

A Study on the Question of Portuguese Being an Official Language

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In May 2012, the Director of Public Administration and Civil Service Bureau of the Macao Special Administrative Region (SAR) Government issued a circular entitled “Atenção com a divulgação de informações ao público (Attention in Release of Information to the Public)”. It declared that, in accordance with Article 9 of the *Basic Law of the Macao Special Administrative Region of the People’s Republic of China* (hereinafter as “the Macao Basic Law”) and Decree No. 101/99/M *Aprova o Estatuto das Linguas Oficiais (Approval of the Status of the Official Language)* by the former Portuguese Macao Government, “both Chinese and Portuguese as official languages are to be used by government departments when releasing information to the public.” This measure again gave rise to a prolonged debate over the question of how to ensure “Portuguese being also used an official language” in the Macao SAR. The author intends to offer an analysis on the topic by drawing upon interpretations of the Macao Basic Law, references in substantive laws, legal logic and factors of political reality.

I. Interpreting Provisions of Article 9 of the Macao Basic Law

Article 9 of the Macao Basic Law stipulates, “In addition to the Chinese language, Portuguese may also be used as an official language by the executive authorities, legislature and judiciary of the Macao Special Administrative Region.” This provision codifies the commitment by the Chinese Government in the *Joint Declaration of the Government of the People’s Republic of China and the Government of the Republic of Portugal on the Question of Macao* (hereinafter as “the Sino-Portuguese Joint Declaration”) that states in Article 2 (5) “In addition to Chinese, Portuguese may also be used in organs of government and in the legislature and the courts in the Macao Special Administrative Region (second sentence).” The provision in the Macao Basic Law is identical to that in the *Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China* (hereinafter as “the Hong Kong Basic Law”), replacing “Hong Kong” and “English” with “Macao” and “Portuguese”. The Hong Kong Basic Law codifies the commitment as defined in the fourth paragraph of Section I of “Elaboration by the Government of the People’s Republic of China of its Basic Policies Regarding Hong Kong”, Annex I of the *Joint Declaration of the Government of the United Kingdom of Great Britian and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong* (hereinafter as “the Sino-British Joint Declaration”), which states that “In addition to Chinese, English may also be used in organs of government and in the courts in the Hong Kong Special Administrative Region.”¹ Despite differences by degrees in the lexicon, these four texts reflect the same principle in systematic design and legal logic, with gradually optimized wording.

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1.1 Interpretation by former members of the Macao Basic Law drafting committee

Xiao Weiyun pointed out in session 16 of his lecture series that “the two sentences indicate that, on the one hand, clearly both Chinese and Portuguese can be used and have official language status, and on the other, implicitly the Chinese language has a dominant status. It is quite clear... and goes without saying that Chinese should be used as a dominant language in Chinese territories. Some may think this is discrimination against and neglect of the Portuguese language. Such a view is wrong. Instituting clear legal provisions to allow use of a certain foreign language in government organs of a special administrative region demonstrates sufficient flexibility taking into account of actual situation. How can this be seen as discrimination against that language?”² Wang Shuwen also pointed out that “this clause states in principle the official languages to be used by government organs of the Macao SAR, which is an inalienable part of the People’s Republic of China where 98% of the local population are Chinese. It is a matter of course that Chinese is used as a dominant official language by the executive, legislative and judicial organs of its government.”³ Another scholar further noted, “Differentiating the primary and secondary languages reflects to a certain extent the status of Hong Kong and Macao as special administrative regions of the People’s Republic of China and conforms to the actual condition and needs of the Chinese residents who comprise 97% of the total population of Hong Kong and Macao.”⁴

1.2 Treatment by the Standing Committee of the National People’s Congress (NPC) of provisions in previously existing laws of the SARs concerning bilingual language standard

