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In discharging its duty to protect human rights, the State will frequently be led to impose restrictions to other, conflicting human rights. For instance, to protect the rights of the workers, it may be necessary to restrict the rights of the employer; to protect the rights of the celebrity who is harrassed by paparazzi, it may be necessary to restrict the freedom of expression of the journalists. As seen in section 3, when we discussed different versions of the requirement of "necessity" (or "proportionality") where restrictions are imposed on human rights, the recommendation that courts should "balance" rights against one another in such situations of conflict is not particularly helpful, especially because of the *incommensurability* of rights -- the absence of a metrics that would allow to weigh them against one another.

Are there alternatives to "balancing"? Other options seem to be:

- (a)** to affirm a priority of the State's obligation to respect over its obligation to protect, so that the scope of the obligation to protect would be limited by the State's obligation not to impose disproportionate interferences with other human rights;
- (b)** to recognize a broad margin of appreciation to national and non-judicial (i.e. executive and legislative) authorities in addressing situations of conflicting rights, leading to a 'hands-off' attitude of the courts in such situations, particularly if they are international courts; and
- (c)** to develop judicial techniques that can solve conflicts between rights, beyond the vague, and largely empty, reference to the need to 'balance' the rights against one another.

We will consider illustrations of (a) and (b), respectively in the two following units, before opening the debate on whether a judicial methodology could be devised that would be appropriate in addressing the issue of conflicting rights.





Avenues to address biases between human ...

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