

WHAT IS THE CHURCH'S SOCIAL TEACHING SAYING ABOUT PROPERTY GRABBING ?



Lk 7:11-13

JESUIT CENTRE FOR THEOLOGICAL REFLECTION
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"In the midst of so many problems such as increasing poverty, death, disease and orphans and in the face of so many injustices such as property grabbing, oppression of women and girls, and violence and abuse in families, the Church in Zambia must be a sign of hope by courageously speaking out and actively promoting justice and development at every level of community life."

(Zambian Bishops, The Church as a Caring Family, 1997, #18)

This pamphlet has been prepared to assist Christian groups (e.g., Small Christian Communities, Justice and Peace groups, Bible Study groups, Fellow-ship groups, etc.) to learn more about the Church Social Teaching (CST) - grounded in scripture - especially in the relationship to the issue of property grabbing.

It is designed as a study guide for four sessions - but we should not rush through the process of study! The process follows the "Pastoral Circle," encouraging us to begin with contact study with our experiences, then move on to an *analysis* of why the situation exists. Subsequently we do some theological *reflection* (guided by Scripture and the CST), and finally move to an appropriate *response* of action.

For more information about the CST, please contact our office. You are also advised to visit and/or contact the Catholic Centre for Justice, Development and Peace (CCJDP); P.O. Box 31965; Lusaka, Zambia; Tel. 260-1-260980;

E-mail: zecccjp@zec.org.zm; Website: ccjp.org.zm.

We encourage you to send in your comments and suggestions for improving our instructions about the CST. We are very interested to hear how you have used this pamphlet to move toward action for social justice and greater concern for the orphans, widows and widowers in Zambia today.

Simson Mwale, Coordinator, JCTR Church's Social Teaching Project
Lusaka, Zambia

October 2006

SESSION ONE: EXPERIENCE

Scriptural Reflection

Read: Luke 7:11-13

“It happened that soon afterwards Jesus went to a town called Nain, accompanied by his disciples and a great number of people. Now when he was near the gate of the town there was a dead man being carried out, the only son of his mother, and she was a widow. And a considerable number of the townspeople were with her. When Jesus saw her he felt sorry for her and said to her, ‘Don’t cry’”.

Points for Reflection

- The Zambian Catholic Bishops' pastoral letter *The Church as a Caring Family* (1997) reflecting on this text, invites Christians, among others, to “care for the sick, aged and orphans, the promotion of women and girls, youth training, promotion of justice, peace and development.”
- The Bishops further urge Christians to reflect more deeply on Jesus' experience with his disciples in Nain, and call on Christians to respond with a spirit of compassion to the bereaved family. That is, to treat widows or widowers and orphans with a sense of care, love and compassion.
- Msema, a former housemaid, now a marketeer, sales tomatoes and vegetables on a small makeshift stand by the roadside. After the death of her husband, her in-laws went away with property leaving her with barely nothing. She is a mother of six. Her youngest 12-year-old son is the only one attending school at a nearby community school. The other children are out of school because she is unable to raise enough money to meet school demands. So far, none of her in-laws assist her to raise the children and very little assistance comes from her own relatives.
- Kabango, a cashier working for a commercial bank, lost his spouse five years ago. He has four children. Two days after the burial of his wife, in-laws went away with a lot of property including a house and a car. Kabango now rents a two-roomed house. He is unwilling to pursue the property grabbers through the courts of law - at least to take back part of the children's share. He isn't sure whether he will win his case.
- Ilunga, a mother of three, two boys and one girl, teaches at a private school. When her husband died, her property was grabbed leaving her with only a few belongings, mainly kitchen goods. She borrowed money from the bank and started her own business firm, which is operating very well. She has managed to

send her first-born daughter to the college. Her daughter is a dedicated hard working public relations manager. The second son just completed his university studies last year. Her last-born son is in grade twelve.

These are just a few experiences of our brothers and sisters in our midst. Some of them who have had their property grabbed are coping well, others struggling or barely surviving the fate of loss of property and their children are out of school - facing a bleak future. How do we treat the bereaved family, especially after burial?

