

Translation between Mongolian and Chinese Languages in the Criminal Proceedings —From the Perspective of Protecting Procedural Rights of Mongolian Defendants in China

Abstract: There are five minorities' autonomous regions in China, including the Inner Mongolia Autonomous Region in Northeast area. In judicial practice, Chinese is the main language in the trials of the Region, while the judiciary shall be liable for providing free translation service if the defendant is a Mongolian who does not understand Chinese. This is a constitutional right for citizens in China, but this requirement had encountered many challenges in reality. For example, the Mongolian is a language for the nomadic nationalities which is closely related to their life. As many legal terms in Chinese are far away from their life, it is sometimes difficult for them to find an equivalent word in Mongolian. Furthermore, the traditional life and customary law of the Mongolian Nationalities is far away from the modern life and law of the Han Nationalities, and therefore, it is quite difficult for them to understand the legal theory applied nowadays in China. Moreover, China lacks those intellectuals knowing both Mongolian and Chinese languages. Apart from that, the problems of language barrier between the Mongolian and Chinese in the criminal trial have not be adequately addressed because the government has not fully realized the importance of language right for the minorities and thus it failed to provide sufficient financial and human resources. The translation problem in the trials involving Mongolian people will affect the judicial fairness and justice, which in turn will have impact on the solidarity and social stability of the borderland in China. As a result, the author argues to make further reforms in this respect, such as the government's more attention and increased investment of financial and human resources, conduct in-depth investigation on the language issues and find out the Mongolian languages that can match the meaning in Chinese. In this way can China improve its protection of the defendants and ensure the fairness and equity of the criminal trial.

Keywords: Translation; Mongolian and Chinese Languages; Criminal Trial; Procedural Rights; Fairness

1 Introduction

* **Correspondent author: Weidong Li:** Inner Mongolia University, China. E-mail: nmdong2003@sina.com.

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Qiang Tian: Inner Mongolia University, China. E-mail: rogertian@aliyun.com

According to the jurisprudential theory, the language of the main nationality is generally the official language of a country with multi-nationalities, while the language right of those ethnic minorities is fragile and liable to the infringement, which need urgent protection in practice (Guo 2010:122-123).

There is no exception in China in respect of protecting the ethnic nationalities' language right, which is a country with various nationalities but the Han Nationality is the biggest one in population and thus the Mandarin is the official language (Zhou et al. 2003:87). For example, the Constitutional Law of the People's Republic of China as well as the Civil and Criminal Procedure Law and the Administrative Litigation Law have provided that the parties shall have the right to use their own languages in the proceedings.³ That is to say, the Chinese government has been sticking to the equality between different nationalities in China, including the equality in language, developing the rights of ethnic minorities in judicial proceedings and daily work and life in using their own native language through legislations at various levels. Therefore, China has factually operated a bi-lingual judicial system in some localities (Zhang 2007:177). Given the requirement of equality among the nationalities and against the background of judicial fairness, it is of great theoretical and practical significance to improve the matching mechanism and regulate the bilingual judicial system in the autonomous regions of China. In another word, for instance, citizens of all ethnic nationalities, no matter whether they are the parties or defenders, witnesses and expert appraisers, shall have the right to use their native language in the criminal proceedings, such as making a statement and debate or writing a proceeding document; and in the areas inhabited by the minorities or ethnic groups, the public security organ, procuratorate and court shall use the locally popular language in the criminal investigation, prosecution and trial respectively, and announce the judgment, public notice and other documents; they should provide translation for the litigation participants if the latter are not familiar with the locally popular language.

Nationalities are equal in political and legal status, they all shall have the right to use and develop their own language and texts. Implementation of the principle of securing the application of the nationalities' languages will achieve the goal of equality and consolidation of nationalities' unity. Furthermore, implementation of the principle will also contribute to help the parties and litigation participants to protect their procedural rights in China. During this process, it would be also advantageous for the public to understand case information, improve their legal awareness and strengthen their supervision over the judiciary's power. Therefore, it is of great theoretical and practical significance in improving the supportive mechanism for the bilingual judicial system, regulating the bilingual judiciary activities and safeguarding the ethnic minorities to fairly and efficiently exercise their right to justice in using their own language in

³ Section 1 of Article 134 of the *Constitutional Law of the People's Republic of China* provides that citizens of all ethnic groups shall have the right to use their own national language in the proceedings. The people's court and procuratorate shall provide translation for those participants in the proceedings who are not familiar with the local popular language. Section 2 further states that, in the areas inhabited by the minorities or ethnic groups, the trial of cases shall be conducted in the local popular language. Indictments, judgments, notices and other instruments should be written in one or more of the languages commonly used in the locality based on the actual need. Likewise, Article 9 of the *Criminal Procedure Law of the People's Republic of China* stipulates that: "Citizens of all ethnic nationalities shall have the right to use their own national language in the proceedings. Where the litigation participants are not familiar with the locally popular language, the people's court and procuratorate shall provide translation for them. In the areas inhabited by the minorities or ethnic groups, information on the case trial and announcement of judgment, public notice and other documents shall be in the locally popular language."

China.

Generally speaking, this paper consists of three parts, most of which is based on the author's surveys in three grassroots and one intermediary court in the Inner Mongolia Autonomous Region of China during early 2015.

