



# ALIGN

**Advancing Land-based  
Investment Governance**



**Columbia Center  
on Sustainable Investment**  
A JOINT CENTER OF COLUMBIA LAW SCHOOL  
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY



**International Institute  
for Environment  
and Development**



# Community consultation and consent

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Capacity Development Webinar for Lawyers:  
Responsible Land-Based Investments in  
Agriculture

Asia-Pacific Session, 18 May 2022

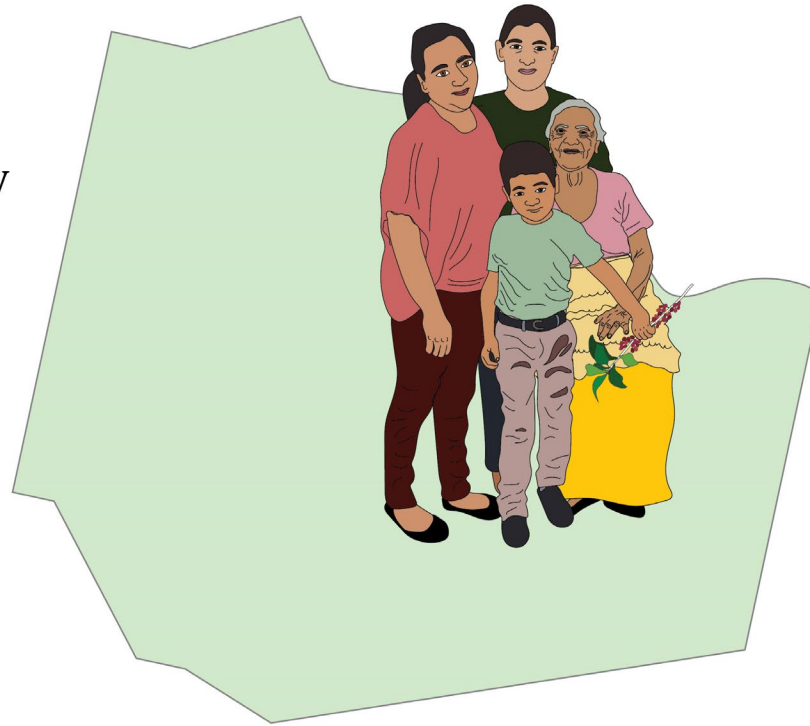
# Overview

Community consultation and consent –

1. Why?
2. What?
3. How?
4. Examples of good practice
5. Key takeaways

# When considering a piece of land...

In all likelihood,  
people are already  
using the land  
slated for the  
prospective  
investment.




# Cambodia: Challenging Mitr Phol land grab and Bonsucro greenwashing

[Overview](#) [Our Actions](#) [Background](#) [Further Reading](#)

## Overview

A decade-long struggle by displaced Cambodian farmers against Asia's largest sugar company has led to a landmark court victory in the company's home country of Thailand.

☰ 

East Africa: UK Timber Firm Forces 25,000 Ugandans Off Their Land - Oxfam

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### News & Articles

# Argentina: Communities Protest Foreign Land Grabs in Iberá



December 09, 2014



On November 27<sup>th</sup>, a group of organizations representing local farmers, Indigenous communities, and environmentalists gathered to protest in the Capital of Corrientes, Argentina, to demand an end to the land-grabbing by foreign investors in the province.

Country: [Argentina](#) Issues: [Lands, Resources, and Environments](#)

# Implications of ignoring legitimate tenure rights holders

- **Legal**

Government clients

- Political

Corporate clients

- Reputational

- Financial \$€¥£ (see sources)

Community clients

- Human rights violations and abuses (eg land, environment, water, food, housing, life, etc)

Sources: Locke et al (2019) [\*Assessing the Costs of Tenure Risks to Agribusinesses\*](#)

Feyertag & Bowie (2021) [\*The financial costs of mitigating social risks\*](#)

Davis & Franks (2014) [\*Costs of Company-Community Conflict in the Extractive Sector\*](#)

