



# PRACTICAL IMPLEMENTATION OF STATUTORY RECOGNITION OF CUSTOMARY LAND RIGHTS: IDLO'S COMMUNITY LAND TITLING INITIATIVE

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# Project Partners

## □ Liberia: The Sustainable Development Institute

■ [www.sdiliberia.org](http://www.sdiliberia.org)

- SDI works to transform decision-making processes in relation to natural resources and to promote equity in the sharing of benefits derived from natural resource management in Liberia.

## □ Uganda: The Land and Equity Movement in Uganda

■ [www.land-in-uganda.org](http://www.land-in-uganda.org)

- LEMU works to improve the land tenure security of the poor and ensure that policies, laws and structures are put in place to allow all Ugandans to have fair and profitable access to land.

## □ Mozambique: Centro Terra Viva

■ [www.centroterraviva.org.mz](http://www.centroterraviva.org.mz)

- CTV works to contribute to improved environment and land rights policies and legislation and to increase the capacity of civil society to participate in environmental management.

## □ The Gates Foundation

- This presentation is based on research funded by the Bill & Melinda Gates Foundation. The findings and conclusions contained within are those of the authors and do not necessarily reflect positions or policies of the Bill & Melinda Gates Foundation.

# The Current Context: Large Scale Agricultural Investment

- Wealthy nations and private investors are increasingly seeking to acquire large tracts of land for large scale agricultural investment, among other uses.
  - Whole communities are being displaced, and because they often lack access to justice and formal documentation of their customary land rights, they may have very little bargaining power to contest this displacement or demand and receive compensation for their losses.
- In reaction to these trends, the World Bank set out 7 “Principles for Agricultural Investment that Respects Rights, Livelihoods, and Resources.” **Principle 1 focuses on ensuring that:**

***“Existing rights to land and associated natural resources are recognized and respected.”***

# Resulting Questions:

## The central questions thus become:

- **Recognition:** How to best recognize existing (customary) land claims in Sub-Saharan Africa?
- **Respect:** How to best ensure that such rights are respected, i.e. successfully claimed and protected? (including the land claims of women and vulnerable groups?)

# Excellent legislative frameworks: Uganda, Mozambique, Tanzania

- Titling communities as a whole may be the fastest, most efficient and equitable manner of protecting customary land claims.
- Various nations have already passed excellent laws that set out relatively simple procedures for securing community land rights:
  - Mozambique – Community Delimitation
    - Lei de Terras of 1997
  - Uganda – Communal Land Associations
    - Land Act of 1998
  - Tanzania – Village Registration
    - Village Land Act (No 5 of 1999)

# Basic Procedures of Community Land Titling

- While each of these laws have different mechanisms and procedures, there are generally five basic components:
  1. Creation and election of a core committee, council or association to lead the community titling process
  2. Defining the physical limits of the community, through map-making and boundary harmonization with neighbors
  3. Establishing rules for community land administration (through drafting and adopting community by-laws or a community constitution)
  4. Establishing a community land and natural resources management plan
  5. Following a regulatory procedure, in conjunction with local, regional, and national state officials, who support and supervise the process.

# How have community land titling laws worked in practice?

- However, community land titling laws have generally not been well or widely implemented.
- This has generally been due to:
  - ❑ The law itself may be difficult to read and understand and therefore use.
  - ❑ Communities may lack awareness of their land rights, as well as the skills, time, finances and resources to pursue administrative processes.
  - ❑ Legislative and procedural requirements may prescribe complex processes that are difficult for the poor and less-educated to navigate.
  - ❑ The law may set up too many new administrative bodies, while funding is not allocated to support these bodies' establishment and proper functioning.
  - ❑ State officials may lack the capacity to implement the law, due to lack of training and resources.
  - ❑ There may be a dearth of appropriate technical expertise, leading to the high cost of hiring necessary technicians (particularly surveyors).
  - ❑ Government emphasis on investment may lead officials to prioritize granting investors' land requests, at the expense of documenting and protecting community land rights.
  - ❑ Lack of political will: state officials may be opposed to the land law's content (i.e. devolution of power over land administration and management to the community) and hinder implementation.

# The important questions then become:

- How to best amend existing laws and regulations to simplify and streamline administrative procedures, so as to ensure that these laws are actually “useable and used” by communities?
- How to ensure that these laws are well-implemented by state officials?
- What type and level of support do communities require to successfully complete community land titling processes?
- How to best facilitate the protection of the land rights of women and vulnerable groups during community land titling efforts and support communities to establish systems that will ensure that the rights of vulnerable individuals are enforced?