2 Operation of Bilingual Judicial System Requires the State's Intellectual Support

As we know, local legislations and judicial activities in the ethnic minorities' autonomous regions exercise the bilingual system, that is, each minority shall enjoy the right to use their own language in the judiciary activities. On the other hand, China is a unitary state, and the only one national language commonly used is the regulated Chinese Mandarin and characters—All the national legislations are enacted in Chinese. Consequently, there is an asymmetric characteristic between the Chinese and minorities' languages. To solve such an asymmetry, it is the state's responsibility to provide a concise and correct legal text of the legislations in the minorities' language in the minorities' autonomous regions so as to ensure consistent application of the national laws within the nation. At present, the texts of such basic laws as the constitutional, criminal, civil and criminal procedure laws are available in the minorities' language in the five autonomous regions in China. But the problem is that, the number of articles of judicial interpretation of those basic laws is even more than that of the original texts, while there are no corresponding texts for those minorities in their own language, which brought some challenges especially at the grassroots level in the translation and drafting of the legal documents in judicial practice.

Take Inner Mongolia Autonomous Region for example. In my survey, I found that the courts generally were lacking of legal texts of the important laws in Mongolian. As a result, the bilingual judges grasping Mongolian and Chinese languages can only translate the applicable national law in the judicial process by themselves. But in reality, a lot of Chinese legal concepts and terms are strangely new in the Mongolian language, as the Mongolian is a kind of ancient language, which is closely linked with Mongolians' traditional nomadic life. Given that most of the modern legal terms are the products of modern economic life and social relations, although many are borrowed terms, it is not difficult to understand the connotation and extension of the concept in the Chinese language. By contrast, the Mongolians with the tradition of nomadic life do not have such contexts in its own language. A typical example is that traditional Mongolian economic life is through goods exchange, while the terms or equivalent words such as the financial fraud and destruction of financial management order in the criminal law existed in modern economic life cannot be found in Mongolian. In my interview with a Mongolian judge in a grassroots court, for instance, she (33 years old, LLM degree) said:

.....Currently our country has not up to date released any authoritative legal texts or judicial interpretation in Mongolian except the basic law. When I draft a judgment in Mongolian for a case involving the Mongolians, I can only consult a legal text translated by a lawyer from a law firm or from a university professor that is available online, which is often out of date and fragmented in nature. This is particularly true that China modified many laws and we judges dealing with Mongolian parties' case are in urgent need of authoritative and standardized legal texts in Mongolian which can be used in the trial. Obviously, this work cannot be done only relying on a law firm or certain bilingual law professors or judges....

Therefore, how to keep up with the pace of national legislation in translating legal texts of the Chinese Mandarin version promptly into minority languages, and deliver these free of charge and in full quantity to the areas in need is one of the realistic problem that needs to be resolved urgently in the practice of bilingual judicature in national autonomous areas to achieve the legalization and normalization of Mongolian legal norms in China. To this end, I think only the People's Congress at the national or provincial (or equivalent) level is able to organize those high-level bilingual (Chinese Mandarin and Mongolian) talents to complete this translation task in an efficient manner.

3 The Operation of the Bilingual Judicial System Requires the Material Support from the State

During my survey, the Supreme People's Court of China ("SPC") formally issued the *Interim Measures of Online-Accessible Judicial Judgments* in July 2013, according to which all its judicial documents such as the judgments, rulings or decisions shall be published on the internet with some limited exceptional circumstances.⁴ Moreover, in the light of the SPC's *Rules on the People's Courts Publishing Online Judicial Rulings*, formally being implemented on 1 January 2014, the SPC will set up a website for publishing the judgments or rulings in effect of the courts at all levels, while the schedule for this work in the grassroots courts of mid or west China shall be decided by the Higher People's Court at the provincial level, reporting to the SPC for record.

Inner Mongolia Autonomous Region is located in the western area of China, which is part of the underdeveloped areas in China, but the vast majority of the grassroots courts have the economic and technical conditions of uploading to the verdicts to the website set up by the SPC. However, the implementation of the SPC's rules is not so satisfactory in the Inner Mongolia, as the SPC website does not support the Mongolian language.⁵ In fact, there is a sound system to deal with the computer information processing in Mongolian which has been developed for many years.⁶ Thus we have reason to argue that this language application problem apparently did not get adequate attention of the authorities, which resulted in the negative effect on the right of ethnic minorities in using their native language.

Moreover, according to another Mongolian judge (male, 42 years old; LLM) in a grassroots court, as the software price in Mongolian language is not cheap, his court did not equip all the judges dealing with cases involving Mongolian parties with the authentic software. But due to work need, some of them would download the pirate software, which is not functioning quite well and thus affecting the working efficiency. According to the judges interviewed, they expressed the hope that the state can finance such costs for the installation of software in

⁴ See <http://www.court.gov.cn> (accessed 13 July 2015).

⁵ My interview with a Mongolian judge in my survey. The SPC asked the Inner Mongolia Higher People's Court to contact the technical supporter Tsinghua Unigroup directly but the latter said no way to solve this problem. See also Higher Intermediate People's Court of Inner Mongolia Autonomous Region, *Survey Report on the Bilingual Trial (Shuangyu Shenpan Diaoyan Baogao) (2014)*, available at <http://nmgfy.chinacourt.org> (accessed 28 July 2015) confirmed this point.