Breaking News

“A precedent setting ruling... by a local court in Zambia has given women married under the customary law the right to a share of marital property in the event of a divorce or death of a husband. Previously, a woman married under customary law would not be entitled to a share of property irrespective of whether she had contributed to its acquisition.” (Court Decision, December 2005)

“It is unfortunate that men are still shy to come out in the open when they suffer property grabbing... Many suffer in silence, which is a real pity... Many do not want to be bothered claiming back grabbed property because some know they can easily replace it and move on.” (Zambia Daily Mail, 12 January 2005)

Suggested Questions for Reflection

- What is your understanding of property grabbing?
- Do you know of anyone who has had their property grabbed in your family or neighbourhood?
- What do you think of Kabango, Ilunga and Msema's situations?
- Is there any remedy that people like Kabango, Ilunga and Msema can use in case of such incidences of property grabbing in your area?

Concluding Prayer

One member of the group should give a concluding prayer to close the discussion.

SESSION TWO: SOCIAL ANALYSIS

A. Some Causes of Property Grabbing

There are a number of reasons as to why the problem of property grabbing exists in our Zambian society and why often times it isn't challenged. Of the many reasons, two come out distinctively as root causes, that is, cultural (or abuse of our cultural and traditional ways of doing things) and economic (or taking advantage of the prevailing economic difficulties).

There are some long-held cultural values and prevailing traditional attitudes that encourage property grabbing. Many people hide behind certain traditional customs when grabbing property of a deceased relative. Some of these customs consider property grabbing as a "normal traditional practice" expected to be followed without any question or challenge.

But is property grabbing really part of tradition or an abuse, or a betrayal of our cultural values? Recall that originally the person inheriting the deceased's property also was expected to take good care of the family left behind. It was never an acceptable custom that the family of the deceased should be hurt and humiliated.

Another cause of the frequency of property grabbing could be the poverty and difficult situations that many households today are facing, caused by a struggling economy. In such conditions, surviving relatives would like to gain from the wealth that was accumulated and left behind by the deceased. But it is not only the poorer members of our community who use this excuse. It is also those who are "well-to-do", but who let greed drive them on at the expense of others.

B. Other Structural Causes of Property Grabbing

- i) Ignorance of law: For example, "The Intestate Succession Act". Most people affected are not sure whether the judgement will be on their side or not or will be honoured by the property grabbers.
- ii) Fear of witchcraft and intimidation: the widow or widower are intimidated or threatened by the relatives of the deceased that they will be bewitched if they seek redress from the courts of law.
- iii) Disunity among families: Lack of unity and communication among families. Once one dies the whole extended family ties are cut off and the widow or widower is left to fetch for himself or herself with very little or no external assistance.
- iv) Passive role of religion or the Church: The Church has not always been seen to take an active role and adequate interest in combating property grabbing.

Suggested Questions for Reflection

- In your own opinion, what causes property grabbing?
- From your experience, do you know of anyone whose property was grabbed because of one or more of the reasons cited here?
- Do you think instances of property grabbing are increasing or decreasing in Zambia today?
- Do you think property grabbing is an acceptable traditional custom? Why or why not?

Concluding Prayer

One member of the group should give a concluding prayer to close the discussion.

Instruction: For in-depth insights and knowledge of current Zambian laws, we suggest that before proceeding to the next session, you share experiences about the laws summarised in the Annex.

SESSION THREE: THEOLOGICAL REFLECTION

A. Scriptural Teaching About Property Grabbing

Property grabbing is a serious social problem, which if not addressed, often has terrible effects on the deceased's spouse, children and the community. This will eventually affect the spiritual welfare of the community at large. It is a grave injustice because it disturbs the human person both socially and spiritually and erodes the right to a peaceful and happy existence.

Regardless of the reasons or causes that may be given for the practice of property grabbing, it is not at all an acceptable practice for us Christians. God, through the words of the Bible, very clearly denounces any form of injustice or unfair treatment of strangers, widows and orphans, and condemns anyone who perpetuates or encourages such injustices.