# IDLO's Community Land Titling Initiative

- **Study Countries: Uganda, Mozambique, Liberia**
- **Project Goal:** to investigate how to best ensure that customary land rights are successfully claimed, protected, and leveraged for local prosperity and human flourishing.
- **Project Objectives:**
  - ▣ Facilitate the titling of customarily-held community lands through legally-established community land titling processes;
  - ▣ Understand how to best and most efficiently support communities to successfully protect their lands through legally-established land titling processes;
  - ▣ Identify procedural obstacles to fast, inexpensive and streamlined community land titling; and
  - ▣ Devise and pilot strategies to guard against intra-community injustice and discrimination during community-land titling schemes and protect the land interests of vulnerable groups.

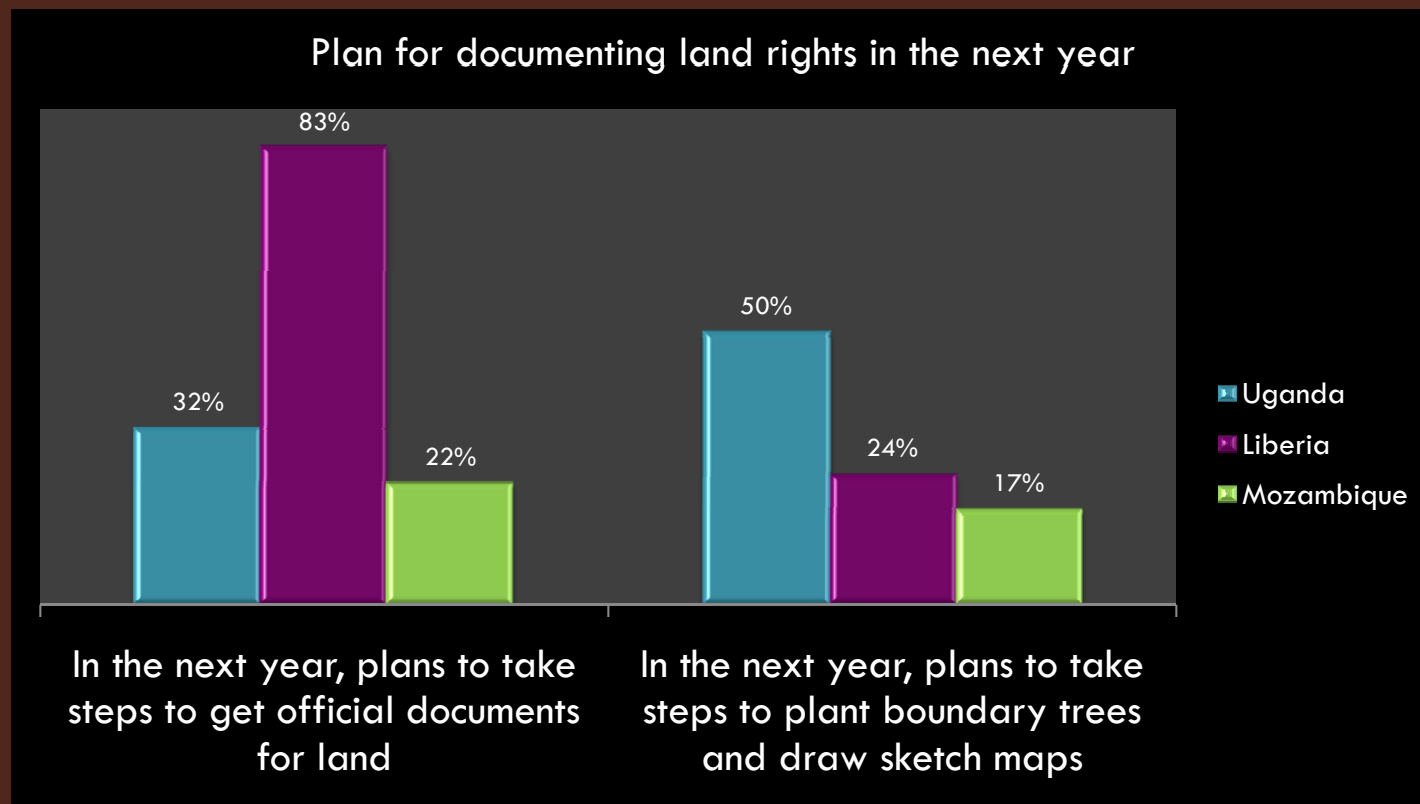
# Methodology

- Local NGO partner in each study country
- Selection of communities that actively expressed interest in being titled, not currently engaged in negotiations with investors or extensive land conflicts
- Baseline study of communities and local land administrators (state and customary)
- Varying levels of legal support provided throughout community titling processes:
  - Control
  - Monthly legal education-only
  - Monthly legal education and community “paralegal” election, training and supervision
  - Monthly legal education and provision of full legal services
- Observation and Claim Tracking:
  - All community meetings observed and documented
  - All interactions with land administrators throughout the process recorded
  - All obstacles confronted tracked, and their resolution recorded
  - Inter- and intra-community conflicts tracked, and their resolution recorded
- Trainings for local land officials
- Tracking of each communities’ successful or unsuccessful completion of the legal process
- Post-service study of communities and local land administrators (state and customary)

