

FEBRUARY, 2023

# UNIVERSAL JURISDICTION

TOOLKIT

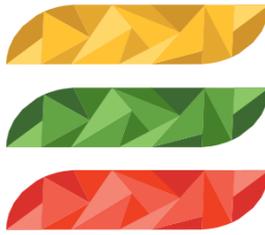
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DR. MONIKA ROGERS



NO SAFE HAVEN  
FOR PERPETRATORS



**MINISTRY  
OF JUSTICE**  
OF THE REPUBLIC OF LITHUANIA

Kurk  
Lietuvai 

**This project is implemented as part of the program “Create Lithuania” (Kurk Lietuvai), which provides the Lithuanian public sector with strategies, ideas and best practices to improve the functioning of various Lithuanian state institutions.**

# Universal jurisdiction

**is the right of States to assert  
jurisdiction over international crimes  
regardless of the fact:**

- where the conduct occurs, or**
- the nationality of the perpetrator (s).**



# The scope of Universal Jurisdiction is conceived in two ways:

ABSOLUTE	CONDITIONAL
doesn't require the presence of the accused <i>"in absentia"</i>	requires the presence of the accused in the prosecuting State

Global enforcer approach	No safe haven approach
states have a pro-active role in preventing and punishing core crimes committed anywhere in the world	states act in their own interests by not becoming a refuge for perpetrators of war crimes

# **The Principles of Universal Jurisdiction (Princeton's and Madrid-Buenos Aires)**



**Principle 1 – Concept**

**Principle 2 – Crimes subject to Universal Jurisdiction**

**Principle 3 – Economic and environmental crimes subject to Universal Jurisdiction**

**Principle 4 – Scope of Universal Jurisdiction**

**Principle 5 – Connected crimes**

**Principle 6 – Criminal and/or civil liability**

**Principle 7 – Universal civil jurisdiction**

**Principle 8 – Application of the principle of Universal Jurisdiction when not included in national legislation**

**Principle 9 – Statute of limitations, amnesty, pardon and immunity**

**Principle 10 – Principle of legality under international criminal law**

**Principle 11– Initiation of the investigation and presence of the alleged perpetrator during the proceedings**

**Principle 12 – Complementarity and cooperation with the**

**International Criminal Court and other international criminal justice mechanisms**

**Principle 13 – Conflicts of national jurisdiction**

**Principle 14 – Mutual legal assistance**

**Principle 15 – Extradition**

**Principle 16 – Ne bis in idem**

**Principle 17 – Transitional Justice**

**Principle 18 – Independence of the competent authorities**

**Principle 19 – Specialised judicial, prosecution and police institutions**

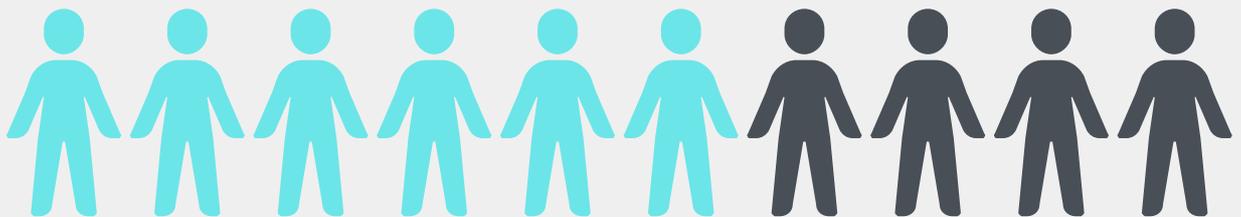
**Principle 20 – Rights of victims and protection of witnesses and experts**