At the time of the signing of the Sino-Portuguese Joint Declaration, a Chinese/Portuguese bilingual standard did not exist in any sense. Only during the transition prior to the Macao government handover when the Chinese side raised the question of “according Chinese the status of official language” did the Portuguese side begin to pursue “Chinese/Portuguese bilingualism” in earnest. On 20th February 1989, the then Macao Governor issued Decree No. 11/89/M *Estabelece o Uso da Língua Chinesa nos Diplomas do Governo (Establishing the Use of the Chinese language in Government Documents)* which stated, “With exceptions only granted by the Macao Governor based on sufficient reasons for specific occasions, all laws, decrees, orders and instructions of legislative and regulatory nature published in Portuguese by administrative organs of the region should be printed together with a Chinese translation.” “Either Chinese or Portuguese can be used by any resident to communicate with the various public services of the administration of the region including self-government and municipal organizations, or related public officials and employees.” “All documents, forms or similar documents released by public organs of the region including self-government and municipal organizations should be printed in both Chinese and Portuguese.” However, “equal official status of Portuguese and Chinese languages in Macau will be achieved gradually and progressively, in accordance with the conditions for doing so.”⁵ On 23th December 1991, the then President of Portugal signed into effect Decree-Law 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)*, under pressure from the Chinese government in proactive diplomatic consultation, which confirmed, “Chinese language has the same official language status and legal effect as Portuguese in Macao.”⁶ Following this, the Portuguese Macao administration issued a series of normative regulations concerning “bilingual recruitment requirement” and “bilingual language proficiency assessment” for civil servants and judicial officials in particular.⁷ Its intent was to make it possible for the Portuguese language to retain the same legal status and effect as the Chinese language in Macao, by giving the same to the Chinese language through preemptive legislation. Thus, it claimed “Chinese and Portuguese as two official languages have equal legal status” in a push for bilingualism. At one point, it even

mandated that both official languages be taught in all public schools. On 13th December 1999, just one week prior to the end of Portuguese Macao administration, the then Governor of Macao issued Decree No. 101/99/M with a view to reaffirming the principle of "Chinese and Portuguese both being official languages of Macao" and "enjoying equal dignity".

How should the "Chinese/Portuguese bilingualism" be viewed? What approach should be taken in handling related decrees? The *Decision on Disposition of the Existing Laws in Macao Pursuant to Article 145 of the Basic Law of the Macao Special Administrative Region* (hereinafter as "the Decision"), adopted at the 12th Meeting of the Standing Committee of the 9th NPC on 31st October 1999, provided a legally binding answer. Its Paragraph 5 states that the laws previously in force in Macao, which have been adopted as laws of the Macao SAR, shall be applied "with such modifications, adaptations, restrictions and exceptions as may be necessary for making them conform with the status of Macao after the People's Republic of China resumes the exercise of sovereignty over it and with the relevant provisions of the Macao Basic Law." It states in particular, "Of the laws previously in force, (5) The provision that the Portuguese language is superior to the Chinese language in terms of legal effect shall be construed as that both the Chinese and Portuguese languages are the official languages; in provisions where it is required that the Portuguese language or both the Portuguese and Chinese languages be used, the matter shall be dealt with in accordance with the provisions in Article 9 of the Macao Basic Law." Not only the "provisions where it is required that the Portuguese language be used", but also the "provisions where it is required that both the Portuguese and Chinese languages be used" should both "be dealt with in accordance with the provisions in Article 9 of the Macao Basic Law." Such phrasing clearly points to a preferred direction and has significant meaning. More noteworthy is that, of the list of laws and decrees previously in force in Macao that are in contravention of the Macao Basic Law and therefore shall not be adopted as laws of the Macao SAR, the first was No.5/90/M *Define os Níveis de Conhecimento Linguístico para Efeitos de Ingresso e Acesso na Função Pública* (*Law Concerning Language Proficiency for Admission into Public Service and Promotion*), and the ninth was a group of decrees including No.17/92/M, No.18/92/M, No.55/92/M, No.45/96/M, No.28/97/M, No.8/98/M and No.10/99/M regarding standardization of Macao's judicial system, including the requirement for bilingual proficiency in the recruitment of judicial officials.⁸ According to a report by the legal subcommittee at the 10th meeting of the SAR Preparatory Committee, "some of these laws or decrees are emblematic of Portuguese rule in Macao, while others are in contravention of the political system or other systems instituted by the Macao Basic Law. With resumption of sovereignty over Macao by the Chinese Government, these laws of course must be nullified."⁹ The categorical decisions by the Standing Committee of the NPC, and by the Macao SAR Preparatory Committee under its authorization, to take legal steps to abolish related provisions for "bilingualism", were a clear indication that the organ of state power determined the provisions for "bilingualism" in these decrees were in contravention of Article 9 of the Macao Basic Law. Such a definitive conclusion should prompt serious attention to situations of similar nature.