In Isaiah 10:1-3, for example, we see God speaking through the prophet to warn those who oppress the people in unjust ways: "You are doomed! You make unjust laws that oppress the people. That is how you prevent the poor from having their rights and from getting justice. That is how you take the property that belongs to widows and orphans. What will you do when God punishes you?" Isaiah does encourage stopping these evil practices and turning towards just ways: "Stop this evil that I see you doing... and learn to do right. See that justice is done - help those who are oppressed, give orphans their rights, and defend the widow."

Another example denouncing property grabbing is in the Gospel of Mark, where we read that Jesus warns against the hypocrisy of the people who like to think of themselves as religious and yet abuse the widows: "Watch out for the teachers of the law, who like to walk around in long robes and be greeted with respect in the market places.... They take advantage of widows and rob them of their homes, and then make a show of saying long prayers. Their punishment will be worse!" (Mark 12:38-40) Moreover, St. James in his letter urges that a "Religion that God our Father accepts as pure and faultless is this: to look after orphans and widows in their distress and to keep oneself from being polluted by the world." (James 1:27)

It is very clear, then, that God demands that respect and justice should be shown to the orphan and to the widow or the widower. God warns of great punishment for anyone who violates the rights of the stranger, the orphan and the widow or widower. This very ancient teaching from the Bible should certainly give us something to think about when we Christians evaluate property grabbing today in Zambia.

Suggested Questions for Reflection

Do you think that most Christians know about the strong passages in the Old Testament and New Testament that call for justice for widows, widowers and orphans? Why or why not?

Do you know of any other passages in the Bible that speak about the situation of widows, widowers and orphans?

B. Church Statements About Property Grabbing

The Church's Social Teaching, which is strongly grounded in the Bible, embraces the social aspect of the human person. Thus, all teaching on property grabbing stems from the strong belief that the human person is to be respected in every aspect of existence and action because all people are created in the "image and likeness of God" (Genesis 1:27). Human dignity is therefore a primary value. Based on this core truth, the social teaching of the Church encourages us to embrace Christian values of love, peace, solidarity and justice.

Christians are called to live in solidarity. We belong to one human family. As such we have mutual obligations to promote the rights and development of all people across communities, nations, and the world, irrespective of cultural diversities. In particular, "the present situation must be faced with courage and the injustices linked with it must be fought against and overcome" (Development of Peoples, 1967, #32). In like manner, Christians have a responsibility to liberate those who are oppressed, robbed of their justice and property. The greatest commandment: "love of God and of neighbour" (Matthew 22:34-40) is an absolute demand for justice. This is because charity must manifest itself in actions and structures that respect human dignity, protect human rights, and facilitate human development. Action on behalf justice and participation in

the transformation of the world is the Church's mission for the redemption of the human race and its liberation from every oppressive situation. (Justice in the World, 1971, #6) Moreover, the Zambian Bishops in their pastoral letter *The Church as a Caring Family* (1997) challenge us to show care, love and justice to orphans, widows and widowers. Our role as Christians is to preach the Good News of justice and peace and to fight and discourage all social injustices, e.g., property grabbing. The Bishops further caution, "When we don't treat each other with the dignity that God wants for every person, the result is social injustice. True compassion therefore is a strong and clear call to work for justice, peace, development and the integrity of creation" (*The Church as a Caring Family*, 1997, #25). This means promoting a more just society against all practices and vices that breed serious social problems.

We are called to build God's kingdom, which is characterised by sharing love, peace, justice, etc., in a practical way. "Faith without deeds is dead!" (James 2:20) Similarly, the African Synod urges Christians to be "the salt of the earth and light of the world" and to bear witness to goodness, truth, justice and love of God in their daily life. (*The Church in Africa*, 1995, #108) Therefore, action applied to real life situations is important for all of us as Christians. It is a practical manifestation, a living sign of our faith. Remember that the family is the place where deep values of life comes to be, are protected and nourished, a place of belonging where sharing and solidarity are at the heart of daily life and where each one feels himself or herself to be truly at home.

The Church's Social Teaching reminds us that it is our Christian responsibility to intervene and correct situations such as property grabbing which make people spiritually, socially and materially poor.