⁶ The work of information processing in Mongolian language started from early 1980s. After 30 years' development, such technology has been extensively applied in office automation work, e-governance, press and publication, picture/graphic editing, voice identification, machine translation and trilingual teaching (Bai, 2012: 3).

Mongolian.

Furthermore, Article 18 of the *Regulations of Inner Mongolia Autonomous Region on the Work of Implementation of the Mongolian Language and Texts* (effective in 2005) provided that staff at all levels of state organs, people's organizations and institutions involving in the translation of Mongolian texts should enjoy special post allowance. However, according to my survey, the Mongolian judges undertook heavy burden in this regard as they had to produce all the judicial documents in bilingual (Mongolian and Chinese mandarin) format, in cases involving Mongolian parties, but none of the judges receive any job allowances for the translation work. Therefore, I think it is quite important to put into full effect the job allowance for the text interpreters between Chinese mandarin and Mongolian or other minorities' languages.

4 Bilingual (Mongolian and Chinese Mandarin) Litigation Requires the Legal Procedural Safeguards for the Parties

The *Regulations of Inner Mongolia Autonomous Region on the Work of Implementation of the Mongolian Language and Texts* (2005) provides that the Mongolian language is the common language used in the Inner Mongolia Autonomous Region, which is an important tool to exercise the autonomy in the Region; all levels of state organs, people's organizations and institutions shall strengthen the translation work of the Mongolian language, the interpreter concerned shall enjoy the post allowance of the Mongolian language translation. It is the first time that a regulation has defined the legal status of Mongolian language as commonly used language in the Inner Mongolia Autonomous Region, which also provided legal basis for the people's courts and procuratorates to apply local common language in the prosecution and case trial in the Region. That is the common/official languages in the Inner Mongolia Autonomous Region is Chinese Mandarin and Mongolian. Second, it provided safeguard through local regulations for the implementation of minor nationalities' national language in the proceedings. The parties may choose Mongolian in the judicial activities in the Inner Mongolia Autonomous Region. Third, the judicial organs in Inner Mongolia shall be the main body of the obligation in ensuring the Mongolian nationalities to use Mongolian in their litigations, while the main body of undertaking the obligation shall safeguard such language right of the ethnic nationality through procedural safeguard.

The procedural safeguard, in a broad sense, means various kinds of procedural requirements and standards set for the purpose of fair trial. In a narrow sense, it refers to the procedural requirement of ensuring the parties' equal procedural opportunities in the proceedings, that is, the principle of due process (Fan 2005:45). While in modern jurisprudence, procedural safeguard has been raised to a high level of fundamental, constitutional and internationally-recognized rights.⁷

In my research, I conducted surveys in three courts in the west and east part of Inner Mongolia Autonomous Region in early 2015—including 3 grassroots courts (Courts A, B and C) and 1 intermediate court (Court D), mostly to collect the statistics during 2012 and 2014 (hereinafter called the three years) on the cases involving use of the Mongolian language in the

⁷ See also Article 3 of the *International Covenant on Civil and Political Rights*.

litigation. Although the field sites may not be so representative in reflecting all the pictures, they can in some degree present us some features of bilingual application in the grassroots of Inner Mongolia Autonomous Region. A summary of the research data can be shown in the figures below.

Figure 1

Percentage of using Mongolian in the cases heard by court (2012)

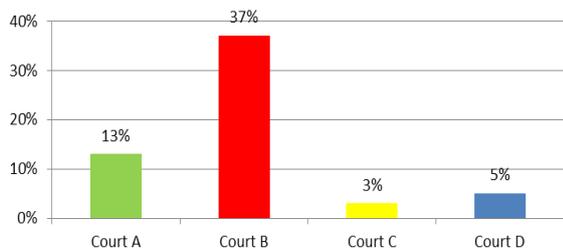


Figure 2

Percentage of using Mongolian in the cases heard by court (2013)

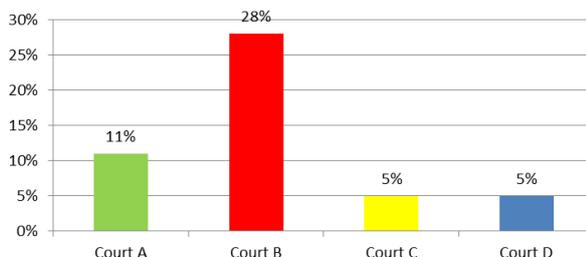


Figure 3

Percentage of using Mongolian in the cases heard by court (2014)

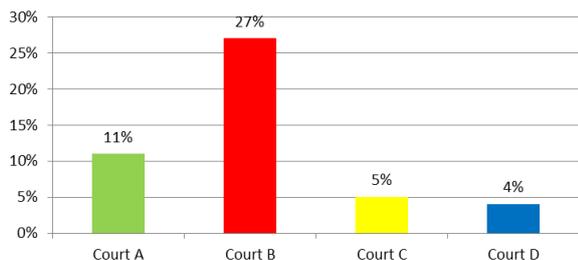


Figure 4

Percentage of using Mongolian and Mandarin in the cases heard by court (2012)

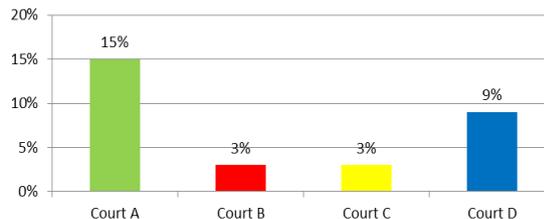


Figure 5

Percentage of using Mongolian and Mandarin in the cases heard by court (2013)

