

# Practice and Exploration of Strengthening and Innovating Environmental Resources Trials in the New Era

## Analysis of Forest-related Criminal Cases in D County People's Court as a Perspective

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### ABSTRACT

The Supreme People's Court issued the "Opinions on Strengthening and Innovating the Environmental and Resource Justice Work in the New Era, and Providing Judicial Services and Guarantees for the Construction of a Modernization of Harmonious Coexistence Between Man and Nature", which put forward specific requirements for innovating the environmental and resource trial work in the new era. This paper sorts out the forest-related criminal cases in D County since 2016, analyzes the characteristics of the above cases, and summarizes the practice and exploration of the People's Court of D County to strengthen and innovate the environmental resources trial work, including the establishment of a professional trial team, the construction of the environmental rule of law linkage mechanism, and the cultivation of a correct ecological view with judicial authority.

**Keywords:** Innovative environmental resource trials, Trial team, Environmental rule of law linkage mechanism, Restorative justice.

## 1. INTRODUCTION

On October 8, 2021, the Supreme People's Court issued the "Opinions on Strengthening and Innovating Environmental and Resource Justice in the New Era, and Providing Judicial Services and Guarantees for the Modernization of Harmonious Coexistence Between Man and Nature" (hereinafter referred to as the "Opinions"). The "Opinions" put forward five major aspects, namely, strengthening political guidance, adhering to the people's center, implementing the system concept, boosting the green economy, improving the judicial system and strengthening the environmental resources trial work in the new era of innovation, and put forward 20 specific implementation measures.

For the grass-roots people's court, how to strengthen and innovate the environmental and resources trial work, crack down on illegal and criminal acts such as deforestation according to law,

and protect forest resources? How to practice the concept of green justice, boost the overall layout of "Five in One", and help achieve the "double carbon" goal? This paper attempts to take the forest-related criminal cases accepted by the People's Court of D County since 2016 as an analysis sample, from the overall situation of the case to the characteristics of the case, and finally attempts to summarize the practice and exploration of the court in strengthening and innovating the environmental resources trial work in recent years.

## 2. COLLECTION OF FOREST-RELATED CASES IN D COUNTY

From 2016 to July 2022, the People's Court of D County accepted 17 forest-related criminal cases, including 0 civil and administrative cases. Therefore, this article will focus on the analysis of relevant criminal cases. Among the 17 criminal cases, there were 14 cases of the crime of illegal

felling of trees, and 3 cases of the crime of illegal transportation, illegal felling and indiscriminate

felling of trees. The specific year distribution is as follows: ("Figure 1")



Figure 1 Statistics of the number of cases of forest resources destruction accepted by the People's Court of D County.

In general, in the past seven years, the total number of cases of destroying forest resources in D County has not been large and is on a downward trend. After two years of high incidence of cases in 2016 and 2017, the number of cases in 2018 and 2019 was 0. In 2022, there are 2 related cases, which have not been heard so far. Therefore, the following statistics do not include two cases in 2022 without special explanation.

### 3. ANALYSIS ON THE CHARACTERISTICS OF CASES OF FOREST RESOURCES DESTRUCTION IN D COUNTY

From the above statistical "Table 1", it can be seen that there are five crimes against destroying forest resources set up in Chapter VI of the "Criminal Law" of China. However, in the cases accepted by D County, the defendant committed two crimes, both of which were concentrated in Article 345 of the "Criminal Law", and 82.35% of the cases were the crime of illegal logging.

Table 1. Concentration of charges involved

Relevant provisions on forest resources protection in the "Criminal Law"	Accusation	Number of cases involved	Proportion
Article 342-1	Crime of destroying nature reserves	0	0.00%
Article 34	Crime of endangering plants under national key protection	0	0.00%
Paragraph 1 of Article 345	Crime of illegal logging	14	82.35%
Paragraph 2 of Article 345	Crime of deforestation	0	0.00%
Paragraph 3 of Article 345	Crime of illegally purchasing and transporting illegally felled trees	3	17.65%

The cultural level of the personnel involved is generally low.