The Paragraph 7 of the Decision also specified, "If the laws previously in force in Macao, which are adopted as laws of the Macao Special Administrative Region, are later discovered to be in contravention of the Macao Basic Law, they may be amended or cease to have force in accordance with the provisions of the Macao Basic Law and legal procedure." Such a provision is made in accordance with Article 145 of the Macao Basic Law that states, "If any laws are later discovered to be in contravention of this Law, they shall be amended or cease to have force in accordance with the provisions of this Law and legal procedure." The legal subcommittee explained, "As we have only focused on review of laws and decrees, rather than the entire body of law previously existing in Macao, with some of the laws and decrees that do not have ready Chinese translation being excluded from review, it is likely those previously existing laws that have

not been reviewed may have undiscovered problems of being in contravention of the Macao Basic Law.” That is why provisions of Paragraph 7 were added.¹⁰

II. A Legal Analysis of Macao’s “Official Language” System

2.1 A review of official language systems

There are currently 5,651 identified languages in the world.¹¹ Language is the most important tool of human communication, consisting of signs that relate to meanings and expressions. Language is used for preserving and passing on achievements of civilization. Types of language use include conversation, monologue, writing, exclusive internal communication, etc. Language is also one of the important features defining different ethnic groups. A specific language is associated with a modern nation-state and mandated by law or government as the official language for communication between its citizens and the government within the nation-state. One definition of official language refers to “the formal language mandated by a country’s government to be used within its state organs, e.g. the Danish language. Some countries use more than one official language. For instance, Singapore designates Malay, Mandarin, Tamil and English as its official languages.”¹² A country usually designates one or several languages that are geographically in most extensive use or used by the largest number of people within the country. It is the one language or a group of languages mandated for use on official occasions – in its state organs, official documents, court judgments and international communication – to meet the needs of conducting state affairs.

There is no standard form for provisions concerning official language instituted in substantive laws of different countries. Some countries have provisions in their constitutions naming one or more than one language as their official language(s) and define, in the event of multiple official languages, their equal or hierarchical relations. Some countries in Asia, Africa and Latin America have generally adopted such arrangements for the relations between the official language(s), a legacy of past colonial rule, and their native language(s). Most major nations do not have provisions for official language in their constitutions. The *Constitution of the United States*, for example, was written in English, which is interpreted as using English as the official language (notwithstanding Spanish, Hawaiian languages being used in certain states as parallel official languages). France uses French, Britain English, Japan Japanese and Germany German. These are indisputable and can perhaps be seen as customary official languages. Other countries with multiple official languages (such as aforementioned Singapore or Belgium using Dutch, German and French as official languages) have formulated specific laws to define their use.

Generally, a specific language is designated as lingua franca in provisions for multiple languages. For example, Singapore designates “English as the common language that students of all ethnic backgrounds must learn”; it is a “working language and de-facto national language.”¹³ The most complex is the United Nation system involving six official working languages. The United Nation Secretariat provides simultaneous translations and verbatim records in Arabic, Chinese, English, French, Russian and Spanish for all formal sessions including the General Assembly and Security Council meetings. All official United Nation documents, including important speeches, need to be printed in the six languages. As written records in six languages for the same session need to be consistent, five language versions of the verbatim record will have to be revised according to, or simply translated from, the transcript in the language actually used at the session in question. The reason for so doing is to ensure all six versions “are equally effective”, with no discrimination against, and equal services provided for, any official language user.

2.2 Relevant provisions concerning official language in China's current laws

No reference of "official language" per se exists in the *Constitution of the People's Republic of China* (hereinafter as "the Constitution") and laws. Related statements in the Constitution are its Clause 5 of Article 19 which states, "The state promotes the nationwide use of Putonghua (a common speech with pronunciation based on the Beijing dialect)", and Article 121, "In performing their functions, the organs of self-government of the national autonomous areas, in accordance with the autonomy regulations of the respective areas, employ the spoken and written language or languages in common use in the locality." The latter provision is clearly applicable only to specific regions, which is apparently not relevant to the Macao SAR. It is questionable if applicability of the former in the SAR is totally excluded by the SAR system affirmed by the Macao Basic Law and authorized by Article 31 of the Constitution.

