

## Bilingual Legislation in Trilingual Macau Special Administrative Region, China

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### **Abstract**

*Disregard of the majority of Chinese population, Portuguese has once been the only recognized language of Macau under the Portuguese administrative from mid-17<sup>th</sup> Century until the retrocession to China in 1999. Albeit the Portuguese administration passed a Decree recognizing the official language status of Chinese together with Portuguese before the handover and making Macau a bilingual state, English seems to be the third or even important language universally applicable in this tiny enclave. Due to the gradual infiltration of the pluralistic culture of Hong Kong, an ex-British colony in the Far East, English has been universally used by local Macau Chinese. Most of the local Chinese who can write and speak English more fluent than that of Portuguese making one queries the official status of English. After the increase of gaming franchise in early 2000's, the applicability of English has become more explicit over time. It is claimed that Macau is a trilingual state in spite of the non-official status of English.*

**Keywords:** bilingual legislation, trilingual, official language, localization

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## **1. Introduction**

China is a diversified country consisting of fifty-six races whereas Han race is the dominant majority. Citizens in China can use their own dialect in daily communication while Putonghua is the sole official language. Government officials as well as lay people normally use Putonghua in public and social dialogues especially to those who are visiting other cities inside China where their native dialects are not commonly spoken. Notwithstanding, Hong Kong and Macau are particularly different in this ancient piece of land. Because of the historical background, Macau was under colonial administration since mid-17<sup>th</sup> Century, and Hong Kong was under colonial rule since mid-19<sup>th</sup> Century, English and Portuguese were then unavoidably plunged into these two tiny enclaves as the official languages of Hong Kong and Macau respectively. Meanwhile, official language regulations could not replace or rule out the reality of mother tongue used by local Chinese from generation to generation. History reveals that a deep-rooted national culture including language can hardly be substituted simply because of the change of sovereignty, even on the southern part of China where Cantonese is continuing to be the mother language for many centuries upon the shifting of ruling dynasties. What makes it more interesting to observe that Macau, being a former Portuguese enclave in the Far East and would be returned to the People's Republic of China (PRC) in 1999, has exercised trilingual practice since the 1960's. Soon after the signing of Sino-Portuguese Joint Declaration in 1987, the transition period started until the handover on December 20, 1999, the process of localization should be completed during this period. In 2002, Macau government decided to open the gaming franchise from 1 to 6, all these 6 licenses were possessed by the American and Hong Kong investors to whom English was the first or second language and that British Common Law legal system was the foundation of their judicial system. All these investors would require to use English and Common Law in their daily practice simply because they were the train-head investors and Portuguese language and legal system were strange to them. This paper tries to analyze the problems of translation of laws which is comprising an important part of localization.

## **2. The Process of Localization of Chinese as one of the Official Languages**

Localization is a crucial part of decolonization of a colony from the sovereign state. Despite the decolonization of former Portuguese colonies in African were marked by a hurry retreat (Lo, 2008, Jeong and Jeong 2004), Macau, a historical and last colony of the Portuguese administration in Asia appeared in a reverse way in terms of decolonization. The Sino-Portuguese Joint Declaration (JD) laid down a 13-year long transition period beginning from the signing of the JD until the night of the handover, the Portuguese Macau government possessed the obligation to fulfill this promise. Decolonization is a process in which colonial policy-makers delegate more administrative and

political power to indigenous people. Usually this process is marked by more autonomy for local institutions, such as a legislature, and by recruiting local people into the civil service (Yee and Lo, 1991). The Portuguese administration in Macau should start to implement the process of localization in this enclave. Notwithstanding, the process of localization is far from normal progress. The process of localization includes, in general, the localization of the (1) personnel in the civil service; (2) recognizing of Chinese as part of official language; (3) translation of laws from Portuguese to Chinese; and (4) training of local legal practitioners (Yee and Lo, 1991, pp. 313-317). Because of the trilingual problem, the issue of legal related matter became one of the headache problems among those aspects of localization.