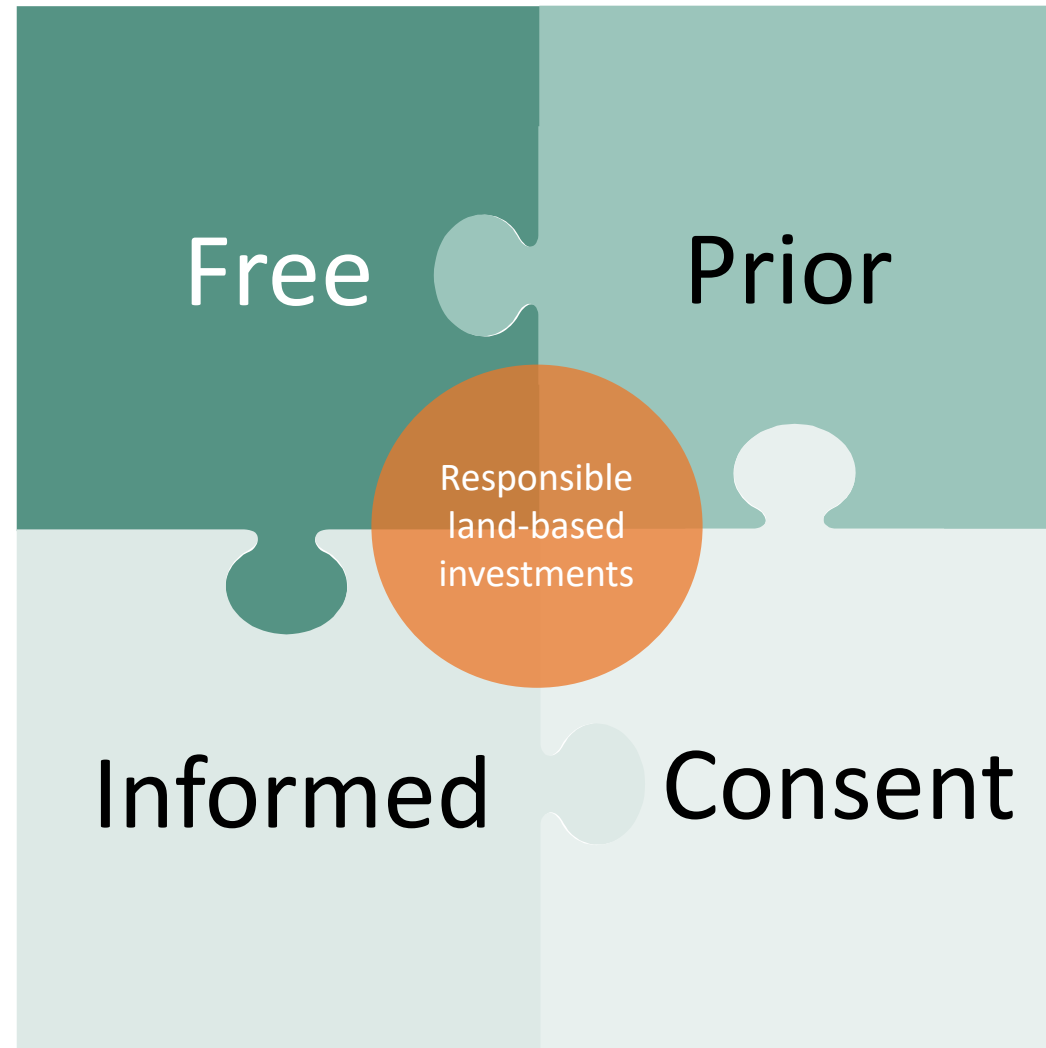
Henisz & McGlinch (2019) *ESG, Material Credit Events, and Credit Risk*, J. App. Corp. Fin., 105-119.