Suggested Questions for Reflection

- Do you think it is important for Christians to use Scripture and Social Teaching of the Church in reflecting about property grabbing? Why or why not?
- Have you ever had a special discussion about property grabbing in your Bible study group or Small Christian Community? What effect does such activity today have?
- Do you read newspapers, watch television or read any literature related to property grabbing; or do you make any follow-ups on issues related to property grabbing as they happen in your local community or those reported in the media?
- "Some people say that only widows and not widowers deserve special attention and protection." Do you agree or disagree with this statement? Should the Church also speak out for the protection of a widower?

Concluding Prayer

One member of the group should give a concluding prayer to close the discussion.

SESSION FOUR: CHRISTIAN RESPONSE

Christian Action

In order to build a community of love, peace and justice here are some of the suggestions that could help us plan how we can respond to the problem of property grabbing in our society:

- **Culture and Tradition:** As Christians, we have the responsibility to take the message of love, peace and justice to our families, to our cultures and traditional customs. It is our duty and responsibility to let our people know that the love, justice and peace of Christ should prevail and permeate our families, cultures and traditional values and beliefs. Manifesting what Christ and the Christian way of life teach us enriches our cultural and traditional values and practices.
- **Fear of Witchcraft:** The existence of witchcraft and the influence of evil, cannot be denied in our communities. Very often, most of those left behind by the deceased (children, widow or widower) fear that if they do not comply with the demands of the deceased's relatives, deformity, illness and even death could eventually befall them. This raises questions about how strong our Christian faith is and how much we follow the Christian teachings on love, "love of God and love of neighbour" (Matthew 22:34-40) and "always treat others as you would like them treat you" (Matthew 7:12). And do we really believe and trust what the Scriptures clearly tell us that the power of Jesus Christ is stronger than any other powers or forces in this world or the next (Romans 8:38-39)? Therefore, when we make an effort to faithfully follow Jesus' teachings, we are always protected.
- **The Church/Religion:** The Church should foster harmony in family relationships, e.g., through the involvement of parents at marriage instructions. In our cultural traditions, a person marries an entire family and not an individual. Thus where there is animosity, it can be curtailed with the help of all family members. And in the event of death, instances of property grabbing can be reduced if people know each other and respect one another. Moreover, Church instructions should not only be limited to the few days before marriage, but it ought to be a continuous process. The Church has a privileged position and potential to offer constant counsel as needs arise in various cultures.

- **Solidarity:** The solidarity we normally demonstrate at funerals should be extended beyond the day of burial. For example, the Small Christian Community (SCC) or any committee instituted to serve the interest of the bereaved families should take up the challenge before and after burial. It is known that it is after the burial when most of the discussions involving distribution of property take place. Through the SCC or committee we should protect those left behind by the deceased and bring out into the open any injustices that some of our fellow Christians or others may impart on the deceased's family.
- **The Law:** We should help one another to be aware of the existing laws that protect widows, widowers and children of the deceased (e.g., the Interstate Succession Act) and of the need for families to plan ahead in view of their impending deaths. Spouses should be encouraged to write Wills. In addition, the spouse of the deceased should know how to seek redress through the courts of law once there has been an incidence of property grabbing. Legal justice should be seen to take its course in cases where arrogance and violence predominate because of the unjust and illegal actions of property grabbers.
- **Education:** We need to strengthen and empower people with the knowledge about their rights in such matters, particularly children who are able to understand these things and all other family members, i.e., wives, husbands and parents. The Church, Parish, SCC, Justice and Peace Group, and other faith-based organisation can prepare and sponsor civic education programmes on radio, television and other communication media. Community radio stations would be preferable for it would also reach even the remotest rural areas.

Workshops can also help to promote Christians' involvement in the implementation of the responses mentioned above.

Suggested Questions for Reflection

- What can we do as a Church, SCC, group, or Christians in general, to bring to an end the problem of property grabbing?
- In our communities in particular and in our society in general, what can we do to better promote true justice and lasting peace around us?
- As an individual or as a community, what could we do to help people like Kabango, Ilunga and Msema out of their situations?
- Do you think the Zambian government is doing enough to end property grabbing in Zambia? If not, what should be done?