### **3. Trilingual problem in a Chinese Dominated Society**

In spite of the reality that Cantonese was the major language of Macau since its occupation in mid-17<sup>th</sup> century, the Portuguese administration had paid very little effort to localize the speaking of Portuguese in this enclave. Portuguese was alien to the local Chinese for more about four centuries, and that the Portuguese, disregard of their ruling status in Macau, was the minority and Portuguese language was a minority language even though it was important in official communication (Edmonds and Yee, 1999). Ever since Stanley Ho, a gambling tycoon of Macau, won the franchised of gaming operation in 1960's, the plunters in Hong Kong became the major source of income on the gaming tables (Lo, 2005). Since Hong Kong was a British colony for more than one hundred year before Ho's succession of the gaming franchise, English was an official language of Hong Kong. What made it so different was that English was quite commonly use in Hong Kong, and many local Chinese could speak English and took English as their second language since the primary education especially for those who wanted to join the civil service, a higher reputation and turnover job in Hong Kong's colonial era (Lau 1991; Miners 1998). Ho was very successful in operating the gambling industry making it becoming the train-head industry of Macau since the 1970's, the Portuguese administration in Macau relied on this industry so much and such reliability was even harder until today. Because of such specific economic consideration, Stanley Ho, as well as the Portuguese Macau administration, incorporated so many Hong Kong practice into Macau, including the use of language and legal terms. In fact, Hong Kong was very influential to Macau not only because of economic factor, but also because of geographical issue, pluralistic TV programmes infiltration, Chinese demographic issue and colonial status for centuries. Most of the Macau people took Hong Kong as model to learn. Secondly, Portuguese Macau government had made no intention to promote Portuguese education to local Chinese, and therefore, the only choice of receiving second language education to the local

Chinese was English instead of Portuguese.<sup>2</sup> Chinese and English then became the major language in Macau's Chinese society whereas Portuguese, disregard of its governing status, became a minority language basically used within the small-circle Portuguese community (Pina-Cabral, 2002).

The cultural influence from Hong Kong pushed Macau into a trilingual society. Whereas Portuguese was the official language used by the Portuguese administration in Macau, majority local Chinese took Chinese as the universal language supported by English as their second language. As the increasing influence of Hong Kong's culture and economic reality, the use of English became part of important norms to local Macau people's life. And that arouse a problem of trilingual practice in this tiny enclave.

#### **4. Linguistic Problem and the Translation of Laws in a Trilingual Society**

Localization of law was part of critical ingredient of decolonization. According to the requirement of localization, all the legislation should be translated to Chinese and such process should be completed before the handover. There was no evidence could be traced of how much and to what extent the effort the Portuguese Macau government paid to finish the localization of law as promise from the JD. Instead, the reality showed that there was a big problem to translation, i.e. the lack of bilingual expert who could be able to translate Portuguese law to Chinese.

##### *4.1 Lack of Bilingual Education*

A tragic fact revealed that there were only two local Chinese who were fluent in speaking Chinese and Portuguese, making it tremendously difficult to do the translation of law, or even instant interpretation in several official meeting with the China official.<sup>3</sup> In fact, Macau was very influenced by Hong Kong including the use of wordings. Interviewees explained that Hong Kong was the only source of entertainment the local Macau Chinese received because the Macau TV produced very poor quality programmes and because of the outstanding and pluralistic programmes produced by Hong Kong TV stations, so that many Macau programmes resembled the Hong Kong TVs, including the

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<sup>2</sup> Full report of language issue in colonial Macau, please watch "Macau: back to the Motherland", The Pearl Report, Episode 3, TVB HK.

<sup>3</sup> Personal interview. April 9, 2018 at the old campus of the University of Macau. A graduate from the University of East Asia, Macau in the late 1980's explained that the ill-administration in language education in the colonial era could not produce bilingual students to deal with Portuguese/Chinese documents and translations as well. The name of the University of East Asia had been changed to the University of Macau in 1991 after the change of ownership from the private to public.

use of Chinese and English words. Further, local translators would like to pick up the Hong Kong style wording from the TV programmes or daily connections applying to local linguistic culture, therefore, the translation of local laws incorporated so many legal terms using in Hong Kong.