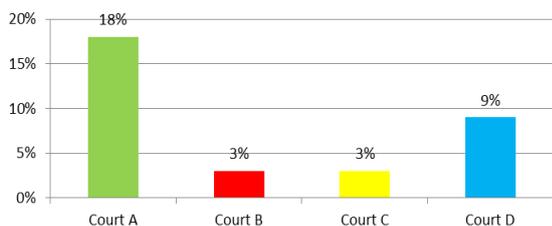


Figure 6

Percentage of using Mongolian and Mandarin in the cases heard by court (2014)

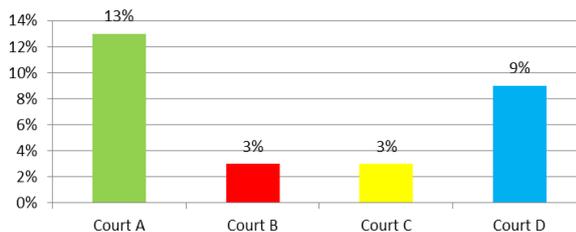


Figure 7

Percentage of judges being able to use Mandarin and Mongolian in the trial



In the sample courts, the bilingual trial mode is based on the parties' autonomy of choosing the language they are willing to use or able to understand, and accordingly the court will arrange its panel and court clerk. Specifically speaking, there are four circumstances in this regard.

(1) Case hearing in Mongolian. If both parties understand and are willing to use Mongolian to conduct proceedings, the court will arrange the judge(s) who can use such language to form a collegial panel to hear the case and draft the judgment in Mongolian.

(2) Case hearing in Mandarin. If both parties are willing to or if one party opposed to use Mongolian to conduct proceedings, the court will arrange the judge(s) to form a collegial panel to hear the case and draft the judgment in Mandarin.

(3) Case hearing in mixed mode. If one party doesn't understand the other party's language in the proceedings, the court will arrange the judges who know both Mandarin and Mongolian to form a collegial panel to hear the case. Another judge rather than the presiding or case-handling judge, or the court clerk or ad litem agent or defender will help translate for the parties in the trial. Judgments and other procedural documents will also be prepared in Mongolian and Mandarin.

(4) Special circumstances. In the western part of Inner Mongolia, the habitants has the tradition of using a mixture of Mongolian and Mandarin languages for a long time, which also influenced the language used in the trial. The parties may speak with some Mandarin words or expression when speaking Mongolian in the trial, especially when they express their own views, conduct defense, bear the burden of proof with the professional legal term.⁸

In this situation, it is the judges who were born locally and can speak the bilingual language, as they have become accustomed to such kind of language expression. When the parties have difficulties in the communication, the trial judge(s) will often act as temporary court interpreters, the parties may understand the other side, apart from the help of one party and their lawyers. This is why one judge (Court President, male, 47 years old, LLB) interviewed said that there are only two lawyers in the whole flag (county) which made it difficult the court to organize a panel

⁸ For example, an interviewee from a procuratorate (female, 43 years old, LLB) in my research presented me a representative example in this regard. In one case involving international injury leading to the death of the victim that the interviewee heard in 2009, the defendant collided with the victim in a wedding ceremony and further fought and hurt the victim. Later, the victim was dead shortly as the consequence of the fight. During that collision, the defendant shouted "Kill you", which caused disagreement between the defence and the prosecution. As we know, the word "Kill you" is a popular term cursing somebody, just like shit or son-of-bitch. The interview considered overall circumstances and relationship between the parties, and finally prosecuted the defendant with the charge of intentional injury, which was supported by the court. If the prosecutor or judge does not understand the culture or tradition of Mongolian, this case might be prosecuted with the charge of intentional murder, which will definitely hurt the defendant's rights.

for the trial in need.

In general, we can draw the following conclusions from the field data: First, in the Mongolian and Chinese bilingual litigation, the court will respect the parties' language option, basically guarantee the parties and other participants' right to use their native language, form some dynamic procedures and normative safeguard in this respect, with a certain degree of procedural judicial organization guarantee. For instance, the data of the four sample courts showed that there are a certain number of bilingual judges which can form a trial organization (panel) to meet the need of bilingual proceedings. Second, the trial model can adapt to bilingual litigation in Inner Mongolia Autonomous Region, namely, trial models in Mongolian and a mixture of Mongolian and Mandarin in addition to the one using Chinese Mandarin. This indicated that such practice had its legal and constitutional basis as far as the parties' right to use their native language in the litigation.

In the meanwhile, however, there are several obvious problems in this aspect: The parties and litigation participants' legal right to use their own language in the proceedings is of inadequate stability and lacking of protection of relevant system. Specifically speaking, the following four problems are worthy of our attention.

4.1 There is a lack of normative and uniform standard on the requirement of language used in the court trial when the parties are involved in a bilingual litigation.

For instance, how does the court perform the obligation of conducting the trial with local commonly used language? What are the specific requirements and procedures in this regard? If the court concerned failed to perform the obligation of bilingual perspective, which channels can one of the parties resort to securing his or her rights of using native language? If the court concerned rejected to perform such obligation, what can the parties do for the remedies? All these require an official normative document to illustrate such issues in order to put into practical effect the parties and other participants' rights of languages in the litigation.