Concluding Prayer

One member of the group should give a concluding prayer to close the discussion.

ANNEX: SOCIAL ANALYSIS

The Zambian Laws that relate to the Deceased Property

In order to address the prevalence of property grabbing, Parliament has enacted particular laws in an attempt to regulate the distribution of the assets and estate of a deceased person. The principal legislation relating to property grabbing is embodied in three Acts of Parliament, namely:

- The Intestate Succession Act, Chapter (Cap.) 59
- The Wills and Administration of Testate Estate Act, Cap. 60
- The Administrator-General Act, Cap. 58

Because of the importance of these Acts, we offer a non-technical summary of some important issues. It will be helpful to begin by defining certain terms, which constantly arise when dealing with this subject.

Will: a document written by a person in which he or she indicates how he or she wants his or her property and money is to be distributed or shared after his or her death.

Probate: the process of acquiring authority from the courts to execute a Will or administer a deceased's estate.

Estate: everything that belonged personally to a deceased person including all assets and liabilities.

Intestate: a person who dies without having left a Will.

Testate: a person who dies having left a Will.

Testator: a person who makes a Will.

Executor: a person who administers the content of a Will.

Administrator: a person who administers a deceased person's estate having been appointed by the bereaved family and approved by the courts of law.

Distribution/Devolution: the manner in which the estate is divided amongst the beneficiaries.

1. The Intestate Succession Act. Cap. 59

This is a fairly exhaustive piece of legislation and governs all matters concerning the distribution (or devolution) of an intestate estate. (An intestate estate is an estate or property left behind by a deceased person who did not leave any will.) A glance at the Act reveals an attempt by Parliament to take account of the traditional system of extended family. For example, the Act makes provision for the deceased parents as well as dependants.

The Act does ensure, however, that the principal beneficiaries in instances of intestacy are the deceased spouse and children. According to the Act, an intestate estate is to be distributed as follows:

- 20% to the surviving spouse(s)
- 50% to the children (including children born outside of wedlock)
- 20% to the parents of the deceased
- 10% to the dependants

Where one or more of the beneficiaries is non-existent, the Act dictates which category of the existing beneficiaries will get hold of the estate. In most instances, however, the surviving spouse and children assume the estate. It is important to note that the Act does not place any age restrictions on the children in respect of inheritance, although where the court has been called upon to settle disputes arising under the Act, it has always given priority to the younger children whilst at the same time taking account of all the circumstances surrounding a particular case.

The Act also states that where an estate includes a house, the surviving spouse and children shall be tenants in common, with the surviving spouse's interests ceasing upon remarriage.

The family house, homestead property and chattels (which include cars if not used for business purposes) go to the surviving spouse and the children. The remaining property is available for distribution as part of the estate.

Where there is more than one house, only one house is for the surviving spouse and children. The other(s) houses(s) are part of the estate to be distributed. Where there are two or more widows, the 20% is distributed in proportion to their respective number of years in the marriage. The widow's contribution to the deceased's property may also be taken into account if justice so demands. Anyone of the beneficiaries who feels that his or her share is unreasonably small, with regard to his or her dependence on the deceased, has the right to apply to the court of law for adjustments to be made in due proportions. Moreover, there are two categories of property grabbers, that is, (i) those without authority and (ii) those who abuse their authority, for example, Administrators. There are very serious penalties that the law applies to these people who take part in property grabbing.

- *Those without authority:* The Act provides for a fine or imprisonment not exceeding two years, or both, in cases of property grabbing.
- *Those who abuse authority:* The Act provides for a fine or imprisonment not exceeding one year or both in cases of abuse of authority. The court may also order for restitution or order the culprit to compensate the beneficiaries.

2. The Wills and Administration of Testate Estate Act. Cap. 60

This Act governs testate estates. A Last Will and Testament embodies the wishes of the deceased and is by and large the best way for a testator to ensure the financial security of his or her family. A Will which complies with the requirements of the law is always acceptable to the courts and letters of probate giving the executor authority to carry out the Will.

