

I believe that if there were fewer instances such as that of the Anshan SAT, China's tax revenues might increase to a level where the government actually could achieve its stated goal of reducing the gap between rich and poor. Instead, the current system protects the privileged while the common people remain oppressed and exploited.

Anyone who reports these matters is a dead man

Anshan City's steel industry has profited from jumping on the illicit real estate bandwagon, and while local residents have enjoyed a modest increase in income, unemployment and poverty remain significant problems. If corruption in the tax bureau alone could account for revenue losses of hundreds of million of yuan, one can only wonder how much the city has lost as a result of corruption across the board.

The tax evasion exposed in Anshan related largely to state-owned enterprises: In December 2001, Angang New Steel Shares Co. Ltd. underpaid 22 million yuan of value added tax (VAT); Liaoyang Petroleum's Anshan Oil Refinery underpaid 10.71 million yuan of VAT; and Anshan Steel Group's Automation Division underpaid 6.82 million yuan in various taxes. Big enterprises such as these accounted for a total shortfall of 97.62 million yuan in tax revenues.

At the end of 2000, the Anshan SAT allocated one third of the space in its expensive multi-story office to a luxury hotel and used its influence to solicit business for the hotel from private enterprises. This hotel withheld tens of millions of yuan in state tax every year. After Li Wenjuan accused Anshan SAT director Liu Guangming of taking massive bribes and transferring assets abroad, Liu sent people to trail and threaten her, and to watch for any opportunity to frame her. Ultimately Li Wenjuan was berated before an assembly of the SAT's entire staff, and her job was terminated. Li became a virtual vagabond; her marriage broke up, her elderly mother and children were left unattended, and her brother was driven insane by harassment. The entire scenario was a classic case of rule by underworld intimidation.

In May 2002, Li Wenjuan used her real name to report her situation to the Communist Party's Disciplinary Inspection Committee and the State Administration of Taxation, but SAT's top officials betrayed her, and the Anshan SAT branch destroyed evidence and altered documents on a massive scale to thwart investigation. Anshan SAT director Liu Guangming, having failed to intimidate Li Wenjuan, beat her unconscious in an elevator, then dragged her into his office and tried to get her to change her testimony. Ultimately Li Wenjuan was sentenced to a year of reeducation through labor on charges that were amended from "slander" to "disrupting public order by repeated petitioning."

Li Wenjuan felt lucky to have escaped with her life. "The power of individuals is too small," she observed with a sigh. "How can it be otherwise when the Communist Party gives people no democracy or freedom? In fact, the Party needs the people to remain insignificant in order to cover up its own weakness."

One clear-sighted writer posed a series of questions regarding the case: Why did the SAT protect criminals? Why was the SAT director afraid to reveal the conclusions of the investigation to the person who reported the allegations? State policy requires allegations to be investigated within three months; why did the SAT director wait more than a year to take up the case? Why did the SAT send the conclusions of its investigation to the provincial SAT branch? What was the source of leaks in the case? When the informant reported that the Anshan SAT branch was organizing a massive destruction of evidence, why didn't the central SAT take action to stop it? How much state

revenue is lost when the SAT handles cases in this way? Why doesn't the Communist Party's Disciplinary Investigation Committee protect its informants?

Indeed, these are not the only questions this case has raised.

The price paid by whistle-blowers

I feel the deepest sympathy for Li Wenjuan, but after observing the situation in China for so many years, my sense of outrage has been dulled. What happened to Li Wenjuan is the inevitable outcome of the dictatorship of the Communist Party, and is one example among all too many others. Without the existence of whistle-blowers who risk their lives reporting cases of corruption to the Communist Party's disciplinary inspection offices year after year, the Party's anti-corruption campaigns would devolve into nothing more than an element in its internal power struggles. The relevant official reports in recent years show that corruption cases exposed by members of the public made up 81 to 90 percent of China's corruption cases. Since the establishment of corruption reporting centers at various levels, public reporting has become the main impetus for fighting corruption. Moreover, the larger the scale of a corruption case, the more dependent it is on the continued cooperation of informants.