*Law of the People's Republic of China on the Standard Spoken and Written Chinese Language*¹⁴ is the first specific Chinese law concerning standard spoken and written language, which establishes Putonghua and standardized Chinese characters as the "standard spoken and written language" of the state. It is enacted for the purpose of promoting consistent and standard use of the standard spoken and written Chinese language and its sound development, and promoting economic and cultural exchange among all Chinese nationalities and regions. It was adopted at the 18th Meeting of the Standing Committee of the NPC on 31st October 2000 and went into effect as of 1st January 2001, several years after the adoption of the Hong Kong Basic Law and the Macao Basic Law. It stipulates, "the standard spoken and written Chinese language means Putonghua (a common speech with pronunciation based on the Beijing dialect) and the standardized Chinese characters" (Article 2); "The State popularizes Putonghua and the standardized Chinese characters" (Article 3); "The standard spoken and written Chinese language shall be used in such a way as to be conducive to the upholding of state sovereignty and national dignity, to unification of the country and unity of the nationalities, and to socialist material progress and ethical progress" (Article 5); and "the State promulgates standard norms of the spoken and written Chinese language, administers its use in the community, supports the teaching of and scientific research in the language in order to promote its normalization, enrichment and development" (Article 6). This law also specifically requires state organs, institutions of education, broadcasting and TV stations, publishing agencies, and the services trade to use the standard spoken and written Chinese language of the state, except where otherwise provided for in laws. It also allows for exceptions whereby the spoken and written languages of the ethnic peoples shall be used in accordance with the relevant legal provisions. Such exceptions also include situations where the original complex or the variant forms of Chinese characters may be retained or used under specific circumstances. It is worth noting that this law has so far not been included in Annex III of the Macao Basic Law to make it applicable in the SAR, and it seems the Central Government currently has no intention to make it so.

In the author's view, it is understandable and even advantageous that a relatively flexible approach is adopted for language use in the Macao SAR under the "One Country, Two Systems" policy, given the general practice for the country's official language, the standardization of the Chinese language since the First Qin Emperor who "standardized length of the axles of carts and the writing of the Chinese script", and the practical needs in economic transactions and social interchange within the state. On the one hand, the state does not pass a law to make it mandatory to popularize the standard spoken and written Chinese language in the Macao SAR, where the use of the Cantonese dialect can be guaranteed by legislation or de-facto use. On the other hand, to meet practical needs of economic integration and closer people interaction between Macao and the Mainland, it is necessary for the Macao SAR to gradually adapt to and accept the use of standard spoken and written Chinese language. In time, it will be able to find a natural path of adjustment, which can be more effective and reasonable than imposing a regulation or law for mandatory use of

the standard Chinese language in the SAR.

2.3 Understanding the provision for “official language” in the Macao Basic Law

The Chinese term “正式語文(*zhengshi yuwen*)” (literally meaning “official language”) is often used interchangeably with another Chinese term “官方語文(*guanfang yuwen*)” (literally meaning “officially mandated language by the government of a country or region”). There is perhaps no need to dwell too much on their semantic difference. However, the use of the former rather than the latter in Chinese national legislation was deliberate and intentional, with specific political and legal implications.

Politically, the use of any written and spoken language concerns state sovereignty and national dignity; it is of significance to state unity and is never a trivial matter. It was a sensitive matter to affirm a foreign language as an official language in a special local region of China by organs of public authority in exercising its powers. It was an exceptional arrangement limited to a specific geographical location under unique historical and contemporary conditions. Refraining from using the term of “官方語文(*guanfang yuwen*)” is only natural, given the absence of any legal provisions by the state concerning such a term and its applications.

From a legal perspective, “官方語文(*guanfang yuwen*)” would apply to a much larger scope of government and social affairs, encompassing not only mandated language use by agencies of public administration, but also in broader areas of public education, broadcasting, publishing and the services trade. The term of “正式語文(*zhengshi yuwen*)”, on the other hand, allows flexible interpretations. In Article 9 of the Macao Basic Law, official language is defined as the language that “may also be used”, which is different from “should be used”. Such distinction apparently is meant to show the difference in the status of Chinese and Portuguese languages, emphatically eliminating any room for existence of “bilingualism of Chinese and Portuguese as both officially mandated languages”.

A note of clarification on one detail is necessary here. In the Portuguese text of the Macao Basic Law, “正式語文(*zhengshi yuwen*)” – the term used in the Chinese version – is translated as “lingua oficial”. Thus, many who have only read the Portuguese text claimed that this confirmed the status of Portuguese as an officially mandated language in the Macao SAR. This was largely a misunderstanding. Such a judgment is supported not only by the logic in our foregoing analysis, but a relevant decision by the Standing Committee of the NPC¹⁵, which states “in case there is any discrepancy in the meaning of wording between the Portuguese text and the Chinese text, the Chinese text shall prevail.”

