For discussion on
8 July 2014

Legislative Council Panel on Security

Conclusion of
Consultation on RESCUE Drug Testing Scheme

PURPOSE

This paper briefs Members on the conclusion of the Action Committee Against Narcotics (ACAN) on the four-month public consultation on the RESCUE Drug Testing Scheme (RDT)[1] and the recommendations put forward to the Administration on the way forward.

BACKGROUND

2. Against the background of a growing problem of hidden drug abuse in spite of some early success in curtailing the growth in drug abusing population, ACAN proposed the RDT to provide an additional measure to enable early identification of drug abusers. The idea is that when there are reasonable grounds based on strong circumstantial conditions to suspect that a person has taken illicit drugs, the law will enable law enforcement officers (LEOs) to require that person to undergo drug testing procedures. The primary objective is to identify drug abusers early to enable counselling and treatment to be provided to them in a timely manner, and before prolonged drug abuse induces serious or even irreversible harm on their health.

3. ACAN led the public consultation between September 2013 and January 2014. During the period, ACAN organised four town hall discussion sessions attended by over 300 members of the public. ACAN members also attended nearly 100 forums and discussion sessions organised by different sectors of the community. On 5 November 2013 and 7 January 2014, ACAN briefed the Security Panel. Deputations from four professional bodies attended the meeting on 7 January and gave their views on the RDT. The Welfare Services Panel held a special meeting on

[1] "RESCUE" is an acronym for "Reasonable and Early Screening for Caring and Universal Engagement".

the RDT in the context of drug treatment and rehabilitation services on 19 November 2013, and heard views from 20 deputations.

4. By the end of the consultation period, the ACAN Secretariat received a total of 2 791 submissions by mail, facsimile or e-mail. ACAN has considered and analysed the views received and has prepared a report on the conclusion of the consultation exercise, which was published on 2 July 2014. The report is at the **Enclosure**. It is also available on the website of Narcotics Division, Security Bureau. Between 17 February and 14 March 2014, the Public Opinion Programme of the University of Hong Kong (HKU-POP) was commissioned to conduct an opinion poll on the RDT (summary of findings attached to the report).

OPINION POLL AND WRITTEN SUBMISSIONS

5. Under the poll conducted by HKU-POP, around 1 000 people aged 18 or above were interviewed over the phone. About 91% of the respondents supported the RDT; 61% believed that the RDT should be effective in achieving its objective of identifying drug abusers and referring them to treatment at an early stage. While 36% of the respondents had concerns over LEOs having excessive power, 47% did not consider that the RDT would infringe on human rights and civil liberties.

6. The 2 791 written submissions carried diverse views. A simple count indicated that the number of opponents and supporters accounted for 54% and 45% respectively. As in other consultation exercises, submissions with identical positions engineered by individual parties could be found. In the case of the RDT, some opponents organised mass submissions with standardized templates, which accounted for 71% of the opposing voices and 38% of the overall submissions. There was also a template in support of the RDT, accounting for 17% of all supporting voices and 8% of the total submissions. Overall speaking, the RDT had more support in the following sectors: education (90%), parents (74%), medical doctors and nurses (67%), and drug abusers and ex-drug abusers (55%).

7. Many respondents noted inadequacies in the existing system in addressing the problem of hidden drug abuse and motivating drug abusers to receive treatment before they became aware of the long-term, or even irreversible health damages caused by drugs. Some echoed ACAN's

position that the RDT could provide an extra entry point of intervention before it became too late.

8. Those opposing the scheme included social workers / non-government organisations (NGOs), as well as major professional bodies and human rights concern groups. More specifically, they voiced concerns about possible abuse of power by LEOs, and questioning the effectiveness of the RDT and Adminstration's intention in the absence of specific proposals in the consultation document. Some noted that it was ineffective to attempt to force drug abusers who had low or no motivation to receive treatment.

9. The views in paragraph 8 were in direct contrast with the stance of those who had firsthand experience in drug treatment and rehabilitation services, including both service providers and former drug abusers. They were generally much more supportive of the RDT. Some, including also parents of ex-drug abusers, noted that an additional point of intervention was necessary to prevent drug abusers from deterioration to a point of no return.

10. In the medical services, those who were directly involved in treating serious and chronic cases of drug abusers had more understanding and support for the RDT. The supporters reflected that drug abusers normally had very low motivation to quit drugs, and would only seek help when they were too sick to lead a normal life. It was noted that such people would need a push from an external force to take up treatment and counselling programmes. Some medical practitioners with direct and frequent experience of handling drug abusers also pointed out that the earlier the treatment could be given to the drug abuser, the better could be the result. Sadly, many drug abusers they encountered had missed the golden time for treatment, hence recovery, and the damage to their body (e.g. urinary bladder and brain) had become irreversible.

11. The legal profession and human rights concern groups, while mostly opposing the RDT, had generally acknowledged that certain human rights might be restricted in exceptional circumstances. Some, however, argued that, in view of the declining number of reported drug abusers, the proportionality test could not be met because the measures proposed in the RDT were more than necessary for addressing the problem of drug abuse. They argued that ACAN and the Administration should focus on measures with proven effectiveness. At the same time, less draconian measures should be exhausted before considering the RDT.

12. Some submissions put forward specific suggestions on the drug testing scheme, including amongst others, restricting the location or age of RDT application in a bid to minimise the impact on the general public, and developing a new mechanism that could give an opportunity of non-prosecution to those identified but at the same time mandating treatment [2]. On the mechanism for follow-up of those confirmed to have taken drugs, some argued that compulsory treatment would be essential to the effectiveness of the RDT. Some suggested alternatives to the RDT with the objectives of facilitating early identification of drug abusers. Examples included setting up dedicated teams to reach out to drug abusers at home, establishing a new referral mechanism such that the Police could refer a person suspected of committing drug-related offences to social workers, using the Care or Protection Order under the Protection of Children and Juveniles Ordinance (Cap. 213) and establish a drug court [3] as in various other jurisdictions.

THE SWEDISH EXPERIENCE

13. ACAN made a visit to Stockholm in April 2014 to look into the compulsory drug testing scheme currently in practice in Sweden.

14. In spite of a common perception that the more advanced economies in the West in general adopt more permissive drug policies as part of their commitment to compassion and tolerance of diversity, Sweden, a country noted for its liberal views, stands out as an exception to this stereotype and adopts a more restrictive drug policy. Sweden de facto legalised drug consumption in the 1960s. Doctors were allowed to

---

2 The law as it now stands does not provide for any such mechanism. The Police Superintendent's Discretion Scheme (PSDS) cannot serve such purpose because under PSDS, the Police can only exercise their discretion not to prosecute. They cannot, as a condition for exercising that discretion, require the subject to undergo any treatment. In any event the Scheme is applicable to juveniles aged under 18 only. The Court can, as a sentencing option, order a convicted person be detained in the Drug Addiction Treatment Centre for treatment of his/her drug problem. The court, however, can only so sentence a convicted person. This means that the subject will have a criminal record. While a conviction can later be spent if it meets the criteria of the Rehabilitation of Offenders Ordinance (Cap. 297), certain exceptions make disclosure of the criminal record of the rehabilitated individual inevitable.

3 In a number of overseas jurisdictions, drug courts are specialised courts adopting a multi-disciplinary approach to handling cases involving drug abusing offenders. The judge plays a key and active role in the supervision and rehabilitation of drug abusers. Having regard to overseas drug court practice, the Task Force on Youth Drug Abuse (Task Force), chaired by the then Secretary for Justice in 2007-2008, recommended a pilot project on an enhanced probation service to provide more focused, structured and intensive treatment programmes for drug offenders aged below 21 pursuant to the Probation of Offenders Ordinance (Cap. 298). The pilot project began at two magistracies in October 2009. As the project was proven more effective in preventing relapse and reconviction than conventional probation programmes, the project was extended territory-wide in 2013-14 for three years.

prescribe drugs to patients for non-medical use. Yet this had given rise to a thriving black market of drugs and cases of death as a result of over dosage emerged. This had subsequently prompted Sweden to consciously move back to a more restrictive anti-drug policy with the aim of a drug-free society and zero tolerance, with the introduction in 1993 of a compulsory drug testing scheme implemented by the Swedish Police.

