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# A STUDY ON JUVENILE DIVERSION AND DIVERSION - MEDIATION PROGRAMME IN GEORGIA

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# Part 1. About the Study

## Chapter 1. Introduction

Under the United Nations Convention on the Rights of the Child (CRC), “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”<sup>1</sup> The Convention also establishes procedural guarantees for the children in conflict with the law in the field of justice.<sup>2</sup>

Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.<sup>3</sup>

The CRC requires from States to develop such procedures, which would allow to have, whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.<sup>4</sup> Under the recommendation of the Committee on the Rights of the Child, the law has to contain specific provisions indicating in which cases diversion is possible, and the powers of the police, prosecutors and/or other agencies to make decisions in this regard should be regulated.<sup>5</sup>

According to the amendments made to the Criminal Procedure Code in July 2010, a mechanism for diversion and mediation for minors in conflict with the law became effective. In addition, adoption of the Juvenile Code of Georgia by the Parliament in 2015 was the reflection of the desire to reinforce the indicated principles. The Code came into force on January 1, 2016. The indicated document has further expanded the area of the diversion and mediation programme and it can be applied against persons aged 18-21. Apart from this, the indicated mechanism is now applied in case of serious and less serious crimes, when at an initial stage it was applied only to less serious crimes.

The Juvenile Code creates only a general framework. Evaluation of the process of practical implementation of these norms is also important, as it will allow us to analyze the existing policy and positive and negative sides of the practice.

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1 CRC, Art. 3 (1).

2 *Ibid.*, Art.40.

3 *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), Rule 1.4.*

4 CRC, Art. 40/3/b; see also the *Beijing Rules*, Rule 6 and Rule 11.

5 *Committee on the Rights of the Child, General Comment No. 10 (2007), para. 27.*

In its narrowest sense, legislative reform applies purely to the amending of an existing law or the drafting of a new law. However, in practice, “legislative reform” is more far-reaching than this and goes beyond simply reviewing and amending the legal framework.

Legislative reform includes:

- Consideration of policy, budgetary and human resources;
- Evaluation of institutional capacities and the system of communication among the institutions;
- Professional training and professional practice;
- Planning of the process of implementation of the law and its implementation;
- Transitional arrangements<sup>6</sup>;
- System of monitoring and quality assurance during the process of implementation.

Under the Beijing Rules: “efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration”.<sup>7</sup> Apart from this, the UN Committee on the Rights of the Child underlines that “(...) in order to ensure the full implementation of the [indicated] principles and rights, it is necessary to establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system.”<sup>8</sup>

**After launching of the diversion-mediation programme no detailed analysis of the diversion-mediation process has been done by external actors. It is important to have a detailed analysis of the diversion-mediation process after launching of the indicated mechanism both from the point of view of legislative changes and their implementation in practice as well as at a policy level. Criminal policy should be based on evidence-based approaches. Application of research/analysis as a basis of juvenile justice policy is recognized as an important mechanism to ensure the compliance between practice and achievements existing in theory and to develop and improve the juvenile justice system. Permanent link between the research and policy is especially important for the juvenile justice.<sup>9</sup> It is significant to collect exact and detailed data on juvenile justice practice and administration and to control them. Efficient monitoring and evaluation system allows planning of a purposeful application of resources.**

6 *Guidance for Legislative Reform on Juvenile Justice, Children’s Legal Centre and United Nations Children’s Fund (UNICEF), Child Protection Section, New York, 2011, p. 3.*

7 *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), Rule 30.3.*

8 *The UN Committee on the Rights of the Child No. 10, para.30.*

9 *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), Rule 30, comment.*

## Chapter 2. Purpose of the Study

The purpose of the study is to have an in-depth analysis of the process of diversion-mediation from the moment of its commencement till present, to analyze gaps existing in legislation and practice and to develop recommendations.

## Chapter 3. The study objectives

1. **Comparative analysis of compliance of domestic legislation with international standards in the diversion-mediation process;**
2. **Study of international practice;**
3. **Study of dynamics of numbers of minors/young persons involved in the diversion-mediation programme from the moment of its launching inclusive of the first half of 2017;**
4. **Study of the diversion-mediation local practice.**

## Chapter 4. Research methodology

The research methodology is based on the following instruments:

1. **Comparative analysis of compliance of domestic legislation with international standards;**
2. **Analysis of the international practice;**
3. **Analysis of the public information;**
4. **Interviews and focus groups.**

### 1) Comparative analysis of compliance of domestic legislation with international standards

Comparative analysis of compliance of domestic legislation<sup>10</sup> with international standards<sup>11</sup> in the field of juvenile justice was implemented. During the comparative

<sup>10</sup> Decree №120 of the Minister of Justice "On the Approval of the Rule of Use of Diversion and Mediation Programme and Main Terms and Conditions of Agreement to be entered into by and between the Parties"; A joint decree 132/95/23 of the Minister of Justice of Georgia, Minister of Internal Affairs of Georgia and the Minister of Corrections of Georgia on Approval of Methodology, Rule and Standard for Preparing Individual Assessment Report; Decree N 384/s of the director of LEPL Center for Crime Prevention on Approval of the Rules of Procedure and Working Documents for Mediators Involved in Diversion and Mediation Programme; Ordinance №668 of the Government of Georgia on Approval of Standards for Specialization of Persons Administering Juvenile Justice Procedure and Persons Involved in This Procedure; Decree №109/n of the Minister of Labour, Health and Social Affairs of Georgia on the Regulations of Social Service Agency.

<sup>11</sup> CRC, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), United Nations Standard Minimum Rules for Non-custodial Measures ("The Tokyo Rules"), UN Committee on the Rights of the Child, General Comment No. 10 and other commentaries by the Committee.

analysis a focus was made on the following issues: agencies authorized to make a decision on diversion; preconditions for diversion; stages for making a decision; types of a diversion programme; application of restorative justice components and other important issues. Procedures, common and different norms (provisions) reflected in the domestic legislation and international standards were described in detail during the analysis.

## **2) Analysis of best practices**

Analysis of experiences of different countries related to the application of the diversion-mediation mechanism has been carried out. The study presents legislative norms regulating diversion-mediation programmes in England and Wales, New Zealand, Canada, the Netherlands and the Philippines and the issues of their implementation in practice. The indicated countries have been selected to demonstrate peculiarities of the diversion-mediation programme in different regions and the countries with different legal systems (Northern America, Europe, Pacific Basin countries).

## **3) Public Information Analysis**

Information about the numbers of minors/young persons involved in diversion-mediation programme was received from the LEPL National Probation Agency (further “National Probation Agency”) of the Ministry of Corrections of Georgia and the LEPL Center for Crime Prevention (further “Center for Crime Prevention”) of the Ministry of Justice of Georgia and Chief prosecutor’s Office of Georgia on the basis of a written application of the group of researchers. Information was also obtained from the following web-resources: <http://www.pog.gov.ge/> and <http://ganrideba.ge/>.

The obtained quantitative data has been analyzed according to number of the diverted, their gender, age and crime categories.

Data about the services offered to the diverted during different years and the number of staffers involved in this process was received in the form of public information.

## **4) Interviews and Focus Groups**

Methods of semi-structured interviews and focus groups have been applied to study the diversion-mediation practice. Representatives of state agencies and non-governmental organizations (NGOs) involved in the diversion-mediation process, minors and their procedural representatives, social workers of the LEPL Social Service Agency of the Ministry of Labour, Health and Social Affairs of Georgia (further “Social Service Agency”) took part in the study.

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**Participants of the study:** four judges, nine prosecutors, three mediators, seven representatives of NGOs, fifteen diverted and thirteen procedural representatives took part in the study. Five focus groups and 37 interviews were conducted in total and 60 respondents were interviewed.

**Selection procedure:** those respondents from the state agencies (court, prosecutor's office, National Probation Agency, Center for Crime Prevention, Social Service Agency), who had been nominated out of the staffers working under the subordination of the above indicated agencies on the basis of official applications, took part in the study. Respondents represented both East (25 respondents) and West Georgia (12 respondents).

Respondents were selected from those NGOs who are implementing projects concerning the diversion-mediation programme representing East (5 respondents) and West (2 respondents) Georgia. The indicated information was provided by the National Probation Agency based on the submitted application.

One of the organizations that conducted the indicated study is the NGO Georgian Centre for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT), which has been offering services to diverted minors for years. Therefore, selection of the study participants was done among those minors referred to this NGO, who consented to take part in the study.

**Research instruments:** a semi-structured questionnaire for an interview and focus groups were developed by the research group for each target group (see annex), which covered the following issues: first contact of a minor/young person<sup>12</sup> with the justice system; making a decision about diversion and mediation; informing and involving a minor and his/her procedural representative; mediation process; defining terms of a contract; evaluation of effectiveness of services; quality assurance of diversion-mediation process.

## Chapter 5. Restriction of the study

The study findings mostly reflect the resources and shortcomings of the East Georgia mediation process (exclusive of public information). Since we do not have any strong evidence to prove that there is a different situation in the West Georgia, we can generalize the study findings to cover the processes in the West Georgia. Please find below a detailed table reflecting the respondent distribution in East and West Georgia:

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<sup>12</sup> A person aged 18-21 is implied.

<b>Participants</b>	<b>East Georgia</b>	<b>West Georgia</b>
Judges	<b>2</b>	<b>2</b>
Prosecutors	<b>5</b>	<b>3</b>
Social workers of the National Probation Agency	<b>6</b>	<b>3</b>
Mediators	<b>3</b>	
Representatives of NGOs	<b>5</b>	<b>2</b>
Diverted minors	<b>11</b>	<b>2</b>
Social workers of the Social Service Agency (procedural representative)	<b>9</b>	<b>4</b>
<b>Total</b>	<b>41</b>	<b>19</b>

Majority of mediators represent the non-governmental organization GCRT, which is also responsible for the study. Therefore, for the sake of objectiveness of results, the mediators of the indicated organization did not participate in the study.

In total 15 minors were interviewed within the frames of the study, which taken separately, in relation to the total number of the diverted minors, is not a big number. However, based on a comparative analysis between the information provided by them and the information obtained through other sources, it is possible to clearly see general tendencies existing in practice. Young diverted persons aged 18-21 have not been interviewed within the frames of the study and therefore, the findings of this study cannot be applied to them.

## **Chapter 6. Main Findings**

**Main findings of the study are presented in the following structure:**

- 1. Comparative analysis of domestic legislation regulating the diversion-mediation process with international standards and practices;**
- 2. Study of quantitative dynamics of minors/young persons involved in the diversion/mediation programme from the moment of its launching inclusive of the first half of 2017;**
- 3. Study of diversion-mediation practice.**

## **Part 2. Comparative analysis of domestic legislation regulating the diversion-mediation process with international standards and practices**

The idea of dealing with juvenile cases without judicial proceedings is firmly expressed in the international instruments of the juvenile justice. The CRC requires from states to introduce such mechanisms which would make it possible to deal with cases of children without resorting to criminal judicial proceedings.<sup>13</sup> It should be underlined that diverting a child does not mean that his/her offending behaviour must be ignored. Rather, it allows steps to be taken to identify risks and needs of a child in order to prevent further offending. The CRC provides that diversionary measures may include care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes and other alternatives to institutional care<sup>14</sup>. Such types of measures often include social welfare or community reintegration services and restorative justice programmes<sup>15</sup>.

**It is important to have a comparative analysis of domestic legislation with international standards and practices in order to evaluate compliance. In this part we will discuss international standards and practical examples in the process of diversion-mediation, which refer to agencies authorized to make decisions concerning diversion, stages of making decisions and types of a diversion programme.**

### **Chapter 1. Authorized agencies and stages of making a decision**

**International standards** stipulate different forms of application of a diversion mechanism and using it at various stages of proceedings. They will be discussed in general below.

#### **a) No intervention**

As a rule, this mechanism is applied in case a crime is not serious and where the family, the school or other informal social control institutions have already reacted, or are likely to react<sup>16</sup>. In this case, the role of the family, the community and the public in general in the diversion process is especially important. United Nations Standard Minimum Rules for Non-custodial Measures (the “Tokyo Rules”)

<sup>13</sup> *CRC, Art.40 (3) (b).*

<sup>14</sup> *Ibid., Art.40 (4).*

<sup>15</sup> *Guidance for Legislative Reform on Juvenile Justice, Children’s Legal Centre and United Nations Children’s Fund (UNICEF), Child Protection Section, New York, 2011, p.54.*

<sup>16</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), Rule 11, Commentary.*

states: “where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims.”<sup>17</sup>

### **Practical examples - Canada, England and Wales**

Under the Youth Criminal Justice Act of **Canada** of 2002, **Police** would consider whether it would be sufficient or not to apply the following mechanisms before starting judicial proceedings against a young person, who allegedly committed a crime: no intervention, informal [or] formal warning to a young person.

In **England** and **Wales**, to keep young offenders out of the youth justice system and provide them with support to stop offending, police can make use of pre-court measures, such as “reprimands” and “final warnings”.

### **b) Use of care/welfare procedures**

Some States use mechanisms oriented on care as a response to juvenile offending. Where a child is found to have committed a criminal offence, a relevant body can order that the child be removed from his or her parents into the care of another individual or institution. That individual may be a family member or a foster parent, but may also include a residential children’s home. It should be stressed that a child should only be removed from his or her family where it is necessary to do so to protect the child or to protect others from serious harm, and it is in the child’s best interests.<sup>18</sup>

### **c) Pre-trial diversion**

International standards define that it should be possible to apply diversion at any moment before the start of judicial proceedings. In order for diversion to work effectively, the police, prosecutors and other agencies need to have legal authority to dispose of cases without resorting to a formal hearing before the court<sup>19,20</sup>. Domestic legislation should also make it clear that diversion does not need to be limited to minor offences, nor just to first time offenders<sup>21</sup>, but should be widely used<sup>22</sup>.

17 *United Nations Standard Minimum Rules for Non-custodial Measures (“The Tokyo Rules”), Rule 5 (1).*

18 *Guidance for Legislative Reform on Juvenile Justice, Children’s Legal Centre and United Nations Children’s Fund (UNICEF), Child Protection Section, New York, 2011, p.66.*

19 *CRC, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), Rule 11.2.*

20 *UN Committee on the Rights of the Child, General Comment No. 10 (2007), para 27.*

21 *CRC, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), Rule 11, Commentary.*

22 *UN Committee on the Rights of the Child, General Comment No. 10 (2007), para 25.*

### ➤ **Police diversion**

In some States, the police are given power to divert children rather than refer the case to the prosecutors. The power to divert at this stage is expedient as it limits the child's contact with the justice system and is often sufficient to end the child's offending behaviour. In this case, it is important to develop guidelines in order to regulate the conditions and limits for exercising the police discretion.<sup>23</sup> As it was mentioned above, similar systems exist in Canada<sup>24</sup>, England and Wales, as well as in New Zealand and the Netherlands.

