



**Submission to the Public Services Panel
Language Proficiency Requirements for Appointments to the Civil Service
19 may 2010**

I) Foreword

We are a NGO advocating for the rights of ethnic minority (thereafter EM) people in Hong Kong. Over the past few years, we have been particularly concerning about their employment opportunities. Compared to colonial era, EM residents in Hong Kong now face more obstacles and difficulties in employment. Part of the reason is due to the increasing number of employers requiring job applicants to have Chinese language qualification, without considering whether it is necessary to nature of the jobs.

It was particularly regrettable to witness our Government taking the lead to exclude EM residents. By imposing universal Chinese language requirements to all civil service posts, the Government failed to consider its adverse impact to EM people, who are also part of the Hong Kong society. More importantly, we consider such policy not in line with the Racial Discrimination Ordinance (thereafter RDO), as the latter only allows employers to impose those requirements fitting into genuine occupational needs.

II) Present policy and its impact to EM residents

1) Degree and professional posts

Since December 2006, the Government required all the job applicants of degree and professional posts to obtain at least “Level 1” in the Chinese Language paper in the Common Recruitment Examination. Given that most of our EM youth did not have opportunities to study Chinese Language in their primary and secondary schools, such requirement have in effect screened them out of these posts.

2) Posts requiring academic qualification below degree level (Non-degree posts)

Since 2003, the Government had required all the job applicants of non-degree posts to have at least a pass in the subject of Chinese Language in HKCEE. In October 2006, the Government adjusted the above policy, in which individual departments were given the authority to determine their own language requirements, having regard to the nature of each post. Yet most of them were still stick to the “HKCEE Chinese Language” requirement. (NB: We have asked for statistics on how many EM had been recruited after 2003 but the Government refused to provide any information. However, if you looked at those job advertisements for civil service posts, it was not difficult to find out most of the non-degree posts still require “HKCEE Chinese Language” qualifications).



Starting from August 2007, the Government allowed its job applicants to use Grade D in the Chinese Language subject in GCSE/IGCSE/GCE ‘O’ Level as an alternative for “HKCEE Chinese Language” qualification. The policy is supposed to facilitate our EM residents applying for civil service posts. Yet as individual department could impose its own requirements, additional hurdles could still be created for EM applicants. Taking the Hong Kong Police as an example, they require the applicants for the post of Police Constable to pass an internal Chinese written test. In fact, a number of our EM youth has applied for the post, yet they failed to pass the test, even though they possess “GCSE Chinese Language” qualification.

3) Promotion

Besides recruitment, similar Chinese language requirement has also been imposed on promotion to different grades in Civil Service. Such requirement has put those EM civil servants currently working in the Government in a disadvantageous position. One should note that when they entered the Government, there was no such requirement. However, owing to their relatively weak Chinese language proficiency, they are now in an inferior position when competing for promotion.

In fact, a group of EM officers who have joined the Correctional Services Department (thereafter CSD) before 1997, and at the rank of Assistant Officer II, has written to your Legislative Council, complaining about lack of equal promotion opportunities, due to the imposition of Chinese Language Proficiency Test by the CSD in 2000. For details, please refer to Appendix 1.

III) Our Argument: Present policy does not in line with the RDO

The Government has repeatedly stressed the importance of building a biliterate (Chinese and English) and trilingual (Cantonese, Putonghua and English) Civil Service, since Chinese and English are both official languages of HKSAR as accord to the Basic Law. Given the increasing importance of Chinese language, we recognized there is a need to enhance Chinese language proficiency within the Civil Service. However, it doesn’t mean that every member of the Civil Service should be able to speak, read and write Chinese. When imposing a language requirement, an employer has to consider whether there is a genuine occupational needs, having regard to the nature and duties of each post.

We consider the current civil service recruitment and promotion policy not in line with the RDO. According to the RDO, if a condition applied to all job applicants put a particularly racial group in a disadvantageous position, it could constitute an act of indirect discrimination. In fact, it is exactly the case in the recruitment of degree and professional civil service posts. By putting a universal language requirement to all the posts, the Government failed to take into circumstances of each post, i.e., whether it is necessary to impose such requirement with regard to work nature and duties.