15. ACAN noted that, in certain aspects, the Swedish drug testing scheme[4] provided more power to their Police than what ACAN proposed under the RDT: the Swedish Police did not require physical signs and presence of drugs as the prerequisites to trigger drug testing. The offence of drug consumption in Sweden is, however, less serious than that in Hong Kong: imprisonment is technically possible, but the maximum penalty in practice is a fine[5], and the criminal record can be completely erased after three or five years.

16. The Swedish drug testing is found to be effective in identifying drug abusers and referring them to receive treatment at an earlier stage. Taking the Juvenile Protection Unit (JPU)[6] of the Stockholm Police as an example, it handled 1 251 cases in 2013. Of these, 78% were tested positive, and 60% of the positive cases were previously unknown to the police. Moreover, a collaborative project between social workers and the police enables suspects aged below 20 to be referred directly from the police to social workers for instant counselling.

17. During the consultation, some people alleged that Sweden had increased resources, which could have been spent in helping people with drug problems, for the police for implementing the drug testing scheme, and that the number of suicidal cases related to drug abuse problems had increased as a result of the launching of the drug testing scheme. It was confirmed with the Swedish authorities during the ACAN visit that both suggestions were ungrounded.

---

4 Information on Swedish laws and drug testing scheme were provided by Stockholm Police.

5 Consumption of narcotic drugs in Sweden is classified as a minor offence that is subject to fines or a maximum of six month's imprisonment. In practice, fines are the only penalty imposed. No offender has ever received a prison sentence. The imprisonment is merely a legal formality for enabling drug testing because under *Rattegangsbalken* (the Swedish Trial Law), body examination on a person is only permitted when he is reasonably suspected of a crime which might lead to imprisonment.

6 The Stockholm Police established JPU in 1996 in response to an emerging trend of rave parties. The mission of JPU is to identify drug abusers who were previously unknown to the police. JPU has a total of 25 police officers responsible for tackling primarily drug abusers up to the age of 25. Those above 25 years old are being handled by other units in the police.

ACAN'S OBSERVATIONS AND RECOMMENDATIONS

18. ACAN noted that there was overwhelming public support for the RDT. Although views in the submissions were more divided, there was general support for the need to do more to facilitate early identification of drug abusers for early intervention. At the same time, the Swedish experience had demonstrated how a compulsory drug testing scheme might successfully work to the objective of early identification, hence providing assistance to drug abusers at an early stage.

19. ACAN observed that among the opponents, some rejected the RDT out of their conviction that individual choices and freedom should in no circumstances be compromised. Many others, however, could not indicate support due to a general mistrust of the Government. They tended to be sceptical of the intention of introducing the RDT and its effectiveness when details of the RDT were not made available in the consultation document. ACAN, however, noted that the consultation exercise was only intended to gauge community sentiment on a number of issues of principles which would shed light on specific aspects of the RDT, if it was to be pursued.

20. ACAN highlighted that there was community consensus that drug abusers should be offered assistance as early as possible. The debate was whether the RDT could be considered as an effective tool. With the successful overseas experience and overwhelming support by members of the public, ACAN considered there to be a strong case to continue to explore the RDT. ACAN also suggested that the concerns raised by all parties, especially those by the relevant professional groups, should be addressed as far as practical. In particular, before the launch of a second stage consultation, it would be necessary to develop more specific proposals to ensure that the mechanism was proportionate to its objective, i.e. early identification of drug abusers for early assistance. It is also important to continue dialogue with the relevant professional bodies and key stakeholders to dispel misunderstanding.

21. ACAN put forth the following recommendations to the Government -

(a) to continue to explore details of the RDT and engage stakeholders, professional bodies and the public in ongoing discussion;

(b) to foster a more favourable environment for considering the RDT: this includes exploring ways to address the concerns of professional bodies especially on how to minimise the interference to human rights and civil liberties. In this regard, the Government should promote efforts to expedite the development of a test kit for rapid oral fluid test, which would give an instant objective indication on the spot, hence alleviating concerns that the proposed impairment test would take up too much time and involve subjective judgement of LEOs. In addition, efforts should also be made to enhance trust and rapport between LEOs and social workers in helping people with drug problems;

(c) to develop a follow-up mechanism which could effectively balance giving a chance to the drug abuser but mandating counselling and treatment: an effective follow-up mechanism would be instrumental to the success of the RDT; and

(d) to share the best practices in other countries, e.g. Sweden, with local stakeholders.

22. ACAN recommended that the Government should immediately follow up these recommendations, and roll out proposals for operational details for a second-stage public consultation as soon as practicable.

ADMINISTRATION'S RESPONSE

23. The Administration agrees with ACAN's observations and recommendations as set out in paragraphs 18 to 22. We note that there is strong public support for the RDT, including the support by over 90% of respondents in the poll conducted by HKU-POP and certain quarters of the community, such as parents, those providing treatment services for drug abusers, and those who have benefitted from the drug treatment services. Although views are more divided among some key stakeholders, there is general support for the objective of early identification to enable counselling and help to be given to drug abusers in a timely manner.

24. We note that there is successful experience overseas where law enforcement officers and the social services could work hand-in-hand in identifying drug abusers, as well as providing them with counselling and treatment programmes.

25. We also note that the problem of hidden drug abuse has continued to deteriorate in spite of early signs of improvement in the drug scene as reflected by the downward trend of the reported drug abusers and new drug abusers. The median drug age of newly reported drug abusers had further increased from 4.0 years in 2012 to 4.6 years in 2013. In light of this and taking into account the strong public support for the RDT, we support ACAN's view that there is a strong case to continue to examine issues concerning the implementation of the RDT, as an additional tool to facilitate early identification of drug abusers and early intervention.

26. The Administration is committed to developing specific proposals taking into account views received during the public consultation exercise and addressing concerns expressed. We will also continue to work with ACAN to dispel fear and build understanding through research, pilot projects and experience sharing by overseas experts. These will allow room for ongoing dialogue with interested parties on aspects of concern in drawing up detailed proposals for the RDT before a second stage consultation.

ADVICE SOUGHT

27. Members are invited to note the conclusion of ACAN about the RDT consultation, ACAN's observations and recommendations and the Administration's response as set out in this paper.

Narcotics Division
Security Bureau
July 2014

Enclosure

Consultation Conclusion on RESCUE Drug Testing Scheme

July 2014

Action Committee Against Narcotics

Contents

CHAPTER 1. THE CONSULTATION

1.1. The Action Committee Against Narcotics (ACAN) launched a four-month public consultation exercise on the RESCUE Drug Testing Scheme (RDT) from 25 September 2013 to 24 January 2014. Under the RDT, it is envisaged that where there are reasonable grounds based on strong circumstantial conditions to suspect that a person has taken drugs, law enforcement officers (LEOs) would require that person to undergo drug testing procedures. Those identified to have taken drugs would be referred to counselling and treatment programmes.

1.2. Against the background of a worsening situation of hidden drug abuse where the drug history of newly identified drug abusers has continued to increase, the primary objective of the RDT is to provide an additional means to enable early identification of drug abusers so that they can receive counselling and treatment in a timely manner, and before prolonged drug abuse causes serious or even irreversible harm on their health.

1.3. This report summarises the main public views received and sets out ACAN's response and the recommended way forward for the Government's consideration.

Written Submissions

1.4. A total of 2 791 written submissions were received responding to the key issues set out in the consultation paper[1]. The written submissions received are reproduced and available at www.nd.gov.hk.

Public Forums

1.5. ACAN organised four public forums on Hong Kong Island, Kowloon and New Territories East and West on 4, 8, 9 and 17 October

[1] We have crossed out the identity of some of the respondents at their express request and also the contact details in the submissions from individuals. Some of the submissions refer to names of individuals or organisations. We have also crossed out such references while keeping the rest of the submissions intact.

2013 to enable the public to express their views. Around 300 members of the public attended these forums[2].

Discussions at Panels of the Legislative Council

1.6. On 5 November 2013 and 7 January 2014, ACAN briefed the Security Panel of the Legislative Council on the RDT public consultation exercise. Deputations from four professional bodies attended the meeting on 7 January 2014 and gave their views. The Welfare Services Panel held a special meeting on 19 November 2013, at which the RDT was discussed in the context of drug treatment and rehabilitation services in Hong Kong. A total of 20 deputations attended and gave their views.