On the other hand, translators also liked to adopt legal terms of deriving from Taiwan legal system into the local legal documents. It was because the foundation of Portuguese laws were very similar to that of Taiwan legal system. Both the legal system of these two places were using European Continental Legal system, so the translators found little problem while applying the Taiwan terms into local legal document.<sup>4</sup> However, the use of Taiwan legal terms was not as common as the Hong Kong terms mainly because of the weak cultural exchange with Taiwan and the low profile of Taiwanese activities happened to exist in Macau.

Therefore, the lack of Portuguese education to local Chinese pushing them to adopt and apply the bilingual (English and Chinese) Hong Kong culture into local people's daily life in multiple perspectives, including the major task on translation of legal documents from Portuguese to Chinese (Yee, 1999).

#### *4.2 Development of Recognizing Chinese as Official Language*

Although more than 90% of the Macau population of Macao were Chinese during Portuguese administration in Macau, the Portuguese did not formulate any provisions on the formulization of Chinese as an official language. When the JD signed, the Portuguese realized the gradual important of the use of Chinese in official matters, and because of the British Hong Kong government had already passed a law to confirm Chinese together with English were the official Language in colonial Hong Kong in early 1980's, so the Portuguese administration was under pressure from China to legalize Chinese as one of the official language in Macau.

In 1989, the Portuguese Macau Government issued the Decree No. 11/89/MEstabelece o Uso da Lingua Chinesanos Diplomas do Governo (Establishing the Use of the Chinese language in Government Documents), firstly making provisions of the official status of Chinese and Portuguese.<sup>5</sup> The Decree regulating that all laws, decrees, orders, and instructions with legislative and regulatory

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<sup>4</sup> Personal interviews with two government official working for Macau government since early 1990's. October 21, 2017.

<sup>5</sup> Full legislation, please see *Estabelece o uso da línguachinesanos diplomas do Governo*, <http://bo.io.gov.mo/bo/i/89/08/declei11.asp>, 20-4-2018, only Portuguese and Chinese versions provided.

nature issued in Portuguese by self-regulatory authorities in the region shall be published together with the Chinese translation version; all legal proposals, decree drafts and instruction drafts by hearing the Consultative Council shall be proposed in both Portuguese and Chinese; the residents shall use Portuguese or Chinese to communicate with the public authorities of the region, including the autonomous authorities and municipal institutions, or relevant civil servants and public officers; and the all printing documents, forms and similar documents printed by the public authorities including the autonomous authorities and municipal institutions must be in Portuguese and Chinese. This decree did not formally endow Chinese with official status, instead, it only pointed that "because of most of the people in this region use Chinese, this status of Chinese shall be gradually increased".<sup>6</sup> Moreover, Clause 3, Article I of the Decree stated that where doubts arising from the understanding of Portuguese version and Chinese translation version or the Chinese version, the Portuguese version should prevail.

In 1991, the Portuguese Macau government issued the Decree No. 455/91 *Atribui à língua chinesa estatuto oficial, idêntico ao da língua portuguesa* (Giving the Chinese Language an Official Status, Identical to the Portuguese Language), Chinese was then endowed with official status in Macao.<sup>7</sup> As the decree was issued by the Portuguese Macau government before the handover, its effectiveness in Macao was terminated automatically upon the establishment of the Macao SAR on December 20, 1999. Interestingly, the Macao Portuguese Government issued Decree No. 101/99/M *Aprova o Estatuto das Línguas Oficiais* (Approval of the Status of the Official Language) on December 13, 1999, provided that "both Chinese and Portuguese are the official languages of Macao with the principle of equal dignity".<sup>8</sup> This Decree contained 14 articles giving equal status to Chinese and Portuguese in each public sector including the legislative, administrative and judicial fields, in a sense that Portuguese was endorsed and guaranteed to have the equal right with Chinese after the handover.

From the above historical review, it is clearly found that the laws in Macau, including the Basic Law and Administrative Regulations and all other laws should be published in both Chinese and Portuguese upon the establishment of Macau Special Administration Region (MSAR) after the

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<sup>6</sup>Ibid., *The Preamble*.

<sup>7</sup>*Atribui à língua chinesa estatuto oficial, idêntico ao da língua portuguesa*, <http://bo.io.gov.mo/bo/i/92/02/decretolei455.asp>, 20-4-2018, only Portuguese and Chinese versions provided.