### **Practical examples of police diversion – New Zealand, the Netherlands**

*Since 1968 the obligation was placed on the police in **New Zealand** stipulating that in case of a crime committed by a minor/young person the police would “consider whether it would be sufficient to warn the child or young person, unless a warning is clearly inappropriate having regard to the seriousness of the offence and the nature and number of previous offences committed by the child or young person”.*

***The police in the Netherlands** have the discretion to offer children, who have committed such crimes like vandalism, property damage, petty theft or anti-social behaviour, the opportunity of attending a programme run by the HALT bureaus instead of charging them with the offence and instituting criminal proceedings. Police can refer a young person if: the suspect is between 12 and 18 years old; the offence meets HALT criteria, which sets out the maximum value for the theft or the damage done; and the suspect admits the offence. Local authorities manage nearly two thirds of the HALT bureaus, one fifth are managed by independent voluntary organisations, and one fifth are located within other public sector or voluntary organisations. This programme has been highlighted as an example of good practice.<sup>1</sup>*

### ➤ **Prosecutor diversion**

According to international standards, domestic legislation should contain provisions giving prosecutors discretionary power to suspend, or not to initiate, prosecutions against children, even if there is sufficient evidence to bring charges. As a rule, prosecutors have the power to impose measures on the child when suspending or dropping the prosecution. These measures generally include community service, mediation and an obligation to attend a rehabilitation programme, etc.<sup>25</sup>

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23 *Guidance for Legislative Reform on Juvenile Justice, Children's Legal Centre and United Nations Children's Fund (UNICEF), Child Protection Section, New York, 2011, p. 56.*

24 *Ibid.*, p. 53

25 *Ibid.*, p. 56.

### ➤ *Court-led diversion*

In some countries, judges are provided with the discretion to impose diversion prior to the beginning of the main trial, at the preparatory hearing. As a rule, the indicated mechanism is applied at this stage in case diversion has not been used at previous stages of criminal proceedings (by the police, prosecution) against the children in conflict with the law.

#### **Practical examples - the Philippines**

*Diversion was comprehensively introduced into domestic law in 2006 in the Philippines. The Juvenile Justice and Welfare Act provides that children in conflict with the law have “the right to diversion if he/she is qualified and voluntarily avails of the same”.*

*Diversion may be conducted by the police during the inquest or at a preliminary investigation stage and at all levels and phases of the proceedings including judicial level. The Act therefore permits the local community to first try to resolve the case, where the offence is against another person and attracts a term of imprisonment of less than six years, through conferencing, mediation or conciliation.<sup>2</sup>*

**According to the domestic legislation**, diversion and mediation programmes are based on a restorative justice concept that should stipulate interests of an offender and a victim as much as possible and generally it should be directed **to prevent re-offending**.

According to the domestic legislation, if there is a probable cause that a minor has committed a **minor or a serious crime**, the possibility of applying diversion shall be considered in the first place and it shall be evaluated whether diversion can ensure the re-socialisation and rehabilitation of the minor and the prevention of a new crime<sup>26</sup>. In this case the prosecutor may make a reasoned decision not to initiate a criminal prosecution or to terminate an already initiated criminal prosecution and to apply diversion<sup>27</sup>. A prosecutor will make a decision whether it is necessary or not to initiate a criminal prosecution to prevent re-offending by a minor and whether this will ensure his/her re-socialisation and rehabilitation; and evaluate whether the best interests of the minor, which will be encroached upon by the criminal prosecution, exceed other public interests, which would be defended in case of the criminal prosecution against the minor.<sup>28</sup> If the prosecutor refuses the minor diversion, the minor’s legal representative or lawyer may apply to the superior prosecutor for the imposition of diversion.<sup>29</sup>

<sup>26</sup> *Juvenile Justice Code*, Art.38 (1).

<sup>27</sup> *Ibid.*, Art.38 (2).

<sup>28</sup> *Decree №120 of the Minister of Justice “On the Approval of the Rule of Use of Diversion and Mediation Programme and Main Terms and Conditions of Agreement to be entered into by and between the Parties”*, Art.4.

<sup>29</sup> *Juvenile Justice Code*, Art.39 (4).

Diversion may also be imposed after the court hearings. For the purpose of imposing diversion, the court may, on its own initiative or on the basis of a reasoned motion of a party, return the case to the prosecutor, who shall decide on applying diversion in the event of the accused minor's consent<sup>30</sup>. When making a decision on the application of diversion account shall be taken of the best interests of the minor, the nature and gravity of the offense, the age of the minor, the degree of guilt, the expected punishment, any injury or damage caused by the minor, the preventive effect of criminal prosecution, the behaviour after the commission of the crime, any previous crimes, and the individual assessment report prepared for the diversion procedure<sup>31</sup>.

**International standards** define minimum legal safeguards that should be taken into account during the diversion:

- a) Diversionary measures should only be imposed where there is compelling evidence that the child actually committed the offence and he or she has freely admitted responsibility;<sup>32</sup>
- b) When a child does make an admission of guilt, and is offered a diversionary measure, this must not be used against the child in any subsequent legal proceedings;<sup>33</sup>
- c) The child must provide consent to the diversion measure freely, voluntarily and in writing;<sup>34</sup>
- d) Prior to consenting to the diversion, the child must have an opportunity to seek legal or other appropriate assistance, to discuss the appropriateness and desirability of the diversion offered;<sup>35</sup>
- e) The child's failure to complete his or her diversionary measure may legitimately lead to the authorities restarting their case, but successful completion of the diversion measure by the child will result in a final and definite closure of the case.<sup>36</sup>

It should be underlined that the State must establish safeguards that minimise the potential for coercion and intimidation: children should not feel pressured

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30 *Ibid.*, Art.39 (2) .

31 *Ibid.*, Art.38 (3).

32 *UN Committee on the Rights of the Child, General Comment No. 10 (2007), para. 27.*

33 *Ibid.*, para. 27.

34 *Ibid.*, para. 27.

35 *Ibid.*, para. 27.

36 *The Committee on the Rights of the Child, in General Comment No. 10, para. 27, states that although confidential records can be kept of diversion for administrative and review purposes, they should not be viewed as 'criminal' records and a child who has been previously diverted should not be seen as having a previous conviction. If any registration takes place of this event, access to that information should be given exclusively and for a limited period of time e.g. for a maximum of one year to the competent authorities authorised to deal with children in conflict with the law.*

into consenting to diversion programmes: juveniles should not feel pressured into consenting to diversion programmes.<sup>37</sup> The child must be provided with “adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to cooperate, carry out or complete the measure”<sup>38</sup>. In addition, children should be given the opportunity to express their views concerning the measures that may be imposed, and those wishes should be given due weight.<sup>39 40</sup>

**According to the domestic legislation**, diversion may be imposed on a minor if all the following circumstances obtain:

- a) There is sufficient evidence for a probable cause that the minor has committed a minor or serious crime;
- b) The minor has no previous convictions;
- c) The minor has not participated in a diversion-mediation programme before;
- d) The minor confesses to the crime;
- e) In the belief of the prosecutor/judge and taking into account the best interests of the minor, there is no public interest in initiating criminal prosecution or continuing an already initiated criminal prosecution;
- f) The minor and his/her legal representative have given an informed written consent to the application of diversion<sup>41</sup>.

Where making a decision on imposing diversion, the prosecutor may conclude an agreement with the minor about diversion or about diversion and mediation. The maximum duration of this agreement shall be one year<sup>42</sup>.

Before making a decision about the diversion, a prosecutor will meet with a minor, his/her legal representative and a lawyer and will provide information about the diversion/mediation programme, its application procedure, possible duration, possible conditions and results of a failure to fulfill the diversion measures. The prosecutor will also meet with a victim and will provide to him/her the information about a possible commencement of the diversion and mediation process and will explain to him/her grounds and reasons for making a decision. The prosecutor

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37 *CRC, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), Rule 11.3. Commentary*

38 *UN Committee on the Rights of the Child, General Comment No. 10 (2007), para. 27.*

39 *Guidance for Legislative Reform on Juvenile Justice, Children’s Legal Centre and United Nations Children’s Fund (UNICEF), Child Protection Section, New York, 2011. p. 56*

40 *UN Committee on the Rights of the Child, General Comment No. 10, para. 45.*

41 *Juvenile Justice Code, Art.40.*

42 *Ibid., Art.39 (3).*

will inform the victim about the need to involve a mediator in the process and will explain what the purpose and the essence is. The victim's refusal about the commencement of the diversion process and/or his/her refusal to take part in the mediation does not impede the diversion process<sup>43</sup>.

In case of making a preliminary decision about the diversion of a minor, a prosecutor will make a resolution about the commencement of a diversion process against the minor. In case of a consent of the minor and his/her legal representative, within 3 working days from the moment of delivery of the resolution, the prosecutor shall apply to the National Probation Agency to prepare an individual assessment report. The case shall be transferred by the Agency to a social worker within 2 working days to prepare the individual assessment report<sup>44</sup>. In case there is a victim in the case, the prosecutor, within 3 working days after delivering the resolution, shall apply to the Crime Prevention Center, which will transfer the given case to a mediator within 2 working days<sup>45</sup>.

The social worker of the National Probation Agency shall conduct the individual assessment of the minor. The social worker shall present to the prosecutor this assessment and a report, a recommendation about a diversion measure, other guidance concerning the conditions of the agreement within 10 working days from the moment of receiving the case. If the social worker fails to provide the assessment within 10 working days because of good reasons, the term can be extended<sup>46</sup>. In parallel, the mediator shall contact the victim within 10 working days. He/she will explain to him/her the essence of the diversion and mediation programme, its principles, goals, results of his/her participation and shall provide all necessary information so that the victim provides his/her informed consent or denial concerning the participation in the mediation process<sup>47</sup>.

After the case is transferred to the social worker, he/she will meet with a relevant prosecutor and within 3 working days from the moment of meeting with the prosecutor the social worker will organize a meeting with the minor and his/her legal representatives to explain the future stages of cooperation and his role and obligations during the diversion process<sup>48</sup>.

Within the frames of an individual assessment a social worker shall obtain information about the needs of a minor, risks of committing a crime and his/her

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43 Decree №120 of the Minister of Justice "On the Approval of the Rule of Use of Diversion and Mediation Programme and Main Terms and Conditions of Agreement to be entered into by and between the Parties", Art.4 (2,3,4).

44 Decree №120 of the Minister of Justice "On the Approval of the Rule of Use of Diversion and Mediation Programme and Main Terms and Conditions of Agreement to be entered into by and between the Parties", Art.4 (6).

45 Ibid., Art.4 (7).

46 Ibid., Art.4 (8).

47 Ibid., Art.4 (8).

48 A joint decree 132/95/23 of the Minister of Justice of Georgia, Minister of Internal Affairs of Georgia and the Minister of Corrections of Georgia on Approval of Methodology, Rule and Standard for Preparing Individual Assessment Report, Annex N1, Art.3 (5).

skills. In particular, in a special form he/she will fill in the following: “a) General information about a minor; b). Information about an illegal action; c). Information about his/her physical condition and state of health; d). Information about his/her emotional, cognitive development and behavioural peculiarities; e). Information about his/her education, vocational training, sports activity and work experience; f). Information about the family and a living environment; g). Information about social networks and his/her relations”<sup>49</sup>.

The individual assessment, the report drafted on the basis of the assessment and the list of recommended terms of the agreement shall be reviewed jointly by the social worker and the prosecutor after 5 days from presenting these documents to the prosecutor.<sup>50</sup> The individual assessment shall be carried out with the minor, his/her family members and other related persons through interviews. After finalization of the assessment the social worker shall list recommended measures in the report consideration of which will be possible while drafting conditions of the agreement<sup>51</sup>. The social worker should not include such measures in the agreement that would be impossible for the minor to implement.<sup>52</sup>

A diversion or diversion and mediation agreement should include the following: “a). Term of the agreement; b). Place and time of drafting the agreement; c). Data of the persons participating in the programme; d). Place (municipality) of fulfillment of the agreement conditions; e). Indication about the fact that the minor confesses to the crime; f). Type of a diversion measure and other conditions; g). Legal results of failure to fulfill the obligations and grounds for termination and suspension of the agreement”.<sup>53</sup> Additional conditions can be defined in the agreement at the initiative of a prosecutor, social worker, mediator, victim, juvenile, lawyer or his/her legal representative.<sup>54</sup>

## Chapter 2. Types of diversion programmes

**According to international standards,** diversion programmes can take a number of different forms. Some may be based on restorative justice principles, some take a family-focused, welfare approach, and yet others use activity programmes to address offending behaviour.<sup>55</sup>

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49 A joint decree 132/95/23 of the Minister of Justice of Georgia, Minister of Internal Affairs of Georgia and the Minister of Corrections of Georgia on Approval of Methodology, Rule and Standard for Preparing Individual Assessment Report, Annex N1, Art.3 (8).

50 *Ibid.*, Art.3 (9).

51 *Ibid.*, Art.3 (11).

52 *Ibid.*, Art.3 (14).

53 Decree №120 of the Minister of Justice “On the Approval of the Rule of Use of Diversion and Mediation Programme and Main Terms and Conditions of Agreement to be entered into by and between the Parties”, Art.4 (12).

54 *Ibid.*, Art.4 (13).

55 *Guidance for Legislative Reform on Juvenile Justice, Children’s Legal Centre and United Nations Children’s Fund (UNICEF), Child Protection Section, New York, 2011, p. 73.*

### ➤ Restorative justice

Restorative justice is a process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.<sup>56</sup>

### ➤ Family-based/welfare diversion

Offending behaviour by children is sometimes viewed as a symptom of family dysfunction and caused by poor parenting, difficult family circumstances or a breakdown in family relationships. The family focused diversion programmes generally work with the child and his or her family to understand why a child is offending and how to address the child's needs to prevent further offending. This approach uses intensive social work, family conferencing and individual work with children to re-integrate the child within his or her family, school and community and build up the child's self-esteem.<sup>57</sup>

### ➤ Activity programmes

There are other programmes during the diversion process that may imply involvement of children in different activities allowing them to correctly use their leisure time, to learn new skills and to become engaged in different youth activities. These programmes can be wide-ranging and depend upon the needs of the particular child<sup>58</sup>.

**On the basis of the domestic legislation**, diversion or a diversion and mediation agreement may provide for the following measures:

- a) A written warning;
- b) A restorative justice measure, including involvement in a diversion and mediation programme;
- c) The full or partial compensation for injury or damage caused;
- d) The transfer to the State of property obtained by illegal means;
- e) The transfer to the State of the weapon of crime and/or object withdrawn from civil circulation;
- f) The imposition of obligations on the minor;
- g) The placement of the minor in foster care<sup>59</sup>.

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<sup>56</sup> *Basic Principles in the Use of Restorative Justice Programmes in Criminal Matters*, paras 1.2 and 1.3.

<sup>57</sup> *Guidance for Legislative Reform on Juvenile Justice*, Children's Legal Centre and United Nations Children's Fund (UNICEF), Child Protection Section, New York, 2011, p. 60

<sup>58</sup> *Guidance for Legislative Reform on Juvenile Justice*, Children's Legal Centre and United Nations Children's Fund (UNICEF), Child Protection Section, New York, 2011, p. 60.

<sup>59</sup> *Juvenile Justice Code*, Art.42

A written warning to a minor means explaining to the minor the injury and damage caused by his/her actions and the consequences of committing a crime again<sup>60</sup>.

Restorative justice measures may include the involvement of a minor in a diversion and mediation programme, and/or any other programmes.<sup>61</sup> Mediation process is a component of the restorative justice. Under the domestic law, mediation process is made of three main stages: a). preparatory stage; b). pre-conference stage; and c). mediation conference.