2.4 A review of “Chinese/Portuguese bilingualism” of the Portuguese Macao administration

During the era of Portugal’s colonial rule in Macao, Chinese was initially not recognized as an official language. All laws and decrees were published only in Portuguese and all administrative matters and judicial procedures were conducted in Portuguese, so that Chinese participation in public affairs had been extremely limited. Adequate protection of the relatively few statutory rights of Chinese residents was difficult, given the language barrier.

The Portuguese administration passed a decree law in 1991 affirming, “Chinese shall have equal official status and legal effect as that of Portuguese in Macao.” However, its implementation was not thorough and persistent. On the one hand, although the law expressly stated the publications of all laws and normative acts should be accompanied by Chinese translations (which meant Portuguese would still be used as the original language when formulating laws), mandating bilingual publications, it stated at the same time, “the Governor may, in considering specific cases and with sufficient reasons, order exceptions to the requirement.” It also stated, “in the event of discrepancy between the Chinese translation and the Portuguese text, the latter shall prevail,”

allowing Portuguese to take precedence over Chinese. On the other hand, the principle of “equality in bilingualism” is totally ignored in the application of bilingual requirement and assessment for civil service recruitment, especially for the judiciary. Only Chinese speaking job applicants or candidates for promotion were subject to Portuguese language assessment, while Portuguese applicants and candidates were never required to take prior Chinese language tests. Portuguese speaking employees in Macao Government who did not read Chinese and only spoke Cantonese were designated as “bilingual talents”. Thus, things turned out exactly as the Governor of Macao had intended – “equal official status of Portuguese and Chinese in Macao will be achieved gradually and progressively, in accordance with the conditions for doing so.”¹⁶

The provisions of Decree Law No. 101/99/M include both those that had been in practice in the previous decade and new requirements to “ensure the coexistence and completely equal use of the two languages,” most of which however were not plausible under the Portuguese Macao administration. The hasty promulgation of such a law in the 11th hour of its colonial rule was evidently not intended for its own application, but rather a last minute attempt to constrain the future Macao SAR Government in governance. The Macao Basic Law and the Decision provided guidance for dealing with Decree Law No. 101/99/M. First, the Standing Committee of the NPC reviewed all laws enacted in Macao during the period from 1976 through 30th June 1999, rather than the entire body of existing laws, and decided on those that could remain effective post handover. If any laws that had not been reviewed were later discovered to be problematic, they could be amended or nullified in accordance with paragraph 1, Article 145 and other related provisions in the Macao Basic Law. Second, in accordance with the Decision, “the requirement for use of both Portuguese and Chinese should be dealt with following provisions of Article 9 of the Macao Basic Law.” Meanwhile it was stressed that had there been time for the Standing Committee of the NPC to review the Decree Law No. 101/99/M, it would have been listed in Appendix I of the Decision as one of the laws nullified. As this had not been the case, it was mandated that the two languages should be used differently (i.e. Chinese being primary and Portuguese secondary) in accordance with Article 9 of the Macao Basic Law.¹⁷ Third, although the Decision did not specify which entity should continue the review of laws previously in force and determine which contravene the Macao Basic Law, the author believes it could be the executive administration, the Legislative Council or the Court of Final Appeal of the SAR. This is because they are the de-facto entities responsible for enforcing previous laws that remain effective in the SAR. They should deal with the contravening laws in unequivocal manner in accordance with the Macao Basic Law, rather than leaving them to partial interpretations and misuse by certain organizations. With regard to language use, one plausible approach can be motioning by the SAR administration and enactment by the Legislative Council of a “Law on the Official Language of the Macao SAR”, nullifying Decree Law 101/99/M.

III. Some Thoughts on the Establishment and Improvement of an Official Language Regime for the Macao SAR

The Macao SAR has been in existence under the institutional framework of the “One Country, Two Systems” policy for nearly 13 years. Its public authority has developed a mature model for the use of official languages and accumulated relevant experience. Remaining problems and their impact have also been fully identified. The Impasse over laws previously in force that contravene the Macao Basic Law and the decisions of the Standing Committee of the NPC cannot remain for long. Given all this, the author believes that it is highly necessary for Macao to conduct research for the establishment of an official language regime and improvement of current practice in the Macao SAR, as preparation for the eventual enactment of a “Law on the Official Language of the Macao SAR”.