**Principle 21 – Procedural rights and guarantees of the alleged**

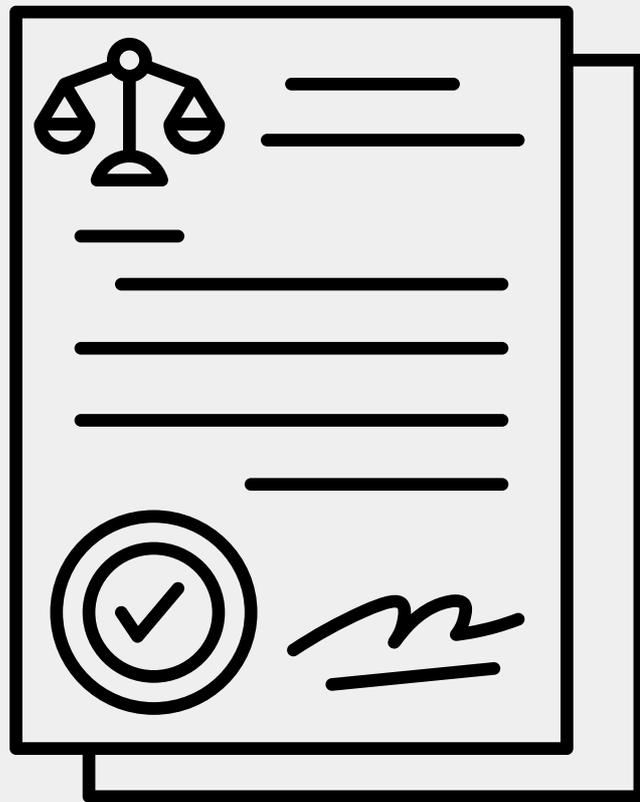
# PRE-TRIAL INVESTIGATION



**Special Department or  
other specialised units within the  
police and prosecution**



# Use National Law



**Qualified and opened the case  
according to the national Criminal  
Code and Criminal Procedure Code**



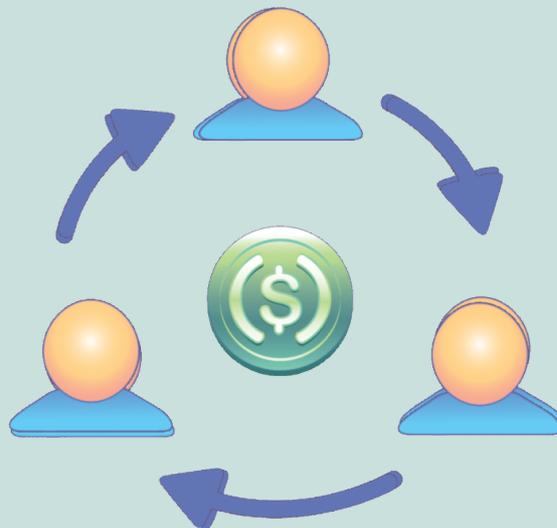
**Separate Code**

# Existing Tool

TRIAL DATABASE



**SHARE BEST PRACTICES**





**How to collect  
evidence  
*in a distance?***

# Use digital tools



- SEARCH THE INTERNET, SOCIAL NETWORKS, TELEGRAM CHANNELS AND OTHER OPEN PUBLIC PLACES FOR INFORMATION RECORDED BY THE PARTICIPANTS OF THIS INCIDENT AND POSTED ON THE NETWORK
- RESEARCH FOR PHOTO AND VIDEO MATERIALS ON SOCIAL MEDIA AND IN OTHER PUBLIC SOURCES
- USE OF PROGRAMS FOR THE ANALYSIS AND PROCESSING OF DIGITAL IMAGES
- SEARCH BY KEYWORDS AND HASHTAGS, ANALYSIS OF GEOLOCATION TAGS

