SECTION II

The Right to Housing and Property Restitution

Principle 2. The Right to Housing and Property Restitution

2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.

2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

I General Remarks

Principle 2 constitutes the very essence of the Pinheiro Principles as it prescribes restitution as the principle restorative remedy. When displaced persons return to their homes they may find their properties occupied by others. This is frequently an obstacle to return, and raises questions concerning the adequate remedy, namely restitution of the property or compensation for its loss.

There is a certain trend in general human rights instruments, along with the progressive development of international law, to affirm the right to HLP restitution for refugees and displaced persons, in line with Article 8 of UDHR, which provides that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." According to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law restitution includes the return of property.13

The United Nations Security Council, in its Resolution 687(1991) decided in operative paragraph 16 “to create a Fund to pay compensation for claims” of those damaged by Iraq’s occupation of Kuwait. Victims of human rights violations have been recognized as eligible for compensation by the United Nations Compensation Commission.14

13 A/RES/60/147, annex para. 19.
The rules of the War Crimes Tribunal for former Yugoslavia also allow the Tribunal, in conjunction with a judgment of conviction, to award restitution of property or its proceeds to victims, even property in the hands of third parties not otherwise connected with the crime of which the convicted person had been found guilty.15 The Inter-American Commission on Human Rights has recommended payment of just compensation to returning IDPs for loss of their property including homes, crops, livestock and other belongings.16

Furthermore, the Parliamentary Assembly of the Council of Europe considers that restitution is the optimal response to the loss of access and rights to housing, land and property because, alone among forms of redress, it facilitates choice between three **durable solutions** to displacement: return to one’s original home in safety and dignity; local integration at the site of displacement; or resettlement either at some other site within the country of origin or outside its borders.

Similarly, paragraph 59 of the report of the UN Secretary-General on the protection of civilians in armed conflict of 2007 recommends *inter alia* to the Security Council a consistent, systematic and comprehensive treatment of HLP issues, including “restorative actions, such as the inclusion of the right to return and restitution of housing, land or property in all future peace agreements and all relevant Council resolutions, and the inclusion of housing, land and property issues as an integral part of future peacekeeping and other relevant missions, with provisions for dedicated, expert capacity to address these issues.”17

Finally, the Guiding Principles on Internal Displacement also acknowledge in Principle 29 that IDPs regularly lose access to their property when displaced and that when they return to their former habitual residence or when return becomes impossible and they are resettled, they may find their properties destroyed, confiscated, expropriated or occupied by other people. Principle 29 of the 1998 Guiding Principles stipulates a right to restitution for the property or to compensation for its loss.

The advisory opinion of the International Court of Justice of 9 July 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory reflects the spirit of the Guiding Principles. In its advisory