SAR”. The author would like to suggest the following by way of a policy recommendation:

3.1 Principles to be observed in the establishment and improvement of the official language regime

3.3.1 Strict compliance with Article 9 of the Macao Basic Law

If we use the customary approach for interpretation of constitutional laws, i.e. from the angles of syntax, structure, precedence and objective, the principle established by Article 9 of the Macao Basic Law has implications at three different levels. First, Chinese is the primary official language in the Macao SAR and must be used by its executive, legislative and judicial bodies in the exercise of their powers according to law. This in essence conforms to the requirement of resuming exercise of sovereignty over Macao by the Chinese Government and the legislative intention in using the wording in question, i.e. “In addition to the Chinese language, Portuguese may also be used as an official language by the executive authorities, legislature and judiciary of the Macao Special Administrative Region.” Second, Portuguese “also” has the “official language” status and “may”, rather than “should”, be used by executive, legislative and judicial bodies of the Macao SAR in the exercise of their powers. This is based on the following considerations:

a) Accommodating the language needs of the minority consisting of descendents of Portuguese residents in the Macao SAR; protecting their rights, equal to those of Chinese residents, according to law in public administration;

b) Necessity to recognize Portuguese as an official language, as many previous laws, government and legal documents were written in Portuguese and archival data had to be kept in their original language, given the SAR system being largely based on previous laws that have been retained and previous social and economic systems;

c) Given emotional and spiritual attachment by local residents to the cultural legacies and diversity forming Macao’s unique features as result of more than 400 years of Portuguese settlement and occupation, and given that Macao is actively seeking to serve as a bridge for economic, trade and cultural interaction between China and Portuguese-speaking countries, keeping Portuguese as an official language of the Macao SAR is of great significance.

Third, although both Chinese and Portuguese are official languages, one is primary while the other secondary. Chinese should and must be used in public administration according to law, while Portuguese may be used in such context. In the event of discrepancies between the two, Chinese will prevail as a matter of principle, which does not exclude exceptions under specific conditions. For example, as the original texts of laws that were previously in force and to be adopted as SAR laws are in Portuguese, interpretation of such laws in legislative processes for their adoption should be based on the original texts in Portuguese, which should prevail in the event of dispute.

Such a normative principle should serve not only as a basic guide for adjusting current language regime and policy, but also as a core guiding principle for the eventual formulation of a “Law on the Official Language of the Macao SAR”. At no time should it be violated.

3.1.2 Sufficient consideration to be given to the nature of government and social reality in the Macao SAR

The Macao SAR is a local administrative region of China that comes directly under the Central Government and enjoys a high degree of autonomy. The SAR Government is a local government in China. All the documents that it submitted to the Central Government will have to be in the standard spoken and written Chinese language. As its Chief Executive and principal officials are all residents in Macao with Chinese citizenship and appointed by the Central Government, it will not be difficult in practicality for a considerable part of government activities to be conducted chiefly in Chinese. This has been achieved by the Legislative Council in a gradual manner after the return of Macao in chiefly using Chinese in legislative reviews of bills.

The population of permanent residents in Macao currently stands at 562,900. Government

officials and scholars have generally claimed that the majority of Macao residents are Chinese who speak and use Chinese language. However, there has been no published data for the exact number of Portuguese descendents and residents using Portuguese as their native tongue. Only the Results of 2011 Census released in April 2012 give indications of language ability. 41.4% of the population could speak Putonghua, an increase of 14.7% as compared to 2001, 21.1% could speak English and 2.4% could speak Portuguese.¹⁸

Establishment and improvement of an official language regime that suits the nature of government and social reality of the Macao SAR should proceed from the above conditions, rather than taking things for granted, thinking pedantically or catering for vested interest of the few. This should also serve as a guiding principle, barring which the language regime would fail to gain public support.