Meetings with Different Sectors of the Community

1.7. ACAN also attended nearly 100 forums and discussion sessions organised by different sectors of the community, including political parties, the anti-drug sector, medical and legal professional bodies, social welfare organisations, district organisations, and advisory committees, the school sector, parent and youth groups.

Opinion Poll

1.8. The Public Opinion Programme of the University of Hong Kong (HKU-POP) conducted an opinion poll on the RDT, in which around 1 000 people were interviewed over the phone, between 17 February and 14 March 2014. A summary is at **Annex A**.

An Overview

1.9. ACAN observes that there is community consensus that drug abusers should be offered assistance as early as possible. There is strong public support for the RDT, including the support by over 90% of respondents in the HKU-POP poll and certain quarters of the community, such as parents, those providing treatment services for drug abusers, and those who have benefitted from the drug treatment services. Although views are more divided among some key stakeholders, there is general

[2] In addition, a discussion topic on the RDT was also posted at the Public Affairs Forum website of the Home Affairs Bureau (www.forum.gov.hk). A total of six messages were posted by Members.

support for the objective of early identification to enable counselling and help to be given to drug abusers in a timely manner.

1.10. Chapters 2 and 3 present a more detailed response from both the opinion poll and the written submissions to individual issues. Chapters 4 and 5 set out ACAN's observations and recommendations on the way forward.

1.11. ACAN is grateful to all those who have expressed views on the RDT. The public consultation exercise has contributed to a fruitful discussion of how to tackle the drug problem in Hong Kong. The views collected during the consultation period would shed light on specific aspects of the RDT, if it is to be pursued.

CHAPTER 2. SHOULD HONG KONG HAVE THE RDT?

The Issue

2.1. In Chapter 2 of the consultation paper, ACAN set out the case for the RDT. The public were invited to comment on a number of questions in Chapter 3. Question 1 reads as follows -

> *Do you agree that, as a matter of principle, Hong Kong should have the RDT?*

Views Received

Opinion Poll

2.2. The poll conducted by HKU-POP, in which around 1 000 people aged 18 or above were interviewed, shows that 88% of the respondents supported the RDT. The support rate went up to 91% after they had responded to a series of questions on different aspects of the RDT.

2.3. Also, 61% of respondents opined that the scheme could be very effective in facilitating early identification of drug abusers and referring them to treatment. While 36% of the respondents had concern over LEOs having excessive power, 47% did not expect the RDT to infringe on human rights or civil liberties.

Written Submissions

2.4. Of the 2 791 submissions received, 2 732 (98%) came from individuals and 59 (2%) came from organisations or interest groups. The submissions from individuals can be further classified into three different categories. First, 53% were submissions in which a person expressed his own views. Second, 47% came in 11 templates with standard wording. Finally, a handful of submissions were co-signed or co-issued by more than one person.

2.5. Against this background, we have tabulated the findings of these submissions in three different forms as in the table below-

Classification	**Total Count**	**Support**	**Not Support**	**Neutral**
Number of submissions by individuals[3]	2 732	45%	54%	1%
Number of submissions by organisations	59	39%	46%	15%
Number of people involved	2 903	43%	56%	1%

2.6. We have also analysed the level of support in different sectors. The RDT was supported by the majority in the following sectors: education (90%), parents (74%), medical doctors and nurses (67%), and drug abusers and ex-drug abusers (55%). Slightly less than half of social workers/non-government organisations (NGOs) (43%) supported the scheme. Finally, the vast majority of the submissions from legal sector and human rights concern groups opposed the scheme.

(i) Reasons for supporting or opposing RDT

2.7. The major reason cited for supporting the RDT was that it could be an effective extra point of intervention that would help shorten the time required for identifying a drug abuser and bringing him to treatment. Consumption of dangerous drugs being a criminal offence, it would be reasonable to have the RDT to make the law enforceable. The RDT was also seen as an effective means in preventing drug abuse. The RDT would give a clear message that drug consumption was an offence and one should not even try for the first time. The RDT would also create a deterrent effect on those abusing drugs when they realised that there could be a consequence for doing so. Moreover, some parents of drug abusers believed that LEOs under the RDT would have the necessary authority to help channel their children to receive assistance. The objective of the RDT of offering assistance rather than punishment was welcome by parents.

[3] Mass submissions in 10 standard templates accounted for 71% of the opposing voices and 38% of the overall submissions. There was another template which supported RDT, accounting for 17% of those supporting RDT and 8% of the total submissions.

2.8. Among the opponents, the most commonly cited concern was that LEOs might, intentionally or inadvertently, abuse their power, resulting in wrongful prosecution. There was question on whether the power granted to LEOs would be excessive. Individual respondents expressed worry that ethnic minorities might become an easy target of the RDT. Some criticised the RDT for only tackling the symptoms but not the root cause of drug abuse, quoting broken family and social incoherence. Some considered that LEOs should not and did not have the role and duty to refer drug abusers to treatment. Such a role should be better played by judicial officers save for confined circumstances, such as the Police Superintendent's Discretion Scheme (PSDS) for juvenile offenders aged under 18. Some considered that the consultation paper lacked specifics, particularly on how to take forward the treatment and rehabilitation programmes after identification by the police. Some thought that the current downstream support services would not be able to cope with the new demand arising from the RDT.

2.9. Another commonly cited reason for opposing the RDT was that there was no clear evidence to demonstrate the effectiveness of the RDT towards early identification and treatment for drug abusers; on the contrary, the scheme was likely to drive drug abusers to hide further from social workers and friends, making identification even more difficult.

2.10. Concerns about infringements of human rights and civil liberties were a common argument. The legal professionals generally acknowledged that such rights might be restricted in exceptional circumstances, but the RDT failed to satisfy the proportionality test. They considered the proposed RDT was more than necessary to address the problem of drug abuse. Some went on to argue that the drug situation, as evidenced by the declining number of drug abusers reported to the Central Registry of Drug Abuse, had been improving. In their view, ACAN and the Government should focus on measures with proven effectiveness and track record. At the same time, measures less draconian than the RDT should be exhausted before considering the RDT.

2.11. Some held the view that the RDT should not be directly compared to the legislation against drug driving because a person driving a vehicle under the influence of drugs would pose immediate threat not only to himself but also to others, whereas a drug abuser not driving a vehicle would not cause immediate harm to others.

2.12. On human rights issues, some respondents outside the legal sector expressed concern that the scheme might violate the presumption

of innocence and the right against self-incrimination. Some went further to argue that drug abuse was no different from other bad habits such as alcoholism or addiction. One should have the autonomy to do so, to decide whether to keep on or to discontinue, as well as whether to accept treatment.

2.13. Opponents to the RDT also surmised that a drug abuser would inevitably be penalised eventually if he was repeatedly caught under the RDT. Some also noted that drug abusers were victims rather than criminals, but the RDT would stigmatise them, leading to more rejection by the community, hence increasing difficulty for them to turn over a new leaf. Along this logic, some suggested that drug abusers should be given multiple chances for non-prosecution. At the other end of the spectrum, however, there were worries that the proposal of giving at least a chance to those tested positive under the RDT would undermine the zero tolerance towards drugs and inadvertently encourage people to take drugs at least once in their life.

2.14. In addition, some expressed doubts on the effectiveness of the overseas examples quoted in the consultation paper. For example, some argued that the fact that similar drug testing schemes existed in overseas jurisdictions alone was not a sufficient justification for rolling out the RDT in Hong Kong. ACAN would need to provide further information to show that these overseas practices achieved their intended policy objectives. Specific to Sweden's example, some quoted from online sources that Sweden had significantly expanded the police force to implement its drug testing scheme; and the Swedish scheme was not effective because the number of drug-related deaths had increased as a result of the drug testing scheme. As to the example of the United Kingdom (UK), some believed that it was not directly comparable to the RDT because the UK scheme only authorised drug testing after arrests for other crimes.

2.15. In addition, some questioned how to take forward the RDT because the supposedly key players in the RDT, notably many in the social services, were not supportive of the scheme.