In case there is a victim in the criminal case, a prosecutor shall apply to a diversion/diversion and mediation programme manager of the center within 3 working days from the moment of delivering a resolution on the commencement of a diversion process against the minor. The programme manager shall transfer the case to a mediator within 2 working days. He/she will provide information about the case and provide contact information concerning the professionals working on the case to the mediator.

The mediator shall be obliged to organize a first meeting with a victim within 10 working days from the moment he/she has received the case from the diversion/diversion and mediation programme manager. Extension of this term shall be possible only in special cases.

In case the victim consents to be involved in the mediation process, a pre-conference stage shall commence from the moment of presenting an individual assessment report of the minor by a social worker/probation officer to the prosecutor. At the pre-conference stage the mediator shall contact the minor/legal representative and the victim separately, talk to them about the mediation and present the mediation conference rules, provide detailed information about the possible conditions of the agreement to the parties.

In case the victim does not agree with the possible conditions of the agreement, the diversion and mediation agreement shall not be signed. In this case, only an agreement on diversion can be signed with the minor by the decision of the prosecutor.

Mediation conference is a forum, where people discuss a crime and a conflict. All participants may talk, express their emotions and what is the most important, to have his/her own contribution to the result. Possible conditions of the agreement shall be discussed in detail at the conference. The conference shall be considered to be finished upon the signature of the agreement.

Under the diversion and/or diversion and mediation agreement minors may be prohibited: a) from visiting certain places and/or person(s); b) from changing a place of residence; c) from leaving home during a specific period; d) from leaving

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60 *Ibid.*, Art.43

61 *Ibid.*, Art.44.

the country or an administrative unit without permission; e) from performing other acts which might hinder their re-socialisation and rehabilitation<sup>62</sup>.

Minors may be obligated: a) to start or resume study in an educational institution with the assistance of a specialised state agency; b) to start working with the assistance of a specialised state agency; c) to participate in educational, correctional and/or medical treatment programmes; d) to spend leisure time in a specific manner; e) to fulfil other obligations that will facilitate their re-socialisation and rehabilitation and prevent them committing a new crime<sup>63</sup>.

Placing a minor in foster care means transferring a minor for a certain period of time to a foster family, away from the home and separately from parents, if leaving the minor at home with his/her parents poses a risk of the minor committing a new crime.<sup>64</sup>

If a victim consents to participate in the mediation or if he/she does not express a clearly negative attitude toward the minor, it is possible to draft the diversion and mediation agreement<sup>65</sup>.

Monitoring of implementation of diversion and/or diversion and mediation agreement shall be carried out on a monthly basis by a social worker of the National Probation Agency.<sup>66</sup> In case of need, the monitoring can be carried out more intensively.

A social worker shall meet with a minor at least once a month to carry out monitoring, during which the progress done by the minor will be discussed. In case of failure to fulfill one of the conditions, the social worker and the minor shall discuss jointly interfering factors.<sup>67</sup> If the minor fails to fulfill the agreement conditions without any reasoning, the social worker shall inform a prosecutor, who will make a decision defined by the law.<sup>68</sup> The social worker shall present to the prosecutor a report on fulfillment of the agreement conditions by the minor on a monthly basis.<sup>69</sup>

If the failure to fulfill the agreement conditions was caused by objective circumstances, the social worker and the prosecutor may amend the agreement conditions and replace a concrete obligatory condition/s with other, adequate one/s.<sup>70</sup>

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62 *Ibid.*, Art.45 (1).

63 *Ibid.*, Art.45 (2).

64 *Ibid.*, Art.46 (1).

65 A joint decree 132/95/23 of the Minister of Justice of Georgia, Minister of Internal Affairs of Georgia and the Minister of Corrections of Georgia on Approval of Methodology, Rule and Standard for Preparing Individual Assessment Report, Annex No1, Art.3 (15).

66 *Ibid.*, Art.4 (1).

67 *Ibid.*, Art.4 (3,4).

68 *Ibid.*, Art.4 (5).

69 *Ibid.*, Art.4 (6).

70 *Ibid.*, Art.4 (8).

Within 5 days from the moment of expiry of the term of the contract the social worker shall present to the prosecutor a final report, which shall provide information not only about the general progress, but also indicate to what extent the re-offending risks have been eliminated.<sup>71</sup> If a minor fulfils the obligations under the agreement, the prosecutor shall decide to stop the investigation of the criminal case.<sup>72</sup>

Where a minor fails to comply with diversion measures intentionally, the prosecutor shall be notified about the fact. The prosecutor based on this and other circumstances, after hearing the views of the minor, his/her legal representative and the social worker, shall cancel or keep in force the decision on imposing diversion, or shall change the diversion measures and/or shall extend the duration of the diversion agreement. Where the decision on imposing diversion is cancelled, a prosecutor may, with a reasoned resolution, cancel the decision not to initiate a criminal prosecution or to terminate an already initiated criminal prosecution, or initiate or resume a criminal prosecution with a new reasoned resolution.

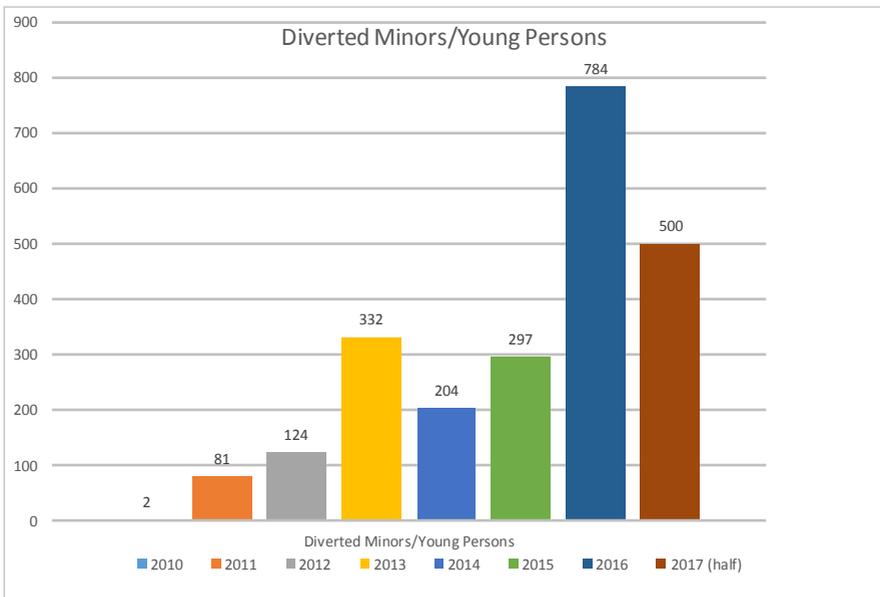
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71 *Ibid.*, Art.4 (9).

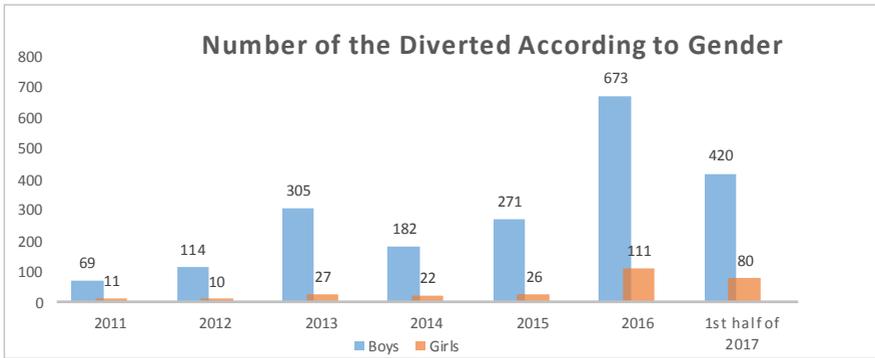
72 *Juvenile Justice Code*, Art.47.

### Part 3. Study of quantitative dynamics of minors/young persons involved in the diversion-mediation programme from the moment of its commencement inclusive of the first half of 2017

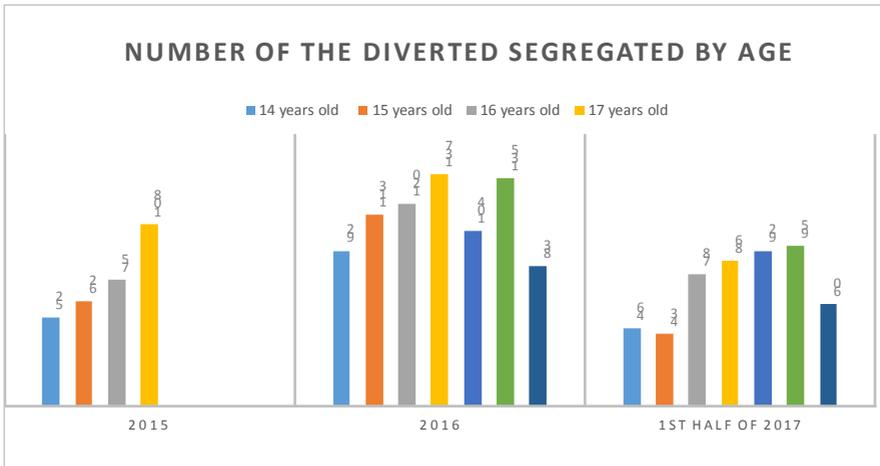
After commencement of the diversion programme, in 2010-2016 and in the first half of 2017, **2325** minors/young persons were diverted in total out of which **1756** are *minors* and **569** – *persons aged 18-21 years*. As it was indicated above, this programme has been applied against the persons aged 18-21 since 2016 when the Juvenile Justice Code became effective and therefore the presented statistic data covers only this period. After enactment of this mechanism, the number of the diverted minors started to increase.



It would be interesting to analyze the number of the diverted according to gender segregation. The presented statistic data covers the period after 2011 (*there were only 2 diversion cases in 2010 and both of them were boys*). Diversion measures applied against **girls** make up approximately 8% of the total number. Please see the diagram (the detailed table can be found in Annex 1).



It is also interesting to analyze **what is the age** of persons who are diverted. It was possible to obtain and process the information from 2015-2016 and the first half of 2017.<sup>73</sup> Information from 2015 and 2016-2017 is different with the consideration of the fact that since 2016 diversion-mediation programme has been also applied against the persons aged 18-21. However, analysis of the information from this period allows us to assess general dynamics from this perspective. The statistics make it clear that application of the diversion mechanism during the **age of juvenility** increases along with the age and therefore it is applied most often against the persons aged 17. This measure is often applied also against the persons aged 19. See the diagram below:



<sup>73</sup> The Chief Prosecutor's Office and the Crime Prevention Center have provided the public information only concerning the indicated reporting period.

Until 2012 diversion was applied only in case of less serious crimes. However, since 2012 it has been applied against less serious as well as serious crimes. After this norm became effective and **until 2017**, the index of application of diversion in case of less serious and serious crimes was divided according to the following principle: **70% - 30% in average in favour of the less serious crime**. However, the dynamics of the first half of 2017 shows that diversion is applied equally against the minors in case of less serious and serious crimes.

Crime category	First half of 2017		2016		2015	2014	2013	2012
	14-18 years	18-21 years	14-18 years	18-21 years				
Less serious	51%	75%	64%	75%	69%	69%	72%	63%
Serious	49%	25%	36%	25%	31%	31%	28%	37%

Below is the information about those crimes stipulated by the Criminal Code that were committed by minors, who were later diverted. Mostly the data after 2013 has been analyzed (as it was impossible to obtain the data of previous years).

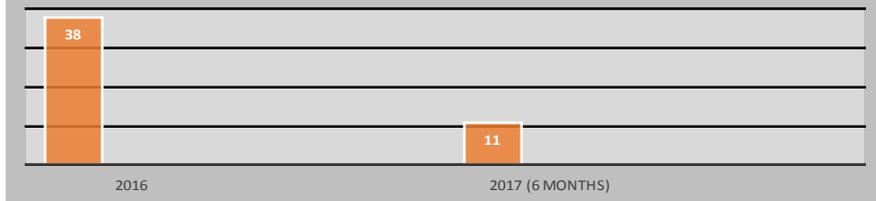
The greatest part of crimes comes on **theft (Criminal Code of Georgia, Art. 177, paragraph 1, 2 and 3)**. After theft diversion was most often applied until 2013 against **carrying melee weapons (Criminal Code, Art. 238<sup>1</sup>)**. However, after 2013 the diversion has not been applied against the crime stipulated under this article, which is probably related to the change in the criminal policy. Since 2014 diversion has been applied the most often against the following crimes after theft - **battery (Art.125 of the Criminal Code<sup>74</sup>)**, **intentional less grave bodily injury (Art. 120)** and **violation of traffic safety rules or rules for operating transport (Art. 276)**. However, as it was already indicated, the greatest part of crimes (more than 50%) comes on the cases of **theft**.

As concerns the cases of minors returned from court for diversion purposes, it should be noted that the court has this authority since 2016, i.e. after Juvenile Justice Code has become effective. Therefore, in 2016 courts returned the cases against **38 persons** for diversion, whereas within first 6 months of 2017 – cases against **11 persons**.<sup>75</sup>

<sup>74</sup> This article has been removed from the Criminal Code and its elements are integrated into the article on violence (Art. 126 of the Criminal Code).

<sup>75</sup> [http://pog.gov.ge/res/docs/public\\_information/arasrulclovanta\\_mimart\\_sixxli\\_samartlis\\_politika.pdf](http://pog.gov.ge/res/docs/public_information/arasrulclovanta_mimart_sixxli_samartlis_politika.pdf)

## Cases of Minors Returned from Court for Diversion Purposes



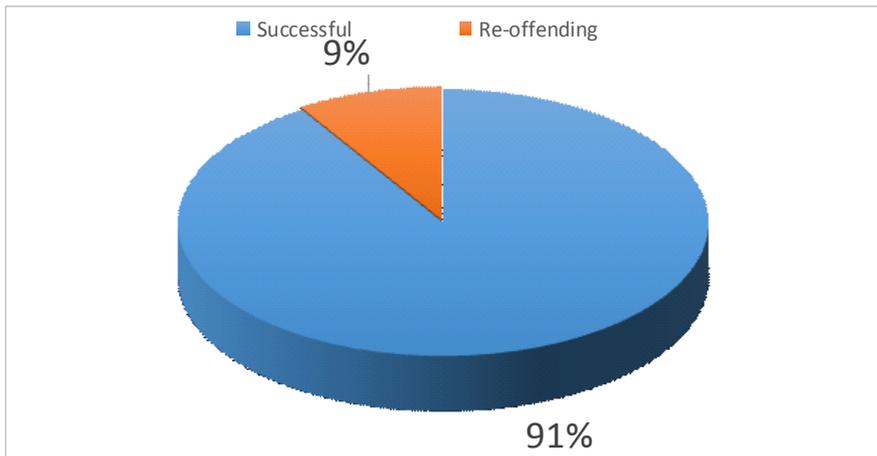
Under the Georgian legislation, diversion can be applied both before or after the initiation of a criminal prosecution. In 2014 38% of minors were diverted after initiation of criminal prosecution, in 2015 - 25%, in 2016 - 16%, and in 2017 (1-6 months) – 6%. **These statistic data shows that the diversion mechanism is applied more and more often before initiation of criminal prosecution.**

It is also interesting to see how many persons were arrested before the application of the diversion mechanism. Number of arrested and diverted persons in 2014 was 12% of the minors to be diverted, in 2015 - 5%, in 2016 - 6%, in 2017 (1-6 months) - 4%. The indicated information shows that before application of the diversion mechanism arrest of minors is rare and there is a tendency of decrease from year to year.<sup>76</sup>

Index of institution of prosecution and arrests against minors before diversion			
Year	Number of the diverted	Number of persons against whom criminal prosecution started before diversion	Number of persons arrested before diversion
2014	203	78 (38%)	24 (12%)
2015	297	74 (25%)	16 (5%)
2016	462	74 (16%)	29 (6%)
2017 (6 months)	253	15 (6%)	10 (4%)

<sup>76</sup> [http://pog.gov.ge/res/docs/public\\_information/arasrulciovanta\\_mimart\\_sisxli\\_samartlis\\_politika.pdf](http://pog.gov.ge/res/docs/public_information/arasrulciovanta_mimart_sisxli_samartlis_politika.pdf)

One of the indicators for the assessment of the diversion mechanism is re-offending by the diverted minors. According to the information provided by the Crime Prevention Center, in 2010-2016 index of re-offending among the diverted minors was 9% (134 minors).