# What are consultation and consent?

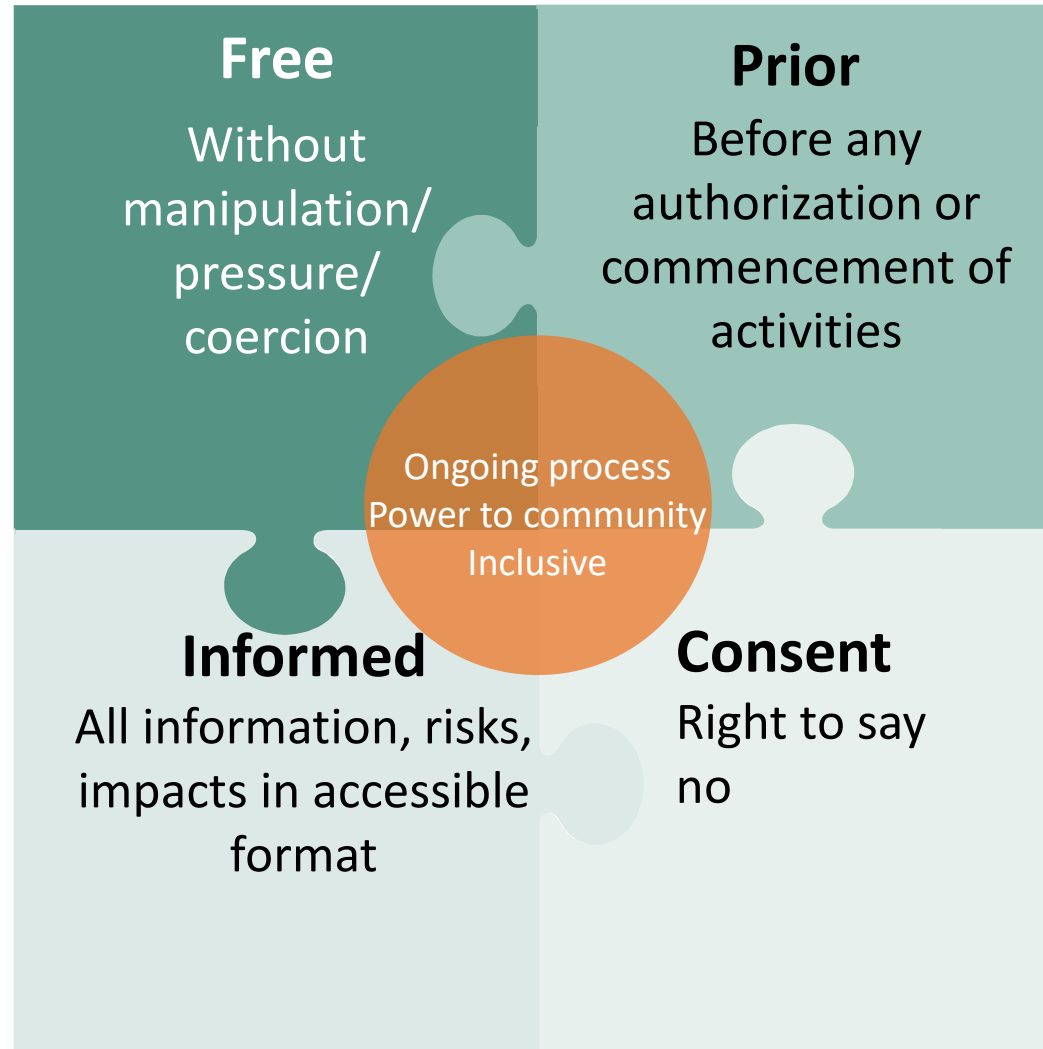
- The gold standard: **Free, Prior and Informed Consent (FPIC)**
- The baseline (where FPIC N/A): **Consultation**
- Processes and outcomes that FPIC and consultation shape:
  - Design of laws and policies
  - Human rights due diligence
  - Investment assessment/approval processes
  - Contracts e.g., tripartite agreements, community development agreements
  - Assignment/transfer of project etc...

See eg: Dudine & Szoke-Burke, [Government Briefing: Incorporating Free, Prior and Informed Consent \(FPIC\) into Investment Approval Processes](#) (CCSI, 2020)