(ii) Debate on RDT's Necessity and Effectiveness

2.16. The debate between those who supported and opposed the RDT on whether the scheme was necessary and effective warrants a more in-depth analysis. Views were particularly divided among those providing services to drug abusers. Slightly less than half (43%) of the submissions

from those who identified themselves as social workers and other anti-drug workers supported the scheme. However, the support rate was 68% among those who specialised in drug treatment and rehabilitation.

2.17. A major difference between opponents and supporters on the necessity of the RDT was their difference in view on the balance between safeguarding individual rights and preserving wider social interests. For example, a medical organisation, while acknowledging that dangerous drugs inflicted bodily harm on a drug abuser, which in turn affected his family and even society as a whole, questioned whether drug abuse stood out distinctively among all social problems. They questioned if the magnitude of the problem justified a measure that would infringe on human rights, and argued that drug abuse was a personal choice and that its consequence should be borne by the drug abuser personally. They also argued that drug abuse was not uniquely or excessively harmful, and was like any other ailments such that a drug abuser should not be handled differently from any other patients seeking treatment.

2.18. The view above, however, was not shared by some medical specialists with frontline experience dealing with chronic and severe cases of drug abusers. This group was convinced that an extra tool like the RDT could be effective in helping to trawl out drug abusers at an early stage, when their motivation to quit was normally low. From clinical experience and medical literature, psychotropic substance abuse could lead to various long-term, and possibly irreversible bodily damages. Most abusers became dependent on the drugs psychologically and/or physiologically over time, with increases in dosage and frequency of intake. The body would suffer from multiple chronic functional impairments which would in turn impose a heavy burden on the health-care system.

2.19. Some anti-drug workers pointed out that the behaviour of drug abuse, rather than being purely a personal matter, was contagious, as shown in a finding of a survey of over 80 residents of a drug treatment and rehabilitation centre: over 50% revealed that they had lured at least six people to take drugs before, while 30% had lured more than 20 people to do so.

2.20. The debate on RDT's effectiveness involved two aspects. The first was whether the RDT would drive drug abusers to go even more hidden. Such voice was strong among the respondents who identified themselves as outreaching social workers. They argued that if the RDT applied to public areas only, its effectiveness would be compromised as

most drug abusers would turn to take drugs at private premises such as at home. Although the RDT might eventually increase the chances of identifying drug abusers who frequented entertainment venues, quite a proportion would shift to more hidden places, rendering it even more difficult for social workers to reach out to them.

2.21. Supporters of the RDT counter-argued that hidden drug abuse was a constant phenomenon, a challenge which had to be tackled in any event. Some supporters also highlighted that the RDT could at least deter someone from openly taking drugs in public, effectively containing the spread to others. There was no other equally effective means as the RDT in identifying drug abusers in an early manner.

2.22. The second part of the debate on RDT's effectiveness was whether we should compel the drug abuser to receive counselling and treatment services in some cases without the drug abuser's genuine consent. Opponents argued if a drug abuser was not willing to receive counselling and treatment services, the chance of success would be low, but it might cost the trust between the drug abuser and his social workers.

2.23. Supporters of the RDT held a different view. They pointed out that one's consent and motivation to quit should not be taken as the key factor in deciding if he should receive counselling and treatment programmes. Many anti-drug workers noted that they had seen many live examples of individuals being reluctant and resentful upon arrest and sentencing to residential drug treatment centres under probation. Yet over time, with suitable guidance and counselling, many had turned to be grateful for having had the chance of turning over a new leaf. Moreover, probationers normally had a higher completion rate and better treatment outcome than those admitted to these programmes voluntarily. It was therefore argued that some elements of mandatory counselling and treatment might be an important ingredient of success of the RDT, if it was to be implemented. Some also raised that it would be too late and inhumane to delay the treatment process until a drug abuser had to face the possibility of criminal conviction or when irreversible health problems had already emerged.

CHAPTER 3. RDT OPERATION

3.1. This chapter addresses issues in five areas, namely: when to trigger the RDT; procedures and measures to safeguard individual rights; age applicability; consequences of positive test results; and the situation of drugs consumption outside Hong Kong.

I. When to Trigger RDT

The Issue

3.2. ACAN advocated that LEO's power to trigger drug testing had to be carefully defined. To this end, ACAN proposed that the RDT power could only be triggered by trained and authorised officers of at least a certain rank when there was a cause to suspect that a person had taken drugs [4]. More specifically, two conditions, as specified in Question 2 below, should be satisfied.

> ***Question 2****: Do you agree that the RDT power should be triggered only when (i) substances suspected of being drugs are found in the near vicinity of a person; AND (ii) the person in question shows signs of having just taken drugs? Do you consider it acceptable that some obvious cases would not be covered by the RDT for the purpose of maintaining a high threshold in triggering the RDT power?*

Views Received

Opinion Poll

3.3. As reported in paragraph 2.2, 91% of respondents interviewed by the HKU-POP indicated support for the RDT based on the two thresholds proposed in the consultation paper.

[4] Paragraphs 3.4 – 3.5 of the consultation paper.

Written Submissions

3.4. Slightly over half of the submissions expressed views on this proposal. Among them, around 60% supported the approach described in Question 2. The proposed trigger was considered to be able to strike a right balance between the need to safeguard human rights and the effectiveness of the scheme.

3.5. For those who expressed reservation or objection to the proposal, they considered that there was lacked appropriate or enough protection to human rights. More specifically, some expressed concern that the proposed trigger point involved too much subjective judgement of the LEOs. They doubted the ability of LEOs, who were not trained as medical professionals, to differentiate the condition of drug abuse from alcohol consumption, medication, mental illness, etc. A medical organisation argued that whereas one's driving manner triggered the legislation against drug driving, the RDT would be triggered by one's clinical symptoms. Moreover, those who opposed the RDT reckoned that the terms used in the formulation, such as "near vicinity" and "just taken drugs", lacked a clear definition; such ambiguity would not be conducive to LEOs in carrying out their duties, and would be prone to conflicts between those suspected of having taken drugs and the LEOs. Some suggested that the LEOs should be assisted by more reliable and accurate tools to screen out drug abusers.

3.6. On the contrary, some respondents, in particular those who identified themselves as parents of drug abusers or ex-drug abusers and anti-drug workers, found the proposed thresholds too restrictive, thus unduly limiting LEOs' ability to identify drug abusers and frustrating parents with drug abusing children who wished to seek help. In a rather common scenario where a parent would call the Police for help as he could no longer stop his child from abusing drugs, the proposed mechanism could not be triggered if the child had discarded the substances suspected of being dangerous drugs before the Police arrived on site. However, if drugs could be found, the Police might be obliged to charge the person with drug possession or even trafficking offences, since very often private premises, rather than public places, would be involved. Under such circumstances, the person would lose the chance of non-prosecution under the RDT. To resolve this dilemma, individual respondents suggested that the RDT might be triggered without the need to satisfy the two conditions as set out in Question 2 above when parents suspected their children to be abusing drugs and reported to LEOs.

3.7. In an effort to minimise the impact on the general public, some respondents made suggestions to reduce the scope of RDT application. The first suggestion was to apply the RDT to certain locations only, such as public entertainment venues frequented by the youths, and extend the application of the scheme to other places when the scheme was proven effective. Some further suggested that a warrant from the Court should be obtained first before the search and that social workers or medical professionals should accompany LEOs or even take up the role of drug testing. Other respondents, however, expressed concern about the suggestion of confining RDT application to certain locations because it might generate a "balloon effect", leading people to take drugs at places outside the scope of the RDT. Some suggested making reference to the UK's Arrest Referral Scheme (ARS), in which drug testing would only be triggered when a person was suspected of having committed other offences.

II. Procedures and Measures Safeguarding Individual Rights

The Issue

3.8. In the consultation paper, ACAN proposed a two-stage testing procedure. A person must first go through a non-intrusive screening test. Only when the person fails one or more of the screening tests would bodily samples be collected for conducting a laboratory test. ACAN also proposed a series of measures to safeguard individual rights, as set out in paragraphs 3.19 to 3.22 of the consultation paper.