As for the case of non-degree posts; although authority has been delegated to individual departments to set their own language requirement; we found most of them still require “HKCEE Chinese Language” qualification, or applicants being able to read and write Chinese.



For those departments accepting GCSE Chinese qualification, such as the Hong Kong Police Force, they have imposed additional Chinese language requirement for their applicants. On the whole, we found most of the government departments are reluctant to open the door for EM applicants. They simply impose Chinese language requirement automatically, without considering its necessity. Given that the RDO has become effective, we believe the Government has to review its own attitude and mentality as well as the current policy and practice and ensure language qualification should only be imposed whenever necessary.

For the promotion criteria, we do not have the whole picture in the Civil Service. (NB: Again the Government failed to provide information about the criteria of promoting to a different grade in each department and figures of EM civil servants that have been promoted after 2003.). Yet at least we know there are some departments requiring their EM workers to pass an internal Chinese written test when applying for promotion. Such requirement; again could be considered as an evidence of indirect discrimination as our EM civil servants being put into a particular disadvantaged position.

IV) Government owed the EM communities a moral obligation

What makes the Government's case less convincing is that when it revised its recruitment policy in 2003; i.e., requiring all the applicants to civil service posts to have at least a pass in Chinese Language in HKCEE; it failed to consider the adverse impact on our EM communities. Bear in mind that formal Chinese language education was not provided to EM children in Hong Kong until 2004; it is simply unrealistic to expect these people to attain such degree of Chinese language proficiency.

In fact, the Government has owed a moral obligation to the EM communities. We believe there would be still a long way to go before our EM residents could catch up with their Chinese counterparts in Chinese language proficiency. Therefore, the Government should do something to relieve their difficult and disadvantaged employment situation. At least it should adopt a more open attitude in recruiting these people.

V) EM's unique linguistic assets should be taken into account

In fact, by calling for recruitment of EM people, we are not asking our Government to do them a favour. In fact, many of our EM residents entered the Civil Service before 1997. Despite their relatively lower Chinese language proficiency, they are still doing a good job and discharging their duties effectively. More importantly, these people have their unique advantage to be utilized in their performance of duties. This is something that their Chinese counterparts could not replace.

Given that Hong Kong is an international city and we have a 5 % EM population (NB: about 340,000), it is inevitable for our Civil Service to be able to encounter people with different racial backgrounds. The facts that our EM residents could speak their native language, and are familiar with their traditional culture and religion would certainly facilitate different departments in its execution of duties, as well as provision of services.



Taking the CSD as an example, most of the EM staff has been acting as interpreters facilitating communication between the prison and non-Chinese speaking inmates. Though it does not fall within their official duties, they are willing to help and such additional contribution has indeed helped the CSD saving a lot of time and expenses.

Besides practical value, the inclusion of EM residents in the Civil Service would also help to boost the image of HK as an international city. By building a diversified and racial inclusive civil service force, we could maintain our uniqueness and competitiveness when compared to our neighboring cities.

VI) Special measures to ethnic minorities are justifiable

There is a common misconception that by exempting Chinese language requirement for EM people in the recruitment of the Civil Service, it would be unfair to Chinese people and thus amount to racial discrimination. Yet one must understand that our Chinese residents receive Chinese language education since their childhood, not to mention that Chinese is their mother language. From day one, Chinese and EM residents were not placed in an equal footing. Given such background, our EM residents deserve special treatment to compensate the effects of past discrimination so as to promote a substantial or de facto equal opportunities

As suggested by the Committee on the Elimination of Racial Discrimination (CERD) in United Nations, different treatment given to a particular group of people who has been suffering from racial discrimination is justifiable when it aims at lessening the impact of racial discrimination. In fact, this is exactly what happens in Mainland China where ethnic minority people such as Ugurs and Tibetans are given preferential treatment in different areas like education and employment.