# FPIC: What

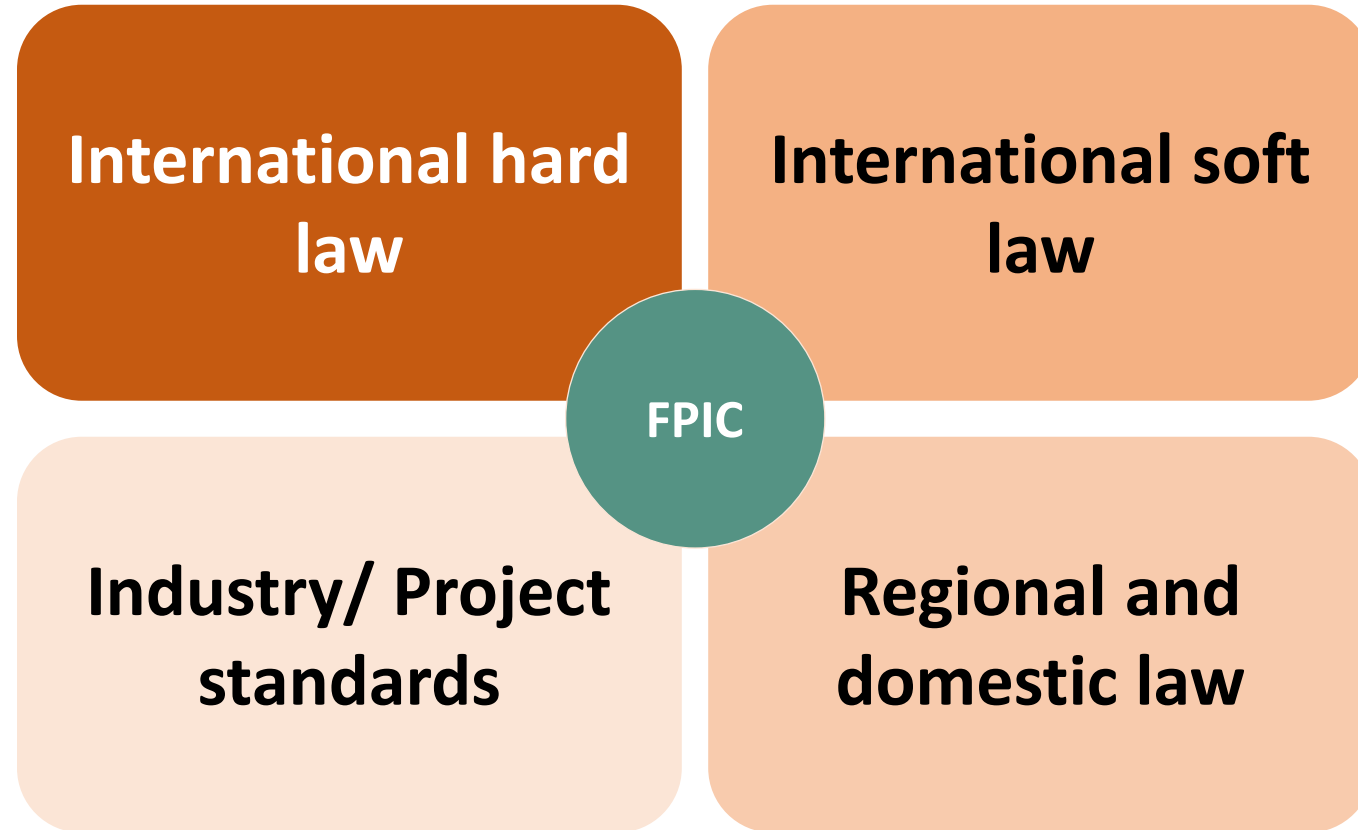


# FPIC: What

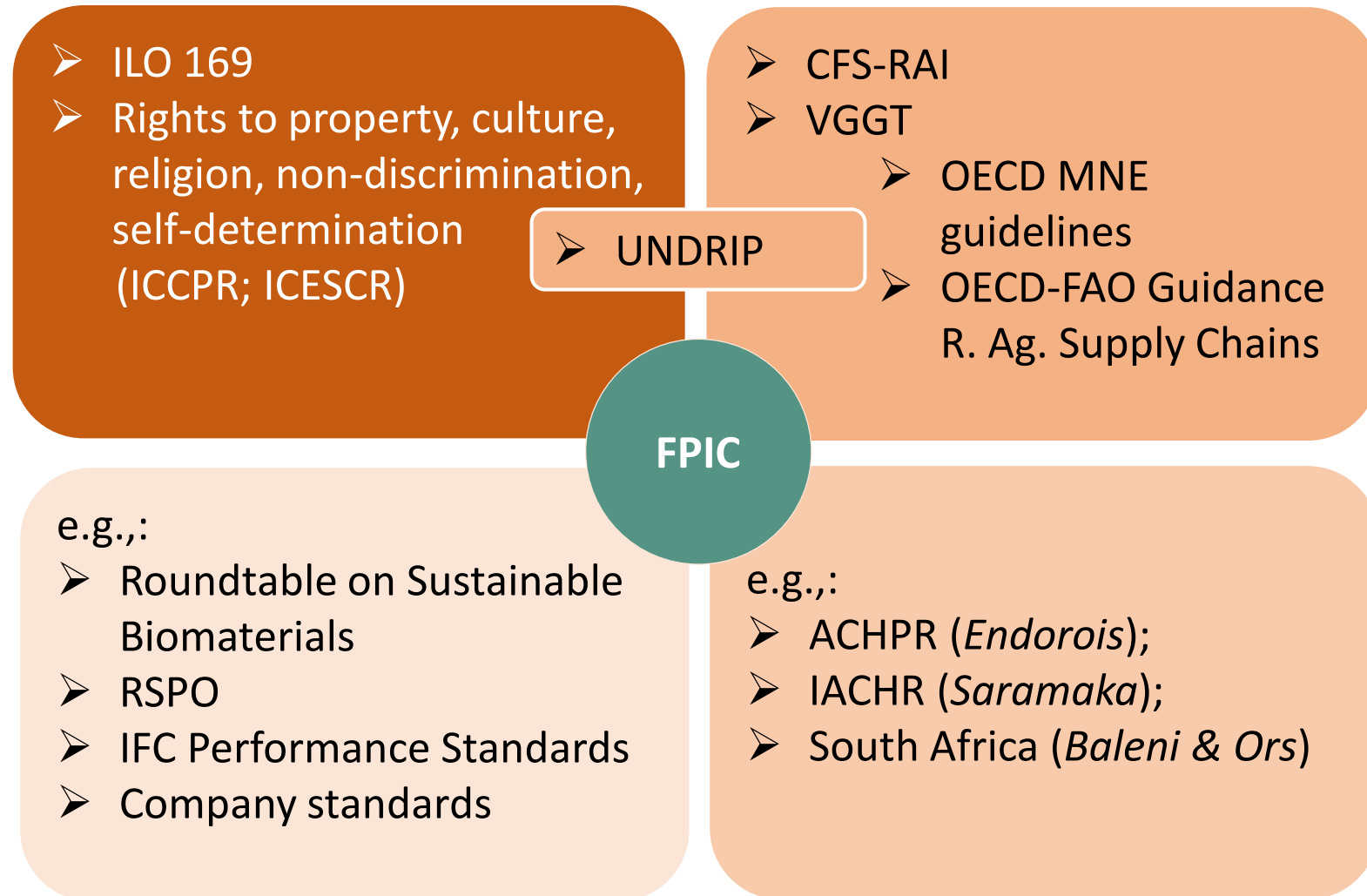




# FPIC: Sources of law



# FPIC: Sources of law



# FPIC: Who

- Who has the right to FPIC?
  - Indigenous and tribal peoples
  - Increasingly extended to all project-affected communities

# FPIC: How?

- Led and facilitated by government or investor
- With community members
- Accessible: widely publicized, locally situated, local language, record-keeping
- Information about the investment
- Technical or legal support and adequate time
- Develop consultation plan – ongoing and iterative