3.9. Accordingly, the public were invited to comment on the following questions -

> ***Question 3:*** *Do you have any comments on the proposed two-stage drug testing procedure?*
>
> ***Question 4:*** *Do you have any suggestions on how to safeguard individual rights?*

Views Received

Opinion Poll

3.10. The HKU-POP's poll indicated that while over 90% of respondents supported the RDT, around 36% of respondents expressed concern that the scheme might give the LEOs excessive power, thus affecting human rights or civil liberties. On the other hand, 47% of respondents did not expect the RDT to cause human rights or civil liberties issues; 11% were neutral; the remaining 7% indicated that they did not know the answer or found it hard to say.

Written Submissions

3.11. There were not many written submissions commenting on these two questions. One major concern was that the consultation paper had not provided enough details on the operational design of the RDT such that respondents felt that they could not comment on the questions. Those who responded raised doubt about the reliability and validity of the drug influence recognition test (DIRO) or impairment test, and expressed concern that medication and alcohol consumption might cause similar symptoms resulting in the failure in the DIRO or impairment test. Some preferred oral fluid tests. Some also indicated that failing any of the screening tests should not automatically trigger the requirement of taking bodily samples. Some suggested that prior consent should be obtained from the subject for taking bodily samples as currently provided for in the Police Force Ordinance (Cap. 232) or Dangerous Drugs Ordinance (Cap.134) when taking intimate samples. One legal professional body also noted that non-compliance with the RDT should not be made an offence.

3.12. The venues for conducting drug testing and the personnel involved were another area of discussion. Some emphasised that screening tests and/or drug testing should be taken in a protected environment. Some suggested setting up testing centres at hospitals, counselling centres for psychotropic substance abusers (CCPSAs), or at other dedicated venues outside police stations. In terms of who should administer the sample collection process, some suggested that LEOs' role should end at the point of having triggered the RDT. In their view, the sample collection process could be conducted by social workers or health-care professionals. Individual respondents even suggested that social workers should go along with LEOs in their operations for the purpose of identifying drug abusers. Other respondents, however,

considered that social workers should be more independent. In their view, social workers should not get involved in the drug testing scheme, at least for the cases involved in the same district where they served.

3.13. Fourthly, on giving extra protection to juveniles, those who commented on this issue generally welcomed the proposal that parents, guardians or other independent third parties should be present when an underage went through the process of providing bodily sample. Some reckoned that when parents and guardians or relatives could not be contacted, teachers and social workers would likely be the alternative. This, however, might cause concern on protecting suspects' privacy.

3.14. Fifthly, some suggested setting up a special committee to monitor the implementation or even an appeal board to provide additional check and balance. Some comments were also made on the possibility of wrongful arrests. For example, one legal professional body criticised that no consideration appeared to have been given for the recourse in the event of wrongful arrests or unlawful detention.

3.15. Some respondents made comments on the proposal of setting up a separate database. For example, the Office of Privacy Commissioner for Personal Data urged the Government to carry out a privacy impact assessment and adopt a privacy-by-design approach to build in personal data privacy protection throughout the development of the whole cycle of data collection, accuracy retention, use, security and erasure so as to mitigate or avoid the privacy risks. Some others made more specific comments, for example, that the data obtained should only be retained for a period of time and must not be transferred to other parties for checking their drug problems. All record should be destroyed after treatment had been administered and the person had quit drugs. On the other hand, some objected to setting up such a database because it would create and retain unsavory data of persons who were not convicted for access by the Police and possibly other LEOs.

III. Age Applicability

The Issue

3.16. On whether the RDT should target specific age groups, ACAN invited the public to comment on the following question -

Question 5*: Should drug testing be applicable to people of all ages?*

Views Received

Opinion Poll

3.17. In HKU-POP's poll, 76% of the respondents supported that the RDT should be applicable to people of all ages; 19% were of the view that the RDT should only be applicable to youngsters; and 4% opined that either option would be acceptable.

Written Submissions

3.18. About 40% of the written submissions commented on the matter. Among them, 77% supported that the RDT should be applicable to people of all ages, whereas 23% disagreed.

3.19. Most of the respondents indicated their preferences without elaboration. For those who opposed the RDT, it was considered that if the scheme was targeted to address the drug abuse problem of certain age groups, it would not be necessary to target drug testing at people of all ages. However, most suggested that the law should equally apply to people irrespective of age. If the RDT was only applicable to youngsters, it would create law enforcement difficulties. It would also convey a wrong message that it would be legal for people of other ages to take drugs.

IV. Consequences: A Chance of Counselling and Treatment or Prosecution

The Issue

3.20. The ultimate purpose of the RDT is to help drug abusers before it becomes too late. It was floated as an idea that drug abusers found under the RDT, where applicable, should be given a chance of non-prosecution and referred to appropriate counselling and treatment services as soon as possible. Accordingly, the public were invited to comment on the following questions –

Question 6(a)*: Do you agree that drug abusers, irrespective of age, should be eligible for a chance to receive counselling and treatment programmes in place of prosecution?*

Question 6(b)*: How many chances of counselling and treatment should be given under the RDT? Should people below a certain age be eligible for more chances?*

Views Received

Opinion Poll

3.21. In HKU-POP's poll, 69% of respondents supported that drug abusers, irrespective of age, should be given a chance. On the other hand, 26% were against this suggestion; 3% were neutral; and 2 % replied that they did not have an answer or found it hard to say.

3.22. Those who supported that at least one chance should be given to drug abusers were invited to comment on the number of chances to be given. About 76% of respondents considered that one chance would suffice; 17% suggested giving two chances and 7% suggested three chances or more.

Written Submissions

3.23. About 40% of the written submissions commented on Question 6(a). Among them, 88% supported that drug abusers, irrespective of age, should have at least one chance. In contrast, 12% disagreed with the proposition in the question.

3.24. About 35% of submissions commented on Question 6(b). Among them, 5% considered that no chance should be given, 39% supported only one chance; 41% supported two chances and 9% suggested three. The remaining 6% had other comments.

3.25. Separately, 77% of the respondents who commented on Question 6(b) suggested giving more chances to youngsters but 23% disagreed.

3.26. A number of respondents elaborated on their stances. For those who supported giving one chance only, they noted that the proposal would be more lenient than the existing system. Some suggested not

giving any chance for fear that the drug abuse problem would deteriorate. The chances given might encourage people to take drugs or even engage in drug trafficking until they were caught. Also, they considered this to be officially declaring that consuming drugs did not bear any criminal consequence for the first time, thus sending a wrong message and prompting some people to try drugs at least once. It was also necessary to consider the parity with other offences of similar gravity, such as people admitting taking drugs and people found possessing drugs (but not to the amount of trafficking). At the other end of the spectrum, there were voices that more chances should be given. Some even went on to suggest that drug consumption offence should be decriminalised, lest the scheme should only facilitate prosecution of repeated offenders.

3.27. The follow-up mechanism offering counselling and treatment was also discussed by some respondents. Some respondents suggested that treatment would not be effective if it was against the wish of a person. Some others, however, considered that mandatory treatment for a certain period of time would be essential if the RDT was to be implemented. The chance(s) given should not be treated merely as an exemption from criminal prosecution but an undertaking to go through counselling and treatment in exchange for an opportunity. The need to go through mandatory treatment under the RDT would not only be a deterrent to people from taking drugs but a necessary tool to make the counselling and treatment programmes effective. Some with frontline experience of handling drug abusing clients suggested that voluntary treatment would be prone to failure especially for those who did not have any motivation to quit drugs. Some respondents also made other suggestions, such as introducing drug courts to Hong Kong or reforming the PSDS by obliging a cautioned juvenile to accept treatment.

V. The Situation of Drug Consumption outside Hong Kong

The Issue

3.28. ACAN noted that certain enforcement difficulties would emerge if the RDT was implemented in Hong Kong. Some individuals, especially those who frequently venture outside Hong Kong to take drugs, might argue that the drugs had been consumed outside Hong Kong. More people might therefore go across the boundary to seek indulgence, exacerbating the cross-boundary drug abuse problem. Accordingly, the public were invited to comment on the following question –

***Question 7**: Do you think the RDT should apply to drug consumption that happened outside Hong Kong?*

3.29. ACAN presented two options[5] to address drug consumption outside Hong Kong -

(a) Option 1: extra-territorial effect for the consumption offence; and

(b) Option 2: adding a new offence of presence of dangerous drugs in bodily samples.