VII) Our Recommendations

In light of the above circumstances, we have the following recommendations:

1. The Government to collect data on EM people currently in the Civil Service: their numbers, distribution and whether they have equal promotion opportunities;
2. The current administrative guideline in relation to the RDO should apply to the Civil Service Bureau, so that the latter have to consider the impact to EM communities in its formulation of policies;
3. The Government to abolish its universal Chinese language requirement in degree and professional post. Instead requirement on Chinese language proficiency should be set based on genuine occupational needs, and should be approved on case by case basis;
4. The Government to review its policy in the recruitment of non-degree posts. Steps should be taken to ensure individual departments only impose Chinese language requirement based on genuine occupational needs;



5. The Government to fully implement the policy that Chinese language qualifications obtained in GCSE/IGCSE/GCE “O” Level could be used as an alternative for “HKCEE Chinese Language” qualification in applying civil service post. Besides, promotion on this regard should be carried out within the Government, as well as EM communities to raise their awareness. Such qualification should also be specified in the job advertisements issued by the Government;
6. The Government to conduct a review on the promotion criteria of individual department. Any language requirement not fall within genuine occupation needs should be dropped immediately;
7. The Government to review its training and development policy for the Civil Servants, to ensure there are equal opportunities for EM civil servants as well. For instance, trainings should be provided in both Chinese and English;
8. The Government to review its practice of internal communications, to ensure that all the notices, newsletters and documents etc to be written bilingually so that all civil servants with different ethnic background have equal access to information.
9. The Government should take the lead to recruit EM people, for instance, contract posts could be created to enable our EM residents to work in those departments with frequent contact to EM people. The purpose is to facilitate communication between the departments and the EM communities.



Appendix 1

To: Legislative Council Secretariat's Complaint Division

Date: 13 January 2010

We are a group of ethnic minority (thereafter EM) officers who joined the Correctional Services Department (thereafter CSD) before 1997, with service period from 15 to 25 years. We are all still at the lowest rank, i.e., Assistant Officer II (thereafter AOII).

We would like to complain against the unfair practice by the CSD towards us, which could be amount to racial discrimination; and which in effective depriving our chances of promotion and on-the-job training.

Unfair Promotion Policy

1) Promotion from AOII to Assistant Officer I (thereafter AOI)

Under the existing policy, an AOII is eligible for promotion to AOI if he or she has been given good appraisal reports. However, after 1997, it has become less likely for us to receive good appraisal reports, compared to our Chinese counterparts. As a result, only a few of us was getting promoted to AOI.

Despite our willingness to take extra duties; such as acting as interpreters for EM inmates; our effort has never been appreciated. We suspect the fact that we have been overlooked in the course of promotion is not a matter of coincidence. It reflects the discriminatory attitude held by the senior management of CSD against its EM staff.

2) Promotion to the Officer

It should be noted that we were not required to have any Chinese language qualifications when we joined the CSD. However, in 2000, the Department introduced an internal Chinese Language Proficiency test as an additional requirement for promotion to the rank of Officer. Only those passing the reading and writing test in Chinese could be considered for promotion. Though most of us could speak fluent Cantonese, it is unlikely for us to pass the test, given that we had no chance to learn Chinese language when we were at school. So the new requirement has deprived our chance of promotion effectively.

3) Internal training opportunities

From time to time, the CSD has been providing internal training opportunities to its staff, for instance, subsidies was provided to the staff attending courses offered by other education institutions. Sadly speaking, many of these courses were offered in Chinese. Even they were provided in English, chances were always given to Chinese staff. Again, we do have equal opportunities in on-the-job training.



4) Internal correspondences

Currently most of the internal correspondences of the CSD, including the circulars, orders, and memos are all written in Chinese; which has denied our excess to these information. To ensure racial equality, we believe the Department should provide these information bilingually.

Our demands

With the enactment of the Racial Discrimination Ordinance (RDO) in last July, we believe the above situations may amount to racial discrimination. Therefore, we would like to draw the Legislative Council attention into the issue, calling for elimination of these discriminatory practices.