## Baseline Findings:

### Desire for land titling and documentation of individual/family land

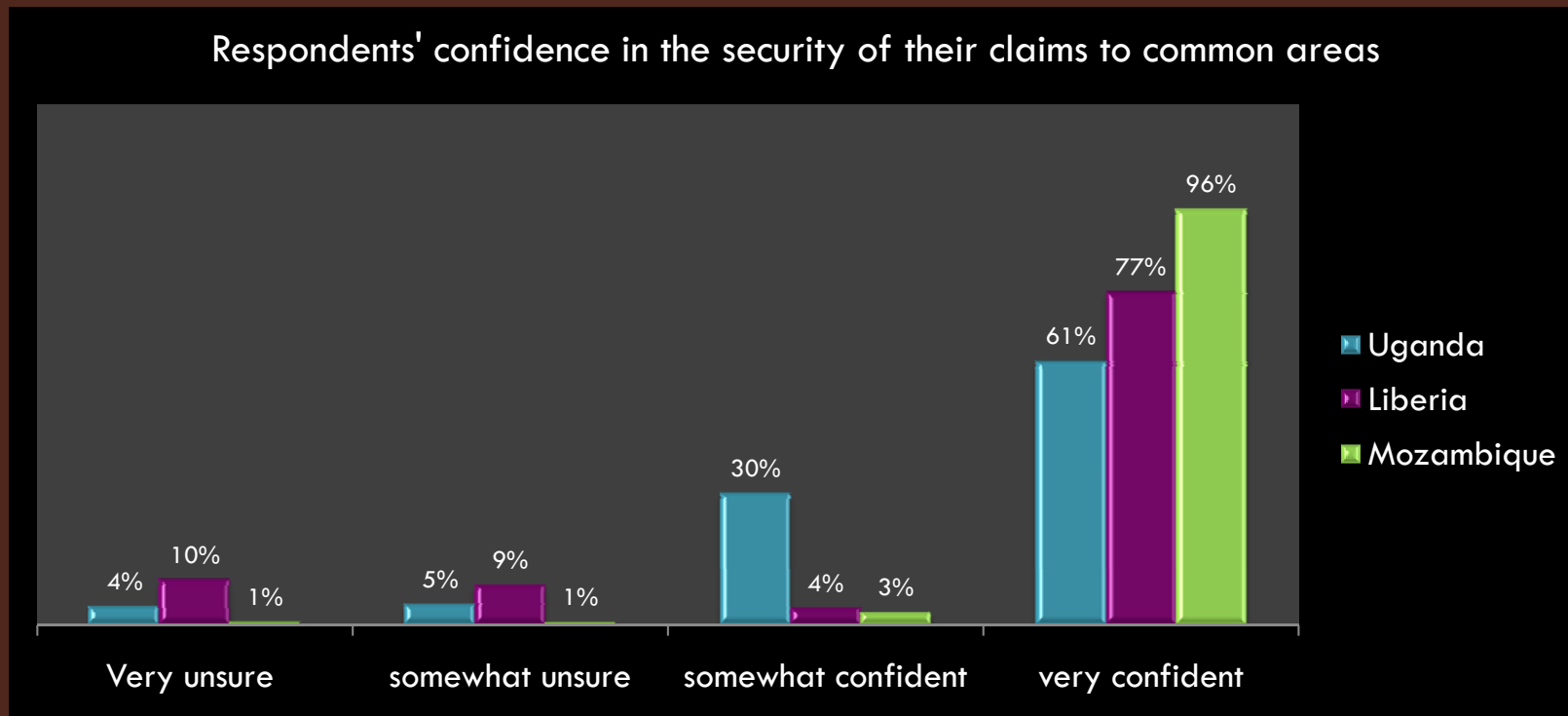
- What was respondents' level of desire for documentation of their individual land claims at the inception of the project? Do they foresee seeking formal or informal documentation?