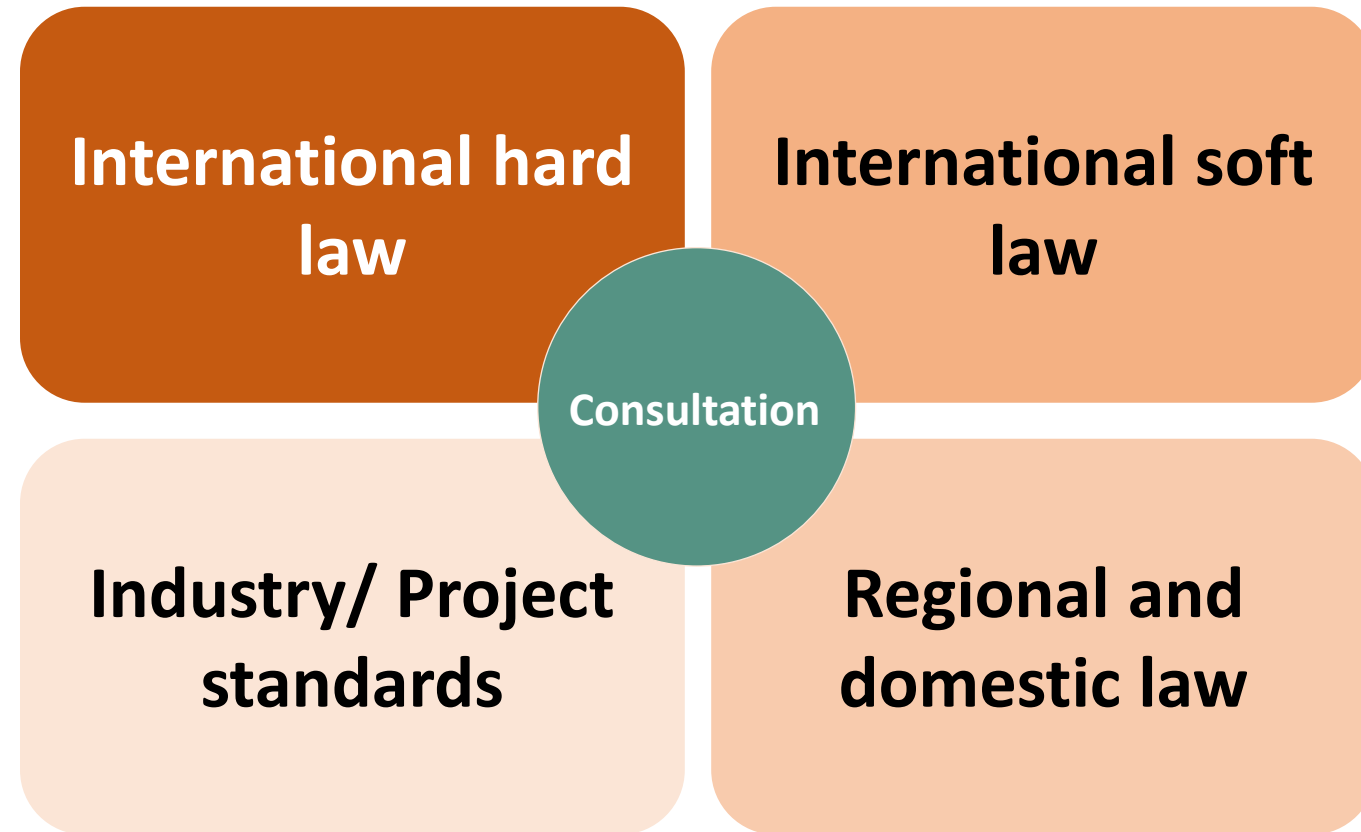
## Key tip:

- Power imbalances within communities (eg gender)