In addition, we believe we are not the only group of EM civil servants suffering from unequal opportunities. Similar things happen at other departments. Therefore, we would also like to urge the Legislative Council to look at the broader picture, that since the handover, there were fewer EM people entering the civil service; and those working in the Government have been suffering from unequal opportunities and treatment.

Appendix 2

News Report by Oriental Daily News, Date 14 May 2010, on the unfair promotion system in CSD (See attached file)

中文試無法過關 等10年原地踏步

南亞裔教員晉升受刁難

港府呼籲僱員主要給平等機會予員工，資料紀律部隊之一的懲教署，卻被指帶頭歧視，未有公平處理非華裔員工的晉升問題。懲教署自○年規定，由懲教助理擢升懲教主任，須通過內部中文能力考試，撰詞刁難一眾南亞裔的懲教助理，雖然他們能操多種語言，惟難達中文考試的高要求。自此便未有一位非華裔員工可晉升至主任職級，嚴重打擊士氣。立法會議員直指，署方此舉反映沒有知人善任，會在稍後的立法會會議上討論南亞裔懲教人員的晉升問題。



現時約有五十名非華裔人士擔任二級懲教助理或以上職位。



南亞裔年輕人都希望可以加入紀律部隊回歸社會，但事與願違。



九七年後，南亞裔非華裔人士獲委任為懲教主任。

現時懲教署約有五十名非華裔人士擔任二級懲教助理或以上職位。擔任二級懲教助理十六年的Hussain (化名)，中五畢業後加入懲教署，一做十六年，看着身邊華裔的同事扶搖直上，自己卻一級都沒有升過。他會向上司反映欲升職，上司只說「界心機嘅！」其實與Hussain一樣「無職升」的非華裔員工比比皆是，由九七年至今，僅三名非華裔二級懲教助理晉升至一級懲教助理，而在逾十多年，竟沒有一名能升至懲教主任。

語言要求按本子辦事
根據懲教署資料，懲教助理與懲教主任屬兩個不同職系，故不能直接晉升為懲教主任，惟懲教助理可經公開或內部招聘投考為懲教主任，而自○年起，如要晉升為懲教主任，中文筆寫能力要達中學水平，須通過內部中文考試。

「我做無得升」下，不少南亞裔懲教人員紛紛離職。在○六年辭任二級懲教助理的南亞裔華人高寶實不諱言，即使沒有投身娛樂圈，也會離開做了十五年的崗位，「愈做愈灰，好似原地踏步一樣。」

政府欠鼓勵難以和諧
懲教署發言人指，署方會沿用行之有效的機制，用人唯才擇優晉升，種族並非晉升過程中的考慮因素。如員工在晉升方面提出申訴，署方會按程序公平處理。「話就話用人唯才，不過政府就唔多珍貴有語言才能的南亞裔員工。」立法會議員李卓人表示，署方態度強硬，完全沒有考慮過南亞裔員工與華裔員工互補不足。

華裔人士獲聘入懲教署，故此擔心署內的非華裔員工會青黃不接。「政府根本就唔係鼓勵南亞裔人士就業，再咁落去，社會又點和諧呢？」他指，會於本月廿四日立法會公務員及資助機構員工事務委員會會議上，討論南亞裔懲教人員的情況，有南亞裔懲教助理表示，已計劃到平機會投訴，爭取公平待遇。

懲委會總幹事王惠芬指，南亞裔年輕人和普通年輕人一樣，也希望可以加入紀律部隊回歸社會，不過，懲教署的晉升考核方法卻令他們卻步。「年輕人唔可以失去理想，亦唔可以失去希望。政府唔可以再只係叫佢地『加油』，要用行動回應佢地嘅要求。」她批評政府對「平等」的觀念無知，落後，擔心社會會賠上代價。

學者：涉間接種族歧視

《種族歧視條例》於○八年七月通過，種族歧視主要分為直接、間接兩類。就南亞裔懲教助理要通過內部中文考試，才符合晉升至懲教主任的資格，有法律學者認為署方可能涉及間接種族歧視。