Of the 15 cases that have been publicly adjudicated (two cases in 2022 have not yet been tried), a total of 17 defendants are involved. Among

them, 10 were illiterate, accounting for 58.82%, 6 were educated in primary school, accounting for 35.29%, and only 1 was educated in junior high

school, accounting for 5.88%, accounting for only one tenth of the illiterate population. ("Figure 2")

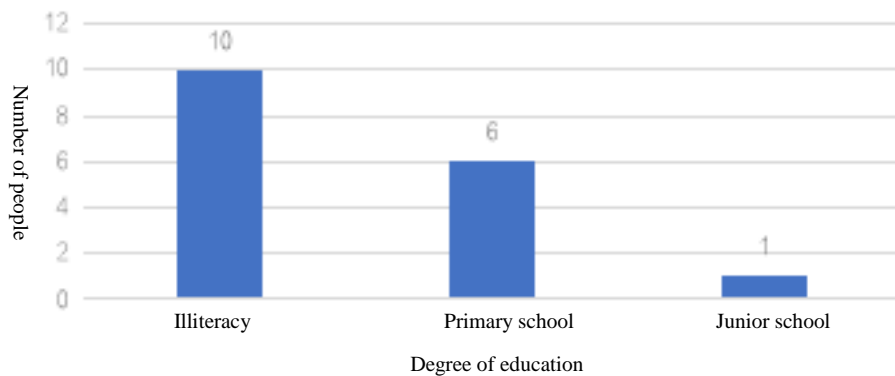


Figure 2 Statistical table of the cultural level of the personnel involved.

The perpetrator has a simple motive and a good attitude of confession.

Table 2. The perpetrators' motives and repentance statistical table

Case type	Crime of illegal logging	Illegal transportation and illegal logging Crime of deforestation	Description
Motive 1	Building/renovating a house	Sale for profit	
Number and percentage of cases	10/66.67%	1/6.67%	Percentage of total caseload
Motive 2	Sale for profit	Motive unknown	
Number and percentage of cases	2/13.33%	2/13.33%	Percentage of total caseload
Number and percentage of cases found to be surrendered	5/33.33%	0	Percentage of total caseload
Number and percentage of cases found to be confessions	12/100%	3/100%	Percentage of total caseload
Number and percentage of felling permit cases processed	5/41.67%	—	Percentage of cases of deforestation offences
Number and percentage of cases of voluntary replanting and re-greening	10/83.33%	—	Percentage of cases of deforestation offences

As the statistics in the above "Table 2" show, the perpetrators' simple motives and good confessions are mainly manifested in the following aspects.

First, in terms of motive, the vast majority of the defendants in the cases were motivated by the need to build or renovate their homes, amounting to 66.67% of the total number of cases. In contrast,

the total number of cases in which it was clear that the trees were stolen or transported for sale for profit was only three.

Secondly, in terms of the circumstances of arrival, the defendants in all cases were found to have confessed to their crimes truthfully upon their return and were found to have confessed. In five of these cases, the defendants surrendered to the

public security authorities after the crime was committed, and were found to have surrendered themselves. The surrender rate reached one third.

Thirdly, in terms of logging permits, in 41.67% of the cases, the defendants or their family members had applied for logging permits, but all of them were convicted because the location of the logging permitted by the permit did not match the actual location of the perpetrator's logging. This shows that some people are aware of the rule that they cannot cut down trees without permission, but there is a lack of awareness of the need to strictly follow the time and territorial limits set out in the cutting permit.

Fourthly, in terms of the remedial measures taken by the defendants and their families after the crime, 83.33% of the defendants and their families in the cases of theft of forest trees offered to voluntarily replant the trees and complete the replanting and re-greening work after the crime. In the cases where voluntary replanting was proposed, the defendants' families or relatives and friends carried out replanting and greening through in-situ replanting and replanting in other places, and the trees were accepted by the local environmental and forestry bureau or township government before the verdict.

#### **4. PRACTICE AND EXPLORATION OF THE PEOPLE'S COURT OF D COUNTY IN STRENGTHENING AND INNOVATING THE TRIALS OF ENVIRONMENTAL RESOURCES**

In a comprehensive analysis of the judicial situation of forest-related cases in recent years, it can be found that the D County Court has mainly explored the following aspects of strengthening and innovating environmental resources trials.

##### ***4.1 Focusing on Building and Forming Professional Trial Teams***

Article 19 of the "Opinions" clearly states the need to forge a quality trial team. Therefore, on the one hand, the D County Court has set up a specialized environmental resources trial team, and as early as April 2016, the D County People's Court established the D County People's Court Environmental Resources Trial Team in accordance with its work needs. The team is staffed with three judges on posts, including one vice-president and

two ordinary judges; and four trial support staff, including one judge's assistant, two clerks and one translator.