## Part 4. Study of the diversion-mediation practice

Diversion-mediation programme practice assessment was done through the evaluation of the following components:

1. **First contact of a minor with the justice system** (it includes the process of arrest of a person; facts of a possible pressure; explanations of rights and obligations; the process of interviewing/interrogating; the stage when diversion is suggested to a minor);
2. **Services** (their number, sustainability and efficiency);
3. **Mediation process;**
4. **Diversion-mediation agreement** (duration of the agreement, agreement conditions);
5. **Quality of an individual assessment report;**
6. **Quality assurance system.**

### Chapter 1. First contact of a minor with the justice system

Several components were assessed during the qualitative research of the first contact with the justice system of the children in conflict with the law: a). physical and/or psychological pressure during the arrest; b). explanation of rights and obligations to minors; c). the process of interviewing and interrogating minors. Analysis of the indicated components is important to assess how a decision is made concerning diversion and what stages precede it.

#### a) Physical and/or psychological pressure during the arrest

Opinions expressed by minors concerning physical and psychological pressure during the arrest were diverse. Half of the minors in conflict with the law stated that there was no physical or psychological pressure exercised during their arrest. However, the other half of the minors (6 respondents) noted that different forms of pressure took place against them during the arrest. The participants described the cases of verbal abuse, yelling, threatening and sarcastic attitude on the part of police officers. According to one of the minors, he was not directly transferred to the police office and the officers were driving him around in the city. One of the respondents has also stated that he was given a possibility to call his family members only after five hours from his arrest.

#### ***Diverted minor 1***

***“Sure, there was a pressure.” Mostly there were using abusive language against me, “if we see you outside after 8 p.m. and...” similar phrases.”***

## **Diverted minor 2**

***“Before bringing me to a police office, the “patrol police officers verbally abused me and swore at me.”***

The majority of the Social Service Agency social workers (procedural representatives) stated that they have not witnessed the cases of physical and/or psychological pressure against minors during their arrest and/or interrogation. However, other respondents talked about the violation of procedures. For example, one of the respondents stated that the minor was kept at the police office during 24 hours and only after that he/she was able to meet with him/her. One of the respondents stated that the children had told him/her about the physical and/or psychological pressure exercised against them. However, after he/she checked this information with the police officers, they did not confirm such a fact. The majority of prosecutors stated that there were no cases of physical and psychological pressure against minors in their practice.

## **Social worker of the Social Service Agency 1**

***“They spend a lot of time there and we had a case with one of the minors: when the procedure was finished they were supposed to release this child. In short... there was a minor arrested in the office and our colleague .... social worker was present there. When we said that it was time for them to release this child, they were worrying that this child could abscond and they would not be able to find him again and because of this they did not let him go. **Probably, they kept the child in the office for 24 hours because of the fear that they would not be able to find him afterwards....He was interrogated as a witness.... He was arrested at about 10 -11 p.m. and the social worker came there at 3 p.m.”*****

## **Social worker of the Social Service Agency 2**

***“... there was a case when the child told me that he had been treated in a harsh manner, that he had been given a slap in the face and that the pressure had been exercised against him so that he would provide information to them. However, when I discussed it later with the police officers concerning this they would reply that these children are exaggerating and that such facts never took place.”***

### **Social worker of the Social Service Agency 3**

**“No. Neither me, nor my colleague social workers have ever witnessed such a fact. If something similar happens, we are procedural representatives and we are working in the division of human rights and we will necessarily take relevant measures. But our team has never had such cases.”**

### **Social worker of the Social Service Agency 4**

**“No, definitely no. There were no similar facts during our involvement.”**

### **b) Explanation of rights and obligations to minors**

A few respondents (3) stated that during the arrest they got explanation as to their rights and obligations, but the majority stated this did not take place.

The majority of respondents stated that they received an offer concerning diversion from prosecutors. However, a part of the respondents noted **that the diversion was offered by them by a police officer**, social worker and a lawyer.

#### **Diverted minor 1**

**“Nobody has explained anything (about rights).”**

#### **Diverted minor 2**

**“Nobody has mentioned rights and has explained nothing.”**

#### **Diverted minor 3**

**“The rights have not been explained at all.”**

According to the majority of the Social Service Agency social workers (procedural representatives), the minors in conflict with the law receive explanations about their rights and obligations. However, according to some respondents, there are cases, when this obligation is not fulfilled or explanation of rights has a very formal character. According to the statement of the prosecutors, the minors in conflict with the law receive explanation concerning their rights and obligations during the arrest and/or interviewing and interrogating minors in a form and a language that is understandable to them.

### **Social worker of the Social Service Agency 1**

*“They do explain, but there were cases when they did not. When we read protocols of interviews we find the explanation of children’s rights, what to do, etc. at the top of the document and then we sign it. When a social worker reads out this, he/she explains the meaning of this part as well, because it is indicated there. Investigators also explain these rights. The process is being improved step by step. Mostly minors learn about their rights in an understandable language. If an investigator fails to do so, then a social worker will be involved to explain.”*

### **Social worker of the Social Service Agency 2**

*“Yes, they provide information, what are their rights and obligations in this process and under what circumstances this or that responsibility may be imposed on them.”*

### **Social worker of the Social Service Agency 3**

*“The do provide information, but this has mostly a formal character. Explanation about the obligation is also very vague. In my opinion, it should be also indicated what measures will be carried out in case of failure to fulfill these conditions. The diverted do not have exact information concerning this.”*

### **c) Interviewing/interrogating**

During the process of description of interviewing/interrogating process, the information provided by the minors in conflict with the law was diverse. However, in most cases there are possible signs of violation of the rights of minors. Half of the respondents said that interviewing/interrogating process was conducted without shortcomings. However, some respondents said interviewing had been conducted before legal representative/procedural representative and/or lawyer came. Apart from this, some respondents said that during interrogation there were 3-4 police officers present besides a legal representative and a lawyer.

**Special mention should be made of the explanation of two respondents concerning the facts that police officers showed non-professional interest towards them. In particular, minors remember cases when the police officers showed interest towards their clothes or appearance. Relevant citations are omitted from the interviews for safety and the best interests of the minors.**

### **Diverted minor 1**

*“Yes, they asked about everything before my mother came. I learned only afterwards that they were not supposed to ask about anything without the presence of my mother, but what can you do with the police? Probably it is always like this, they ask about everything before parents come to the police office.”*

### **Diverted minor 2**

- *“They drew up all documents without the presence of my lawyer.”*

### **Diverted minor 3**

*“I do not know. There were a lot of people present during my examination: the chief, his deputy and about 3-4 officers.”*

### **Diverted minor 4**

*“Yes, I was interrogated without a lawyer.”*

The majority of the Social Service Agency social workers (procedural representatives) stated that **as a rule, the minors in conflict with the law are already interrogated** before they meet them. According to them, they are invited formally so that they sign the protocol of the interrogated minor. They also stated that when they try to interfere in the process of interviewing and interrogation to defend the best interests of the minor, it irritates police officers very much and very often they think social workers are “intriguers”. Part of the respondents also said that often the process of interviewing and interrogation took place beyond working hours. One of the respondents even stated that even if the minor was in foster care, they were not involved in the process. The respondent said he/she had **three** such cases. **Only two respondents confirmed that** the interviewing and interrogation process **was conducted lawfully**. According to prosecutors, they have not witnessed shortcomings during the interviewing and interrogation process.

### Social worker of the Social Service Agency 1

*“There were cases and I will tell you how I guess usually: **the child knows everything by heart, questions are already asked and the child responds with a well-formulated text, i.e. we feel he/she had been interviewed**, but we can do nothing. There were such cases, when they had a text written in advance and the minor read it. We protested against this, **but they reacted on it badly and after that you already are the “intriguer” social worker**. In spite of this, we never sign pre-written testimonies. I have not experienced this personally. Several social workers expressed such a concern. We usually share our experience.”*

### Social worker of the Social Service Agency 2

*“There were cases that the child was already interrogated. Unfortunately, such cases happen very often. We are invited formally to sign the protocol of the interrogated child. Such cases are numerous.... I have a lot of plea bargain agreements... and I have a lot of cases when children are already interrogated and we go there to sign the documents.”*

### Social worker of the Social Service Agency 3

*“I had the following cases: I visited the child, who is in foster care in our system and learned from him that he had been arrested, interrogated in presence of an unknown teacher, but we were not notified.... **I can remember three cases when the child said he was in foster care, had a social worker and we have not received a notification about this.**”*

### Social worker of the Social Service Agency 4

*“Law-enforcement body representatives have already met with the minor and some questions have already been asked, i.e. they have partially received some information.”*

### Social worker of the Social Service Agency 5

*“When we go for an interrogation of a minor, we do not know what are the techniques of investigators, what kind of open questions they have, but according to my assessment, these questions are often so tough that I try to interfere in the interview process and say something, a bit mildly, starting to talk about this topic discreetly, etc. There were cases when I got involved in the process and **it was obvious that they did not like my involvement.**”*

## Chapter 2. Services

According to the information provided by the Ministry of Corrections of Georgia, different types of services are available for the diverted both in East (Tbilisi, Shida Kartli, Kvemo Kartli, Mtskheta-Mtianeti, Kakheti) and in West Georgia (Imereti, Samegrelo and Adjara). The programmes are tailored to different needs of the diverted. Namely, on prevention of anti-social behavior, development of personal characteristic features. It also includes educational and vocational courses, voluntary activities. Among service providers there are both budgetary institutions (ministries, local self-governing bodies) as well as NGOs. According to the data of August 29, 2017, total of 308 minors/young diverted received the services. Detailed information about the accessibility to services according to regions, sources for financing services and the diverted involved in each of the services can be found in the table below.

### Services for the diverted minors/young persons

Data of August 29, 2017

Region	Name of the Programme	Organization that Implements the Programme	Number of Participants
Tbilisi	Rehabilitation services for the prevention of antisocial behaviour	NGOs GCRT & CIDA <i>Funded by the EU</i>	24
	“Two generations”	Center for Crime Prevention	20
	Volunteering at “Catharsis”	National Probation Agency	102
Shida Kartli	Vocational training courses	Internally Displaced Women’s Association “Consent” <i>Funded by the EU</i>	3
	Volunteering activities	NAPR Landscaping and Nursery Gardening of Gori Municipality	1
Kvemo Kartli	Rehabilitation services for the prevention of antisocial behaviour	NGOs GCRT & CIDA <i>Funded by the EU</i>	10
Mtskheta-Mtianeti	Volunteering activities	Association of Mtskheta Municipality Cultural and Sports Establishments	1
	Volunteering activities	Dusheti branch of LEPL State Fund for Protection and Assistance of (statutory) Victims of Human Trafficking	1

<b>Kakheti</b>	Participation in external lighting and landscaping works	Akhmeta Municipality	<b>10</b>
	Volunteering activities	Sighnaghi Municipality	<b>5</b>
	Volunteering activities	Center for Protection and Development of Cultural Heritage, Sports and Health Institutions and Recreational Facilities  <i>Funded by the EU</i>	<b>4</b>
<b>Imereti</b>	Rehabilitation services for the prevention of antisocial behaviour	NGO GCRT  <i>Funded by the EU</i>	<b>20</b>
	Volunteering at “Catharsis” (Zestaponi)	Company “Wissol”	<b>4</b>
	Educational programmes at “Madlierebis Sakhli” –services for socially vulnerable old people	Kutaisi Youth Center	<b>34</b>
	Volunteering at “Madlierebis Sakhli”	State budget	<b>23</b>
	Project for the children living and working on the streets - 24-hour services, inclusive education, services of a psychologist, medical services, educational and cultural programmes	World Vision Georgia	<b>7</b>
<b>Samegrelo</b>	Volunteering activities at a free canteen	Zugdidi Municipality	<b>1</b>
	Volunteering activities at a free canteen	Poti Municipality	<b>5</b>
	Volunteering activities at a free canteen	Chkhorotsku Municipality	<b>1</b>
	Programme “Hand-in-hand for a Better Future”	Internally Displaced Women’s Association “Consent”	<b>1</b>
	Educational activities	Zugdidi Youth Center	<b>3</b>

<b>Adjara</b>	Rehabilitation services for the prevention of antisocial behaviour	NGO GCRT <i>Funded by the EU</i>	<b>14</b>
	Kobuleti historical (local) museum (assistance in different activities)	Kobuleti Municipality	<b>1</b>
	Batumi municipal canteen (assistance in different activities)	Batumi City Hall	<b>5</b>
	Day center "Tana"	Batumi City Hall	<b>2</b>
	Batumi archaeological museum	Batumi City Hall	<b>2</b>
	American corner in Batumi		<b>3</b>
	House of free journalists "Pita"		<b>1</b>
<b>Total</b>			<b>308</b>

As it was indicated above, the diverted have access to different types of services, but the study results show that there are certain needs from the point of view of number of available services and their diversity. Prosecutors, social workers of the Probation Agency, mediators, judges, diverted as well as the representatives of NGOs providing these services have talked about the necessity to improve the services.

The majority of the prosecutors said that the services do not fully correspond to the needs of the minors: *"these are mostly standard services"; "we have only a problem with services and lack of social workers"; "increase of the number of services and social workers would more or less resolve this (problem)"; "if he/she has some other needs, we can offer nothing, we do not include such things in the agreement either, because we know there are no services for them and he/she will not be able to fulfill these conditions because of the lack of services"; "if there is not a different type of a feedback and if services are not added, if we do not receive other proposals, the process will suffer. In my opinion, lack of services is the main challenge"*. According to the majority of the prosecutors, there are inter-agency meetings, where existing challenges are discussed.