## Baseline Findings:

### Community reliance on and perceived tenure security of common areas

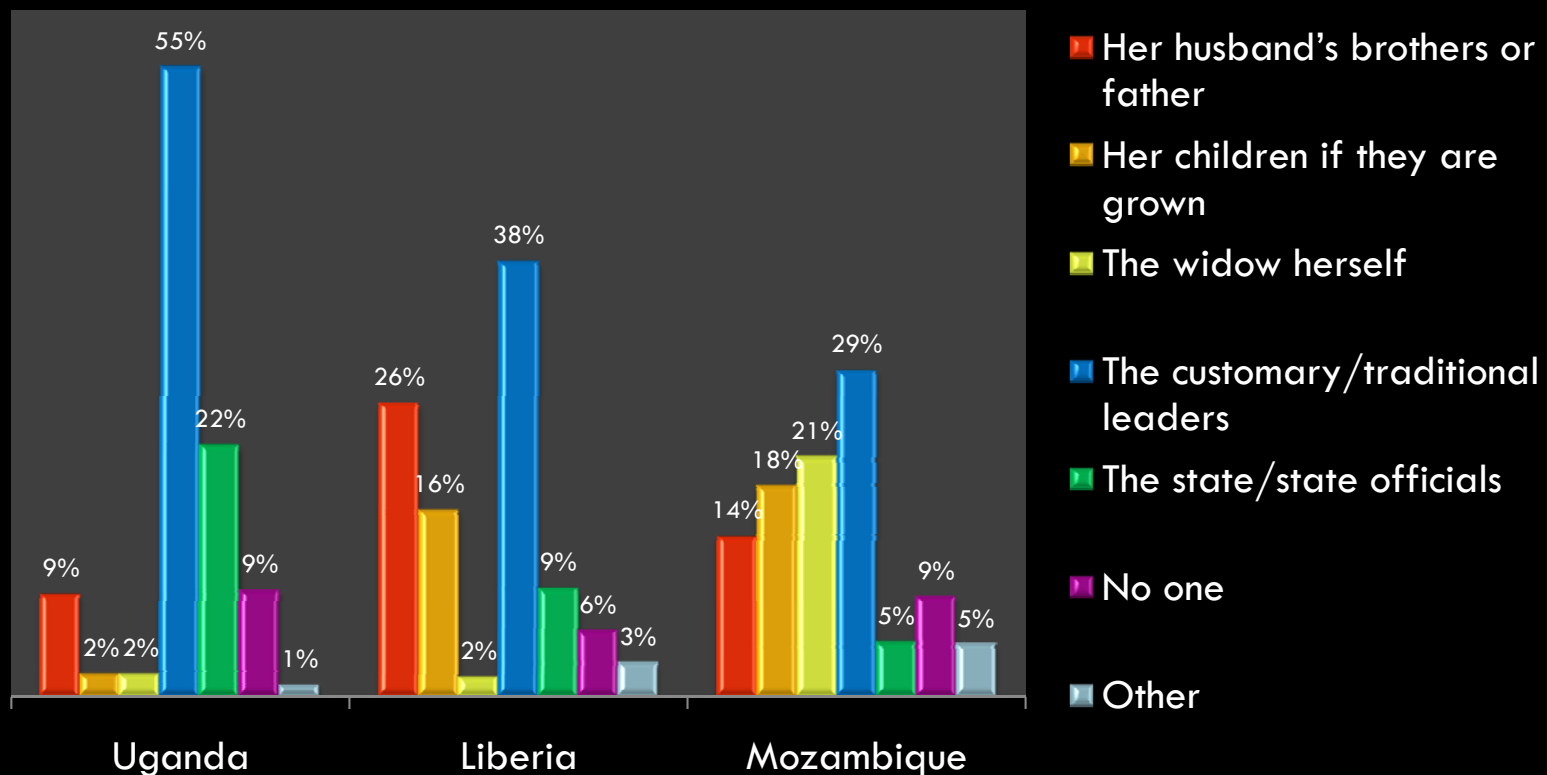
- How reliant are respondents upon the common areas for their well-being, livelihood and survival?
- How confident were respondents in the security of their common areas at the inception of the project?