It can be helpful but not necessary to have the guidance of a lawyer in drawing up the Will. The two main requirements of a Will are:

- It must be written.
- It must be signed by the testator or someone else at his or her direction, and in the presence of two witnesses who also sign at the bottom of the Will.

The Act is also an exhaustive piece of legislation and it covers all matters relating to the execution of Wills as well as instances when a Will can be revoked. (See Sample) It is important to note that this Act has a special section that gives courts the power to vary the contents of a Will that do not leave reasonable provision for maintenance of a dependant. The court will consider all surrounding circumstances including the reasons for having that particular dependant.

Penalties for offences of property grabbing against the wishes of a Will are the same as in Cap 59.

3. The Administrator General Act. Cap. 58

The Office of the Administrator General is an institution created by the government to oversee the administration of the deceased's estates in some circumstances, e.g.,

- Where for one reason or another, an executor appointed under a Will is unable to implement his or her duties.
- Where a testator names the Administrator General as the executor.
- Where in the case of intestacy an unusually long period of time has elapsed without anybody applying for probate.

The Administrator General, with offices throughout the country, has power to seize the assets of the deceased's estate to protect the property even before a grant of probate has been obtained and in the absence of a court order. Under this Act, property grabbers face a fine or imprisonment for a period not exceeding three months, or both.

Suggested Questions for Reflection

- Have you heard about these laws? If yes, where, when and how? If not, why not?
- Do you think it is important to know them? Why? Do they really have any effect?
- Why does the problem of property grabbing persist in our society in spite of the existence of these laws?
- Have you experienced any problem in applying these laws? If so, what was the problem?
- Do you think these laws are sufficient in addressing the problem of property grabbing, which are not captured in these laws?
- Do you have any suggestion for improvement of these laws?

Concluding Prayer

One member of the group should give a concluding prayer to close the discussion.

SAMPLE OF A WRITTEN WILL

This is the last Will and Testament of

Mr/Mrs/Miss.....Full Name of

.....

Address

- 1. I revoke all former Wills, Codicils and Testamentary Dispositions previously made by me.
- 2. I appoint.....of..... to be the Execut (or/rix) of this my last Will and Testament.

But if my said Execut (or/rix) should refuse to act, predecease me, or die within a period of 30 days following my death, then I appoint.....of..... be the Execut (or/rix) of this my last Will and Testament.

- 3. bequeath my house and land at..... to my (husband/wife) together with all the furniture therein.

- 4. I give my car No.....and my plot No.....at.....to my son/daughter. I give my....., to....., I give my....., to....., I give my....., to.....

- 5. I direct that all my just debts, funeral and testament expenses, all incidental thereto be paid by my Execut (or/rix) as soon as possible after my death.

6. I wish my remains to be at.....in.....In the Republic ofaccording to the rites and ritual followed by the within 14 days of my death.

- 14 If for any reason my wishes contained herein cannot be carried out within days of my death, then the place, time and mode of disposal of my remains shall be decided

by the Execut (or/rix) indicated in the Will.

Date thisday of20.....

In witness whereof I..... have set my hand the day and year above written.

(Signature).....

This page and the preceding pages were signed by the Testat (or/rix) as his/her last Will and Testament in the presence of us both.