### Prosecutor 1

*“We try to match the available resources to the risks and needs of the diverted. However, it would be good to have more diversified resources. We anyway manage to work with the diverted efficiently in spite of the lack the resources.”*

### Prosecutor 2

*“We have the following services: psychological assistance, anger management, art therapy. If SIDA has no more projects, we will be in trouble, because we have no other alternatives. Sometimes a child wants to be involved in a sports activity, if e.g. he is a former wrestler, etc. As his family could not afford it, the child was not able to continue this activity. In such cases there are no mechanisms that would assist the children in involvement in those activities that are interesting to them.”*

### Prosecutor 3

*“At our last meeting all of us recognized that lack of services is a challenge.”*

The social workers of the National Probation Agency also talk about the lack of services and the need to have more diversified services and this is considered to be one of the important challenges: “there is a deficit of services. Educational and sports services mostly are not accessible.” Part of the social workers note that they create major resources themselves: “it is a very painful issue. *Unfortunately, only I have a training with rehabilitation modules, but external services are very scarce.*” However, some social workers have a different position. They said that the services cover the needs of the minors: “*we cannot say there is a certain risk and we do not have relevant modules. I have not had such a case in my practice. Mostly what is revealed, we have sufficient resources*”; “*we have sufficient number of relevant rehabilitation services for a problematic behaviour*”; *But, if we need art-therapy or something similar..., we do not have possibilities. There are offers from NGOs concerning such services and we send the minors there to get involved in these activities.*”

## Social worker of the National Probation Agency

*“Our services are mostly made of our rehabilitation modules with the help of which we work with the children. We also have volunteering and the services organized by the Center for Crime Prevention. Since my employment this mainly referred to two rehabilitation modules: realization of one’s own crime, conflicts and anger management.”*

As concerns mediators, they also expressed concern because of lack of services. All respondents stated that a child may not be involved in a programme that is fully tailored to his/her needs, which would be more effective. They expressed wish to have access to more diversified services that would be tailored to the needs of the children. The respondents also said that when they talk about the lack of services, they imply such activities, which are available at this stage. They also mentioned instability of the available services.

### Mediator

*“We involve them in landscaping activities that we had in the last period. Periodically we have some activities, but they are not always available. When NGOs appear, we use their services.”*

Similar to other participants of the process, the absolute majority of the interviewed NGOs consider the lack of services and tailoring of them to the needs of the diverted as a major challenge. According to the statement of the majority, the services are not tailored to individual needs of the children and often the minors are offered similar services: *“this individual plan can not be included in an agreement, because it should be fulfilled, which would be impossible. That is why they put there – “Catharsis”, “anger management”, “electronic book” or “realization of one’s own crime.” If they choose these four and there is a competition announced by the Ministry of Justice, a social worker is happy. If the Ministry has not announced the competition, the diverted child will go to “Catharsis.” In the opinion of the representatives of NGOs, their services “do not exactly match the needs of the children” because of different reasons” (referral criteria, correct formation of groups, in compliance with the needs of the child) – stated the representative of one of the NGOs.*

Part of the NGO representatives said that programme referral criteria are unclear; often such children are in one group, who should not be together, e.g. minors with high and low risk. According to the NGOs, they are not involved in the process of formation of groups and they just receive lists, where sometimes even one and the same surnames are listed twice. They said the minors are not informed where they are going and what is the purpose of their involvement in the programme. The system of checking the efficiency of the services provided to the diverted does not exist either.

## **NGO representative 1**

*“The indicated services do not correspond to the needs of the minors.... E.g. a minor needs vocational training, but a (social worker) may not manage to find relevant resources for this. That is why he/she may be involved in other type of an activity, which may not be important to her/him. There is a lack of services, which would be relevant for each minor.”*

## **NGO representative 2**

*“We have a lack of services everywhere and these social workers and psychologists are not magicians, especially with the consideration of the fact that their number is not sufficient. Mediators are not magicians either and when they only offer to a child to go and clean the yard or to do something similar, it is obvious that it is done only to write a plan and there is little creativity.”*

Judges also talked about the lack of services and the issue of lack of correspondence of the services to the needs of the diverted: *“probably they do not always correspond (to the needs), as such services do not exist, e.g. a minor who is involved in labour activities, you should not offer the same services in diversion”; “As far as I know from the probation bureau officers, sometimes they end up in difficulties, as the services are not always sufficient and they do not always manage to match them to the needs (of the diverted).”* Other judges said that they do not have information about the services stipulated by the agreement.

Social workers of the Social Service Agency share the common opinion about the lack of services. In their opinion, there is nothing much to be offered to the diverted: *“we cannot offer much and in most cases, the services do not correspond to the needs of the minors.”*

Despite the fact that all participants of the study agree on the lack of available services and think it is important to have more diversified programmes, all minors noted that the diversion was very important for them and it assisted them to understand the crime. The absolute majority said that the services offered to them reflected their needs and it was not difficult to fulfill them: *“I realize my own crime and I will try to redress it. The services were necessary and useful”; “I like it very much, because I expected something terrible, but it is very good”; “It is good for me. It helps me to realize what I did”.* Only two diverted minors said that the part of the services was tiresome and they did not correspond to their needs: *“Some activities were uninteresting. The trainings were very unpleasant and tiresome for me. I learned nothing”.* One of the participants said that the conditions listed were not fulfilled by him.

### **Diverted minor 1**

*“All activities that were mandatory, they assisted me and I learned something. It was much better than sitting at home. I got more experience.”*

*“Diversion was necessary to realize my own behaviour.”*

### **Diverted minor 2**

*“I was supposed to go to the retirement home together with a social worker, but we did not go there at all, he/she did not call either... I had my phone on and if he/she would call me I would go, but since he/she has not called, I have not reminded him/her. I was supposed to take part in a project with the involvement of other children, but I did not go there either.”*

## **Chapter 3. Mediation**

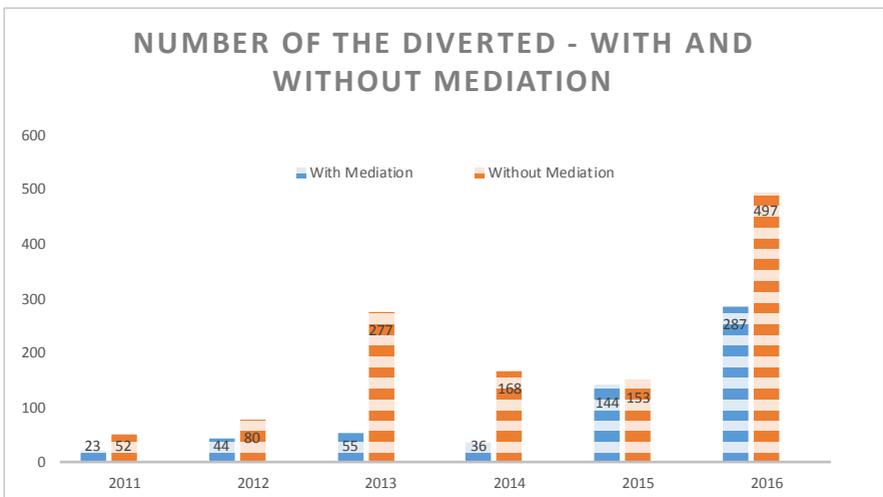
According to the Georgian legislation, the following mechanism of a restorative justice is being applied against minors/young persons: **victim + offender + mediator**.

On the basis of the public information provided to us, there are 14 mediators employed at the Diversion and Mediation Unit of the Center for Crime Prevention, among them one is a permanent staffer and 13 -contractors. Mediators are distributed in different parts of Georgia according to the following principle:

<b>Region</b>	<b>Number of Mediators</b>
<b>Tbilisi</b>	<b>6</b>
<b>Adjara</b>	<b>1</b>
<b>Guria</b>	<b>1</b>
<b>Kvemo Kartli</b>	<b>1</b>
<b>Kakheti</b>	<b>1</b>
<b>Shida Kartli</b>	<b>1</b>
<b>Samtskhe-Javakheti</b>	<b>1</b>
<b>Imereti</b>	<b>1</b>
<b>Samegrelo-Zemo Svaneti</b>	<b>1</b>
<b>Total</b>	<b>14</b>

As for the qualification of the mediators, according to the information provided by the Center for Crime Prevention, there is no specific professional background requirement stipulated for the appointment on the position of a mediator and as it was indicated above, priority is granted to the work experience and skills. Therefore, the professional backgrounds of the mediators employed at the Center for Crime Prevention are different. Namely, there are lawyers (3 staffers), social workers (6 staffers), a specialist of international relations (1 staffer), psychologists (3 staffers), a representative of a medical field (1 staffer).

According to the information provided to us, in 2011-2016 approximately **30%** of diversion cases was carried out **along with mediation**, whereas **70%** of cases was carried out **without mediation**. However, it should be noted that an index of diversion carried out together with mediation increased significantly in 2015-2016.



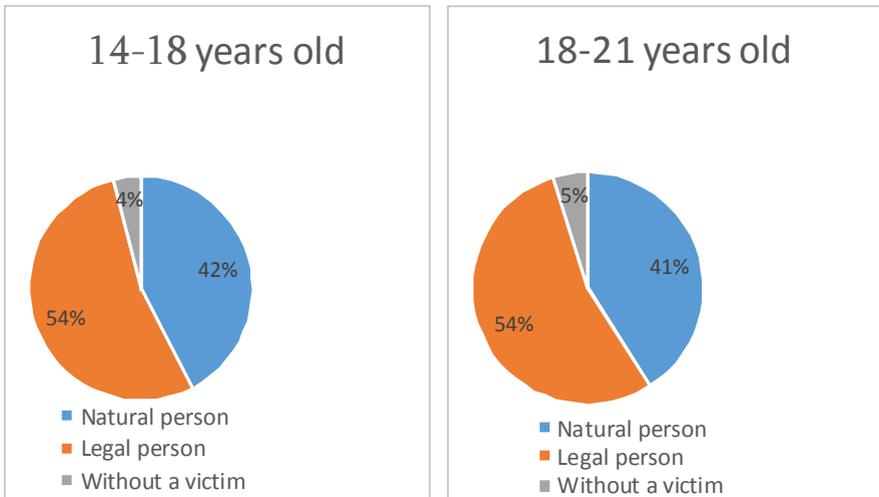
Official statistics also present the information about successful mediations and the mediation conferences<sup>77</sup>. Dynamics shows that the number of mediation conferences was significantly reduced in 2016-2017, by approximately 14% in comparison with the previous years. According to the information provided by the Center for Crime Prevention, there are different reasons for unsuccessful mediation cases. Namely, refusal of a victim - 56%; refusal of a mediator - 36%; absence of a victim - 7%; other reasons - 1%.

Years	2014	2015	2016	2017 (I half)
Successful mediation	18%	51%	40%	37%
Successful mediation conference	28 Conferences	114 Conferences	222 Conferences	143 Conferences

77 <http://ganrideba.ge/?action=page&pid=52&lang=geo>

**It was revealed during the study that: specific indicators for the assessment of the mediation programme efficiency have not been developed; criteria for the involvement of a specific person in the mediation process when a victim is a legal person is unclear; there are no specific criteria defined for the termination of the mediation process.**

The majority of the respondents said one of the challenges for the effective implementation of the mediation process is insufficient motivation of victims. Besides, the majority of the respondents especially underlined the problems related to the cases, where victims are legal persons. According to their statement, there is not a common approach concerning this issue. As a result of the public information analysis it was revealed that in majority of cases the victims are legal persons<sup>78</sup>. In 2010-2016 in 54% of cases committed by persons aged 14-18 as well as by persons aged 18-21, victims in these cases were legal persons. In relation to both age groups, only in 4-5% of cases such crimes were committed where there were no victims.



<sup>78</sup> The information was provided by the Center for Crime Prevention.

### **Mediator 1**

*“Unfortunately, there are cases where [a victim] had no direct relation to the crime, he was not an eye-witness, he has not disclosed this specific fact and therefore, it does not refer to him, he does not feel it has something to do with him and as a result, he cannot be motivated to be involved in the mediation.”*

### **Mediator 2**

*“It is a difficulty that **very often victims do not agree to have mediation**. It is voluntary of course and we as mediators do not have a right to interfere and we do not force them to participate.”*

### **Mediator 3**

*“**Motivation** can be one of the main difficulties what we face. Other difficulty is **the cases of legal persons**. I would raise this issue.”*

According to the majority of the respondents, one of the challenges is a timely organization of mediation conferences. The reasons named are that victims may not have time, he/she might be out of town, etc. One of the respondents also stated that because of this he/she has to organize a mediation conference during non-working hours: *“yes, we conducted conferences at 9 p.m. and on saturday mornings as well.”* The respondent thinks that one of the reasons is the absence of a relevant regulation that would deal with the issue of organization of a mediation process.

All respondents stated that participation of prosecutors in a mediation process is not mandatory by law and they are present at the mediation conferences in rare cases. However, the mediators try to provide detailed information as much as possible to the prosecutors concerning the mediation process. One of the respondents stated that **prosecutors may play a positive role in the process** by attending a mediation conference, as the prosecutors have more authority and children have more respect and **fear** towards them.

### **Mediator 1**

*“**Prosecutors have been attending this process for years** and it was important for them that they were making a decision themselves and therefore, **they wanted to know what would happen in the end and how**. At the beginning they were present more actively and they have more trust on the part of the mediators.”*

## **Mediator 2**

*“Before the presence of a prosecutor was mandatory, but as the prosecutors have a very busy schedule and they find it difficult to attend conferences, now this issue has been revised and it is no longer mandatory for them to attend the conferences. They join us in case of need and **if they have such a desire.**”*

## **Mediator 3**

*“If a prosecutor is not present, we necessarily have a communication via telephone and we tell him/her whether everything went well or not, how the process was conducted. They are always interested. There are certain cases where their presence is necessary, e.g. if there is a need to organize a meeting so that a minor to be diverted meets with a more authoritative person. We are authority for him/her as well, but he/she may need someone **he/she respects. In case he/she fails to fulfill his/her obligations, a diversion will be terminated, etc. When this is explained by a more authoritative person who deserves respect, he/she may be involved in the process.**”*

According to mediators, they receive bio-psycho-social assessment of a child from social workers of the National Probation Agency before commencement of the mediation process, which assists them in an efficient planning of the process.

The study has revealed that there are no clearly defined indicators for measuring the successful mediation process. All respondents noted that they are measuring the successful mediation process instantly. According to two mediators, successful mediation is when after finalization of the process a child or other party representatives “are crying”. One of the respondents said he/she can evaluate whether the process was successful or not through “gestures” of the parties.

## **Mediator 1**

*“For me mediation is successful when it finishes and **you see in the eyes of the party representatives and in their actions, gestures** that a victim will shake hands with a minor to be diverted and the/she will make peace with the minor. This process is so alive that even if this conflict will not turn into a friendship and we do not have such an expectation, but even one gesture from the victim’s side is a step forward. It is a successful mediation for me when I see my work was productive.”*

## **Mediator 2**

*“It is very individual. There were cases when a victim was comforting the minor. I had a lot of similar cases. When the victim would see **how much the child was crying, he/she would try to calm him/her down. Sometimes it is very hard to see this, but it is worth, because it is nice to watch the “happy ending”.**”*

## **Mediator 3**

*“**When I see the transformation of the minor to be diverted, this regret is visible at preparatory meetings. The minor feels he/she made a mistake, he/she did not want to do this, etc. But when the minor to be diverted looks into the eyes of the victim and the latter shares his/her worries and this process finishes, then you see the absolute transformation of the minor to be diverted and it is very pleasant to see.**”*

## **Social Worker of the National Probation Agency**

*“I had such cases, when a child would hardly hold his/her tears not because someone has rebuked him, on the contrary, because this person had a very loyal attitude and he/she showed the minor what losses he/she suffered and what was ruined because of his/her small deed. Good mediation brings really good results.”*

Half of the interviewed minors do not have information about mediation. They said they know nothing about it and/or nobody has talked to them about the mediation; The second half of the interviewed assesses the mediation process diversely. Some of them describe their participation in the process positively, some others think the mediation process is a formality and **that they had no feeling of regret.**

## **Diverted minor 1**

*“It was good, as I met with the victim and I apologized. I think I felt some relief.”*

## **Diverted minor 2**

*“In my opinion, it was just a formality. If I do not regret what I did, would I say it there?”*

One of the representatives of the service provider NGO, who had a direct contact with the diversion-mediation process stated that the mediation process has a very formal character and it does not serve its major goal.