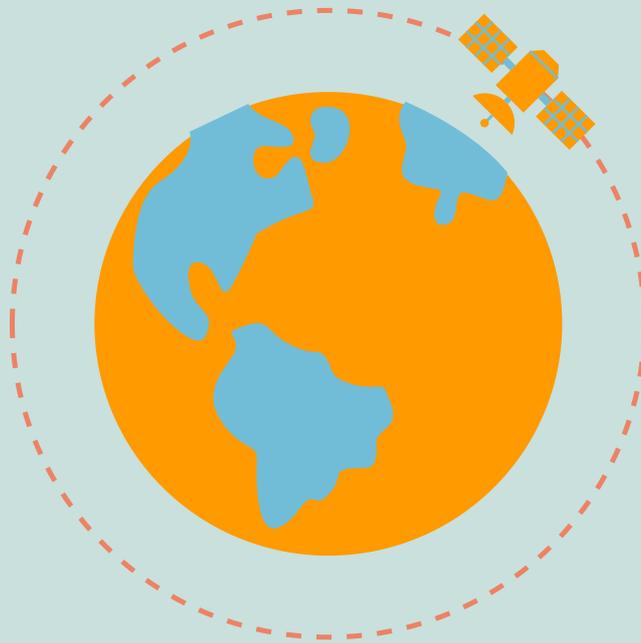
# Chatbots

for collecting oriental information:

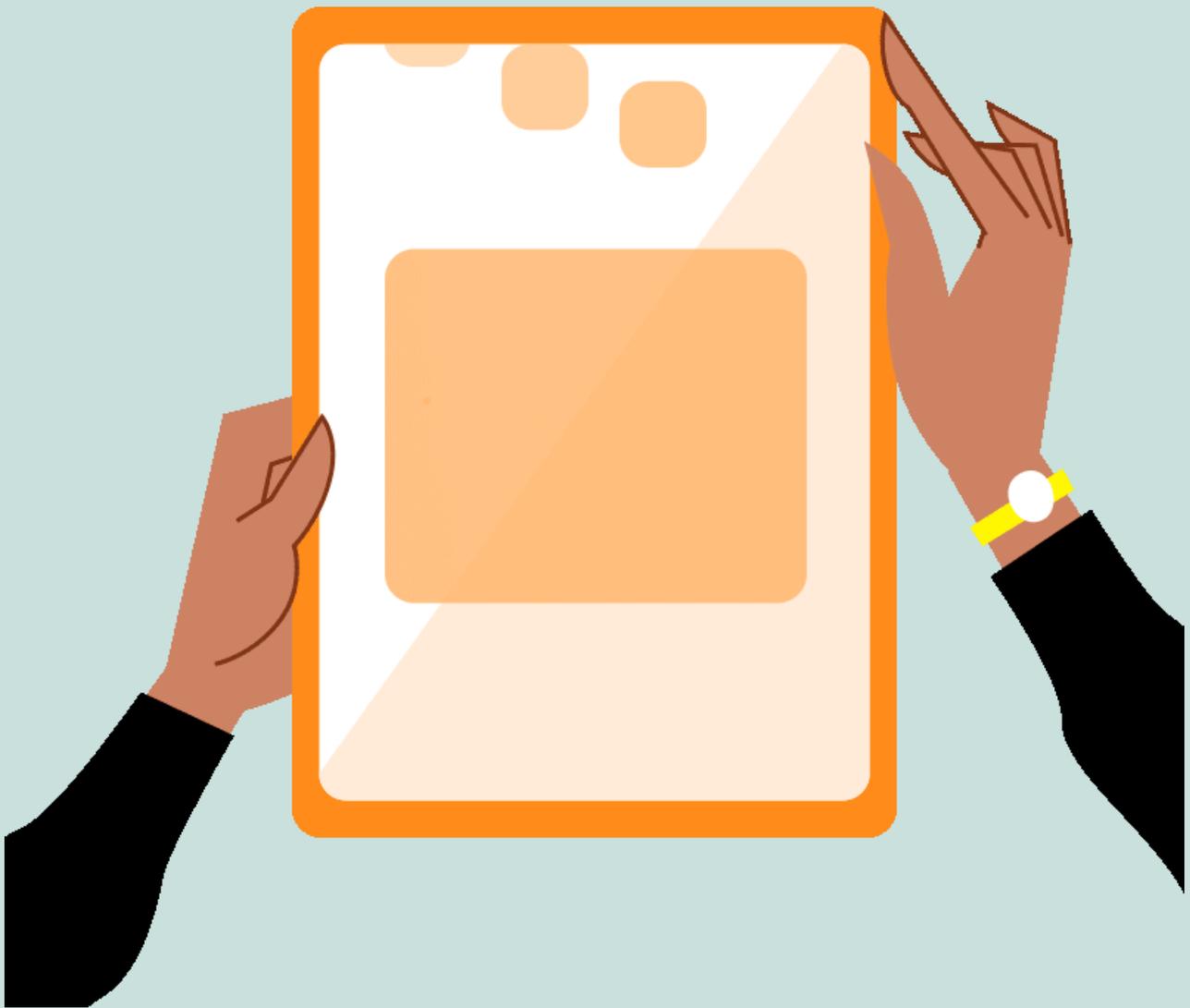


e.g.