<sup>8</sup>*Aprova o Estatuto das Línguas Oficiais*, <http://bo.io.gov.mo/bo/i/99/50/declei101.asp>, 20-4-2018, only Portuguese and Chinese versions provided.

handover. According to Article 11 of the Macao Basic Law, no laws, decrees, administrative regulations and normative acts of the Macao SAR shall contravene the Macao Basic Law. Therefore, even Decree No. 101/99/M is still identified as valid, its status is obviously lower than that of the Macao Basic Law, and Article 9 of the Macao Basic Law shall be regarded as the most fundamental basis for standardizing the official language of the Macao SAR. Since then, Macao has started the process of bilingual legislation. However, the language issues and the lack of relevant talents started to be the major concerns and discussions about the bilingual legislation. Therefore, it is time to discuss how bilingualism affects the writing of laws

## **5. Linguistic Problem and Bilingual Legislation.**

In Macao, bilingual legislation means that a set of laws is drafted, passed, promulgated, implemented, amend and annulled in both Chinese and Portuguese languages. Both texts have the same legal effect. In terms of practical operations, there are two modes of bilingual legislation. The first mode is to draft, pass, promulgate, implement, amend, and annul the laws in both the two languages simultaneously. In this process, the differences between the two languages in the expression of the texts should be coordinated and harmonized, and to use the existing Chinese and Portuguese expressions as suitable as possible to express the same thing. If no corresponding words could be found, another expression should be used. When writing the legal texts, Portuguese texts are in accordance with Portuguese textual expression format while Chinese texts are in accordance with Chinese textual expression format. The second model is based on one language being supplemented by another translated language. The translated texts can be passed together with the passing of the original texts. This method can be more relatively efficient. One may think that the second model is not bilingual legislation, but instead it is a legal translation. But it is actually bilingual legislation because both the original version and translated version are effective at the same time.

### *5.1 Question of Overriding Principle of Bilingual legislation*

Disagreements can be found between Chinese and Portuguese legal provisions. let's have a look on the laws and decrees. As the Article 1 of the Decree No. 11/89/M mentioned that where there were doubts in the understanding in the Portuguese version and the Chinese translation version or the Chinese version, the Portuguese version shall prevail. Although this Decree was substituted by the Decree No. 101/99/M that the Portuguese legal position and Chinese legal position would have the same effect, there was a disagreement between Chinese and Portuguese legal provisions. As the Article 5 of Decree No. 101/99/M laid down several principles of the interpretation of legislative acts, that:

- 1) The normative acts shall be unified, and any of its versions in the two official languages shall be deemed credible and presuming that they have the same meaning and scope;
- 2) The interpretation of the acts referred to in the preceding paragraph may be made in general terms of laws, using any of its versions;
- 3) In the case of divergences of meaning between the versions of a legislative act, all the meanings contained in both versions shall be adopted, taking into account the normal rules of interpretation of the law or, if that is not possible, to adopt the meaning which is the best meet with the objectives pursued by the act.

From the above legislations, it is not clearly mentioned the binding status of Portuguese and Chinese when disagreement of meaning happened. The courts can have the discretion to select Portuguese or Chinese version in interpreting the law. However, in case of divergence of meanings between the two versions, the courts can explain the rules they judge commonly used in law, adopt all the situations contained in bilingual texts and adopt the best meet meaning of purpose of the act to interpret the law if the above two methods together cannot help to solve the problem.

### *5.2 Trilingual Problem in Bilingual Legislation*

There are still some difficulties arising from trilingual reality in bilingual legislation in Macau. First, the difficulty in solving language differences and Portuguese translation. Despite the convergence of different cultures and languages, the fundamental differences in Chinese-Portuguese language are problematic, such as the short forms of corresponding words between Chinese-Portuguese language. Polysemy in Portuguese is very common as it is characterized by the accumulation and combination of words just like the meaning of the word can be different according to the context. However, Chinese language is different as each word can accurately express the meaning. The readability and understandability of translating legal texts especially of several vague terms are affected.