On the other hand, in individual cases, the D County Court also pays great attention to the composition of the trial team. First, a high proportion of cases are tried in full court. Although forest-related cases were generally simple and most of them were similar, 13 of the 15 cases were tried in full court, a proportion of 86.67%. Only two cases were tried as single trials. Secondly, the role of the people's assessor was given full play. In the 13 cases where a panel was used, the participation of people's assessors reached 100%. In the (2020)\*\*\*\* criminal incidental civil case, the seven-member panel even included four people's assessors.

##### ***4.2 Building an Environmental Rule of Law Linkage Mechanism to Pave the Way for Scientific and Efficient Trials***

Point 18 of the "Opinions" proposes that "coordination of work with public security organs, procuratorial organs and administrative departments in charge of environmental resources should be strengthened". And as early as 22 August 2016, four agencies, namely the People's Court of D County, the People's Procuratorate of D County, the Environmental Protection and Forestry Bureau of D County and the Forest Public Security Bureau of D County, formulated the "Interim Provisions on the Establishment of a Linkage Mechanism for Combating Forest-related Offences" (hereinafter referred to as the Interim "Provisions") to establish a linkage mechanism for forest-related offences. The linkage mechanism first clarified the working principles of strict compliance with the law, division of responsibility, mutual cooperation and mutual restraint, and the establishment of a joint liaison and joint meeting system for forest resources protection and law enforcement. In the linkage mechanism, the specific division of work and cooperation among the four agencies is shown in the following "Figure 3".

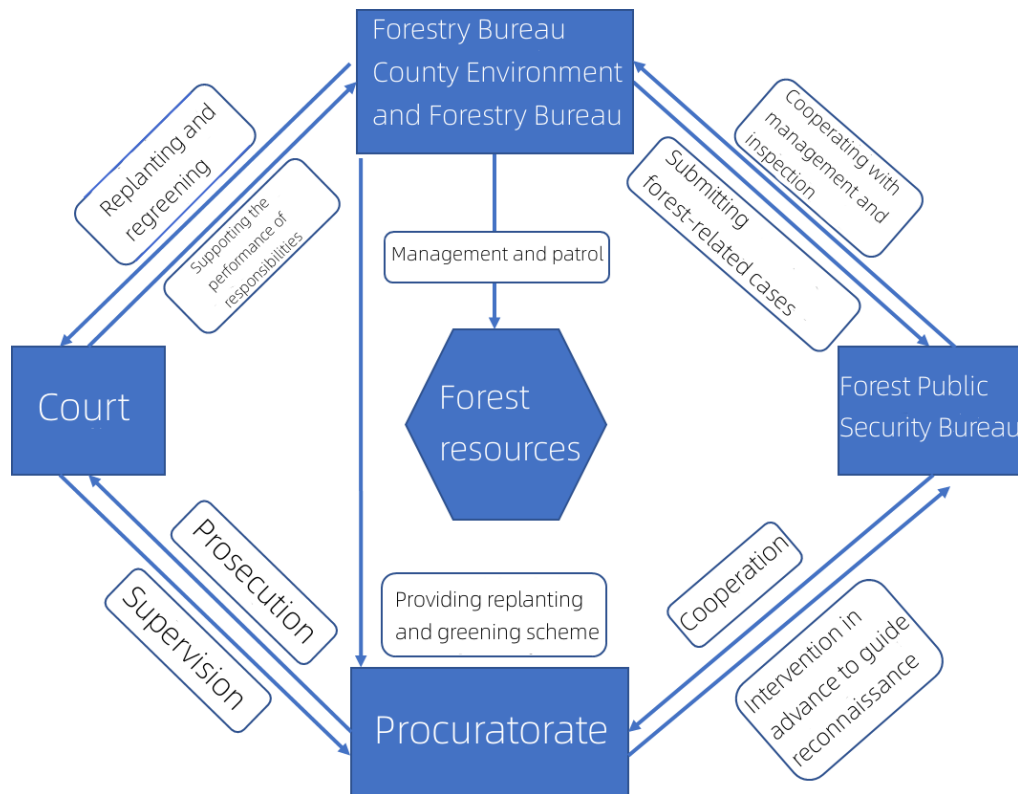


Figure 3 The specific division of work and cooperation among the four agencies.