Views Received

Opinion Poll

3.30. In the HKU-POP's poll, 64% of the respondents supported that the RDT should apply to drug consumption outside Hong Kong; 25% disagreed; 4% were neutral to the notion and 8% replied that they did not know the answer or they found it hard to say.

Written Submissions

3.31. About 38% of the total submissions expressed views on this question. Among them, 55% supported that the RDT should apply to drug behaviour outside Hong Kong, whereas 44% were against it; the remaining 1% had other views.

3.32. Close to 18% of the total submissions indicated a preference out of the two options presented in the consultation paper. Option 1 and Option 2 received nearly the same level of support at around 40%. The remaining 20% had no preference.

3.33. Only a handful of respondents provided elaborate comments on this rather technical issue. They doubted whether there were adequate justifications to implement either Option 1 or 2. For example, a legal professional association commented that Option 1 would raise concerns such as double jeopardy and evidentiary problems. Extra-territorial jurisdiction was exception to the general rule. It was also against Option 2 because the successful prosecution of which depended on positive test

[5] Paragraphs 3.40 – 3.42 of the consultation paper.

results obtained through the proposed RDT. Separately, a legal scholar raised that there was no data to suggest that cross-boundary drug consumption has become such a problem as to warrant the extra-territorial extension of the current offence.

VI. Other Suggestions

The Issue

3.34. ACAN recognised that the RDT should not be taken as a panacea for the problem of hidden drug abuse, and invited other suggestions that could effectively tackle the problem –

Question 8: *Do you have any suggestions for us?*

Views Received

3.35. Of all the submissions, 36% commented on this question. As almost 80% of these submissions were made through standard templates and their responses were quite different from submissions from individuals, separate analyses are worthwhile.

3.36. Among the submissions from individuals, the most common suggestion was to enhance measures under the existing anti-drug strategy, in particular the treatment and rehabilitation services. Specific suggestions included improving the training for anti-drug workers or other professionals who would come into contact with drug abusers in their regular activities, further developing short-term residential programmes as a "time-out" for drug abusers from their existing environment, improving vocational prospects for drug rehabilitants and strengthening family support for drug abusers.

3.37. Another common suggestion was to rely on the Care or Protection Order under the Protection of Children and Juveniles Ordinance (Cap. 213) as the last resort, so that when parents failed to motivate an underage to accept treatment, the Court might make an order to require him to accept drug testing and treatment.

3.38. Some other respondents suggested measures to divert drug abusers from prosecution. For example, a legal professional body proposed a scheme to divert from prosecution drug abusers who had no

previous convictions for drug offences and who were found to be in possession of a small quantity of dangerous drugs (and would otherwise be prosecuted for possession of dangerous drugs). In the event that the same drug abuser was arrested for the second time for drug offences, the existence of the caution in respect of the original transgression would be revealed to the court in considering the sentencing. There was also a clear voice advocating that while an opportunity should be given to those identified to have taken drugs to be diverted from prosecution, it would be essential to ensure an element of compulsion in the follow-up counselling and treatment programmes if the RDT was to be effective.

3.39. Some suggested that a new referral mechanism should be established such that the Police could refer a person suspected of committing drug-related offences to social workers to start counselling upon arrest. More specifically, some suggested that the Government should consider adopting ARS of the UK, which confined drug testing to those who were arrested or charged of other "trigger offences".

3.40. Individual respondents also made other suggestions, such as setting up a new social work team to reach out to hidden drug abusers who were mostly hidden at home, or adding a new condition into the licence of entertainment venues such that social workers would be permitted to go there to conduct preventive education. A small number of respondents mentioned considering or adopting a harm reduction approach or going further to decriminalise drug consumption.

3.41. As to the standard template submissions, alternative suggestions were given in five different templates. A large number of these suggested the Government to consider the feasibility of taking a harm reduction approach. Other suggestions included setting up drug courts, enhancing the measures under the existing anti-drug strategy or more specifically, improving the drug treatment and rehabilitation services.

CHAPTER 4. ACAN'S OBSERVATIONS

The Swedish Experience

4.1. The Swedish experience was widely quoted and extensively discussed during the consultation period. ACAN made a visit to Stockholm in April 2014 to look into the compulsory drug testing scheme currently in practice in Sweden.

4.2. In spite of a common perception that the more advanced economies in the West in general adopt more permissive drug policies as part of their commitment to compassion and tolerance of diversity, Sweden, a country noted for its liberal views, stands out as an exception to this stereotype and adopts a more restrictive drug policy. Sweden de facto legalised drug consumption in the 1960s. Doctors were allowed to prescribe drugs to patients for non-medical use. Yet this had given rise to a thriving black market of drugs and cases of death as a result of over dosage emerged. This had subsequently prompted Sweden to consciously move back to a more restrictive anti-drug policy with the aim of a drug-free society and zero tolerance, with the introduction in 1993 of a compulsory drug testing scheme implemented by the Swedish Police.

4.3. ACAN notes that, in certain aspects, the Swedish drug testing scheme[6] provides more power to their Police than what ACAN proposed under the RDT: the Swedish Police does not require physical signs and presence of drugs as the prerequisites to trigger drug testing. The offence of drug consumption in Sweden is, however, less serious than that in Hong Kong: imprisonment is technically possible, but the maximum penalty in practice is a fine[7], and the criminal record can be completely erased after three or five years.

---

[6] Information on Swedish laws and drug testing scheme were provided by the Stockholm Police.

[7] Consumption of narcotic drugs in Sweden is classified as a minor offence that is subject to fines or a maximum of six month's imprisonment. In practice, fines are the only penalty imposed. No offender has ever received a prison sentence. Imprisonment is merely a legal formality for enabling drug testing because under *Rattegangsbalken* (the Swedish Trial Law), body examination on a person is only permitted when he is reasonably suspected of a crime which might lead to imprisonment.

4.4. The Swedish drug testing scheme is found to be effective in identifying drug abusers and referring them to receive treatment at an earlier stage. Taking the Juvenile Protection Unit (JPU)[8] of the Stockholm Police as an example, it handled 1 251 cases in 2013. Of these, 78% were tested positive, and 60% of the positive cases were previously unknown to the police.

4.5. During the consultation, some people alleged that Sweden had increased resources, which could have been spent in helping people with drug problems, for the police for implementing the drug testing scheme, and that the number of suicidal cases related to drug abuse problems had increased as a result of the launching of the drug testing scheme. It was confirmed with the Swedish authorities during the ACAN visit that both suggestions were ungrounded.

4.6. Moreover, a collaborative project between social workers and the police enables them to work together to offer instant help to minor drug offenders aged below 20. After being apprehended by the police for minor drug offences, the young people may decide if they would accept seeing social workers on the spot. More than half of the young people asked accepted a first interview. Another 55% of them went further to receive treatment for their drug problems. The last evaluation in 2007 shows that over half of the young people who accepted social workers' assistance were new cases. Another evaluation is being conducted in 2014.

4.7. It is without doubt that Sweden's experience cannot be directly transplanted to Hong Kong because of its unique historical background, culture, and legal and government system. That said, the Swedish drug testing scheme shows that the concept has been tested and proven effective in identifying drug abusers who would otherwise be out of the reach of the help network. It has presented a very successful model of collaboration between police officers and social workers in the identification and subsequent counselling and treatment of drug abusers.

[8] The Stockholm Police established JPU in 1996 in response to an emerging trend of rave parties. The mission of JPU is to identify drug abusers who were previously unknown to the police. JPU has a total of 25 police officers responsible for tackling primarily drug abusers up to the age of 25. Those above 25 years old are being handled by other units in the police.

Response to Specific Issues

Human Rights and Civil Liberties Concerns

4.8. ACAN observed that among the opposing voices, some rejected the RDT out of their conviction that individual choices and freedom should in no circumstances be compromised. Some compared drug abuse to addiction in alcohol or gambling, and suggested that there was no reason to legislate or control. Some considered drug abuse a personal choice. Some also indicated that drug testing violated fundamental human rights because citizens have to prove themselves not guilty.