## NGO representative

*“The programme is realization of one’s own crime. First he/she has to attend this programme and then to have mediation so that he/she realizes how much damage he/she has inflicted to you by stealing a phone and that his regret is sincere. We have the following situation: **the first thing they do is the mediation, where a child is involved without any preparation and he/she is asked to apologize. Some minors do not apologize, but some others do it for the sake of their parents, etc. This process is fully formalized.**”*

*“**Out of the children I have worked with I can say that mostly it is a formality.** A child is sitting there out of formality, but in reality he/she does not regret what he/she did. Mediation was conducted and he/she came to me. I should have felt that he /she realized something and had a feeling of regret, that something was redressed. I do not have such a feeling.”*

It is defined by law that it is necessary to have consent of both parties to conduct the mediation process. However, neither legislation nor guidelines define those cases, when a mediator may terminate the indicated process. It was revealed during the qualitative research that there were cases of termination of the mediation, but it is not clear what regulations were applied by the mediator in this process.

## Mediator

*“It was indicated in the report that he/she was an aggressive person and it would be impossible to conduct mediation. He/she agreed to the mediation, but he/she had mental problems and that is why I decided to involve the specialists and the process was terminated.”*

## Chapter 4. Diversion and diversion/mediation agreement/quality of individual assessment report

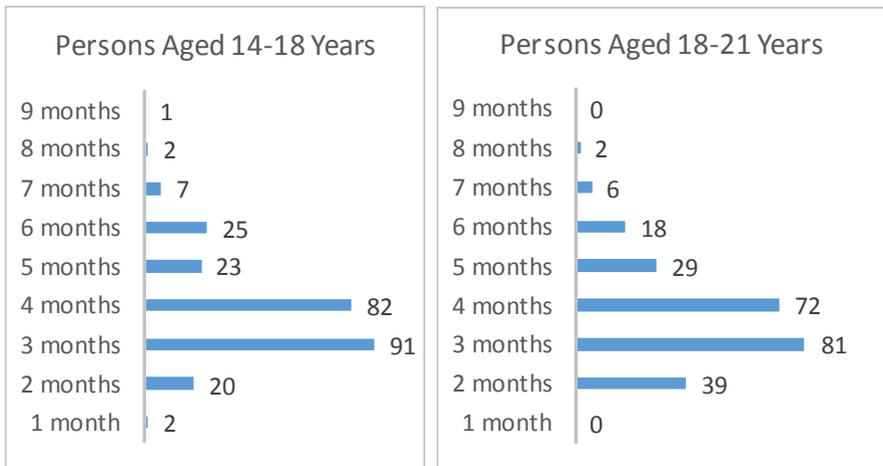
This chapter presents information about the situation concerning the fulfillment of diversion and diversion/mediation agreements, which was revealed during the qualitative research and through the obtained public information. Diversion and diversion/mediation agreement mostly depends on the information reflected in the individual assessment report, which is prepared by social workers of the National Probation Agency. In this part of the report, we will also discuss the issues related to the individual assessment report quality as well as the process of fulfillment of an agreement.

Public information concerning the violation of diversion agreements was obtained through web-resources, but it covers only 2016 and 2017 years.<sup>79</sup>

**In 2016** 462 minors were diverted and agreements were signed with them. There were 18 cases of violation of the agreements. Five minors committed new crimes, whereas in 13 cases they failed to fulfill the agreement conditions. Diversion process was terminated in six cases. In the rest of the cases the term was prolonged.

**Within first six months of 2017** 253 minors were diverted and agreements were signed with them. There were 13 cases of violation of the diversion agreement. Four minors committed a new crime. There were 9 cases of failure to fulfill the conditions of the agreement. Diversion process was terminated in five cases. In the rest of the cases the term was prolonged.

Under the domestic law, maximum term for diversion and/or diversion and mediation agreement is one year. According to the information provided by the Center for Crime Prevention, duration of the agreements for both age groups is 3-4 months in most cases. However, 2-month agreements are signed quite often. There were cases of signing one-month agreements. Detailed data can be found below:



**Opinions expressed during the qualitative research concerning the individual assessment report quality were diverse. However, the majority of the respondents stressed the problems related to the report quality.**

The majority of prosecutors evaluated the individual assessment report quality positively. According to them, the sources indicated in the report from which the information is received, are sufficient and they fully rely on these reports. According

<sup>79</sup> <http://www.pog.gov.ge/>

to one of the respondents, if there is a need to specify this information, they get in touch with the social workers. However, some prosecutors noted that the quality of reports is not satisfactory because the National Probation Agency social workers are overloaded.

### **Prosecutor 1**

*“We study the individual assessment reports drafted by the Probation Agency social workers in detail. We draft the agreement conditions jointly. Prosecutor’s office, Probation Agency social worker and mediator get involved in the process.”*

### **Prosecutor 2**

*“The report is fully informative. If there is a shortcoming or something is unclear or we need additional information, we contact the social workers.”*

### **Prosecutor 3**

*“Social workers are extremely overloaded. Quantity defines quality. When there are a few staffers, it damages the quality. The social workers are very devoted, but because of lack of time and a huge backlog, they cannot do all works. The social workers have a lot of different things to do besides diversion.”*

According to one of the judges, individual assessment reports cover a lot of spheres, but it is anyway subjective – “it is an important document and it covers a lot of spheres, but I think this **assessment is anyway arbitrary**, as it is mostly based on the interviews with the family members. The latter have interest to defend their sons or brothers or sisters and these documents do not provide objective information. That is why I think they are subjective.” According to him, the risks are indicated, but it is very difficult to evaluate them. Unfortunately, the report does not show whether this assessment is correct or not and what stands behind these risks. The majority of judges refer to the **lack of sources** on the basis of which the reports are drawn up. According to them, it is important that the assessment is based on the information received from different sources.

### **Judge 1**

*“Number of visits paid (to a family) is one or two, which is insufficient in my opinion. If an addressee is not communicable, in that case **2 visits are insufficient for an objective assessment.** Information is mainly based on the data received from families and schools. I think these data are very formal. It would be good to visit friends, representatives of those sports circles, which are attended by the minors. That is how we can evaluate the minors in a better way.”*

### **Judge 2**

*“We cannot voice any complaints, it is very informative for me. Personal data protection is also important. It would be **better to have assessments from the school and the teacher, provided there is consent of an accused, or his/her legal representative. If there is no consent, then such examination is not conducted, which is correct.**”*

It was revealed during the qualitative research that the reports drafted by social workers are granted greater significance during the process of definition of the agreement conditions and there is a good communication between prosecutors and social workers concerning these issues. However, it was revealed during the study that there is a lack of information sources on the basis of which individual assessment reports are drafted.

According to all prosecutors, agreement conditions are agreed jointly with the social workers and in this case they fully rely on the reports drafted by the social workers of the National Probation Agency. According to the prosecutors, there may be different opinions in this process, but they agree on the agreement conditions for specific minors/young persons during a joint discussion.

Part of the prosecutors stated that during the process of defining the agreement conditions, it is important to take into account the victim's position. However, according to one of the prosecutors, priority is given to the best interests of the child – *“we take into account the victim's position, but as it was indicated above, we prioritize the child's best interests”*. One of the respondents noted that in the process of defining the agreement conditions, it is important to take into account the minor's position as well.

### **Prosecutor 1**

*“We draft the conditions together and if we have resources to involve them in additional services, we do it with the consideration of their best interests.”*

## **Prosecutor 2**

*"We take into account all recommendations listed by the social worker and we include all of them in the agreement conditions. If a diverted is against one of the conditions, we may consider it, but he/she has to provide reasons and if he/she provides a good reasoning, we may not include such conditions in the agreement."*

According to the majority of the National Probation Agency social workers, their reports are considered to be very important and in most cases, diversion and/or diversion and mediation agreements are drafted on the basis of these reports. According to them, they have frequent discussions with the prosecutors about the definition of the agreement conditions and in spite of difference of opinions, they anyway manage to jointly agree on them. Besides, one of the respondents said that there was a case when a prosecutor refused to divert the minor on the basis of the individual assessment report.

According to the majority of the social workers, the main source of information is mostly a beneficiary, a family or in some cases, a school. According to some social workers, there are problems related to maintenance of confidentiality in the process of obtaining information, especially in a school environment. However, one of the respondents said that he/she does not have a feeling that the source is insufficient and that they mostly manage to obtain information.

## **Social worker of the National Probation Agency 1**

*"In my opinion, **assessment has been attached a great importance in the recent period. Both prosecutors and judges fully rely on them.** That is why the reports should be as informative and objective as possible. I feel this responsibility. During the process of defining the agreement conditions decisions are almost always made jointly. Sometimes even the mediators or prosecutors add some conditions."*

*"I had cases, not many, 3-4 cases, when a prosecutor refused to divert the minor after reading the report drafted by me. It means that our opinions coincided."*

## **Social worker of the National Probation Agency 2**

*"Prosecutors are taking into account what is happening during the process of drafting agreements. In most cases, those conditions remain, which were included by me. If he/she does not agree with me in something, he/she would ask me and I would explain and share my arguments. In most cases they take them into account. If he/she tells me why we should not include certain conditions and these arguments are strong, I also take them into account."*

### **Social worker of the National Probation Agency 3**

*“The main source of information is anyway the family and the school. I do not like it very much to go to the school to obtain information. I think a lot of things should be changed at schools – **nobody keeps confidentiality for the minor**, which is a huge challenge and a mistake. We had an experience when we went to the school and the child was rebuked in front of a big audience.”*

**It was revealed during the study that in case of violation of the agreement conditions by minors, as a rule, diversion conditions are not cancelled and a criminal prosecution is not instituted. The minors are given an opportunity to remedy this shortcoming. However, the study has also showed that there are cases when there was no reaction on the violation of the agreement conditions.**

According to the majority of the social workers, in case of violation of the agreement conditions, criminal prosecution is not necessarily initiated and the minors have an opportunity to rectify this shortcoming. One of the social workers noted that in case of violation of the agreement conditions, prosecutors talk to the minors and they warn them about the possible results of the agreement violation.

According to some social workers, one of the reasons of violation of the agreement conditions is that minors find it difficult to assume responsibility. One of the social workers said that mostly such minors are violating the agreement conditions, who are characterized of an anti-social behavior - **“Mostly we face such problems with those persons, who have inclination towards anti-social behavior, when they do not realize their own crime, when there is a moral development deficit, also when there is a mentality problem, e.g. when a criminal sub-culture is a priority for a person; mostly, in such cases.”**

### **Social worker of the National Probation Agency 1**

*“Nothing happens until this stage. I have not had such a practice before that some measures would be applied against a minor because of violation of the agreement conditions.”*

### **Social worker of the National Probation Agency 2**

*“You know, I noticed that especially minors do not realize what programme they are involved in. **In most cases there is a superficial attitude and they find it difficult to assume responsibility.** They do not realize what it means to have criminal records. Those who know the meaning of this, they will treat these obligations with more responsibility. These persons do not know and that is why the responsibility and the degree of realization of their crimes are low.*

*“Any achievement or violation is reflected in montly reports. A Prosecutor is kept informed and it is possible that he/she may **return a case to a judge for the imposition of criminal liability, or he/she can prolong the agreement term.** We have had the cases of prolongation of the term and by the way, it should be noted that after this minors would start the fulfillment of conditions with more responsibility.”*

### **Social worker of the National Probation Agency 3**

*“I have never had such a significant violation that would entail a strict reaction.”*

According to the prosecutors, they do not lie in wait for the violation of the agreement conditions and that their goal is that a child really realizes what he/she did. Because of this, they are given a chance and as a rule, agreement term is prolonged – *“we do not lie in ambush. Our goals is that a child realizes his/her own crime and he/she knows why he/she is involved in certain activities, what is the final goal of them. As a rule, minors treat this with a great responsibility. During 10 years of my work experience, I have only had one case, when it was necessary to prolong the term.”*

### **Prosecutor 1**

*“If a child violates the agreement conditions and if it is the first case, we give him/her a chance to continue the programme. It also depends why he/she has violated the terms. For example, if this is done because of the problems in the family, we necessarily pardon him/her. If it is an inadequate excuse, then we give him/her another chance.”*

**The majority of the minors interviewed during the study said that agreement conditions were mostly in compliance with their needs and it was not difficult to fulfill them – “they were not difficult to fulfill and they reflected my needs.” However, whether opinions of the minors were considered or not during the process of defining the terms of the agreement, the information provided by the respondents was different.** The majority of the minors also stated that their opinions were considered during the process of definition of the terms of the agreement. Some others stated that their opinions were not taken into account.

### **Diverted minor 1**

*“I think it partially corresponded to my needs. However, some activities were uninteresting.”*

### ***Diverted minor 2***

*“First of all, they asked me whether these activities would suit me or not.”*

### ***Diverted minor 3***

*“Some issues they agreed with me, others were decided without my knowledge.”*

## **Chapter 5. Quality Assurance System**

**Information was received from the respondents in relation to the quality assurance system concerning the diversion-mediation programme as well as about its separate components, e.g. concerning efficiency of services. Even if there are certain types of mechanisms, at this stage we can say that specific and clear indicators for the assessment of the diversion-mediation programme as a whole, as well as its separate components are missing.**

According to the majority of the National Probation Agency social workers, diversion-mediation programme is effective and one of the main criteria to measure its effectiveness is a low index of re-offending. However, a part of the social workers could not refer to the source on the basis of which they have this information. Some others stated that they do not know who processed this information and what the methodology was. One of the social workers also stated that he/she does not have exact statistic data, but in his/her opinion, re-offending rate is low – *“We do not have statistic data, but the re-offending rate is low. Therefore, we can conclude that the suggested services are effective.”*

The information received from the respondents concerning the supervision system was diverse. The majority of the social workers stated that they are supervised on internal departmental level and it is done by the professional supervisors. According to them, the social workers supervise one another – *“To a certain extent I think that in this process we are quality controllers for one another, because if one of us does not do something, I think it will be reflected on other as well”.*

According to some social workers, they themselves have a responsibility and there is no other supervision exercised over them – *“We are responsible on everything ourselves. I am supervised, but concrete cases are reviewed only in case I have a problem. Otherwise, monitoring is not exercised and officially there is no control.”* Some of the social workers also stated that the Ministry of Justice and its subordinate agency - Crime Prevention Center are exercising supervision and monitoring.