1. Name

Address

Occupation

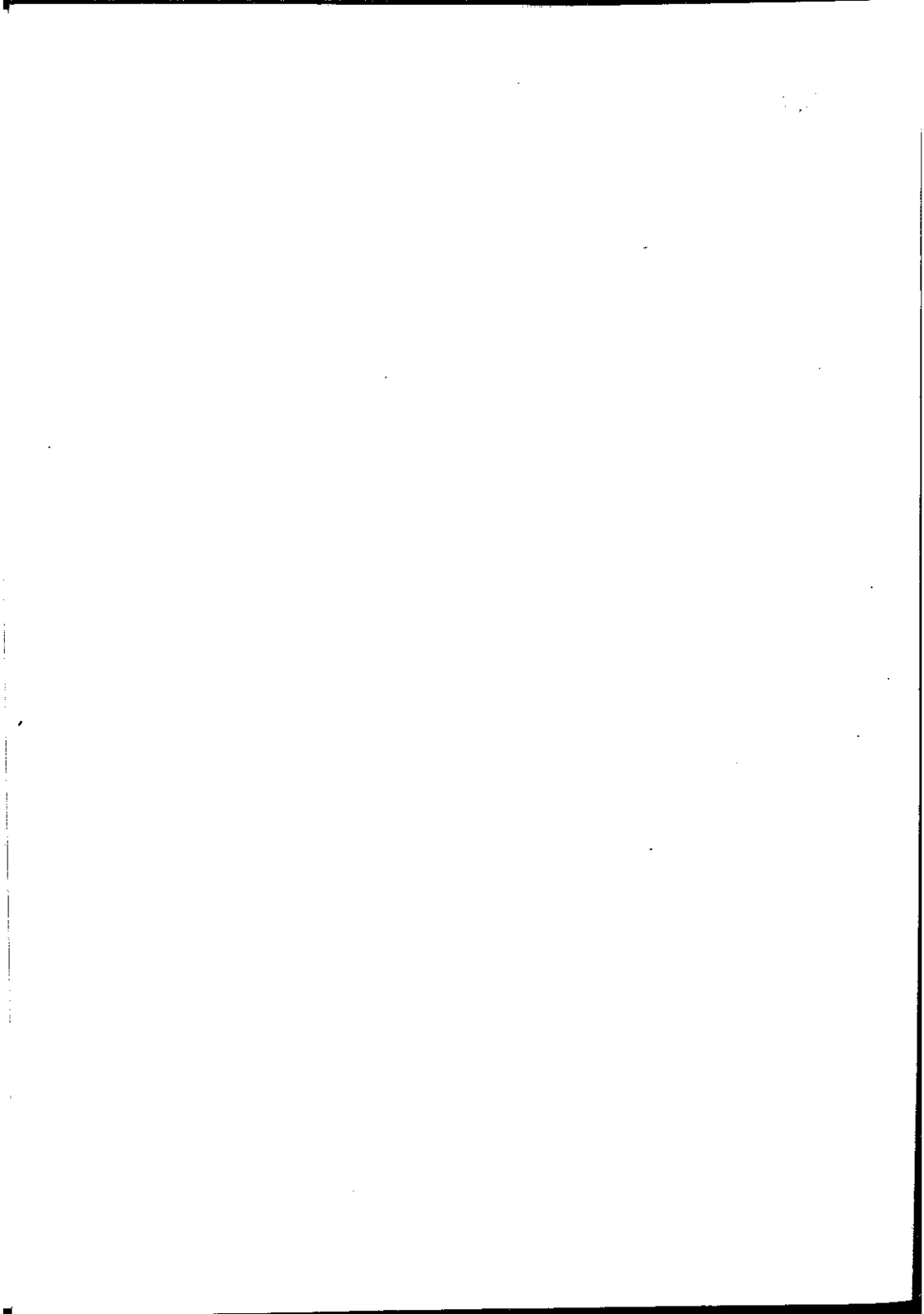
2. Name

Address

Occupation

* Executor (male) or executrix (female) refers to a person named by a maker of a will, or nominated by the testator, to carry out the directions of the will.

This pamphlet is part of our JCTR Church Social Teaching (CST) Project, which is designed to inform Christians in Zambia and Malawi about the CST on various social, economical, cultural and political issues. It is intended to assist Christians to confront injustices from their everyday experiences in order to live more fully the Gospel of Jesus Christ. Previous CST publications following the "pastoral circle" methodology have examined topics of *poverty* and *traditional healing*. All these and many more helpful educational materials are available from the JCTR Office or through a visit to our website: www.jctr.org.zm



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2006-10

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Jesuit Centre for Theological Reflection

Mwale, S. (2006). WHAT IS THE CHURCH'S SOCIAL TEACHING SAYING ABOUT
PROPERTY GRABBING ?. Lusaka, Zambia: Jesuit Centre for Theological Reflection (JCTR).

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