Section VII

Interpretation

Principle 23. Interpretation

23.1 The Principles on housing and property restitution for refugees and displaced persons shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognized under international human rights, refugee and humanitarian law and related standards, or rights consistent with these laws and standards as recognized under national law.

I General Remarks

Principle 23 is an interpretation clause as can be found in treaties and domestic laws, as well as in contracts and agreements. The Explanatory Notes on the Pinheiro Principles denote Principle 23 as a savings clause (previously referred to as saving clause in the Commentary to the Draft Principles), also referred to as “most favourable to the individual clause.”

This clause provides general guidance with respect to the interpretation of the Pinheiro Principles and demarcates its scope through safeguards with respect to the existing legal framework and consistent applicable law. It gives expression to the fact that the Principles constitute a minimum proprium and that they should not prejudice any more favourable protection accorded under international and domestic law.

Some human rights treaties also contain interpretation clauses similar to the one in question, such as ICCPR or ICESCR, which, though different in wording, contain a provision in their common Article 5 (2) that serves the same purpose. In terms of rapport to other applicable interpretation rules, an

179 Art. 5 (2) “There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant
interpretation clause such as the one contained in Principle 23 would have to be considered as *lex specialis.*

The overall utility of an interpretation clause in the case of the Pinheiro Principles lies in the fact that ultimately the Principles seek to safeguard the effective protection and realization of housing and property restitution rights. Juridical and practical policy-determination questions, which relate to competing, concurrent and/or complementary regulation matters, are intrinsic to the nature of the legislation dynamics and are thus always topical; therefore it appeared to be necessary to incorporate Principle 23 as a validity proviso into this set of principles, which stipulates a consistency clause in a binding manner. Conscientious of the variations of the law-producing process and the subsequent comportment, the tenets in question give guidance and orientation on housing and property restitution rights so as to conform to international law. The safeguard in Principle 23 anticipates and eludes an often-overlooked attempt to relativize or otherwise minimize the scope of the housing and property restitution rights protection by an inhibiting interpretation that would lead to their erosion.

Also of note, the 2004 draft Pinheiro Principles recognized that the initial draft Commentary to the Principles, which was later replaced by the Explanatory Notes, “shall constitute the main authoritative interpretation of the Principles.” This provision was however omitted in the final version of the Pinheiro Principles. The Explanatory Notes are therefore purely indicative and are, as indicated in paragraph 1 only “meant to provide an overview of the international human rights, refugee and humanitarian law and related standards which serve to support and inform the Principles themselves.”

Other elements of interpretation may be found in the Vienna Convention on the Law of Treaties. While articles 31 to 33 of the Vienna Convention provide interpretation rules with respect to treaties only, their gist may be of relevance

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183 Article 31 General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;