### **Social worker of the National Probation Agency 1**

*“When we send our assessment by post, a coordinator for rehabilitation programmes gets a copy... Monitoring is exercised by the Ministry of Justice as well.”*

### **Social worker of the National Probation Agency 2**

*“We do not have statistics, but cases of re-offending are very few. During my three years of work, there were only two cases of re-offending.”*

*“Crime Prevention Center and the Ministry of Justice are constantly exercising monitoring and supervision. A coordinator for rehabilitation programmes is informed about every new case we get.”*

### **Social worker of the National Probation Agency 3**

*“I do not have exact statistics, but I remember all of my cases I have worked on and I can tell you that I had a few cases of re-offending.”*

### **Social worker of the National Probation Agency 4**

*“As nothing is perfect and there are a lot of favourable conditions for the commission of a crime, we cannot say that if he/she does the programme, **he/she will never commit a crime, but in most cases they are not re-offending, but there are some exceptions.**”*

According to the mediators, they are supervised once in three months or sometimes more often. According to them, after finalization of the mediation process, they send their reports to programme managers both on successful and unsuccessful mediation cases. According to them, a programme manager is fully responsible on the supervision process. However, one of the mediators said that a manager is only checking a technical side. The mediators also stated that there is no external supervision. – *“Documents are checked on a technical level, e.g. agreement is signed during a mediation conference, protocols are drawn up and a technical side is checked by a manager.”*

According to one of the mediators – *“Programme manager, pshychologist and.... go through interesting cases, who may have what difficulties and we discuss each cases. We are giving advice to our colleagues and it is a very interesting process, because others may have a similar situation and we gain more experience through the cases of others. This is a very interesting and informative process.”*

According to the statement of the majority of prosecutors, diversion-mediation programme is successful, as re-offending number is very low. According to one

of the prosecutors – *“Department of Prosecutorial Activities Supervision and Strategic Development is also exercising the quality control. There is an electronic database, where all documents are kept and all steps are reflected there.”* One of the prosecutors said that – *“they are in communication with mediators and probation officers on a daily basis. Besides, we have internal methods how to control time-limits: within what time application was received, when the individual assessment report was received, was it late or not to divert a minor, etc. Also, we are exercising monitoring on the cases, where criminal prosecution was instituted. We also check diversion refusal protocols, which are grounded well by prosecutors. Two prosecutors are in charge of this at the Prosecutor’s Office and we are watching all processes.”*

### **Prosecutor 1**

*“Mostly these are standard services, but they enable us to prevent re-offending. **Cases of re-offending are very rare** and therefore, this mechanism works well. We try to tailor what we have to the risks and needs of a diverted. However, **it would be good to diversify them.** Despite this lack, we anyway manage to work efficiently with the diverted.”*

### **Prosecutor 2**

*“90% out of 100% of my diversion cases were successful.”*

According to the assessment of one of the NGO representatives, diversion-mediation programme – *“will not have effect at all, it will become an absolute formality and it will not serve the goal of a prevention”*. According to him/her, there is a certain conflict of interests in the management of this programme, as it is not clear, which agency is responsible for its management. The representative also noted that among beneficiaries involved in the project implemented by his/her organization there were no cases of re-offending. – *“As far as I remember, there were 75 or 80 beneficiaries involved in the programme. There were no cases of re-offending during the programme implementation.”*

According to some representatives of NGOs, they have a certain assessment system during the programme implementation. Namely, pre and posttests with the help of which they can evaluate to what extent the programme was successful. However, one of the representatives of NGOs said the following: *“we cannot say that we have a specific instrument that would measure the degree of children’s involvement and what we achieved.”*

Apart from this, some respondents stated that they give a written feedback to the Crime Prevention Center concerning the services implemented by them, but other respondents said they provide information only verbally: *“we have not had such a precedent. In most cases we provide verbal information during the meetings.”*

### **Representative 1 of a service provider NGO**

*“We give feedback in writing... we provide at least 3-page reports on each case, where recommendations are listed and risks of re-offending are evaluated, whether they are low or medium and how to neutralize them. As concerns the Ministry of Justice, I do not give them a detailed and in-depth analysis, as it is confidential and they cannot apply this information.”*

### **Representative 2 of a service provider NGO**

*“We have our instruments. Our programme is rather specific. There are 5 meetings in total and when they are finished, we write an evaluation. It is narrative and not quantitative. As a result of these 5 evaluations, we draw up a psychological portrait. We have our instruments and I can say that only 30-40% out of 100% of cases are successful, no more.”*

### **Representative 3 of a service provider NGO**

*“We also have these instruments: pre and post tests. We organize 12 meetings and we have an interim evaluation as well. We assess their emotional state too.”*

Only some social workers of the Social Service Agency expressed their opinions about the quality assurance system. According to one of the social workers, diversion programme is very formal: *“little is changed; I talk about one and the same people, who are involved in this programme. Nothing is changed for them. They continue to live in the same way and then there are different outcomes.”* According to the second social worker, the programme in most cases does not correspond to the needs of minors, as agreement conditions are very light and the children cannot realize the gravity of the crimes committed by them: ***“in most cases the programme does not correspond to the needs of minors and this is one of the problems. Sometimes conditions are very light and minors do not realize that they committed crimes and that diversion is a chance for them. When they attend trainings, it is mostly fun for them and we cannot say anything about realization of their own crimes. The conditions should be stricter, e.g. community service or something similar.”***

### **Social worker of the Social Service Agency 4**

*“If you are interested in my personal opinion, it is **extremely formal**. It is done because there should be an agreement. In reality there is no monitoring, I do not know... Social workers (of the National Probation Agency) are inquiring, they are contacting us, but I anyway think that it is just a formality.”*

## Part 5. Study findings

### 1. Comparative analysis of domestic legislation with international standards and practices

Generally speaking, domestic legislation is essentially in compliance with international standards and practices. Although there are certain gaps identified in the legislation that require specific actions:

#### ➤ No intervention

Under the domestic legislation, a written warning to a minor is defined as one of the measures of diversion<sup>80</sup>. Such a mechanism is applied only at the moment of signature of diversion or diversion and mediation agreement.<sup>81</sup> This mechanism can partially be considered as the so-called “no intervention”, which is defined by international standards. However, analysis of the public information shows that “a written warning to a minor” has not been applied at all.

In case of commission of certain types of less serious crimes, an authorized person/body should have a possibility to divert a child in conflict with the law, without any interventions. Such a mechanism would enable decision-makers to distribute resources efficiently and to intervene only in case of those children in conflict with the law, where there is a higher risk of re-offending.

#### ➤ Police diversion

International standards appeal to States to allow application of diversion at various stages of criminal procedure and make relevant changes to the domestic law. Under the latter, a prosecutor is authorized to divert and since 2016 a judge has been granted the authority to return a case to a prosecutor to divert a minor if the latter had rejected the diversion before and this decision of the judge will be mandatory for the prosecutor. The domestic legislation does not allow that diversion is done during the very first contact of a child with the justice system, on the police level. We may think of having such regulations, as children will not be in contact with the justice system, which often facilitates the process of correction of their criminal behavior. It is possible that the police discretionary authority may be more restricted and for instance, make such a decision only in case of less serious crimes.

However, we should also take into account the problems existing on the level of the Ministry of Interior, especially during the first contact of a child with the justice system. Unfortunately, there are shortcomings, which have been described in detail in the qualitative part of the study. Taking into account this situation and without remedying the shortcomings, granting of the indicated authority to the police at this stage may be related to risks.

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<sup>80</sup> *Juvenile Justice Code*, Art.42 (1/b)

<sup>81</sup> *Ibid.*, Art. 42 (1/a)

### ➤ **Diversion in case of re-offending**

According to the domestic legislation, diversion may be imposed only in case the minor has no previous convictions and/or he/she has not participated in a diversion-mediation programme before.<sup>82</sup> These regulations are based on the logics that this is only one chance for a minor and in case of re-offending, such an opportunity will not exist any more.

The UN Committee on the Rights of the Child considers that the obligation of States is to promote measures for dealing with children in conflict with the law without resorting to judicial proceedings. In the opinion of the Committee, this principle should be applied, but it certainly should not be limited to children who commit minor offences, such as shoplifting or other property offences with limited damage, and first-time child offenders.<sup>83</sup>

Therefore, as a result of observation on the application of a diversion mechanism, which should be strengthened by relevant criminological research, it is expedient to start discussions about legislative changes under which decision-makers will be able to divert those minors in case of fulfillment of certain criteria, who had criminal records in the past and/or were involved in diversion-mediation programme.

### ➤ **Family-based/welfare diversion**

Under the domestic legislation, minors may be obligated to participate in educational, correctional and/or medical treatment programmes<sup>84</sup>. The legislation does not restrict, but it does not define directly the possibility of offering family-based and welfare diversion programmes. Family-based programmes mostly imply working with minors and their families. According to a prevailing practice, a family is also assessed during the process of drafting of the individual assessment report and needs are identified. However, the practice shows that such programmes are not implemented. It is important to take steps for the development of the indicated services.

## **2. Quantitative dynamics of the diverted**

We may have a general evaluation that after enactment of a diversion mechanism, dynamics of its application is increasing. We welcome such an active application of diversion, among them against serious crimes and there is a rather positive dynamics in this regard in the first half of 2017. But it should be added that it is possible to evaluate positive sides of such an active application of the diversion mechanism, but it should be done in parallel to the evaluation of efficiency of the diversion mechanism. We will discuss it below.

<sup>82</sup> *Juvenile Justice Code*, Art.40 (b, c)

<sup>83</sup> *The Rights of the Child in International Law*, Nevena Vučković-Šahović, Jaap E Doek and Jean Zermatten; para. 5.6.1.2, p.353 / *UN Committee on the Rights of the Child, General Comment No. 10; para. 22-29.*

<sup>84</sup> *Juvenile Justice Code*, Art.45 (c)

Active application of the diversion mechanism before institution of criminal prosecution as well as less frequent use of arrest before application of the diversion mechanism should be also assessed positively.

Analysis of the statistic data demonstrated the crimes for the commission of which minors/young persons are mostly diverted. In most cases, minors commit such crimes against property, like theft. Then come battery and intentional less grave bodily injury. In this regard, it is important to conduct criminological analysis of existing tendencies, which will allow the decision-makers to define intervention forms and scales of application of diversion more correctly and efficiently in the future.

However, it should be noted that criminological analysis<sup>85</sup> of diversion cases was carried out in the first half of 2017 by the Chief Prosecutor's Office, which is really laudable. It is important that such an analysis is conducted on a regular, annual basis in the future, which will enable the decision-makers to develop evidence-based approaches for the improvement of diversion mechanism.

### **3. First contact of minors/young persons with the justice system**

As a rule, first contact of a child with the justice system is done through his/her initial communication with the Police. This is a very important process, as initial contact may radically change the attitude and respect of a child in conflict with the law towards the law-enforcement bodies, the country and the public in general. Analysis of the indicated components is important in order to be able to assess what stages precede the decision-making concerning diversion.

*Under the Beijing Rules: "Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case."<sup>86</sup>*

*Under the international standards: "Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter."<sup>87</sup>*

*Under the domestic legislation: "A person who has arrested a minor, an investigator, and a prosecutor, shall take all necessary steps upon the arrest of the minor to immediately contact his/her parents, and, if this is impossible, other close relatives and/or any other person named by the minor... A person who has arrested a minor, an investigator, and a prosecutor shall, upon bringing him/her to a law enforcement*

85 [http://pog.gov.ge/res/docs/public\\_information/ganridebissaqmeebiskriminologiurianalizi.pdf](http://pog.gov.ge/res/docs/public_information/ganridebissaqmeebiskriminologiurianalizi.pdf)

86 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Rule 10.3.

87 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Rule 10.1.

*authority, immediately notify the legal representative of the minor of his/her arrest and place of detention, and explain the reason for the arrest of the minor and the rights under Article 38(2) of the Criminal Procedure Code of Georgia... If the legal representative of a minor cannot be reached, the competent employee of a police establishment or other law enforcement authority shall immediately notify the guardianship and custodianship authority.”<sup>88</sup>*

*Apart from this, under the domestic legislation:“Minors shall be interrogated in the presence of their legal representatives and lawyers.”<sup>89</sup>And if the legal representative of a minor cannot be reached, the competent employee of a police establishment or other law enforcement authority shall immediately notify the guardianship and custodianship authority,<sup>90</sup> which will nominate an employee as a candidate for a procedural representative.”<sup>91</sup>*

### **a) Arrest/physical and psychological pressure**

As a result of statistic data analysis it was revealed that there are rare cases of arrest of a minor/young person before application of diversion, which is really laudable. However, qualitative research has showed that in those cases when a person is arrested some violations of procedural norms take place, namely, there are frequent cases when a minor is actually arrested, but the arrest documents are officially drawn up rather late. From the point of view of legal qualification, we may say that such cases represent “illegal restriction of freedom”, which, on its part falls under the Criminal Code. Apart from this, it was revealed that before drawing up official arrest documents and/or before interviewing/interrogating of a minor, police officers/investigators establish communication with minors and there are frequent cases they interview them without the presence of their legal/procedural representatives and/or lawyers.

During the qualitative research the main sources of information concerning unofficial/illegal arrest of minors, also shortcomings existing in the process of interviewing/interrogation were social workers of the Social Service Agency, who participate in the criminal procedure as procedural representatives of minors. In spite of the fact that the majority of cases were disclosed mostly by them, the study showed that actually none of the social workers have reacted to the indicated issue, notwithstanding the fact that this is their direct obligation.

Within the frames of the qualitative research it was also revealed that there are cases of psychological pressure on minors. Apart from this, there were several cases when diversion was offered to a minor not by a prosecutor, but by a police officer, which under the current legislation is a discretionary authority of prosecutors and

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88 *Juvenile Justice Code*, Art. 49

89 *Ibid.*, Art.52 (3)

90 *Ibid.*, Art.49 (3)

91 *Ibid.*, Art.50 (1)

it is beyond the limits of the police authority. Police officers/investigators should not be allowed to communicate with minors without the presence of their legal/procedural representative. Therefore, police officers should provide for their timely involvement and do it as soon as they establish communication with minors.

Apart from this, the study has revealed several cases, where there was unhealthy/unprofessional interest shown against the opposite sex minors to be diverted by the police officers, which is a subject for concern.

## **b) Explanations of rights and obligations**

During the qualitative research the majority of minors stated that nobody has explained rights and obligations to them. However, it should be noted that the prosecutors claim the opposite. Therefore, we may conclude that there are cases, when minors get explanation of their rights and obligations and/or there are cases, when official persons explain rights and obligations, but it is not done in a form and a language that is not understandable to children and because of this they do not have a comprehension that their rights and obligations were explained.

## **c) Interviewing/interrogating**

Apart from this, the study has revealed that there are cases of interviewing minors without the presence of their legal/procedural representatives and lawyers. The study has also showed that the environment where interviewing of minors is taking place is not fit for children. There were cases when interviewing of minors was conducted in such an environment where other, non-related persons were present, among them non-specialized police officers/investigators.

It is stated in the guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice that *“in all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have. Cases involving children should be dealt with in non-intimidating and child-sensitive settings.<sup>92</sup> .... As far as appropriate and possible, interviewing and waiting rooms should be arranged for children in a child-friendly environment.<sup>93</sup> ... As far as possible, specialist courts (or court chambers), procedures and institutions should be established for children in conflict with the law. This could include the establishment of specialised units within the police, the judiciary, the court system and the prosecutor’s office.”<sup>94</sup>*

The study has shown that police offices, where minors are interviewed/interrogated in most cases do not create a child-friendly environment, there is no possibility to have a confidential talk with children, not to mention application of relevant approaches to children and defence of their best interests.