In one notable case, in February 1995 the Party Disciplinary Inspection Committee's petitions office received an anonymous letter from Sanmenxia City, Henan Province, reporting that someone in the state-owned municipal tobacco company had made 8.18 million yuan through the illicit purchase of cigarettes from the Yuxi Cigarette Factory in Yunnan Province. An investigation by the Disciplinary Inspection Committee eventually revealed that the director of the Yuxi Cigarette Factory,



The case against former Beijing mayor and Politburo member Chen Xitong started as a tip-off from a whistle-blower. Photo: Associated Press

Chu Shijian, and his family made more than 70 million yuan through corruption and bribery.¹

In another corruption case that ultimately scandalized the nation, an anonymous letter in June 1994 resulted in the Disciplinary Inspection Committee of Jiangsu Province uncovering an illegal capital-raising fraud scheme by Deng Bing at the head office of Xinxing Company in Wuxi City. Deng was found to have illegally appropriated 3.2 billion yuan with the assistance of Li Ming, general manager of the Xinglong Company in Beijing. But the corruption continued much further up the chain of command, through Li Min, the deputy director of Beijing's Municipal Public Security Bureau, Chen Jian, the deputy director of the General Office of the Communist Party's Central Committee, Zhou Beifang, general manager of the Shougang Steel Company, and finally Beijing's vice-mayor Wang Baosen and Chen Xitong, a Politburo member, Beijing Party Secretary and Mayor of Beijing.²

To the best of my recollection, all cases of official corruption from the municipal level upward have been exposed through tip-offs from members of the public, and none through the Party's own "self-improvement" efforts.

A second fact worth mentioning is that although the procuratorate offers a monetary reward for reports of corruption, almost none of the informants take the trouble to claim it. Should we be surprised that so few informants dare to reveal their identities? After the media identified Nanjing's Lan Guilai³ as the first informant who came forward to claim a reward for reporting corruption, people wondered if he would suffer retaliation. But in fact, Lan had long been unemployed. As it turned out, a reporter interviewed the former director of the Bele Refrigerator Factory, who had been convicted on the basis of Lan's allegations, and quoted him as saying, "It's not that I won't retaliate. It's just that I'm still in prison and can't do anything right now!" Lan Guilai, who came from a poor family in Nanjing, eventually found temporary work, only to be laid off soon afterward.

Retaliation is just another systemic process under the Communist dictatorship. One type is the direct retaliation Li Wenjuan received from the person she had reported against. In another type, the perpetrator takes no action himself, but retaliation is carried out by his relationship network. In the third type, in which the identity of the whistle-blower is made public, the power elite imposes social isolation and exclusion on the whistle-blower. The second and the third types of retaliation are invisible.

A third fact that must be brought out is the difficulty people have, first in reporting an offense, then in gathering evidence, and then in obtaining compensation for the retaliation they suffer. Following are some cases that serve as examples:⁴

Case One:

In 1994, Sui Li was posted to a county tax bureau responsible for collecting taxes from a science and technology park. In the course of a major tax audit in 1995, Sui was in charge of auditing the tax returns of more than 30 enterprises. Having made her way through just a handful, she identified underpaid and evaded taxes totaling millions of yuan. It turned out that the

700-odd enterprises covered by the bureau enjoyed tax shelters as high-tech enterprises, even though they did not qualify for that category. Sui reported the matter to the bureau's director, but he discouraged her from looking into the matter further and advised her to "adapt to the situation." In December 1995, Sui's work unit transferred her against her will, and in desperation she made her allegations public. For this, she paid a heavy price, first being demoted from a tax collection manager to invoice issuer, and finally being deployed to the bureau's labor union. Then she discovered that her home phone was being monitored (a common practice under a dictatorship, and facilitated by a state-run telephone company). On September 30, 1997, Sui's work unit had her committed to a mental asylum. Recounting these experiences reduces Sui to tears, but she says, "I can't leave things like this!"⁵

Case Two:

When recalling the seven years he spent reporting a corruption case, Li Changtai observed with feeling, "My hair was black when I made my first report, and now it's gray, but there's still no conclusion!" In 1991, the northeastern transportation company Li worked for was restructured into a private company, and operation of the company's vehicles was contracted out to individuals. Li Changtai felt that the company should register its restructuring with the local Industrial and Commercial Bureau and tax bureau, but the company continued to report and pay its taxes as a state-owned enterprise. On March 19, 1991, Li reported the offense in person to the director of the county SAT, but met with a cold reception. Even though only the SAT director had been present when he submitted his report, his work unit soon learned of it, and he lost his job. In December 1991, Li went back to the SAT office to learn the result of the investigation and found that the transportation company had paid out only 5,000 yuan in back taxes. The head of the tax office gave Li a voucher to receive a reward, but Li, who had been jobless for seven years, told a reporter, "When the bulk of the tax actually owed has not been paid to the state, I feel ashamed to collect any reward."