**"War Crime Bot",  
"STOP Russian War",  
"Stop Marauder",  
"Find the Traitor"**

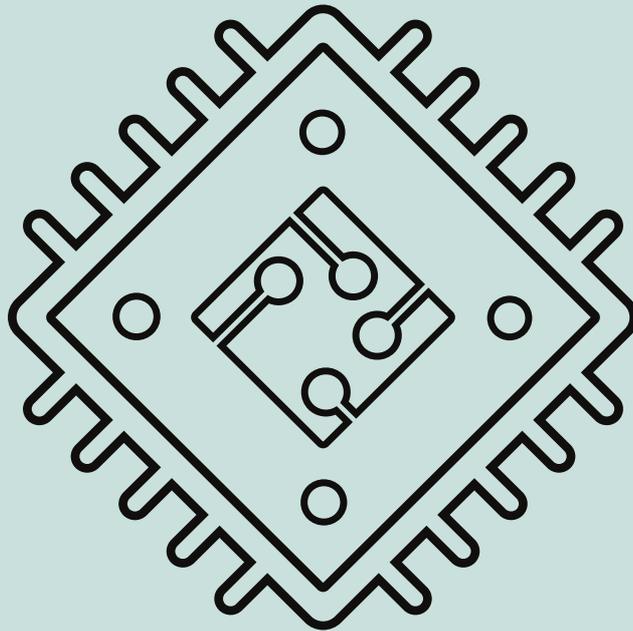


- **analysis of satellite images**
- **monitor radars and Marine Traffic vessel's official monitoring systems**
- **use of "Big Data" analysis technologies**



- **analysis of electronic devices (see Guidelines for electronic evidence by the Council of Europe)**
- **analysis of game systems**

# **Guidelines for electronic evidence by the Council of Europe**



## **Basic Principles:**

- **data integrity**
- **audit log**
- **specialized support**
- **appropriate training**
- **legality**

# Digital Open Source Investigations



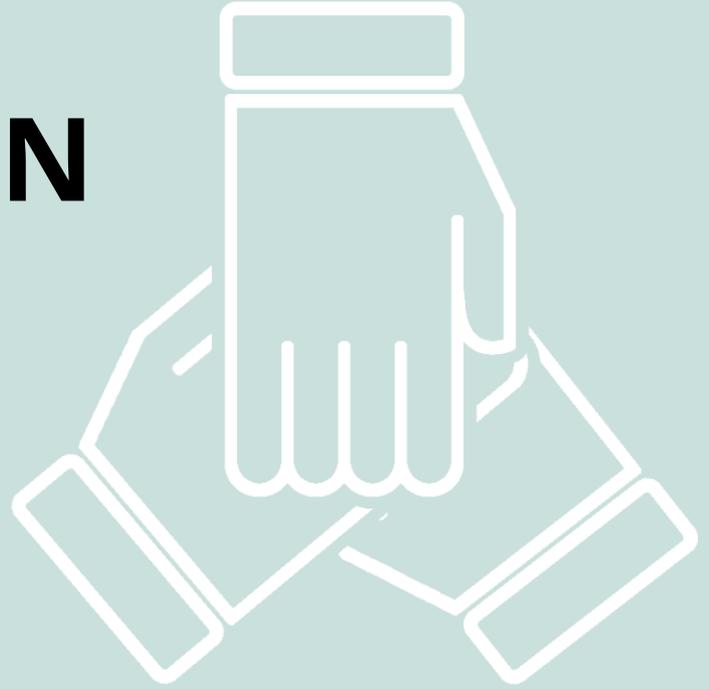
## Berkley's Protocol

**contains basic provisions on international standards of remote investigation, forensic means of collection, analysis and storage electronic traces and digital information in compliance with professional, legal and ethical principles.**