Based on the information collected during the survey, there is no other normative requirement of the bilingual litigation acts in Inner Mongolia Autonomous Region except the civil and criminal procedural laws and administrative litigation law at the national level as mentioned above. As a result, the grassroots courts in Inner Mongolia may apply the requirement of securing the ethnic nationalities to use their native language in the litigation in a dynamic manner, that is to say, the application is characterized with more flexibility than routine nature in the judicial practice. This may lead to inadequate expectation of the parties and participants in enjoying their right to use native language in the litigation. In the meanwhile, the public has no objective evaluation on if the court and the judge' acts are fair, which is not conducive for the general public to supervise judicial activities.

4.2 It is a common phenomenon that there is no full-time interpreter in the courts, especially at the grassroots level.

According to my survey, there is no full-time interpreter in any of the four sample courts, it is the bilingual judges, court clerk and even defence lawyers to act as the interpreter for the cases involving the Mongolian parties. In the light of the judges interviewed, there is no normative

document or specific mandatory provisions in a normative document on requiring the courts to equip with full-time interpreters. This is why judges, defence lawyers, court clerk or ad litem agents could act as part-time dual-status interpreter in judicial practice in Inner Mongolia Autonomous Region. This might mean saving the costs and litigation resources on the part of the court, but the legitimacy of such practice is questionable, which is particularly true if the part-time judge is the one responsible for handling the case because of the neutrality requirement in a fair trial. When the parties challenge the translated content by the judge in court, the credit of the judgment will be reduced greatly. The interpreter's duties and responsibilities are mainly delivering truthfully translation and interpretation in court, which requires the status of neutrality (Liu 1999:349). The duties of interpreters/interpreters in the proceedings have decided that its status shall not overlap with the function of other actors in the courtroom, including the judge in the case.

Therefore, the Chinese authority should produce the law or normative documents to provide how the people's court fulfills its obligations of providing translation service for the parties who have the barrier of understanding and using commonly used local language in the litigation, how the court provide professional interpreters, and how provide remedies if the court concerned has restricted or deprived the parties of the right to use their native language? When the court failed to provide translation service, how can the parties safeguard their language right in the litigation? In another word, there is a lack of appropriate procedural safeguards in the national and regional legislations as well as of punitive provisions on the violation of the procedural safeguard in the litigation.

4.3 It is problematic on how to protect the procedure of setting up the trial judicial organization in the bilingual litigation.

The guarantee of a legitimate trial organization (panel) is the precondition of doing well all the judicial works. When the parties get involved in the litigation, they will have to contact with the court and judges directly. Thus it becomes one of the major elements for them to evaluate whether the court and the judge is fair in the trial. On the other hand, the trial organization is an essential matter on the court and judges' involvement and fairness in the litigation (Taniguchi 2002). In order to safeguard judicial justice, another procedural requirement would in general cover the trial organization in the bilingual litigation, in addition to the implementation of judicial independence, withdrawal and collegial deliberation system. That is, in Inner Mongolia, the bilingual judges shall form a collegial panel or serve as the sole judge in the trial. This should be an essential part of the procedural safeguard on the trial organization in the Mongolian and Mandarin bilingual litigation.

China is a country with many ethnic nationalities, and the minorities' regional autonomy system is its basic political system. The situations in the five major autonomous regions regarding major ethnic nationalities are very different and complex in China.⁹ Therefore, it is

⁹ First, the minorities in each autonomous region have different religious belief, like the Muslims in Ningxia and Uyghurs in Xinjiang worship Islamism, while Mongolians in Inner Mongolia and Tibetans in Tibet believe in Tibetan Buddhism. Second, the economic development is different in the five regions. An illustration of this background is that the GDP per capita in Inner Mongolia ranked top 10 out of the 31 provinces (or equivalence) in China, while Guangxi listed in the least developed province.

difficult to realize the right to use the native language at the national level within a short period. But Article 6 of the *Law of the People's Republic of China on Regional Autonomy of Ethnic Nationalities* prescribes as follows: the people's congress of the areas of national autonomy can formulate adaptive or supplementary provisions according to the principles provided by the Constitutional Law and the Law and in combination with the specific circumstances of the local nationalities. The specific circumstances of the local nationalities is the bilingual or multilingual nature of the litigation in the autonomous regions of ethnic nationalities, which requires to formulate adaptive or supplementary provisions to form practical policies and measures to safeguard the ethnic nationalities' right to use native language in the trial. On the other hand, standardization and institutionalization are important features of the legal behavior that is different from others. Therefore, based on the judicial experience in practice in the Mongolian and Mandarin bilingual litigations, China may consider the following aspects in the standardization and institutionalization of the bilingual judicial behavior:

First, it should further develop institutionalization and standardization of the bilingual litigation according to the successful experience of the Mongolian and Chinese bilingual court and judges models in current judicial practice. The court concerned should inform the parties and participants from the ethnic nationalities area of the right to use native language and have an interpreter in the litigation. At the same time, in light of jurisprudential principle, once the parties or participants of ethnic nationalities are deprived of the right to use their native language in the proceedings, they shall have the rights to appeal or request for a retrial.