In this linkage mechanism, centering on the protection of forest resources, the Forestry Bureau of D County and the Environmental Forestry Bureau are responsible for the management and patrolling of forest resources, timely detecting and stopping forest-related illegal and criminal acts, taking photos and videos at the first time to fix the evidence, and timely reporting forest-related cases to the public security organ. The Forest Public Security Bureau cooperates with the forestry department in the management and inspection of forest resources. The forest-related cases submitted by the forestry department shall be filed for investigation in accordance with the law and transferred to the procuratorate for examination and prosecution. The procuratorate may intervene in advance to guide the investigation of major, major or severe forest-related cases. The case transferred by the public security organ for examination and prosecution shall be brought before the court according to law. If the procuratorial organ files a civil public interest lawsuit, it may work out a replanting and greening plan together with the forestry department. The court shall steadily advance the trial of the cases of illegal crimes against forest resources, and support the forestry department to perform its duties in accordance with the law. If the execution of replanting and greening

is involved in the judgment, the forestry department shall be responsible for acceptance. After the establishment of the linkage mechanism, on September 28, 2016, the four departments held a contact meeting, and formed the "Minutes of the Joint Meeting on Issues Related to the Implementation of Replanting and Greening in Forest-related Cases" (hereinafter referred to as the "Minutes"). The "Minutes" defines the responsible departments and scope of responsibilities for replanting and greening in forest-related administrative cases and criminal cases. On October 11, 2017, the People's Court of D County and the People's Procuratorate jointly issued the "Opinions on Handling Issues Related to Public Welfare Facilities Cases Initiated by the Procuratorate (for Trial Implementation)" to strengthen the guidance of public welfare litigation for forest-related criminal activities.

A series of documents formally established and improved the joint law enforcement linkage mechanism of the four departments. The main significance of this linkage mechanism for the court's environmental resources trial lies in the following aspects:

First, the linkage mechanism separates the administrative responsibility and criminal

responsibility of forest-related cases, and also clarifies the relationship between the administrative responsibility, civil responsibility and criminal responsibility of forest-related cases and the investigation mechanism, thus avoiding forest-related administrative responsibility cases from entering the court from the source, and effectively relieving the pressure of trial work.

Second, the linkage mechanism emphasizes the responsibility of the forestry authorities and the investigation departments to prevent, detect and prevent the destruction of forest resources, and fix the evidence of forest-related cases, laying a solid foundation for the prosecution of the procuratorate, and effectively reducing the difficulty of the court trial.

Thirdly, the linkage mechanism also requires that when the defendant needs to bear the responsibility of replanting and greening, or when the defendant or his relatives voluntarily propose replanting and greening before the judgment, the forestry competent department shall provide the restoration plan and conduct acceptance, and the acceptance report shall be submitted to the court. This mechanism can effectively guarantee the enforceability and scientificity of judgments.

### ***4.3 Cultivating Correct Ecological View with Judicial Authority***

Since September 1, 1998, the local government has implemented the "natural forest protection project", that is, the natural forest resources protection project. The logging of 4.6 million hectares of virgin forest in 57 counties, including D County, has been completely stopped and the management and protection of the forest has been implemented all the year round. However, there are many wooden structures in the residential buildings in D County. Due to the influence of traditional house construction habits, the people have insufficient understanding of the law of forest resources protection and the importance of forest resources protection. As summarized above, due to the influence of cultural level, many people also have misunderstandings about penalty system in China. One of the typical misunderstandings is that the masses believe that as long as no one is in prison, it is not called a crime. Without the negative evaluation of the national law, the responsibility they bear is not legal responsibility.