3.1.3 Design of equitable and reasonable rules with a view to enhanced applicability

Any design for rules should aim for unity of objective and outcome. They should be fair and reasonable, as well as workable. Language concerns every member of the society and efforts should be made to seek balance of outcome and cost efficiency. If Portuguese were to be elevated to the same legal status as that of Chinese, all government affairs would have to be conducted bilingually. First, there will not be adequate resources to support this, as apparently the majority of employees within the Macao government do not possess bilingual proficiency. Second, this would entail tremendous waste of translation resources, hamper efficiency of public administration and increase government expenditure. Third, it is also unnecessary. In a predominantly Chinese society sharing the same language, adding an extra layer of Portuguese translation is akin to adding legs to a snake.

Therefore, in designing institutional rules for official languages, it is necessary to focus on protecting legitimate interests of the minority on the one hand, and meeting the needs of most situations and gaining public acceptance on the other. In addition, consideration should also be given to implementation and enforceability. Lacking practicality would only defeat the original legislative purpose, lead to selective enforcement and eventually hamper universal acceptance of the new law.

3.2 Main problems to be tackled in establishing and improving an official language regime

a) To establish legal rights and obligations in language use by organs of public authority and its administrative counterparts. To promulgate through legislation the liberty of any administrative counterpart to use either Chinese or Portuguese in the process of executive, legislative and judicial activities in the Macao SAR and their right to demand public services by organs of public authority to be provided in either language of their choosing for free; and to define relevant obligations of organs of public authority. At present, the choice of language use by organs of public authority is largely made for the sake of their own convenience. Language translation requested by an administrative counterpart is rendered without quality assurance and mandatory deadline for completion. A payment for such a service could even be required. This is incompatible with what is entailed by an "official language system". It should be corrected through legislation.

b) To further affirm the status of Chinese as the primary official language of the Macao SAR and improve rules for its application calls for a mindset change. The idea that all official languages are equal in status and legal effect, without distinction between the primary and secondary, is pedantic thinking and a misunderstanding. In the earlier discussion in this essay, the author cited examples of countries with multiple official languages designating one as primary, which provides a model worth following and incorporating into Macao's official language regime. In addition, practical issues of great urgency include: (1) certain judicial organs are still unable to conduct their proceedings in Chinese, (2) Chinese translations of court judgments are not provided promptly, and (3) request for using Chinese often causes procedural delays. Effective measures are necessary to

solve these problems gradually. New, workable policies and processes should evolve to define future direction, providing a transformative basis for a more equitable and just language regime.

c) To redefine the circumstances where Portuguese “may also be used” or “must” be used in accompanying text. Nicety can also be in the details. The tendency to adopt bilingualism across the board without distinction between general and specific administrative actions should be avoided. It is necessary to formulate specific rules to define the scope, circumstances and procedures of Portuguese use and institute necessary remedies in the event of failure in adequate protection of language use rights. This can mitigate potential impact of mandatory requirement of Portuguese use in rigidly defined scope. It will also help ultimately achieve harmony and balance between protecting language use rights and enhancing efficiency of public administration and saving cost.

3.3 Current foundation and work proposal for establishing and improving an official language regime

a) Most provisions in Decree Law No. 101/99/M can be useful references for establishing and improving an official language regime of the Macao SAR. Clauses 3 and 4 of its Article 1 affirm each individual’s freedom of choice in language use and the promotion of proper use of official languages by the government. These and Section 1 of Chapter 2 which affirms the legislative status of official language, Article 6 on relations between the administration and its administrative counterparts, and Article 8 on access to justice, in this author’s view, all conform to the Macao Basic Law and reality of Macao society. This law could be used as a reliable basis for establishing and improving an official language regime, after necessary, selective revisions to its other provisions and adding a relevant provision for the “use of Chinese as primary language and Portuguese as secondary language.”

b) Before the start of legislative procedure for a “Law on the Official Language of the Macao SAR”, it is necessary to conduct a survey on language use in Macao. This will generate detailed data to show actual use of Chinese and Portuguese languages and help predict issues in future application of the proposed law. It will also help define direction of change by eliciting long-term trends in the evolution of language use and social development. It is imperative for this piece of legislation that will affect vital interests of every member of the society to have broad public consensus and achieve a high degree of social acceptance. To this end, there must be solid legislative research conducted with thoroughness and accuracy. Half-hearted public consultation for formalities should absolutely be avoided. Bold and rational decisions in the best interest of the greatest majority of the people are needed when confronting complex conflicts between interest groups. Conservatism, status quo and a fear to move forward should be discarded. The work to complete this legislation should be based on legality, scientific thinking and democratic principle to win support of, and implementation by, the majority of Macao residents.