熟悉人權法的港大法律學院助理教授羅偉庭 (Kelley Loper) 認為，懲教署要求南亞裔員工通過中文能力測試才有晉升機會，造成間接的種族歧視。她舉例，如果僱主以身高作為入職或升職要求，讓六呎高才可以被僱用或晉升，就會造成間接歧視。她估計，如果懲教署的個案上法庭，法官會考慮政府設立

原地踏步，愈做愈灰！



前二級懲教助理高寶實。



王惠芬批評政府對「平等」的觀念無知，落後，認為政府應該讓南亞裔年輕人一個希望。

「埋堆」文化 影響考勤評級

「入錯行嘅！No Hope (沒希望) 嘅！」二級懲教助理須經過部門升職考試及服務滿十二年，並在過去五年內服務紀錄和考績報告良好，就會獲考慮晉升為一級懲教助理。不過一班工作了十五至廿五年的南亞裔懲教人員，其服務紀錄和考績報告，卻甚少被評為「良好」。

二級懲教助理Hussain認為，此情況和署內「埋堆」文化盛行有關。「其他同事會同阿頭去打廚審食飯，我哋文化習慣完全唔同，點可以埋到堆呢？」他稱，上司要給予下屬「良好」的評級，需要撰寫詳細報告解釋，惟南亞裔的報告卻要以英文填寫，「有人英文水平有限，又點會願意為我哋寫英文報告呢？」

被迫棄讀課程

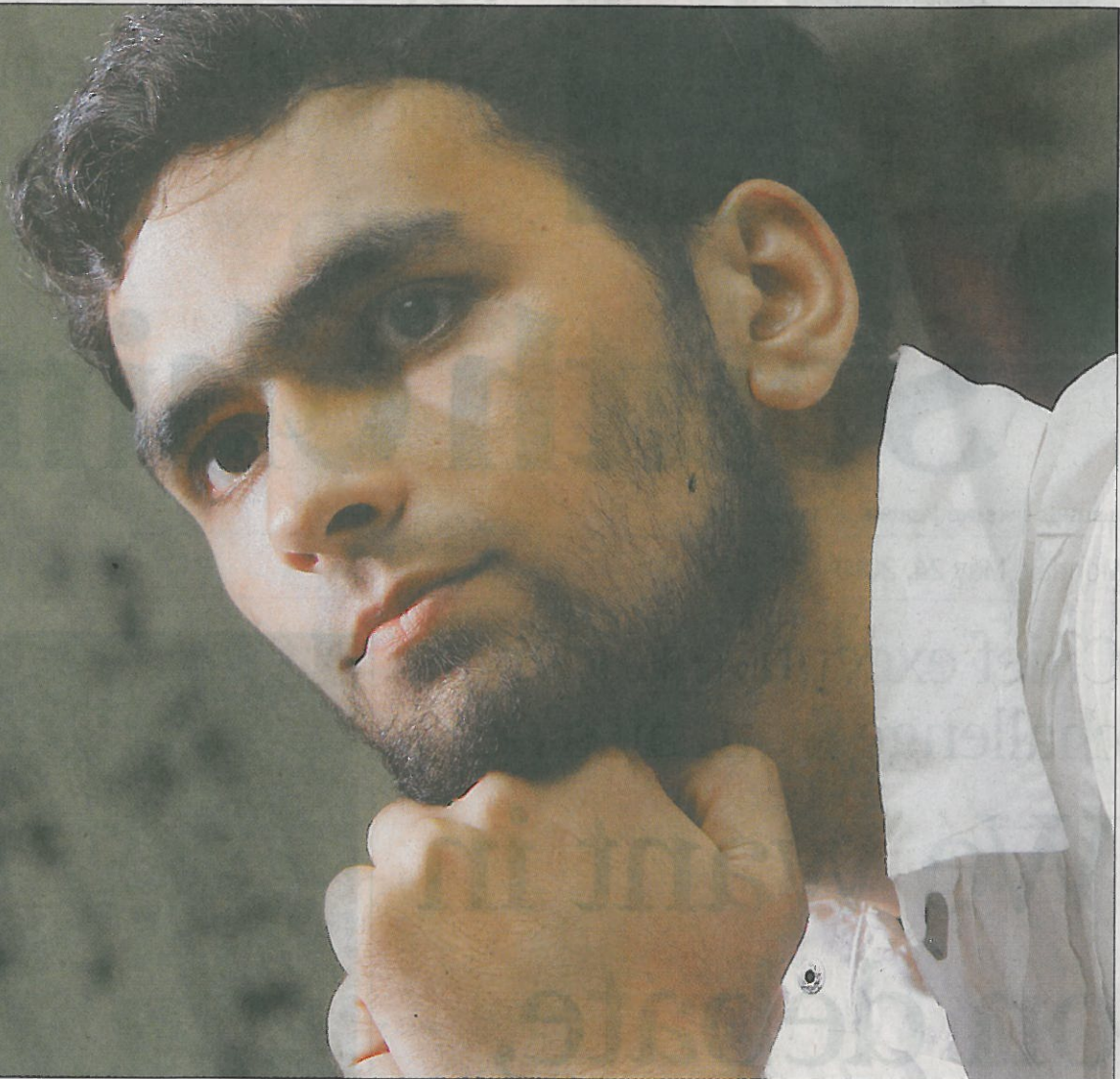
他稱，早前懲教署舉辦一個應用社會學的高級文憑課程，錄取了數名南亞裔的懲教人員，然而有人指課程中有一科是「實用中文」；以此為藉口要求他們簽名自願放棄報讀機會。