In view of the above actual situation, on the one hand, the court of D County is very cautious in the

application of probation when dealing with forest-related cases. On the premise of legality, it is not applicable to probation in principle, to avoid causing the wrong understanding that the people do not need to bear responsibility for deforestation. In recent years, among the forest-related cases accepted by D County Court, only one case is applicable to probation, and the applicable rate of probation is 66.67%. On the other hand, it is necessary to grasp typical cases to interpret and popularize the law. In the case (2020) \* \* \* \*, the defendant Da Mou illegally felled 17 western Sichuan spruces in the state-owned forest area and sold them to Luo Mou for profit. After the case was solved, the procuratorate filed a civil suit with criminal proceedings. The typical significance of this case has two points: first, this is a relatively rare case of illegal felling of trees for the purpose of profit in D County; Second, in this case, the defendant did not actively propose to replant trees before the judgment, so the public prosecution authority filed an incidental civil action. In order to let more people understand the law and expand its influence, the People's Court of D County chose to hold a court session in the square in front of the town government, and informed the local people to participate in the hearing in advance. The court used the most vivid cases around the people to interpret and popularize the law by case, and let the concept of protecting forest green take root in the hearts of the people with judicial authority.

The above practice of D County coincides with the provision of "adhering to the strictest system and the strictest rule of law, following the principle of legality of punishment for a crime and the principle of suiting punishment for a crime,... prudently applying lighter and mitigated punishment" and the provision of "cultivating and promoting high-quality cases as a starting point, and giving full play to the rule-leading and value-oriented functions of cases" put forward in Point 3 of the "Opinion".

### ***4.4 Issues of Establishing a Replanting and Greening Base and Scientifically Implementing Ecological Restoration***

In 2018, the People's Court of D County, the People's Procuratorate, the Forestry and Grass Bureau and the Forest Public Security Bureau held a joint meeting on "Combating Illegal and Criminal Activities of Destroying the Ecology". The meeting jointly studied and decided to replant the 1800 mu base in the local plan.

There are two main situations for the perpetrator to replant and replant in the base: first, before the public prosecution, if the illegal person or his family member voluntarily proposes to replant and replant, or if the illegal person or his family member does not actively propose to replant and replant, the Forest Affairs Unit of the Forest Public Security Bureau shall request or order the lawbreakers or their families to replant and replant according to the intensity of their damage to the forest within the planning scope, and the Forest Public Security Bureau and the Natural Forest Protection Office shall check and accept them, and transfer the results of the check and acceptance to the investigation organ together with the attached volume. The judicial organ will take the acceptance report of replanting and greening as the basis for punishing the suspect and reduce the punishment as appropriate. Second, when prosecuting, the public prosecution organ filed a criminal incidental civil action, and the judicial organ decided that the defendant should bear the incidental civil liability of replanting green in the base. At present, 26,500 spruces have been planted in the base.

The construction and operation of the base effectively solved the following problems:

First of all, article 55 of China's "Civil Procedure Law" stipulates that if the people's procuratorate discovers acts that harm the public interest such as damaging the ecological environment and resource protection in the course of performing its duties, it may file a lawsuit in the people's court without a statutory organ or organization initiating a lawsuit. However, the cultivation of environmental public interest litigation in this region is not very mature, especially the number of environmental public interest litigation filed by statutory organs or organizations is almost zero. Therefore, in the absence of a competent organ or organization to initiate civil public interest litigation, it is difficult to restore the damaged ecological environment by relying solely on the adjudication function of the court. The linkage mechanism built by D County around the replanting and greening base gives full play to the role of the competent administrative organ, and the Forest Public Security Bureau may order the offender to replant and regreen the base, and the replanting and greening acceptance report can be considered as a sentencing factor when the court decides the punishment. This approach takes into account the actual needs of ecological restoration and strengthens the connection between administrative responsibility and criminal liability.

Secondly, the replanting and greening acceptance report is used as one of the sentencing bases to implement the criminal justice policy of combining leniency and strictness. Article 17 of the "Opinions" points out that "it is necessary to implement the criminal policy of combining leniency and strictness, properly handle the relationship between development and protection, and strive to achieve the organic unity of political, legal, social and ecological effects." "On the one hand, considering that most of the offenders of illegal logging have excusable motives and a good attitude of admitting guilt afterwards, the acceptance report of replanting and greening is usually considered as an important basis for light sentencing. On the other hand, before the replanting and greening operation in the base, the public prosecution or administrative organ will invite the Forestry and Grassland Bureau of D County to exit the vegetation restoration plan. And if the court decides that the defendant bears the responsibility for replanting and greening, it will usually follow the vegetation restoration plan. According to the vegetation restoration plan, the replanting location, tree species, replanting method, afforestation density, seedling planting time, seedling technical requirements, and management and protection requirements are all specified in detail. A rigorous and scientific vegetation restoration program helps offenders realize the importance and scientific nature of ecological protection, and also avoids ecological problems such as low survival rate and species invasion that may be brought about by random replanting by offenders and their relatives, which can truly realize the organic unity of political, legal, social and ecological effects.