Case Three:

Wang Rizhong was rewarded 2,000 yuan for his corruption complaint, but he never claimed it. Using his own name, he reported on nine departments in his work unit, but the local SAT office only carried out a cursory investigation on one department. Wang alleged a revenue shortfall of three million yuan, but only 570,000 yuan was identified through investigation. In the meantime, Wang's family was rendered penniless as he went without pay starting in 1997 and accumulated 70,000 yuan in debts. He has lost his home, his child dropped out of school, and he found himself subjected to monitoring and nearly framed for a crime. "Being a whistle-blower is too hard!" Wang sighed to a journalist. He says no one understands him, including his family, and everyone blames him for his stupidity. "But now that I've started, there's no turning back. I only did it because I believe in my country."⁶

Case Four:

Allegations of tax evasion by the Enwei Conglomerate were not promptly handled, but no time or effort was spared in persecuting the whistle-blowers. The former deputy manager of Enwei's finance department, who was one of those making allegations against the company, had his pay suspended, his wife was laid off, and his children were forced to drop out of school. Another man who took part in reporting the company's offenses, Rong Jinming, suffered even more. A founder of the company, he had been the general manager of Enwei's women and children's health products joint venture in Beijing, as well as a local People's Congress delegate in Neijiang City, Sichuan Province.⁷

Case Five:

The most breathtaking battle between an informant and a subject of allegations occurred in the case of Harbin's International Trade City. Officials at the level of section chief or higher were involved in this corruption and bribery conspiracy, which ultimately implicated more than 140 individuals. Fifty-one-year-old Yu Xinhua first made an anonymous report against Zhang Tingpu, the "head honcho" of the International Trade City. The news leaked out, and when Yu was identified as the whistle-blower, Zhang Tingpu immediately launched retaliation against her. Yu Xinhua plucked up her courage and went to Beijing to petition the Party's Disciplinary Inspection Committee 13 times. But she was subjected to close surveillance in Harbin, and as she was leaving work on the evening of November 21, 1994, Yu was attacked by two men and slashed with a knife. More than 10 years later, the former mayor of Harbin, Zhu Shengwen, who took the fall in the case, suddenly committed suicide by jumping out of a prison window. His wife has persistently appealed for justice in his case, but without result.⁸

The key is not whether to report corruption anonymously, but how to implement political and legal mechanisms to protect the rights of whistle-blowers.

Hearing these horrifying stories, people say, "Don't report corruption!" After reading about what Li Wenjuan went through, some netizens have observed that China has a multitude of corruption cases, but too few people reporting them. When a person tries to submit an anonymous report, his identity is almost sure to be uncovered through the efforts of the police, the procuratorate and the court, which in the meantime do nothing about the reported corruption. The key is not whether to report corruption anonymously, but how to implement political and legal mechanisms to protect the rights of whistle-blowers. After the case of Hebei Provincial Party Secretary Cheng Weigao's eight-year campaign of retaliation against Guo Guangyun was exposed,⁹ people said, "It's not just in Hebei Province!" In 1998, I tried to look into a massive fraud case in Jiangsu Province. When I found some of the victims, who had by then retired, none of them was willing to cooper-

ate. They said the police watched over their every move and that the case involved provincial leaders, so it was useless to petition the central government.

How many Li Wenjuans need protection?

Li Wenjuan is a whistle-blower, but the method she chose to report crime is not the only one available. Peasants who trudge their way to Beijing with their petitions year after year are also whistle-blowers. Urban residents who seek redress for unfair treatment by running back and forth between labor arbitration agencies and courts are also whistle-blowers. People with a sense of justice who run from one government office to another to expose doctors who disregard human life, schools that charge unauthorized fees, monopolies that plunder resources, are also whistle-blowers. The ordinary people who gather along roads and fields to prevent forcible land seizures are whistle-blowers, as are the laid-off workers who engage in protests over official profiteering in the sale of state-owned enterprises and the lack of compensation for workers.

According to official reports, the number of petitions over various kinds of cases has reached 30 million in recent years, and mass protests exceeded 100,000 in 2005. These also qualify as whistle-blowing.