# Baseline Findings: Rights of vulnerable groups

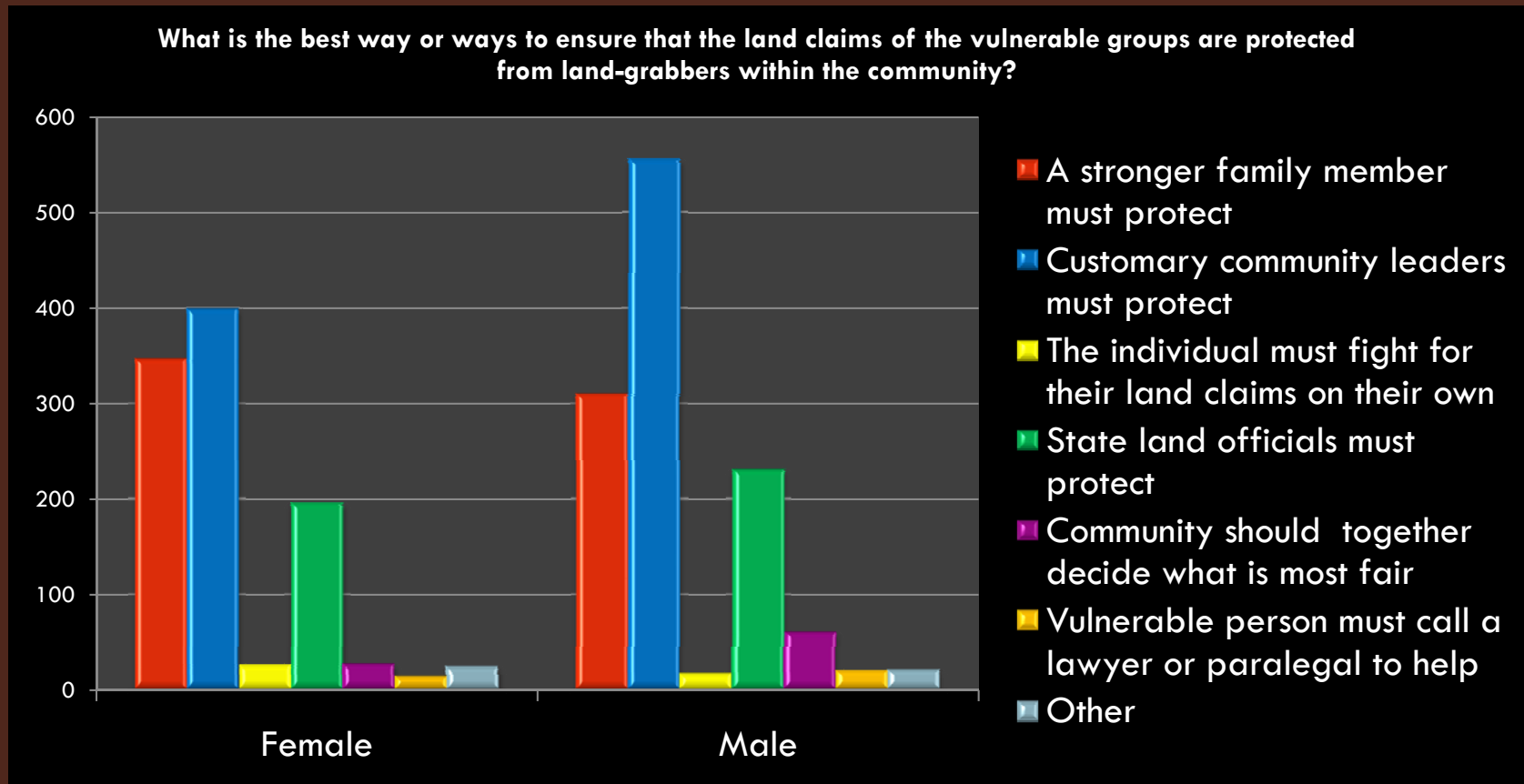
- What are people's *knowledge* of the strength of women's and widows' land claims?
- How are the land claims of vulnerable groups currently protected within communities?

From what you have observed in the community, who protects a widow's land claims if someone is encroaching on her family's land?



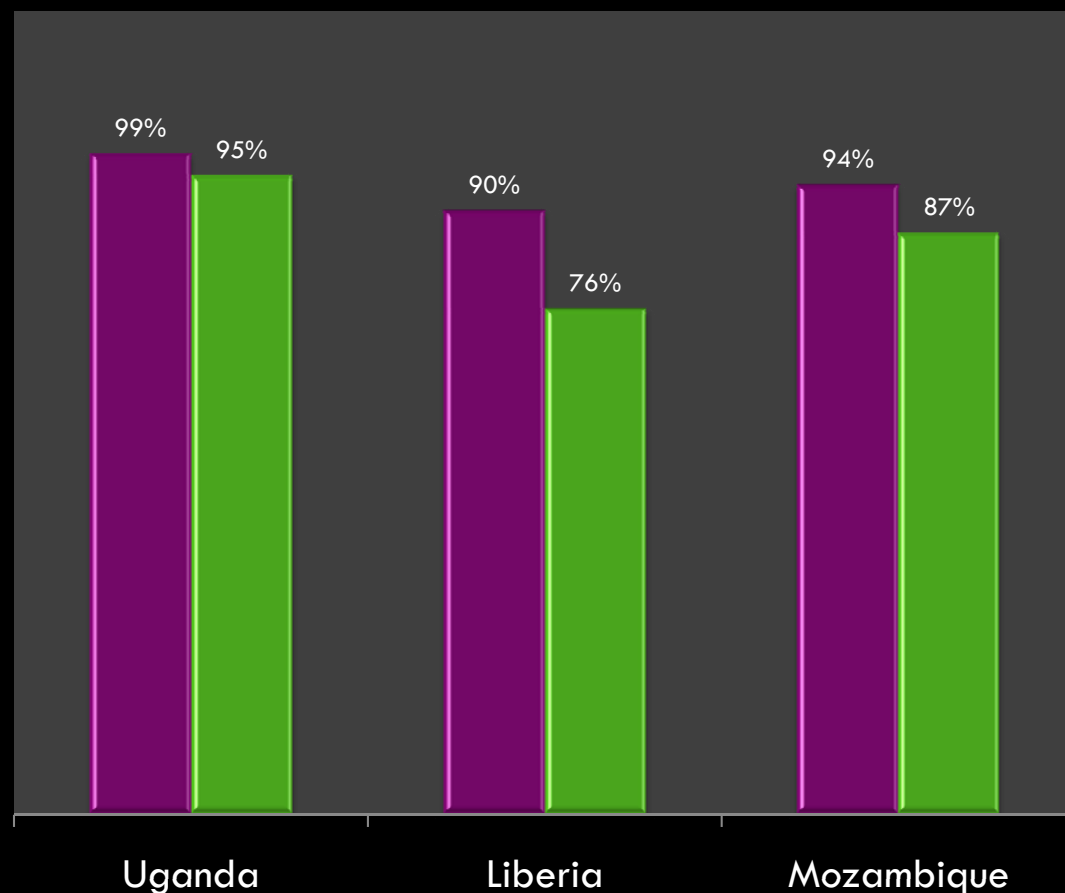
# Baseline Findings: Rights of vulnerable groups