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<sup>92</sup> *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, para.54*

<sup>93</sup> *Ibid., para. 62*

<sup>94</sup> *Ibid., para. 63*

Therefore, it is important to develop special standards for the creation of child-friendly environment at all agencies implementing justice. It is especially important during the first contact of minors with the justice system, i.e. at police offices. Apart from this, concrete steps should be made for the improvement of infrastructure.

#### **4. Services**

One of the important components of the diversion-mediation process is offering services which are tailored to the needs of the diverted minors. After defining needs of each child, those types of services should be suggested for each specific case, which would reduce to minimum the risk of re-offending and will at the same time increase his/her potential and assist the diverted to continue the law-abiding life.

The study has made it clear that there is not a big choice among the services offered during the diversion process. However, assistance from external resources is not required for such directions, like realization of one's own crime, reintegration of drug-addicted persons. Mostly there is a lack of art-therapy, sports and other types of activities.

The study has also revealed that beneficiaries themselves evaluate the diversion programme and the offered services quite positively. However, the research process has also demonstrated that there is a risk that a choice of services available to a social worker may have a direct influence on the diversion agreement contents (some cases were named). A child may have a specific need, but as there is no possibility of offering this service, this need will not be reflected in the agreement.

The study has also showed that there were cases when a social worker of the Probation Agency would agree in advance with service providers whether they would be able to offer certain services and he/she would include this service in a diversion and/or a diversion and mediation agreement only in case of a positive answer from the service providers. It is obvious that we cannot talk about the interests of a child and a service that is tailored to his/her needs, as it creates such a situation, where what is available becomes needed. It is clear that if accessibility to services is not increased (both from the point of view of number of persons to be involved in the services, as well as diversity of services), diversion process shall not meet all those needs that minors have in reality and diversion may lose its positive meaning it had at an initial stage. At present the diverted receive services both from social workers of the Probation Agency as well as from the projects financed by donor organizations, which are implemented by NGOs. It should be noted that apart from provision of services, social workers have to draft a lot of individual assessment reports, which will make it difficult to ensure provision of regular services and at the same time, to maintain quality. It should be also noted that continuity and stability of external services is not secured. Break between services may have a negative influence on the minors involved in the programme.

Informing a child about diversion services and existence of criteria for referring a child to certain services is one of the most important issues. It is important that such children, who may have undesirable influence on one another are not distributed to one and the same groups. Although the Probation Agency representatives declare that the minors received explanation about the purpose of referral to different services and the contents of these services, but the representatives of NGOs indicate that the diverted either do not have such information or if they have it is insufficient. Therefore, it is important that referral criteria are improved and that the diverted are informed about the essence and goals of the services in an understandable language.

It is important to inform parents of the diverted as well. Often the parents of the diverted do not realize their children's responsibility and obligations, which impedes the process of realization of their own crimes among children, as a parent should be an important supporter of him/her in the process of implementation of the diversion agreement. Generally, at present the parent's role in the diversion process is rather passive, but we think that a parent should be one of the main allies of the State in this process and it is important to work more actively and purposefully with parents. It should be also mentioned that under the current situation with the available human resources and services, working additionally with parents may be connected with great difficulties.

## **5. Mediation**

Mediation in the criminal system is a carefully managed contact between a person in conflict with the law and a victim. Participants of a mediation process expect explanation of their actions from the offenders and in ideal cases - apology. It fully depends on a victim whether the latter gets an apology, but the main idea here is the following: an offender listens directly from a victim what he/she feels and the offender is forced to realize that material or moral damage was inflicted to the victim as a result of his/her action. Definitely, it is not a process that can be imposed on the parties or started in haste. Both parties should have a desire to attend a meeting. It is also necessary to conduct preparatory works to convince them that this meeting will bring positive results.

It is defined in the law that for conducting a mediation process it is necessary to have consent of both parties. However, neither law nor guidelines define such cases in the existence of which a mediator may terminate a mediation process before the appointed time. It was revealed during the qualitative research that there was a case of termination of a mediation process, but it is not clear by what regulations the mediator was guided in this process.

Mediation process stages are described in detail in the law. As a result of its analysis it is revealed that the main goal of the mediation is reached when there is a diversion and mediation agreement signed. However, it was revealed during the qualitative

research that, as a rule, effectiveness of mediation is measured immediately, which is a correct way of evaluation of efficiency of a successful mediation. It is natural that a goal of the mediation process is that a person in conflict with the law realizes negative sides of his/her action, and he/she feels certain empathy against a victim. However, measuring success of mediation by the way of taking into account certain emotions demonstrated by a minor/young person during this process cannot be considered to be a correct indicator of efficiency of the indicated mechanism.

Apart from this, as a result of statistic information analysis, it was revealed that in 2016-2017 there was a decrease of a successful mediation cases by approximately 14%. As it was mentioned above, one issue is to define how to evaluate successful mediation cases and in this regard the study showed that there are no common approaches established and exact indicators of evaluation are missing. However, even within the frames of the existing mechanism, there is a negative dynamics of successful mediation cases.

Diversion-mediation process has a common goal: to avoid possible negative results of involving a person in the justice system through diversion and to prevent re-offending in a long-term perspective. Mediation fulfills a function of a restorative justice in this process, which should necessarily serve these general goals. It is necessary to develop clear and specific indicators for measuring mediation efficiency. This will increase the degree of application of this mechanism.

Several important components should become basis for the application of mediation, which is an important element of a restorative justice. Namely: recognition of rights of a victim, imposition of a liability on an offender so that he/she realizes the results of the action committed by him/her and in a number of cases, assisting an offender to establish close contacts with that person, community or public against whom/which he/she committed a crime. Goal of the restorative justice is to “restore” ruined or damaged aspects of lives of a victim and an offender. As a result of statistic data analysis, it was revealed that in case of application of a diversion mechanism, mediation is carried out in approximately 30% of cases, which is a rather low index. It should be taken into account that in case of the diverted minors/young persons only 4-5% committed such crimes, where there were no victims. However, the study has also showed that recently there are more cases of diversion with mediation, which is really laudable.

Qualitative research has revealed certain vagueness concerning those cases, where a victim is a legal person. Neither law nor guidelines define who should be involved in mediation in case of a legal person – for instance, leadership of a specific company, director of a branch, seller himself/herself or security service, which was obliged to prevent such cases. That is why there is not a unified practice and in case legal persons are victims, different representatives are involved in a mediation process. It is necessary to develop guidelines regarding legal persons, which will specify who should be involved in a mediation process in specific cases. It should be also noted

that in case of legal persons mediators find it difficult to motivate representatives of administration to be involved in the mediation process.

During the qualitative research it was also revealed that some mediators have an incorrect opinion on the role of a prosecutor in the mediation process and some others think that fear of minors against prosecutors may play a positive role in the process.

## **6. Diversion and diversion and mediation agreement/individual assessment report**

As a result of public information analysis it was revealed that the majority of diversion and/or diversion and mediation agreements are signed for the term of 3-4 months. Cases of signature of two-month agreements are also frequent. There were cases of one-month agreements as well. One of the reasons for signing agreement for such short terms may be the fact that certain persons may need minimum interventions. Apart from this, it is a bit difficult to analyze what effects may have, for instance, two-month agreements. In cases where a need for minimum interventions is revealed, it is expedient to discuss the possibility of application of such a mechanism, which is the so-called “no intervention” (under the domestic legislation, it can be for instance “written warning issued to a minor”), which was already discussed above. But, at the same time, it is necessary to develop certain type of regulations/guidelines (discretionary authority framework), which will define in what cases such type of a decision may be made. As it was mentioned, this mechanism will enable decision-makers to apply the available resources (services) for those persons who need it the most.

The qualitative research has showed that while drafting of a diversion and/or diversion and mediation agreement prosecutors pay a lot of attention to the reports drafted by the National Probation Bureau social workers. It was also confirmed by the study that while defining conditions of an agreement, prosecutors and National Probation Agency social workers cooperate closely and coordinate this process, which should be assessed positively.

However, there is also an issue of quality of individual assessment reports. Majority of the respondents refer to the lack of sources on the basis of which reports are drafted. Also, some respondents have a feeling that the indicated reports are subjective. As for receiving information from educational establishments, some respondents said it is a challenge, as administrations of these establishments have problems with keeping confidentiality. A bigger part of the respondents said it is a challenge that there is a lack of social workers of the National Probation Agency, which was confirmed by other studies too.

The qualitative research has revealed that in case of violation of the agreement conditions, a diversion mechanism is not reviewed automatically and criminal prosecution is not instituted. Such approaches are in compliance with international

standards and best practices. However, it is necessary to establish such a mechanism of reaction on violation of agreement conditions that would not create a feeling of impunity among minors/young persons, signs of which were revealed during the qualitative research.

## 7. Quality assurance system

Criminal policy should be based on evidence-based approaches. The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice.<sup>95</sup> It is important that States collect exact, detailed data about the juvenile justice practice and its administration and to control them. Efficient monitoring and evaluation system allows for planning resources in an efficient manner.

Under the Beijing Rules: *“Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.”*<sup>96</sup>

After launching of the diversion-mediation programme no detailed analysis of the diversion-mediation process has been done by external actors. Success of diversion-mediation programme is directly connected with the efficient system of quality assurance, which should be based on the criminal policy analysis in the process of its implementation.

Index of re-offending among the diverted minors/young persons should be one of the indicators for measuring efficiency of the indicated mechanism. During the study, majority of the participants were talking about the success of the diversion programme and about a low index of re-offending. They were also noting that re-offending index is counted annually and its percentage is rather low, which speaks about the success of the diversion programme.

In November of 2017, according to the information provided by the Crime Prevention Center, after enactment of a diversion mechanism in 2010-2016, re-offending index was 9%. It was also mentioned what type of methodology was applied for the evaluation of this issue – whether a specific person committed a crime or not during two years after application of a diversion mechanism. For getting data about re-offending and securing reliability of the obtained data it is important to have a methodology on how to obtain data about re-offending, which would be in compliance with the international practice. Such an attitude mostly corresponds to the best practices; however, it is a bit unclear how the data of 2015-

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95 *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), Rule 30, Commentary.*

96 *Ibid.*, Rule 30.3.

2016 was analyzed, when two years have not passed after the application of a diversion mechanism.

It should be also noted that UNICEF is currently implementing a project to create a unified analytical basis for collection and analysis of data in the juvenile justice system. All agencies, which have something to do with the children in conflict with the law in the juvenile justice process, are involved in this activity. After creation of the indicated system a common analytical basis will be developed, where apart from other types of statistic information, data about re-offending among minors/young persons should be reflected, inclusive of a re-offending index among diverted minors/young persons. This system should create mechanisms for data processing and verification. The system has not been developed yet (this process is underway) and therefore, the presented data cannot have high credibility at this stage. We hope that the State will soon have exact statistic and other types of analytical data, which, in parallel to other researches, will enable relevant agencies to measure the diversion process success or existing challenges and to carry out relevant interventions.

General analysis of the criminal policy as well as evaluation of separate elements of the diversion-mediation process (effectiveness of services, mediation process, fulfillment of agreement conditions, individual assessment report quality) are related to the quality assurance system, which should enable to have a common vision. It was revealed during the qualitative research that exact indicators for measuring the efficiency of different components (services, fulfillment of agreement conditions) have not been developed. The qualitative research showed that there are different systems of reporting existing in practice in relation to NGOs implementing the services. In some cases, organizations are sending their feedback in writing, in other cases – verbally and in a number of cases no information is provided regarding the implemented services. For the establishment of an efficient quality assurance system it is necessary to collect and analyze different types of data. Such an analytical approach will enable decision-makers to develop evidence-based approaches.

## Part 6. Recommendations

To the Minister of Justice of Georgia:

To the Chief Prosecutor of Georgia:

- *In cases of commission of less serious crimes a possibility of application of written warning should be considered more often in practice.*
- *To establish such an analytical system, which will make it possible to conduct criminological research regularly, on a yearly basis.*

To the Government of Georgia:

To the Parliament of Georgia:

- *To establish an efficient and independent mechanism for the investigation of crimes allegedly committed by law-enforcement body representatives.*

To the Minister of Interior of Georgia:

- *To develop special standards and on the basis of the latter, to create child-friendly environments at relevant units of the Ministry of Interior, where interviewing/interrogation of the children in conflict with the law will be carried out.*

To the Government of Georgia:

- *To develop guidelines for social workers on how to react on alleged violation of a child's rights on the part of police officers.*
- **To start discussions about a possible increase of number of the National Probation Agency social workers.**

To the Minister of Justice of Georgia:

To the Minister of Corrections of Georgia:

- *To create services, which will meet all possible needs of the diverted as much as possible;*
- *To define criteria and a procedure for referral of the diverted to services, which will be based on the evaluation of needs of a minor and this will increase the benefit of the programme;*

- *To develop such a system that will ensure stability and continuity of the offered services;*
- *To develop a mechanism for verification of quality of services and to provide only those services efficiency of which is based on evidence.*

To the Minister of Corrections of Georgia:

To the Minister of Education and Science of Georgia:

To the Minister of Labour, Health and Social Affairs of Georgia:

- *To develop an efficient inter-agency cooperation mechanism during the process of drafting of an individual assessment report and identifying a diversion measure, which will enable social workers of the National Probation Agency to draft individual assessment reports on the basis of the information received from different sources.*

To the Minister of Justice of Georgia:

To the Chief Prosecutor of Georgia:

To the Minister of Corrections of Georgia:

- *To establish an efficient system for quality assurance both for a diversion-mediation process as a whole as well as for its separate elements (efficiency of services, mediation process, fulfillment of agreement conditions).*

To the Minister of Justice of Georgia:

- *To develop clear guidelines for reacting on a violation of a diversion/diversion and mediation agreement by minors;*
- *To develop specific indicators for measuring a mediation process efficiency;*
- *To define guidelines for the involvement of a victim in the mediation process for those cases, when the victim is a legal person;*
- *To establish specific criteria for termination of a mediation process before the appointed time.*

## Part 7. References and web-resources

1. *UN Convention on the Rights of the Child*;
2. *Guidance for Legislative Reform on Juvenile Justice, Children’s Legal Centre and United Nations Children’s Fund (UNICEF), Child Protection Section, New York, 2011*;
3. *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)*;
4. *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)*;
5. *UN Committee on the Rights of the Child, General Comment No. 10*;
6. *Decree №120 of the Minister of Justice “On the Approval of the Rule of Use of Diversion and Mediation Programme and Main Terms and Conditions of Agreement to be entered into by and between the Parties”*;
7. *Juvenile Justice Code*;
8. *A joint decree 132/95/23 of the Minister of Justice of Georgia, Minister of Internal Affairs of Georgia and the Minister of Corrections of Georgia on Approval of Methodology, Rule and Standard for Preparing Individual Assessment Report*;
9. *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*;
10. *Decree N 384/s of the director of LEPL Center for Crime Prevention on Approval of the Rules of Procedure and Working Documents for Mediators Involved in Diversion and Mediation Programme*;
11. <http://www.pog.gov.ge/>;
12. <http://ganrideba.ge/>.