4.9. We wish to point out that even the legal profession and human rights concern groups, while mostly opposing the RDT, had generally acknowledged that certain human rights might be restricted in exceptional circumstances. We must also bear in mind that in contrast to drinking and gambling, consumption of drugs is in fact a criminal offence. Moreover, the Court of Final Appeal[9] had in a case cited the European Court of Human Rights, noting that the privilege against self-incrimination does not apply to the use of compulsory powers to obtain breath, blood, urine and other samples. Existing traffic legislation also allows the Police to require a motorist to undergo drug testing with reasonable suspicion.

4.10. At the same time, those who are directly involved in treating serious and chronic cases reflected that drug abusers normally had very low motivation to quit drugs, and would only seek help when they were too sick to lead a normal life. It was noted that such people would need a push from an external force to take up treatment and counselling programmes. Some medical practitioners with direct and frequent experience of handling drug abusers pointed out that drug-induced brain damage could hamper the cognitive function of drug abusers, hence their ability to make decisions, such as self-protection, that might be natural to an average person. Some also pointed out that the earlier the treatment could be given to the drug abuser, the better could be the result[10]. Sadly,

---

[9] HKSAR v Lee Ming Tee & Anor (2001) 1 HKLRD 599 p. 638, lines F-J

[10] The Youth Urological Treatment Centre of the Department of Surgery, Chinese University of Hong Kong had assessed and treated more than 300 young ketamine abusers with urinary problems between 2011 and 2013. From the clinical information of 271 patients, with average follow-up of over 10 months, it was found that the longer the duration of drug abuse, the poorer the chance of complete recovery. An earlier intervention and treatment would definitely help to decrease the long-term permanent damage to the body in relation to drug abuse.

many drug abusers they encountered had missed the golden time for treatment, hence recovery, and the damage to their body (e.g. urinary bladder and brain) had become irreversible.

Proportionality of RDT in Addressing Hidden Drug Abuse Problem

4.11. Some respondents argued that in view of the declining number of reported drug abusers, the proportionality test could not be met because the measures proposed in the RDT were more than necessary for addressing the problem of drug abuse. They argued that ACAN and the Government should focus on measures with proven effectiveness. At the same time, less draconian measures should be exhausted before considering the RDT. Some also pointed out that the RDT could not be compared to the legislation against drug driving as drug abusers in a general situation would not necessarily pose immediate threats to themselves or others.

4.12. We should be conscious that psychotropic substance abuse has been known to be associated with various health damages, including impairment to brain function and various drug-induced psychiatric problems, which may have prompted more violent or suicidal acts. Recent medical findings have also shown ketamine abuse to be associated with chronic problems not just to the urological function of the drug abuser but also early signs of liver function impairment[11].

4.13. The problem of hidden drug abuse has continued to deteriorate in spite of early signs of improvement in the drug scene as reflected by the downward trend of the reported drug abusers and new drug abusers. The median drug age of newly reported drug abusers had further increased from 4.0 years in 2012 to 4.6 years in 2013.

4.14. As to whether there are less draconian measures, we have looked into the following few suggestions.

(i) *<u>Not having LEOs administering drug testing process</u>*

As the whole premise upon which the RDT was proposed is the enforcement of law, it is questionable whether it would be appropriate to task parties other than LEOs to conduct the drug

[11] Dr Tam Yuk-him, Youth Urological Treatment Centre, Prince of Wales Hospital, the Chinese University of Hong Kong "A targeted urological treatment program for secondary school students abusing psychotropic substance and a territory-wide school-based survey of bladder dysfunction symptoms associated with psychotropic substance abuse" released on August 28, 2013.

testing process. After all, some social workers or health-care professionals have expressed reservations about taking up such statutory duties.

(ii) *Enhancing existing services*

The Government adopts a five–prolonged anti-drug strategy aiming at tackling the drug problem in a holistic manner. Of these, preventive education and publicity, voluntary rehabilitation and tackling the drug problem at source through law enforcement are key components, with the necessary resources injected into the system in the past few years to enhance provision in different services and pursue different initiatives. However, the hidden drug abuse problem has continued to worsen in light of the significant increase in the drug age of newly reported drug abusers. We are racing against time and an additional tool should be considered. Indeed, it would be essential to ensure the effectiveness of the follow-up counselling and treatment mechanism in implementing the RDT. The Government has to examine the mechanism in detail and capture the views of different stakeholders before formulating options for further consultation.

(iii) *Applying Care or Protection Order*

The Care or Protection Order only applies to young people aged below 18 as a last resort when all other voluntary social work interventions are found ineffective. The Care or Protection Order system is intended to bind the parents and guardians such that the juvenile or child could be given proper care. As to the juvenile or child concerned, there is no sanction against non-compliance with requirements in the supervision order. In practice, under the Care or Protection Order regime, it takes time to consult medical professionals before the drug testing power under the said ordinance may be invoked. In sum, the Care or Protection Order would not be able to serve the same intended purpose of the RDT for identifying drug abusers early through drug testing so that counselling and treatment could be provided. Having said that, we see the merit of promoting awareness of social workers to the Care or Protection Order.

(iv) *Adopting the Arrest and Referral System of the UK*

Some suggested adopting the ARS of the UK, which confined drug testing to those who were arrested or charged of other "trigger offences'. Consumption of drugs other than heroin or cocaine is not a criminal offence in the UK, whereas drug consumption in Hong Kong is a criminal offence. The ARS and RDT are therefore two intrinsically different systems with different principles. Compared to the RDT which addresses the drug consumption offence, a referral system triggered by other offences would likely delay the intervention process because we have to wait until a person's drug abuse problem prompts him to commit another crime. In addition, a referral system may not achieve the purpose of giving a chance to a drug abuser when the triggering offences he commits are so serious that he would need to face prosecution.

(v) *Setting up a Drug Court*

The idea had already been carefully considered by the Task Force on Youth Drug Abuse in 2008. While a direct transplant of the drug court model to Hong Kong was not justified, the Task Force recommended intensifying the probation system with closer cooperation between probation officers and the Judiciary. As a result, a pilot scheme for enhanced probation for young drug offenders aged below 21 was launched in 2009, and extended to all the magistrate courts in 2013. We must emphasise that drug court in itself cannot replace the RDT as a tool for early identification of drug abusers. Notwithstanding this, we consider it worthwhile to examine the feasibility of developing a new mechanism that could give an opportunity to drug abusers but at the same time mandate treatment[12].

[12] The law does not provide for such mechanism. The PSDS only allows the Police to exercise their discretion not to prosecute under certain defined minor offences. They cannot, as a condition for exercising that discretion, require the subject to undergo any treatment. In any event, the Scheme is applicable to juveniles aged under 18 only. The Court can, as a sentencing option, order a convicted person be detained in the Drug Addiction Treatment Centre for treatment of his/her drug problem. The court, however, can only so sentence a convicted person. This means the subject will have a criminal record. While a conviction can later be spent if it meets the criteria of the Rehabilitation of Offenders Ordinance (Cap. 297), certain exceptions make disclosure of the criminal record of the rehabilitated individual inevitable. The Enhanced Probation Scheme by nature would only apply to young offenders aged below 21 with drug problems. It would not be able to help drug abusers aged above 21, apart from being unable to serve as a tool for early identification of drug abusers as the RDT.

CHAPTER 5. CONCLUSION AND RECOMMENDATIONS

5.1. ACAN notes that there is an overwhelming public support for the RDT. Although views in the submissions were more divided, there was general support for the need to do more to facilitate early identification of drug abusers for early intervention. At the same time, the Swedish experience has demonstrated how a compulsory drug testing scheme might successfully work to the objective of early identification, hence providing assistance to drug abusers at an early stage.

5.2. ACAN observes that among the opponents, some rejected the RDT out of their conviction that individual choices and freedom should in no circumstances be compromised. Many others, however, could not indicate support due to a general mistrust of the Government. They tended to be sceptical of the intention of introducing the RDT and its effectiveness when details of the RDT were not made available in the consultation document. ACAN, however, notes that the consultation exercise was only intended to gauge community sentiment on a number of issues of principles which will shed light on specific aspects of the RDT, if it is to be pursued.

