The term derogation is used to refer, generally, to the suspension or suppression of a law under particular circumstances. In International Human Rights Law, certain major treaties contain derogation clauses, which allow a State to suspend or restrict the exercise of certain treaty rights in emergency situations. Derogations have to be distinguished from limitations which are intrinsically related to qualified rights - such as freedom of expression - as opposed to absolute rights, such as freedom from torture, which provide for no possible restrictions and can never be derogated from. The derogation mechanisms in Human Rights Law can only be invoked in case of public emergency threatening the life of the nation, such as an armed conflict.

Under the Fourth Geneva Convention, certain rights of protected persons may be restricted through the derogations foreseen in Art. 5. Thus, on own territory, if a State definitely suspects a protected person of having engaged in activities hostile to its security, it may refuse to accord that individual rights and privileges of the Convention that would be prejudicial to the security of the State. On occupied territory, such persons, as well as those detained as spies or saboteurs, may be denied their rights of communication where absolute military security so requires.

See: Human Rights Applicable in Armed Conflicts;
Chapter 8. II. 3. c) possible derogation

LEGAL SOURCE

GCIV, 5

CASES

Israel, Cheikh Obeid et al. v. Ministry of Security (Para. 6)

From Human Rights

OUTLINE

Chapter 14, I. b) Human Rights apply at all times - but derogations possible in situations threatening the life of the nation + - no derogations from the "hard core"

DOCUMENT

Minimum Humanitarian Standards (B., Paras 50-57)

CASES

Sudan, Report of the UN Commission of Enquiry on Darfur (A., Paras 149-153)

Israel, The Rafah Case (Paras 54-58)
Israel, Methods of Interrogation Used Against Palestinian Detainees

ECHR, Hassan v. UK

Source URL: https://casebook.icrc.org/glossary/derogations

Links