Second, the Chinese authority shall provide the parties and other participants with the right to choose the language in the proceedings within the statutory scope, to facilitate them to use the language they are familiar with in the proceedings. In China, the ethnic minorities stay with the Han nationalities in the ethnic area, so it is a relatively common phenomenon for the language interaction. Therefore, the parties and participants should be allowed to use more skilled and convenient language in the proceedings. Except the special situation and requirement (such as using foreign language in a litigation), citizens should have the opportunity to dispose their individual basic rights. They should be allowed to challenge the trial by using the language or translated language so as to secure fair solution of the disputes.

Third, the judiciary at the municipal and county level of the autonomous regions shall equip certain amount of judicial staff that received systematically legal education and can use local popular ethnic language proficiently according to the population of ethnic nationalities within the jurisdiction. The quality of judicial personnel will directly affect the degree of realizing the procedural right of the parties. In the ethnic autonomous areas, judicial personnel judicial staff that received systematically legal education and can use local popular ethnic language proficiently is a precondition for protecting the ethnic nationalities of the ethnic autonomous regions in using the ethnic language in the litigation. Consequently, courts in the autonomous area, especially the grassroots courts, should equip a certain number of judges who have the knowledge of local ethnic language.

Fourth, as for the equipment of interpreters in the proceedings, I think, they should be different from those in other occasions. There are a number of reasons to support this argument: (1) The interpreter/interpreter is one of the main bodies in the proceedings, who shall enjoy the corresponding procedural rights and bear the corresponding legal obligations. (2) Interpreters are also different from the judges of collegial panel. The judicial personnel shall exercise the power

of hearing cases on behalf of the court, who shall have the right to make a decision on the dispute. By contrast, interpreters convey the language service just from an objective point of view, helping the parties to understand the trial related information in a language the parties understood. (3) The translation service will involve many legal professional knowledge and professional terminology in the litigation. Therefore, the Chinese authority shall set up professional agencies to review the qualification of interpreters used for the court trial. In this way can China address the problem of judges acting as the temporary or part-time interpreter in the trial, as this will contribute to the improvement of being fair and neutral in the judicial proceedings.

5 There is an urgent need of regulation the act of bilingual interpretation and translation service involved in the criminal litigation.

A lot of translation/interpretation work will be involved in the criminal trial of those pastoral areas, which is closely related to the rights of the accused. Any interpretation mistakes may affect the trial outcome. In judicial practice, some miscarriages of justice in Inner Mongolia have aroused widespread concern of the public regarding the right to fair trial. The interpreter shall not only help the judiciary to find out and check the fact of crimes, but also protect legitimate rights of the accused in the trial. For example, the defendant Mr. B in a case of contractual fraud that we collected in Site C was an illiterate Mongolian farmer who leased one plot of land to two persons in turn in November 2009 and January 2010, went out with the rent for work and was caught in June 2010. When the prosecutor reviewed the case and interrogated Mr. B and found that he was not fluent in Chinese Mandarin at all. For the sake of ascertaining the case, the procuratorate hired a Mongolian interpreter and finally understood the whole story: There were some overlaps of the contracted land between the two leases and Mr. B was freed from the charge as it was only a contractual dispute.¹⁰

5.1 There are controversies regarding the accuracy of the content interpreted in criminal proceedings in China.

As we know, most of the interpreters are not systematically trained in the theories of law, and have not got involved in the criminal procedure, and therefore, they may not accurately understand the meaning of legal terms. This may result in the inadequate quality of interpretation. But the accuracy of the interpretation will decide, or at least have direct connections with, final result of the case. Because of this, it is recommended that the interpreter in the criminal proceeding should have received legal education in a systematically manner and understood both Chinese mandarin and Mongolian. Moreover, the interpreters should be able to access to case files before the trial, who should be able to consult and duplicate the case files for the purpose of guaranteeing the accuracy and truthfulness of the interpretation.

5.2 China lacks necessary supervisions over the interpreter's act involved in the criminal

¹⁰ According to the authors' interview in Site C, the Procuratorate reviewed 325 criminal cases and applied Mongolian language in 200 cases since 2009. According the interviewed prosecutors, interpreters contributed to effective avoidance of improper prosecution arising from language barriers.

proceedings.

As we know, most the interpreters are temporarily employed, such as a university or school teacher who majors in Mongolian, the trust of the judiciary on the interpretation is only based on their long-term cooperation. In case that there is a collusion between the interpreter and the parties, it is difficult to control the possible situation that the interpreter conceal or falsify the facts of the case or intentionally interpret in a wrong manner in some key plots. This is also why Articles 149-152 of the *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, (commonly known as “Istanbul Protocol”) released by the United Nations specify in detail the interpreter’s obligations, such as the obligation of confidentiality, regulation on the possible mistakes, the active role of the investigators, selection and withdrawal of courtroom interpreters (Yang & Yang 2003:279-281).

5.3. The interpreter is not subject to the court proceedings.

Due to lack of the rules in hiring interpreters, the same interpreters may be very likely to provide the translation service for the same case during the whole criminal procedure covering the investigation, prosecution and trial stages in judicial practice. However, if the case involves a joint crime, the same interpreter will provide the service for all the criminal suspects, which may depart from the requirement of the basic principles of criminal procedure and cannot guarantee the objectivity and fairness of the trial. We also have reason to argue that the same interpreter who provides the service at the previous stage may have form subjective presumption of the case when continuing the interpretation for the same case at the next stage. Therefore, the interpreter should also apply the withdrawal rules, at least if he or she has provided the service in a case involving several offenders in a joint crime.