5.3. We would like to highlight that there is community consensus that drug abusers should be offered assistance as early as possible. The debate is whether the RDT could be considered as an effective tool. With the successful overseas experience and an overwhelming support by members of the public, ACAN considers there being a strong case to continue to explore the RDT. ACAN also suggests that the concerns raised by all parties, especially those by the relevant professional groups, should be addressed as far as practical. In particular, before the launch of a second stage consultation, it would be necessary to develop more specific proposals to ensure that the mechanism is proportionate to its objective, i.e. early identification of drug abusers for early assistance. It is also important to continue dialogue with the relevant professional bodies and key stakeholders to dispel misunderstanding.

5.4. ACAN puts forth the following recommendations to the Government –

(a) to continue to explore details of the RDT and engage stakeholders, professional bodies and the public in ongoing discussion;

(b) to foster a more favourable environment for considering the RDT: this includes exploring ways to address the concerns of professional bodies especially on how to minimise the interference to human rights and civil liberties. In this regard, the Government should promote efforts to expedite the development of a test kit for rapid oral fluid test, which would give an instant indication on the spot, hence alleviating concerns that the proposed impairment test would take up too much time and involve subjective judgement of LEOs. In addition, efforts should also be made to enhance trust and rapport between LEOs and social workers in helping people with drug problems;

(c) to develop a follow-up mechanism that could effectively balance giving a chance to the drug abusers but mandating counselling and treatment: an issue considered by many anti-drug workers to be instrumental to the success of the RDT; and

(d) to share the best practices in other countries, e.g. Sweden, with local stakeholders.

5.5. ACAN recommends that the Government should immediately follow up these recommendations, and roll out proposals for operational details for a second-stage public consultation as soon as practicable.

Final Note

5.6. ACAN would like to thank all individuals and organisations who had taken time to respond to the consultation exercise. This exercise has helped to focus the community's attention to the drug issue again while the drug scene appears to be improving yet facing the challenges arising from the growing problem of hidden drug abuse. As a final note, ACAN would like to thank the secretariat for the support rendered to its work.

Annex A

Public Opinion Survey on RESCUE Drug Testing Scheme

Summary of Findings

1. In January 2014, the Narcotics Division of the Security Bureau commissioned the Public Opinion Programme of the University of Hong Kong to conduct the "Public Opinion Survey on RESCUE Drug Testing Scheme". The primary objective of the survey was to gauge public opinion on the condition of drug abuse in Hong Kong as well as their views on the RDT, the public consultation exercise on which had taken place between 25 September 2013 and 24 January 2014.

2. The target population of this survey was Cantonese- or Putonghua-speaking Hong Kong residents aged 18 or above. Telephone interviews were conducted between **17 February and 14 March, 2014**. A total of **1 004** target respondents were successfully interviewed. The overall response rate of this survey was **47.0%** (based on the AAPOR definition), and the standard sampling error for percentages based on this sample was less than 1.6 percentage points. In other words, the sampling error for all percentages using the total sample was less than plus/minus 3.2 percentage points at 95% confidence level.

3. The survey results show that 43% of the respondents thought the drug abuse problem was serious in Hong Kong. Among them, 11% considered the problem very serious and 32% thought it quite serious. Also, under the Laws of Hong Kong (i.e. The Dangerous Drugs Ordinance (Cap. 134)), dangerous drug possession or consumption is subject to a maximum penalty of 7 years' imprisonment and a fine of HK$1 million. Nearly half of the respondents (47%) considered such penalty adequate; 28% considered it heavy and 20% said it was light. With regard to the saying that in light of the current situation, drug abusers should be early identified through drug test in order to refer them to counselling and treatment programmes, 86% of the respondents agreed to this. Among them, 59% supported it very much while over one quarter (27%) somewhat supported. Less than one tenth (9%) objected to the idea and only less than 5% (4%) opted for the neutral stance.

4. ACAN launched a four-month public consultation exercise on the RDT from September 2013 to January 2014. The number of respondents who have and have not heard of the RDT before the survey was pretty close, at 48% and 52% respectively. After listening to a brief introduction by interviewers, 88% of the respondents supported the Scheme initially, of whom 57% indicated "very much support" and 31% "somewhat support". Only 6% held the opposite view while 4% were half-half.

5. Regarding some specific proposals of the Scheme, as high as 90% respondents supported "the drug testing procedures to be conducted in two stages", i.e. the person is required to undergo a screening test first, and only when one fails the one or more than one screening test would one's bodily samples be collected for conducting a laboratory test. Next, 87% supported the proposal that "those proven to be drug abusers can be eligible for a chance to receive counselling and treatment programmes in place of prosecution". Meanwhile, 82% supported that "law enforcement officers can require that person to undergo a drug test only when the person's physical state shows that he/she may have just taken drugs", while 78% supported that "law enforcement officers can require that person to undergo a drug test only when there are substances suspected of being drugs present in the near vicinity of the person concerned".

6. The Survey results also show three quarters of the respondents (75%) believed that the RDT should be applicable to people of all ages while around 20% (19%) thought it should only be applicable to young people. Besides, 69% supported that drug abusers irrespective of age should be given at least a chance of non-prosecution, while 26% objected to this idea. As regards the number of chances of non-prosecution to be given to drug abusers, excluding those who disagreed earlier, more than three quarters (76%) thought one chance should be given while 17% opted for two chances. Overall speaking, the average number was 1.4 chances to be given (based on 668 valid answers).

7. The Scheme also mentioned that under the RDT, law enforcement officers can require a person to undergo a drug test only when there are reasonable grounds based on strong circumstantial conditions to

suspect that a person has taken drugs. However, some people doubted that "the RDT would give law enforcement officers excessive power, and it would infringe on civil freedom and individual right." Results show that nearly half of the respondents (47%) disagreed with the statement while 36% agreed, and another 11% remained neutral. Furthermore, 64% of the respondents agreed that the RDT should apply to drug consumption behavior outside Hong Kong, 25% held an opposite view and 4% chose "half-half".

8. With respect to the effectiveness of the Scheme that aims "to identify drug abusers early and refer them to counselling and treatment programmes", 61% of the respondents anticipated the effect would be large once the Scheme is implemented, 18% remained neutral and 13% believed the effect would be small.

9. Lastly, 91% of the respondents expressed support for the implementation of the RDT after answering the series of questions, with a small increment of 3 percentage points as compared to 88% registered earlier (paragraph 4).

Summary Table

	Support	Half-half	Oppose
Overall opinion			
Tendency to support or oppose the "RESCUE Drug Testing Scheme" (first measurement)	**88%**	4%	6%
Tendency to support or oppose the "RESCUE Drug Testing Scheme" (second measurement)	**91%**	5%	4%
Proposals about the RDT			
The drug testing procedures will be conducted in two stages. The person is required to undergo screening test first, only when one fails the one or more than one screening test would one's bodily samples be collected for conducting a laboratory test.	**90%**	3%	5%
Those proven to be drug abusers can be eligible for a chance to receive counselling and treatment programmes in place of prosecution.	**87%**	3%	9%
Law enforcement officers can require that person to undergo a drug test only when the person's physical state shows that he / she may have just taken drugs.	**82%**	3%	12%
Law enforcement officers can require that person to undergo a drug test only when there are substances suspected of being drugs present in the near vicinity of the person concerned.	**78%**	5%	14%
Drug abusers, irrespective of age, should be given at least a chance of non-prosecution.	**69%**	3%	26%
The Scheme should apply to drug consumption that happened outside Hong Kong.	**64%**	4%	25%
Other opinion			
The RDT will give LEOs excessive power, and it would infringe on civil freedom and individual right	36%	11%	**47%**
Expected effectiveness of the Scheme (to identify drug abusers early and refer them to counselling and treatment programmes)	**61% High**	18% Half-half	13% Low

Annex B

List of Abbreviations

ACAN	Action Committee Against Narcotics
ARS	Arrest Referral Scheme
CCPSA	Counselling Centre For Psychotropic Substance Abusers
DIRO	Drug Influence Recognition Observation
HKU-POP	Public Opinion Programme of the University of Hong Kong
JPU	Juvenile Protection Unit
LEO	Law Enforcement Officer
NGO	Non-Government Organisation
PSDS	Police Superintendent's Discretion Scheme
RDT	RESCUE Drug Testing Scheme

Designed by the Information Services Department
Printed by the Government Logistics Department
Hong Kong Special Administrative Region Government