- What is the best way to ensure that the land claims of the vulnerable groups are protected from land-grabbers within the community?



## Baseline Findings:

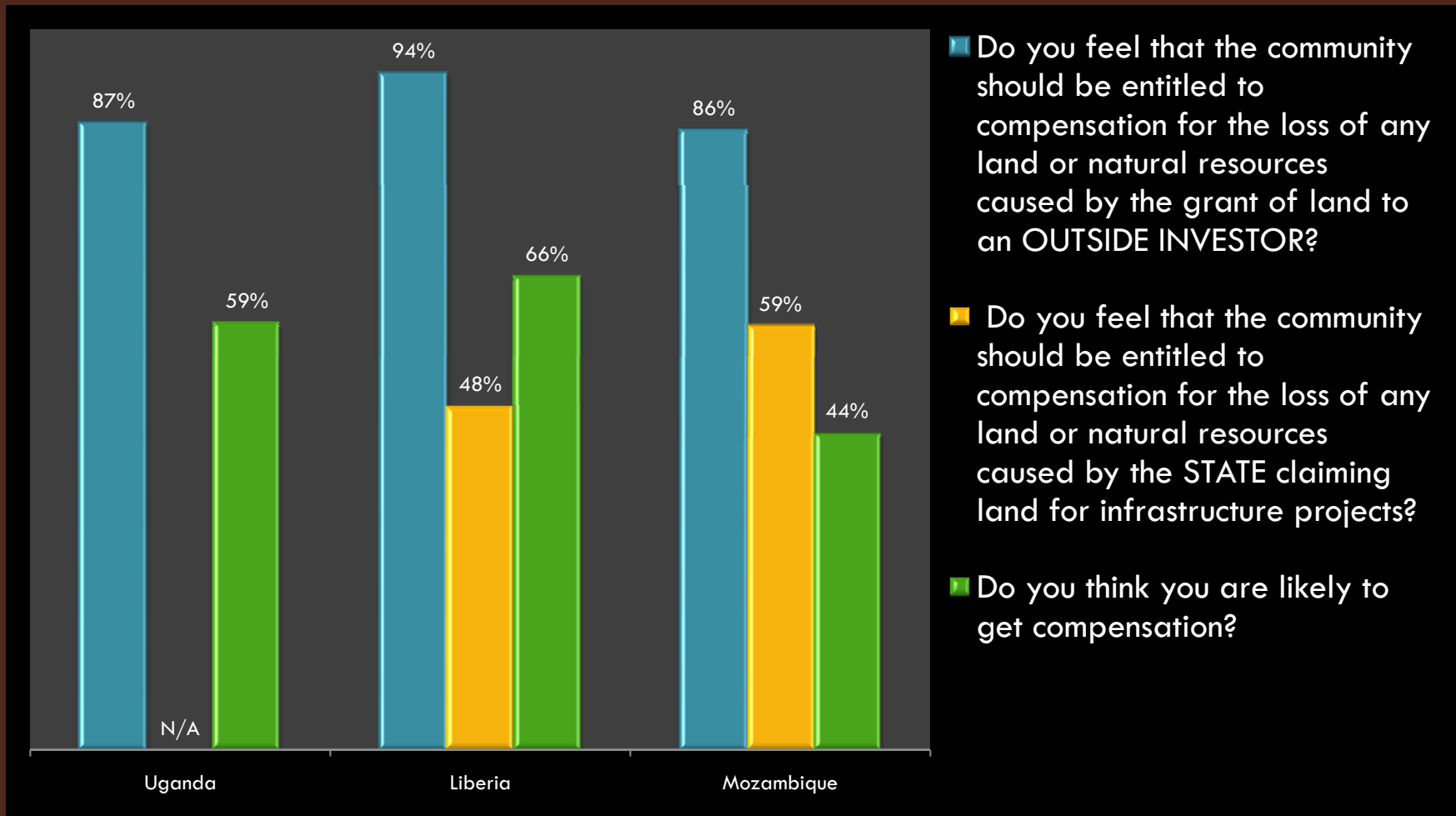
Community perceptions of authority and ability to negotiate with outsiders



- Do you think the community should be consulted about whether or not to grant permission to allow this use/grant of community land?
- Do you think that the community should be approached directly to negotiate a contract for use of the land?