Second, different translator may have different ways in applying wordings, especially for those who are affected by the Hong Kong British linguistic legacy. They are affected by the Chinese translated legal terms from the British Common Law system and adopt those words into Macau's European Continental legal system. Like, for example, sexual harassment is a verbal term commonly used by Hong Kong media to describe minor or serious sexual assault, while sexual assault is a legal term in law. MSAR passes Sexual Harassment Law in 2017 in which the criminal act of this law is similar to that of sexual assault. Actually, sexual assault can clearly identify the actions taking by the criminal against the victim whereas sexual harassment can hardly be proved as serious as sexual harassment.

Third, consistencies of legal concepts between Portuguese and Chinese are problematic. The interpretation of meaning in Chinese law may not be completely consistent with the interpretation of the legal meaning of the Portuguese terms, and that the consistency of legislative information in the process of simply translating one language to another is not clear. For example, the term "bens" in Decree No. 122/84/M and No. 64/84/M were translated into 'property' and "financial loans" respectively; or in Article 496 of the Civil Code, the Portuguese version used the word "veículo" referring to "transportation", while the Chinese version used the word "vehicle" referring to the same thing. Certainly, there are some differences between vehicle and transportation.

Fourth, the lack of fluent bilingual legal experts hinders the bilingual legislation. In order to solve the problems of bilingual legislation, a suitable person should be one who could understand the professional techniques of European Continental Law and translation. Otherwise, Judges may not be able to know if the actual meanings of the translated legislations are consistent with the original meaning of the legislations. For instance, judicial bodies such as judges would not read and compare the two versions of legislations while hearing cases or even giving verdicts. Therefore, they will have different interpretations to the same law because of applying different versions. Therefore, the courts may need to take into account the confidence of legal workers or practitioners of their proficiency in both Portuguese and Chinese. Nevertheless, it seems to be unrealistic in real-life judicial practice.

Fifth, there is a lack of local Chinese with sound training of Chinese literature background. As for the poor allocation of resources in Chinese education by the Portuguese administration for more than 400 years, education in Chinese language and rhetoric are far from enough. People can learn Chinese through the education provided by private schools and media from Hong Kong, including the textbooks and education systems. They are influenced by Hong Kong culture so much to the extent that they would apply the use of words including English legal terms from Hong Kong. Due to the fact the influence from Hong Kong makes the local Macau Chinese who can handle English much more better than Portuguese, including Chinglish (i.e. Chinese English, referring to those Chinese words inaccurately translated from English). Fair in Chinese rhetoric, lacking bilingual experts and prevailing with trilingual history may obstruct the smooth development of bilingual legislation in Macau.

Sixth, casino operations as the train-head of Macau's economic growth induces more rooms to the recession of government policies to satisfy those investors' needs. In terms of tax income, casino operations contribute about 80% tax income from the state-wide. In fact, the foreign investors have

realized their ascending role in Macau's economy. They had requested Macau government to, soon after the bidding of gaming franchise, pass several laws and regulations resembled their practice in Las Vegas and Macau government had issued several laws and administrative regulations in response to the investors' requests (Kwong,2011).In addition to the requested laws and regulations, Macau government has to produce trilingual documents (English, Portuguese and Chinese) dealing with those investor, such as the concession of franchise contracts, and that the legal validity of these trilingual documents are equal. Ironically, economic reality turns this SAR from official bilingual system to unofficial trilingual system.

## 6. Conclusion

The success of bilingual legislation lies in the sufficiency of high standard of bilingual legal professionals who can manage Chinese and Portuguese. Although Macao has developed a specialized translation market recently, but inter-disciplinary trainings of bilingual legal expertise are far from enough. Instead, trilingual issue is still bothering Macau to the extent that the normal progress of the translation of laws may be undermined. As Macauprefers to play the roles of World Centre for Tourism and Leisure, as well the Economic and Trade Cooperation Platform for China and Portuguese-speaking Countries, the government has taken great concerns on the training of bilingual translators and interpreters. A series of policies and investment on talents education are promulgated. Training of bilingual legal talents itself is not an easy mission to complete, more efforts and practical policies should be made to attain these goals. Further, economic reality drives Macau to unofficially exercise trilingual practice in spite of bilingual legal system.Among those historical legacies in this ex-Portuguese enclave, the issue of trilingual social norms may be one of the most critical issues in bilingual legislations pending to resolve.

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