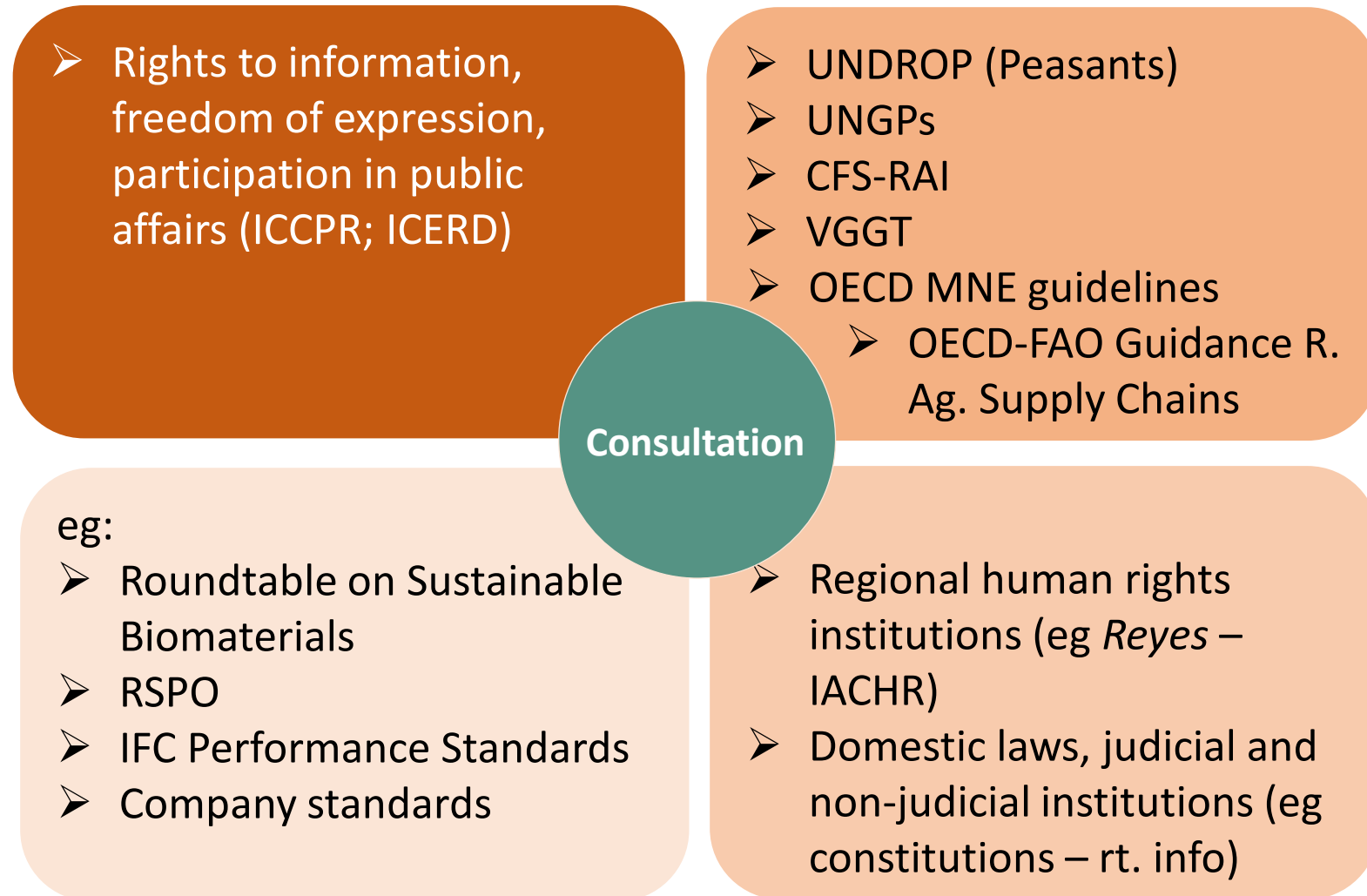
# Consultation

- Essential for all land-based investments, irrespective of whether or not the right to FPIC applies
- Involves:
  - information sharing
  - meaningful two-way communication
  - community participation and **influence**
  - allocation of time and resources
  - culturally-appropriate meetings with accessible information
  - attention to marginalized sub-groups
- It is iterative and ongoing

# Consultation: Sources of law



# Consultation: Sources of law



# Examples of good practice

- Community protocols: Kachi Yupi protocol, Northern Argentina
- Provision of financial and technical resources: Browse LNG consultation, Western Australia, Australia

## Sources:

- Natural Justice, [Community Protocols](#)
- [Kachi Yupi: Tracks in the salt; Consultation and Free Prior Informed Consent \(FPIC\) procedure for the communities of Salinas Grandes and Laguna de Guayatayoc](#)
- Lily O'Neill, [The Role of State Governments in Native Title Negotiations: A Tale of Two Agreements](#)



# Key takeaways

- Meaningful consultation and FPIC (depending on the circumstances – eg rights holders involved; applicable sources of law; etc) are legal requirements for land-based investments
- Investments are much more likely to be successful if communities are genuinely on board

# Reflections

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# ALIGN



**UKaid**

from the British people

## ALIGN: Advancing Land-based Investment Governance

ALIGN supports governments, civil society, local communities and other relevant actors in strengthening the governance of land-based investments. The project is implemented by a consortium led by the International Institute for Environment and Development (IIED), the Columbia Center on Sustainable Investment (CCSI) and Namati, and is funded with UK aid from the UK government.

This material has been produced as part of ALIGN by CCSI, however the views expressed do not necessarily reflect the official views or policies of ALIGN partners or the UK Government.