c) Establishment and improvement of an official language regime should be aligned with localization of laws and the civil service. It would be difficult for an official language regime to evolve without thorough review and comprehensive, accurate translation of current laws in effect in Macao, substantive progress in reform of the legal system and public administration, innovation in governance and adoption of a new mindset by government officials. As long as the said reform is conducted strictly in accordance with Macao Basic Law, proceeding from the fundamental interest of the public that should serve define the ultimate goal, and in the spirit of “Macao people ruling Macao” under the condition of “One Country, Two Systems”, continuous social progress in Macao is inevitable. On this note, the author is supremely optimistic.

Notes:

- ¹ CCCPC Party Literature Research Office (Ed.) (1997). *A Selection of Important Documents on "One Country, Two Systems"*. Beijing: Central Party Literature Press. 185, 77, 120 and 40.
- ² Editorial Committee (1998). *Macao and Macao Basic Law*. Macao: Macao Daily Press. 185.
- ³ Wang Shuwen (Ed.) (1993). *Introduction to the Basic Law of Macao Special Administrative Region*. Beijing: China People's Public Security University Press. 105.
- ⁴ Yang Jinghui and Li Xiangqin (1996). *A Comparative Study of Hong Kong and Macao Basic Laws*. Macao: Macao Foundation. 59-60.
- ⁵ See the website of the Printing Bureau of the Macao SAR: http://bo.io.gov.mo/bo/i/89/08/decllei11_cn.asp. 29th June 2012.
- ⁶ See the website of the Printing Bureau of the Macao SAR: http://bo.io.gov.mo/bo/i/92/02/decretolei455_cn.asp. 10th June 2012.
- ⁷ Similar to provision in Decree Law No. 5/90/M for Chinese/Portuguese bilingual requirement in recruitment and promotion of civil servants, Decree Law No. 62/93/M requires "proficiency in Portuguese and Chinese" for the position of administrative assistants, and Decree Law 6/94 /M stipulates "understanding Portuguese and Chinese" as necessary requirement for judicial magistrates. See Editorial Department (1996). *A Compilation of Macao Statutes*. China: China Social Sciences Press. 566-567, 444, 380, etc.
- ⁸ Office of the Committee for the Basic Law of the Macao SAR of the Standing Committee of the NPC (Ed.) (2011). *The Compilation of Documents of National People's Congress Preparatory Committee for the Macao Special Administrative Region*. Beijing: China Democracy and Legal Press. 278-281.
- ⁹ *Ibid.*, 249-253.
- ¹⁰ *Ibid.*, 279, 252-253.
- ¹¹ See the website of Baidu Baike: <http://baike.baidu.com/view/9793.htm>. 10th June 2012.
- ¹² Xia Zhengnong and Chen Zhili (2009). *An Encyclopedic Dictionary (6th Edition)*. Shanghai: Shanghai Lexicographical Publishing House. 764.
- ¹³ Lee Yi-Fang (1998). Change in Singapore's Policy on Language Education. *Education Information Digest*. Volume 25. 56-61.
- ¹⁴ See the website of the PRC Government: http://www.gov.cn/ziliao/flfg/2005-08/31/content_27920.htm. 10th June 2012.
- ¹⁵ See the *Decision on the Portuguese Text of the Basic Law of the Macao Special Administrative Region of the People's Republic of China* which was adopted at the 2nd Session of the Standing Committee of the 8th NPC on 2nd July 1993. In Ieong Wan Chong (Ed.) (2009). *The Compilation of Legal Documents for the Macao Special Administrative Region of the People's Republic of China*. Macao: One Country Two Systems Research Center, Macao Polytechnic Institute. 141.
- ¹⁶ See the website of the Printing Bureau of the Macao SAR: http://bo.io.gov.mo/bo/i/89/08/decllei11_cn.asp. 29th June 2012.
- ¹⁷ Office of the Committee for the Basic Law of the Macao SAR of the Standing Committee of the NPC (Ed.) (2011). *The Compilation of Documents of National People's Congress Preparatory Committee for the Macao Special Administrative Region*. Beijing: China Democracy and Legal Press. 278-281, 249-253.
- ¹⁸ Statistics and Census Bureau of the Macao SAR (2002). *Results of the 2011 Population Census*. Macao: Statistics and Census Bureau of the Macao SAR 12