In my view, all the reasonable and well-founded criticisms posted by netizens and expressed through newspapers, magazines, books and television—and even the revelations and criticisms of some international organizations—are whistle-blowing of the most important, basic and rational kind.

But it is well known that many peasants, workers, intellectuals and other people with a sense of justice have suffered discrimination and reprisals, including withheld pay, dismissal, beating, arrest and detention or imprisonment, as a result of their petitions, protests and published criticisms.

The case of Li Wenjuan has highlighted anew the need to strengthen protection for whistle-blowers, with many people calling for a special “Whistle-blower Protection Law.” But I have doubts about the value of drafting such a law, given that the main reason that whistle-blowers lack long-term protection is that existing laws are consistently ignored.

Article 41 of China’s Constitution states, “Citizens of the People’s Republic of China have the right to criticize and make suggestions regarding any state organ or functionary. Citizens have the right to make to relevant state organs complaints or charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty; but fabrication or distortion of facts for purposes of libel or false incrimination is prohibited. The state organ concerned must deal with complaints, charges or exposures made by citizens in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures or retaliate against the citizens making them. Citizens who have suffered losses as a result of infringement of their civic rights by any state organ or functionary have the right to compensation in accordance with the law.”¹⁰

Article 404 of China’s Criminal Law states, “Work personnel of tax organs, who, because of favoritism and malpractice, fail to impose or impose less mandatory taxes resulting in serious losses of state revenues, shall be punished with imprisonment or criminal detention of less than five years; or—in cases causing extraordinarily serious losses—with imprisonment of over five years.”¹¹

However imperfect these laws may be, they are still applicable, so why have they not been applied to the cases I have described?

NOTES

1. For more on the case of Chu Shijian, who led China’s well-known Red Pagoda tobacco company, see Seth Faison, “China’s Paragon of Corruption: Meet Mr. Chu, a Hero to Some, an Embezzler to Others,” *The New York Times*, March 6, 1998.
2. For a quick summary of this case, see Jin Yaoru, “Anti-corruption” Conviction Reveals Communist Party Power Struggles,” Association for Asian Research, April 24, 2004, <http://www.asianresearch.org/articles/1955.html>.
3. Lan Guilai, who reported a corruption offense in Nanjing, was voted one of the top ten figures in the development of Jiangsu’s democratic and legal system from 1985 to 2005. See “Top Ten Figures in Legal System in Jiangsu in 20 Years,” China Legal Publicity, http://www.legalinfo.gov.cn/english/LawPopularization/2005-12/INFO_20051202.htm.
4. These cases are mentioned in an article in the official People’s Daily Online, “Yi gongheguo gongmin de mingyi jubao” (Whistle-blowing in the Name of Citizens of the Republic), June 27, 2000, <http://www.people.com.cn/GB/channel4/966/20000627/119847.html>.
5. For an official account of Sui Li’s protracted lawsuit against the telephone company, see “Sui Li zhuanggao changping dianxinju: guanshi shule dan ta bu sixin” (Sui Li Sues Changping Telecommunications Bureau; Sui Loses Lawsuit but Not Hope). People’s Daily Online, December 29, 2000, <http://www.people.com.cn/GB/channel5/31/20001123/323994.html>. Sui Li protested her treatment on an Internet bulletin board in 2003: <http://bbs.eastday.com.cn/allforum/9/12/0009121500556.htm>.
6. Wang’s pursuit of his case is detailed on a number of Web sites, including Liaohai.com: <http://www.liaohai.com.cn/liaohai/chinese/08/show.asp?t=484>.
7. An alternative version of the story, in which Rong Jinming is cast as a corrupt embezzler, is presented in a report on the Web site of the Asian Development Bank at <http://www.adb.org/Documents/Reports/TAR3543/annex2.pdf>.
8. For more on the Harbin case, see Melinda Liu, “Stirring Up a Hornet’s Nest,” *Newsweek International*, November 17, 2003, <http://msnbc.msn.com/id/3403544/>.
9. See the Web site of the China Internet Information Center, “Guo Guangyun: Eight Years Fighting Corruption,” <http://www.china.org.cn/english/2003/Sep/74544.htm>.
10. As translated on the Web site of LawInfoChina.com, <http://www.lawinfochina.com/dispfree.asp?db=1&id=3437&keyword=constitution>.
11. As translated on the Web site of Colaw.cn, <http://www.colaw.cn/findlaw/crime/criminallaw3.html>.