- **face recognition system and their search in relevant databases (e.g. Clearview AI face recognition application is used to identify potential criminals)**
- **photo and video recordings from stationary video cameras located at commercial and private buildings**

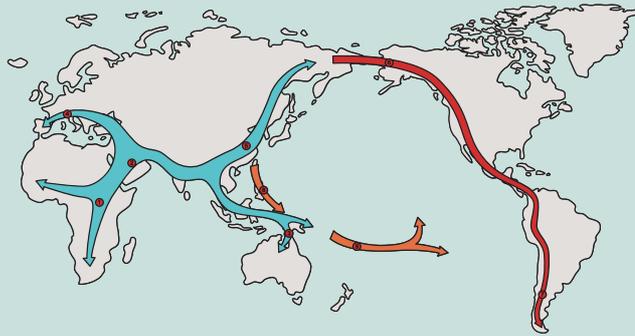
# COOPERATION



# INSIDE AND OUTSIDE



# Cooperation with Migration Department



**War refugees or people who have had to leave temporarily the areas of conflict can be witnesses or victims. When arriving to the country in search of asylum, they have to fill in a questionnaire/application to legalise their staying. In order to identify such persons, the question of whether they were crime witnesses or victims is recommended to be introduced as a separate item.**

# Cooperation with Police Department



**Conducting investigative actions in other cases, the investigators may identify potential witnesses, victims, suspects, or obtain information they will be able to use as evidences in the current case. They can also detain persons who are in the territory of Lithuania illegally, and these persons may have the information necessary for the investigation.**

# Cooperation with hospitals



**Some of the witnesses, victims, and perpetrators may be treated in hospitals.**

# Cooperation with Border Security



**They may detain persons who are illegally crossing the border of Lithuania, and these persons may have the information necessary for the investigation.**