隨著本港犯罪率多非華裔犯人，熟悉多種語言的南亞裔懲教人員的重要性亦隨之增加。



曾有三千多名的少數族裔人士遊行，爭取社會平等對待他們。



ve with the Hong Kong Police ... "We really want to serve the community and work in the government; we have a heart to serve." Photo: May Tse

languages, but police don't want him

communities and fluency in Urdu, Hindi and Punjabi would be useful in dealing with South Asians who get into trouble. "There are many Pakistanis and Indians in Hong Kong and I could use my home language to help them if I worked as a police constable, which I think is a big advantage," he said.

In an interview conducted in Cantonese, in which he often used highly idiomatic Chinese expressions, Hayat told how, after sitting the Form Five Hong Kong Certificate of Education Examination, he applied to join the police force as a constable.

During the process, he was asked to answer three written questions in Chinese on why he was interested in being a police constable. Hayat did his best but was told by a senior in-

spector in the one-to-one interview that his written Chinese was below standard, despite the fact he had obtained an A* in the British General Certificate of Secondary Education, which the government accepts.

"I do agree Chinese is very important in government, but it seems that my GCSE result in Chinese, which is a government-recognised one, is not working; and they don't even emphasise English," he said. There was no test in English and his strength in South Asian languages was ignored.

Like many young Indians and Pakistanis, Hayat grew up speaking Cantonese. When he was studying at the Delia Memorial School in Mei Foo, he decided to be the first one in his family to study Chinese formally instead of French. "Whatever way I

could think of to learn Chinese, I did it," he said. "On Christmas Day, we tried to write Christmas cards to each other in Chinese."

A good student who left school after Form Five last year to help his family's finances, he failed Chinese in the HKCEE but later got an equivalent pass in the GCSE exam.

But as well as the police, he was rejected for clerical and sales jobs by employers who only took his HKCEE result, not the GCSE, into account.

Hayat, who works as a deliveryman, said he would not give up trying to improve his Chinese and would apply again to be a police constable.

Since 2003, the government has applied Chinese language requirements to all applicants for government jobs. At that time applicants for

posts not requiring a degree needed a pass in HKCEE Chinese. From August 2007, applicants have been allowed to use Grade D in the GCSE Chinese as an alternative to the HKCEE qualification. But some departments, including the police, have their own written Chinese test.

Alan Din Wai-bun, project officer of Unison Hong Kong for Ethnic Equality, said the government should review its policies on recruitment so as to be a racial-equality employer.

He said the government at present did not have statistics on the number of applicants or serving civil servants by different race groups.

The Civil Service Bureau says in a Legco paper it is considering what steps can be taken to measure the Civil Service's composition by race.