5.4 The suspects have no right to hire interpreters at their own initiative in practice.

On one side, the law emphasizes the neutrality of interpreters in criminal proceedings; while on the other hand, it is the autonomy of the judicial organ to hire and pay the interpreter according to the law. People may double the impartiality of the interpreters as it is very likely for the interpreter to have the tendency to support the task of the judicial organs in performing the punishment functions. Based on my survey, the payment will be made by the public security, procuratorate and court respectively depending on the stages of the proceedings. Accordingly, in our opinion, the rules on hiring judicial interpreters should be established as soon as possible in China in order to redress and change the shortcomings and disadvantages in current judicial practice. Only in this way can the interpretation play a more impartial and objective role in securing fair trial from the technical perspective.

First of all, China should formulate relevant management rules on hiring the interpreters in the criminal procedure, in particular the qualifications and special circumstances of interpreters and responsibility of the interpretation in the criminal proceedings. It should forbid those who have not received professional training or qualifications to engage in the interpretation service in the criminal procedure so as to ensure the solemnity of law enforcement. Furthermore, China

should develop a special normative document on interpreters' involvement in the criminal proceedings, in which it clearly provides the channel and procedure of hiring the interpreters and their legal status, procedural rights and obligations so as to be conducive to the management and regulation of the interpretation. Finally, China should set up a video and audio recording system of the interpretation during the whole criminal procedure. Language communication and meaning of gestures and actions during the interpretation process is of the characteristics of immediacy, while the video and audio recording system will make up the deficiency of written records and consolidate truthfully what happened in the court trial, which can facilitate the consequent checking of the interpretation quality and correct some key omissions, and ensure the objectivity and fairness of the case (Taguchi 2000:205). Another important aspect is the payment institution and payment method. China should authorize an independent agency for paying the interpretation fee and implement a uniform standard of the charge. In our view, the interpreter's costs should be included in the legal aid budget rather than in the budget of judicial organs in order to avoid the partiality of the interpretation. In this regard, we think it may work like this: The interpreter presents a note or ticket or relevant certificates issued by the judiciary to the legal aid institution and obtain the remuneration after the service. Where the interpreter is hired from other place, their travel costs shall be reimbursed together with the travel expenses (Anisha 2009).

6 Provision of legal aid lawyer with the capacity of Mongolian and Chinese languages is the State's responsibility in the criminal proceeding.

Legal aid is a pro bono legal service provided by the government of a State for the citizens or parties in certain types of cases who have the economic difficulties in order to safeguard human rights of the disadvantaged. In fact, the earliest legal aid record appeared in the mid of 15th Century in Scotland where the poor were entitled to free legal consultation (Zhang 1997:4). But such practice had certain limitation because of the individual public interests provided by the practitioners from the professional considerations. It was until early 20 century that the spread of the bourgeois concept of human rights helped the government to understand such assistance as a duty and obligation for the disadvantaged.

According to Articles 34 and 266 of the Criminal Procedure Law (2012), there are two methods for the defendant to acquire legal aid service: Application of the legal aid by the accused in case of having difficult economic situation or other reasons, or appointment by the judicial organs under the statutory conditions.¹¹ The ethnic minorities are disadvantaged groups in China, and such basic fact decides their right to receive legal aid. Their disadvantages mainly reflect in three aspects: first, the minority population is in a small number comparing with the Han Nationality (Zhang and Zhou 2008). Currently, there are 56 ethnic minorities in China with a total population of nearly 0.12 billion, only accounting for 8.49 per cent of the national population, and 19 ethnic minorities' population is even less than 100,000 people (National

¹¹ Where the crime suspects/defendant has not retained a defender, the Court, Procuratorate, and the police shall notify the legal assistance institution to assign a lawyer for criminal defence: (1) If the crime suspect/defendant is blind, deaf, or dumb, or is psychiatric who have not completely lost identification or control of his capacity; (2) If the criminal suspect/defendant is a minor; (3) If the criminal suspect/defendant may be sentenced to life imprisonment, and death penalty, who belongs to the vulnerable groups of the society.

Statistics Bureau 2011). The low population number will inevitably lead to their vulnerable position from the psychological aspect and who are very easily marginalized in the real life. Second, the ethnic minority population is generally low in the cultural quality, and one outstanding indicator is the high rate of illiteracy. Except the Mongolian and Manchu minorities, the illiteracy rate of other minorities is higher than the national average. Take Yunnan for example. The illiterate in the population of ethnic minorities occupied 38% of the total minorities in the Province, and some ethnic minorities even amount to 60%-80% (Yunnan Statistics Bureau 2011). Among the other thing, low awareness of the ethnic minorities is a reflection of low cultural quality. Third, the ethnic minorities are economically poor. By the end of 2014, the ethnical minorities still occupied more 30% of the total national rural poverty population in China although such rate is slightly reduced, the absolute number of poor people is still striking (State Ethnic Affairs Commission 2015). The people with economically disadvantaged position will directly led to their difficulty in access to better legal services. In another word, the population number, and culture quality and economic development situation of the ethnic minorities led to their disadvantaged position which has been extended to the litigation field. Due to lack of materials, and financial resources, some parties of the minority groups even have difficulties in paying the litigation costs. Litigation right as the last resort for the justice, the state ought to bear up the corresponding responsibility in this regard. The economic development and social stability of a state depends on the disadvantaged groups. If the society has been neglecting the needs of such groups, it can eventually lead to the collapse of their psychological defense line, causing resentment and despair for the surrounding environment, and the revenge as the worst. Such social instability will not be so conducive to social development in China (Liu 2004). As a result, it is important to implement the legal aid system in full effect for the ethnic minorities so as to smooth their channel of claims and rights protection.