# **Cooperation with NGOs who help refugees inside the country**



**e.g. The Red Cross**

**Caritas etc**

# **International Cooperation**



## **Mutual Legal Assistance**

**(e.g. Treaty between Lithuania and other countries)**

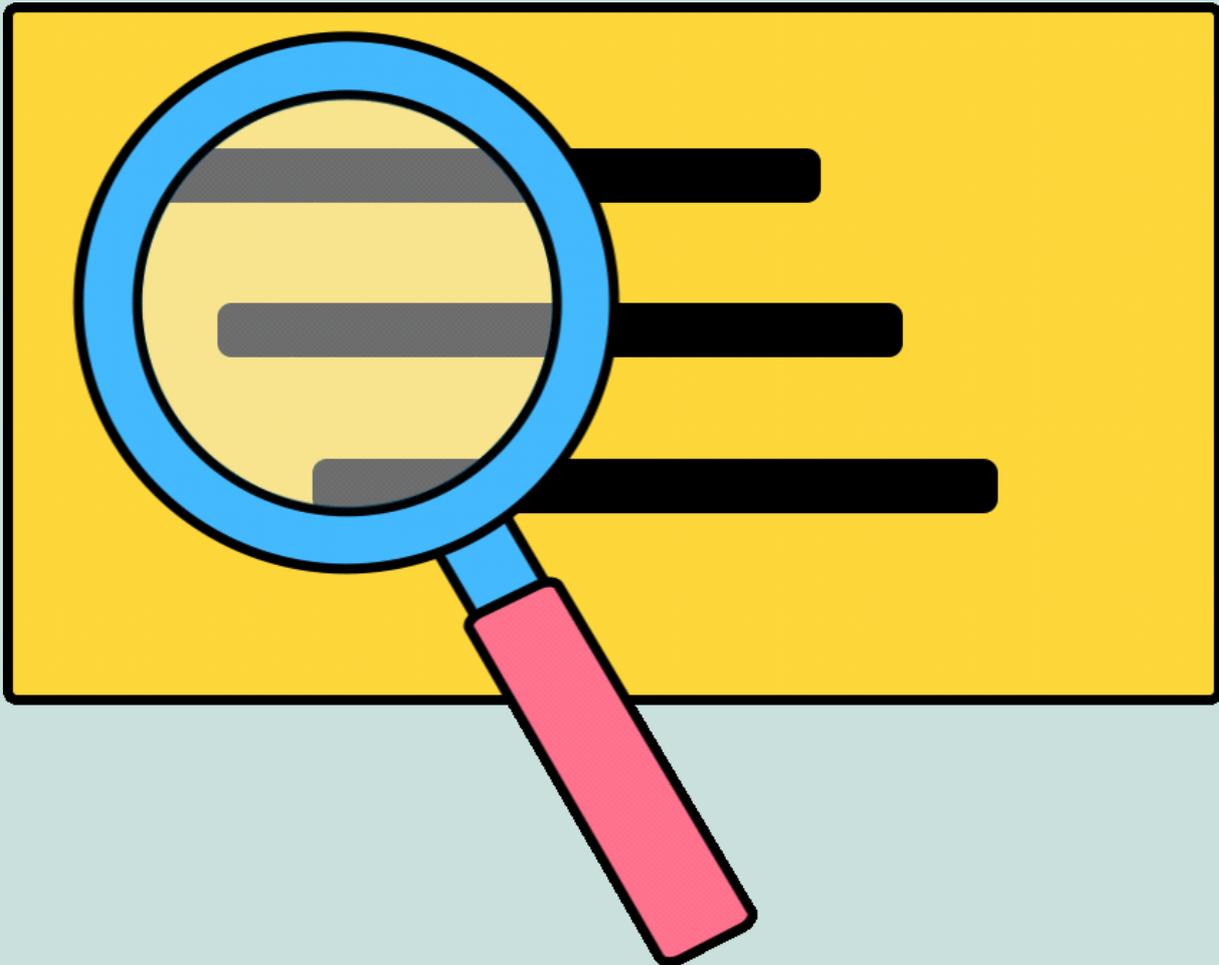
**Interpol**

**Eurojust**

**(Join Investigation Team - participation as a part)**

**The Genocide Network**

# **NGO who conduct public investigations and collect information of war crimes**



**Usually these organisations have huge  
experience conducting public  
investigations in conflict-affected regions  
such as Iraq, Ukraine, Yemen, Mali,  
Sudan, Syria, Belarus, the Gambia.  
(e.g. Global Rights Compliance:  
Basic Investigative Standard Tool Kit)**

# Basic Investigative Standard Tool Kit



**by Global Rights Compliance**

# EyeWitness

ensures photos and videos  
can be used to seek justice



**A variety of programs can be used as a digital tool  
for automatic metadata check.**

**For example, «eyeWitness to Atrocities»  
application might be applied, with the help of which  
anybody can take photos safely. EyeWitness has  
submitted 22 dossiers to investigative and  
accountability mechanisms, including the  
International Criminal Court, the United Nations,  
European war crimes units, domestic courts and  
police forces.**