# Baseline Findings:

## Community Perceptions of Entitlement to Compensation

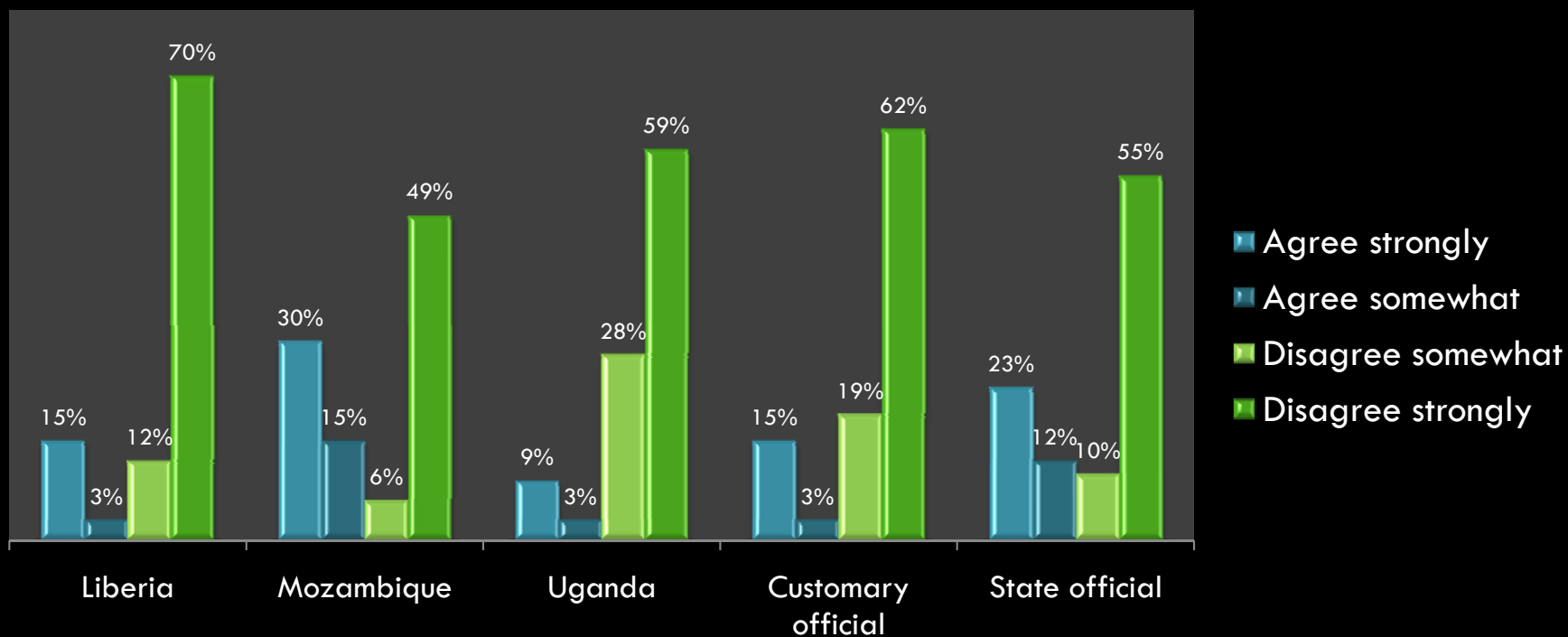


- Do you feel that the community should be entitled to compensation for the loss of any land or natural resources caused by the grant of land to an OUTSIDE INVESTOR?
- Do you feel that the community should be entitled to compensation for the loss of any land or natural resources caused by the STATE claiming land for infrastructure projects?
- Do you think you are likely to get compensation?