In our survey, we found that no matter it is the urban residents or pastoral herdsmen in the Inner Mongolia Autonomous Region, they have few knowledge of law, and many Mongolian over 60 years old cannot speak proficient Chinese, letting alone the degree of their understanding and using Chinese Mandarin. Considering their proficiency in language and the capacity of legal knowledge, the ethnic minorities may face the structural disadvantage in the criminal litigation without the assistance of legal aid which is not good to secure the right to a fair trial and effective defence. Moreover, the religious beliefs and traditions are also something that the legislators must pay attention to in the criminal procedure. For example, the Mongolians mostly believe in the Tibetan Buddhism in Inner Mongolia, and the belief “compassion being good, and willingness to donate to the poor” play a dominant role in their life. However, such situation may also have its negative impact, that is, the legal awareness of those minorities is poor, making themselves as a vulnerable group in legal protection. This is a realistic and objective situation, but it is also a real and long-term social phenomenon. Accordingly, only the lawmakers provide special protection for those disadvantaged in the legislation can they enjoy the same or similar rights and resources as the ordinary people. It is regrettable that, under the current *Regulations on the Legal Aid*, the eligibility conditions for the legal aid are citizens’ economic difficulties and other statutory legal representation or defence matters. Moreover, there is not compulsory criminal defence system in China’s criminal procedure law, while the

definition of the standard of economic difficulties and the representation is left to the power of the provincial government.

At present, the provincial government often determines the standard of economic difficulties based on the local minimum living standard. If we look at the application standard, we will find it difficult for the ethnic minorities to apply for the legal aid as they are not included into the scope of application.¹² The standard in the Inner Mongolia is slightly relaxed, which provides 1.5 times of the minimum living standard for urban residents and farmers and herdsmen as the standard of economic difficulties. However, the rule makers did not envision legal services as a non-essential consumption item, as the individuals whose income is above the minimum living wage may not be so willing to pay for the costs of such services. The division line in such a manner will shut those in urgent legal aid need outside the door.

Take D County of the Inner Mongolia in our survey for example again. The local authority provides the standard of economic difficulties as less than twice of the minimum living standard for urban residents and farmers, while the recommended subsistence allowances for residents of rural and pastoral areas in Inner Mongolia is RMB 700-1,000 (Inner Mongolia Gazette 2009). That is to say, the eligible minority herdsmen in pastoral areas should have an annual income of less than RMB 1,500 in order to have access to the legal aid service, while the income per capita in the Region is RMB 7,851 in 2010 (Hu 2011). At the same time, we noted that the annual income in the pastoral area is not as high as we expected because the income is mainly based on their selling of herds. If they encountered bad weather, they may suffer from economic loss. Therefore, they formed a habit of saving the money in case of the bad year, and are not so willing to spend money on legal service in criminal proceedings. On the other hand, the ethnic minorities groups may also encounter the situation of few legal talents available, especially in the remote area. What contrasts the reality is that many paralegals are actively providing legal service. If the government can consider conduct uniform training on legal aid, this group will play an important supplementary role in legal aid in the ethnic minority areas.

7 Conclusions

In the modern world, one principle that many countries deal with various challenges is to construct harmonious ethnic relationship on the basis of equal recognition and appreciation of cultural value diversity (Wang 2006:1-11). China's bilingual judiciary system in ethnic nationalities' autonomous regions embodies the essence of providing equality and tolerance of different culture, and establishing a harmonious ethnic relationship, and has achieved long-term and positive social effect in judicial practice. Finally, I think it will reflect China's efforts in the protection of ethnic nationalities' human rights, showing to the international community, if China pays more attention to the problem of bilingual proceedings in judicial practice.

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¹² This is the standard applied in Ningxia and Guangxi. See State Ethnic Affairs Commission, "The Monitoring Result of Rural Poverty Situation in the Ethnic Minorities Areas in 2011", 28 November 2012, available at http://www.gov.cn/gzdt/2012-11/28/content_2277545.htm (Last visit: 30 November 2015).

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Bionotes

Weidong Li (b. 1968) is Associate Professor at Inner Mongolia University of China < nmdong2003@sina.com>. Her research interests include judicial system, evidence law and criminal procedural law. Her publications include “Corruption Assets Retrieving Mechanism and Legislation Improvement of China” (2011); “Demonstration Analysis on Implementing System of People’s Supervisors” (2011); “Demonstration Analysis on Investigation and Supervision” (2010); “Demonstration Analysis on Penalty Measurement of Duty Crimes” (2008); “Reflection on Government Responsibility to China Legal Aid System” (2009); “Study on Criminal Policy of Combining Leniency with Rigidity” (2006); “Women’s Rights during the War” (2005); and “Practical Thinking on People’s Supervisors System” (2005).

Qiang Tian (b.1968), is Senior Lecturer at Inner Mongolia University of China < email rogertian@aliyun.com>. Mr. Tian specialized in economic and commercial law. He is currently a senior partner (Part-time) in a distinguished Chinese law firm in Hohhot. His research interests cover contract and civil disputes.