# CRIME SCENE REVIEW



## Drones





**3D-scanner tool  
for crime scene review and  
further expertise**



# TESTIMONIES

- survivors/victims
- witnesses
- perpetrators

## Interrogation



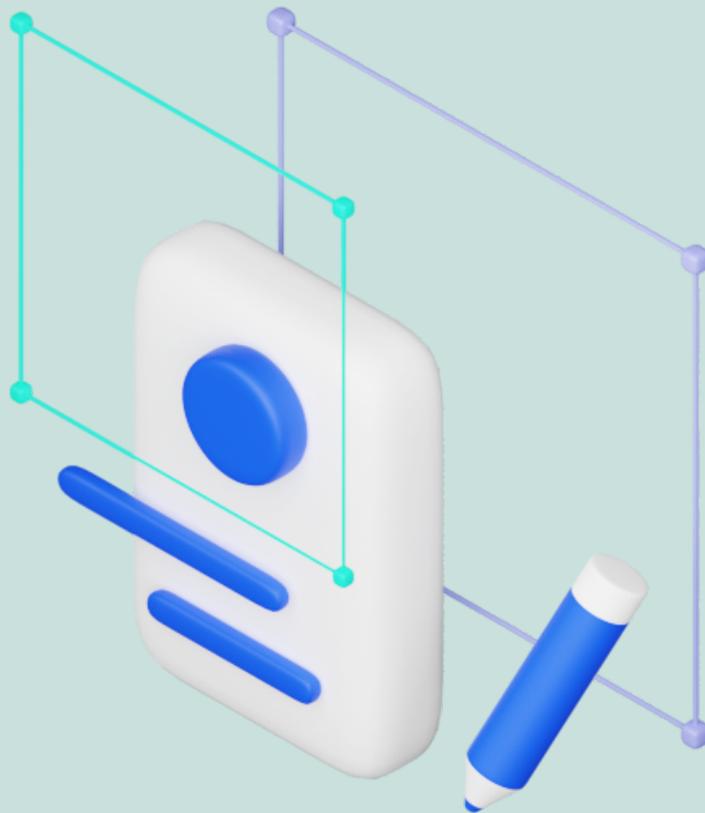
- Do not harm
- Explain stages of the investigation process
- Demonstrate prosecutor's willing and ability to seek the truth
- Demonstrate respect for their rights
- Create simple guidelines for investigation participants in their mother-tongue

# Interrogation



- **Record interrogation, better video record**
- **Guarantee security and privacy: witnesses should feel protected and fear no vengeance.**

# Guidelines on witnesses' protections

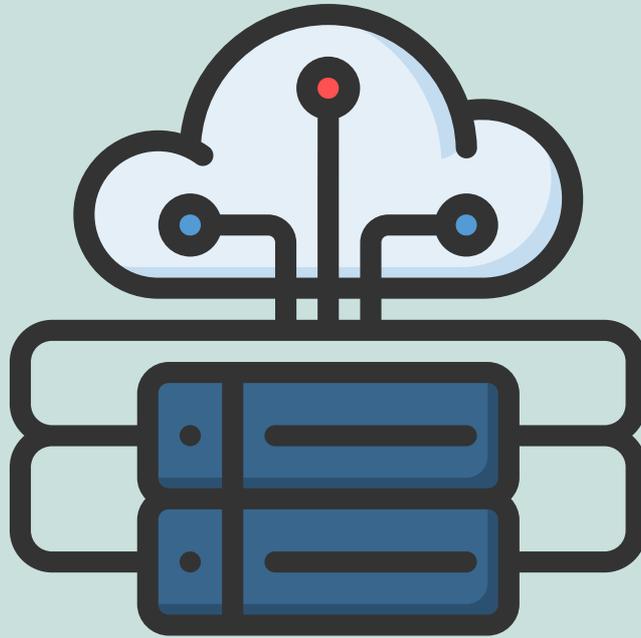


**Refuse to reveal identity or place of residence  
if a well-founded reason of fear is established**

**Testify remotely**

**Alter physical appearance**

# Storage of the collected information



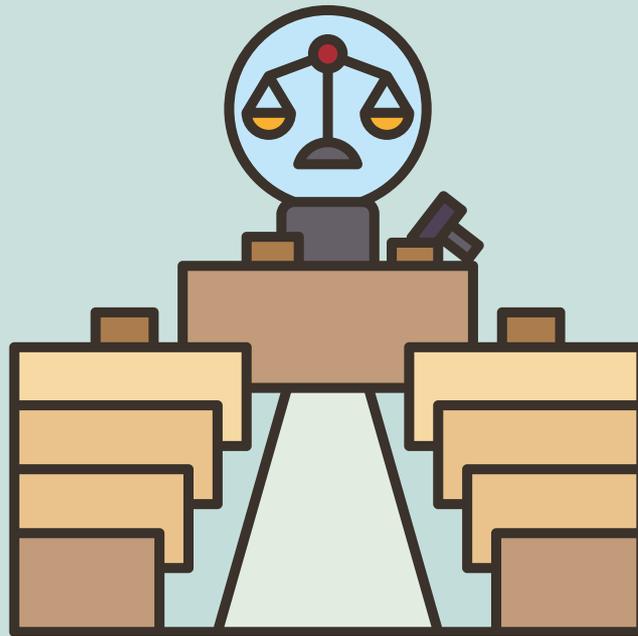
**For example, at all checkpoints (Blockposts), russian soldiers very carefully check the content of media files, contact lists, and correspondence and then they ask to delete everything from the phone or physically destroy it, especially in the so-called "filtration camps". If the phone is completely empty of media files and other information, it raises many suspicions and can lead to the person's arrest by these soldiers. In such cases "The KoBo Toolbox application" can be used. It's a free, open-source tool for collecting information in the field using mobile devices, tablets, computers, and more.**