# Baseline Findings: Land Administrators (State and Customary)

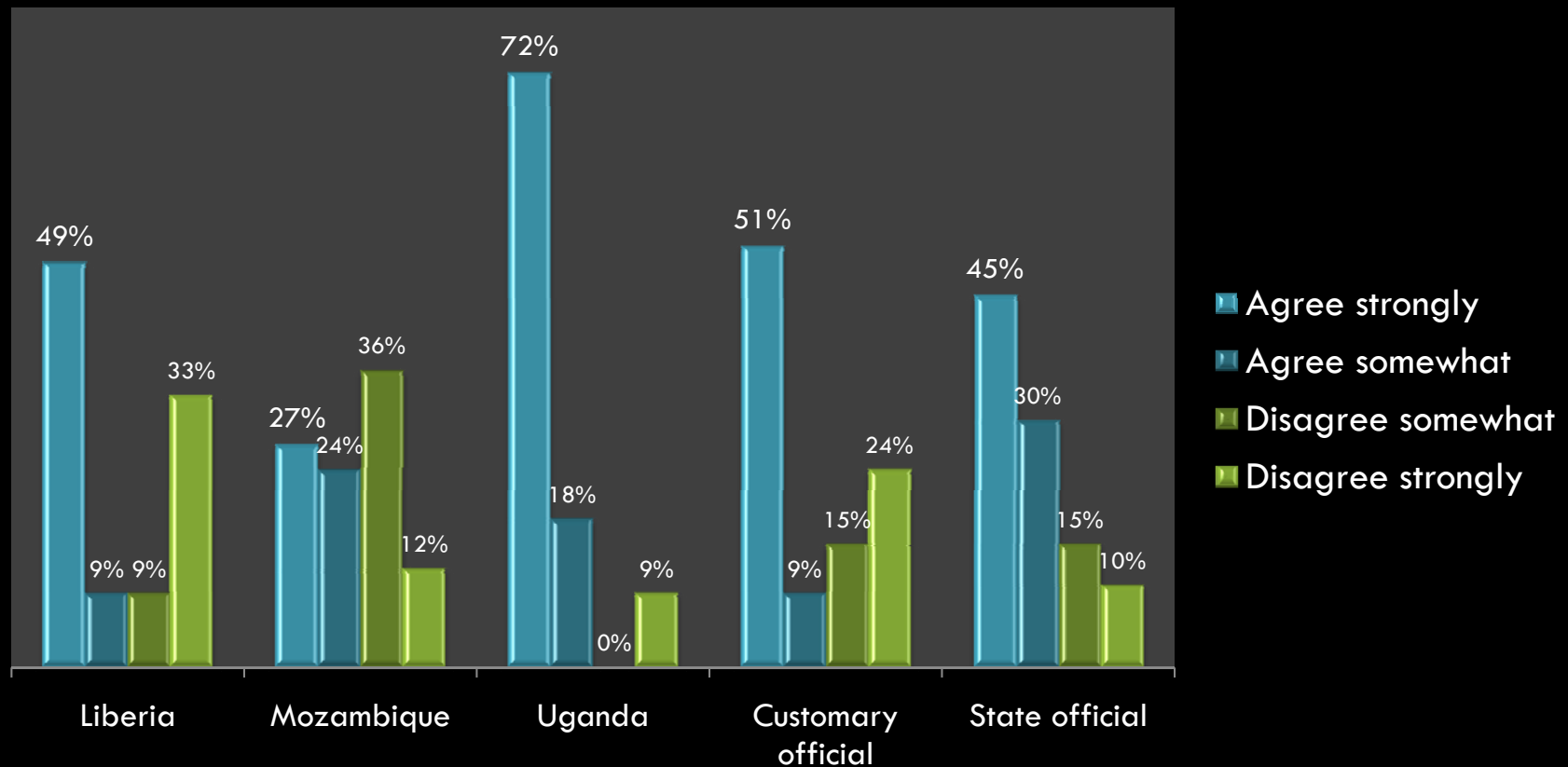
- What are leaders' attitudes towards outside investment in their areas?
- What are their attitudes about community rights to be consulted and make an authentic choice?
- How do customary leaders' views differ from state officials' views on these issues?

Outside investment should be encouraged even if communities do not agree



# Baseline Findings: Land Administrators (State and Customary)

If a community does not want to share its land with an investor, those wishes should be respected even if the investment benefits are lost.



# General Trends Observed so Far

- Extreme distrust of all land-related questions or projects due to fears of land being taken; communities must be very carefully approached through trusted leaders – and who those leaders may be very different in each community
- The level of service provided has so far not proved to be as salient a factor in community progress as:
  - Degree of external threat perceived and/or
  - Cohesion of community and leaders' control and management abilities

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# Actions Necessary to Secure and Protect Community Land Claims

- Improved access to justice and increased legal education for communities
- Legislative and procedural reform to simplify and streamline procedures;
- Improved training and changes in incentives for local and regional land administrators;
- Increased technical capacity; changes in incentives for surveyors and other technicians;
- The establishment of mechanisms to ensure concurrent downward and upward accountability for all land administrators, both customary and state; and
- Support services for community efforts to pursue formal documentation of their customary land rights – supplied both by state agencies and civil society.