## **5. PROBLEMS TO BE FURTHER RESOLVED**

### ***5.1 The Concept and Means of Restorative Justice Need to Be Further Implemented***

Restorative justice was first proposed by American scholars, and was first applied between the criminal party and the victim of criminal crime, and then gradually transplanted to the field of environmental protection. Restorative justice means are more focused on making up for the loss of the victim through the defendant's active repair behavior, thus reducing the intensity of criminal punishment. This system contains the idea of plea bargaining. [1] Therefore, the purpose of applying

restorative justice in the field of environmental protection is to make up and restore the damaged ecological environment through the defendant's replanting and greening, so as to reduce the intensity of criminal punishment.

However, in judicial practice, there are certain problems in the implementation of restorative justice concepts and means. On the one hand, in the implementation of the concept of restorative justice, as some scholars have mentioned, restorative justice has confused the difference between civil tort and criminal act to a certain extent, and the restorative justice model has led to the confusion of environmental administrative punishment, environmental public interest litigation, criminal incidental civil punishment and criminal law. [2]

On the other hand, there are some problems in the implementation of restorative justice. Although in the case of illegal cutting of trees, replanting and reforestation did indeed happen, in most cases where the defendant was judged to be responsible for replanting, the defendant was not declared probationary suspension. At this time, the defendant could not perform the replanting obligation, and usually only the family members could replant. From the perspective of civil liability, it does not meet the conditions of alternative performance. Therefore, the defendant himself did not assume the responsibility of replanting and greening.

### ***5.2 The Execution and Tracking of the Responsibility for Replanting and Greening the Judgment Need to Be Further Strengthened***

In the civil public interest litigation attached to criminal cases, the responsibility of replanting and greening is determined after the judgment comes into effect. In the existing linkage mechanism, the acceptance of replanting and reforestation results by the forestry administrative department occurs when the party concerned voluntarily proposes or the forestry administrative department orders replanting and reforestation, which often occurs before the court decision. Therefore, the court has a clear basis for sentencing. [3] However, the linkage mechanism has no clear provisions on which department is responsible for supervising the implementation and acceptance when the court judges the parties to undertake the responsibility of replanting and greening in public interest litigation. Is it necessary to send a copy of the court judgment to the forestry administrative department at the

same time to facilitate its follow-up and acceptance? Therefore, in the public interest litigation, when the judgment party undertakes the responsibility of ecological restoration such as replanting and greening, it is necessary to further improve the coordination mechanism between the judicial organ and the administrative authority to facilitate the tracking and execution of the judgment. [4]

### ***5.3 The Accountability of Other Persons Involved in the Case of Illegal Logging***

According to the provisions of Article 3 of the "Interpretation of the Supreme People's Court on Several Issues Concerning the Specific Application of Law in the Trial of Criminal Cases of Destroying Forest Resources" in 2000 and Article 345 of the "Criminal Law", the constitutive requirements of the crime of illegal logging of trees should include the following three aspects: the first is the subjective purpose of "illegal possession"; the second is that there is the act of cutting down specific trees without permission; the third is that the number of stolen trees reached a large standard. In the joint crime, although the employed person does not have the purpose of "illegal possession" of his own, but he/she knowingly carries out the act of helping without the cutting license, he/she can be identified as helping others to "illegal possession", and can still constitute an accomplice in the crime of illegal logging. However, for those cases where the circumstances are significantly minor and involve a large number of people, especially the whole family, how to achieve the unity of the fight against crime and the education of the masses, the effect of the rule of law and the social effect, the judicial authorities need to grasp it reasonably and legally as appropriate. [5]

## **6. CONCLUSION**

In summary, the People's Court of D County has in recent years deliberately explored and formed some experience in the formation of a trial team, the construction of an environmental rule of law linkage mechanism, the cultivation of a correct ecological outlook and the implementation of ecological restoration tools for innovative environmental resource trials in the new era. However, at the same time, there is room for further improvement in the implementation of restorative justice concepts and tools, enforcement tracking, and accountability of other persons involved in the case.



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