# TRIAL



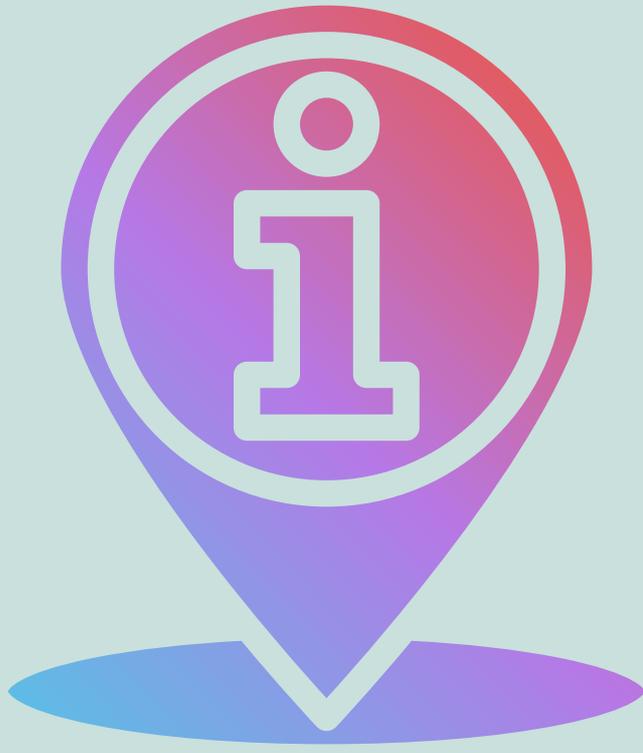
**The accused  
motivating mechanism  
to participate  
in trial can include**



**(1) temporary confiscation of property**

**(2) writing guarantee of immunity, which may be associated with the fulfilment of certain conditions**

**(3) ensure the opportunity to participate in the trial via video-conference**



## ***Criteria***

***to assess whether proceedings leading to a judgment in absentia or the additional guarantees provided by the requesting state satisfy the rights of defence (in connection with Article 3 of the Second Additional Protocol to the European Convention on Extradition)***





## **International documents provide for the possibility of issuing a court decision *in absentia* in criminal proceedings:**

- **European Convention on the International Validity of Criminal Judgments**
- **Resolution (75) 11 of the Committee of Ministers of the Council of Europe "On the criteria governing proceedings held in the absence of the accused"**
- **Recommendation No. R (87)18 of the Committee of Ministers (Council of Europe) to member states "Concerning the simplification of criminal justice"**
- **Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings**

# European Court of Humans Rights



**Yeđer v. Turkey, application №4099/12,  
07 June 2022**

**Sanader v. Croatia, application  
№66408/12, 12 February 2015**

**Vilches Coronado and Others v. Spain,  
application no. 55517/14, 13 March 2018**

**Sejdovic v. Italy, application №56581/00, 1  
March 2006**



- **Create simple guidelines for trial participants**

**in their mother-tongue to propel safe conduct and anonymity inside and outside the court room**



# Ways to inform perpetrator



- **Mutual Legal Assistance**
- **Using email, social network (WhatsApp, Facebook etc) as additional way**
- **Using telephone call (record and then conduct voice's expertise)**

# **UNIVERSAL JURISDICTION: current situation analysis in Lithuania**



# Best International Practices

