

Challenges of Criminal Procedure in Emergency Conditions: A Critical Reflection on the Gap Between Norms and Reality in the Experience of the COVID-19 Pandemic

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Received: 2026-04-01	Revised: 2026-08-17	Accepted: 2026-08-25	Initial Publish: 2026-08-25	Final Publish: 2026-11-01
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1. Round 1

1.1. Reviewer 1

Reviewer:

In the paragraph defining emergency conditions, the sentence “In legal discourse, terms such as ‘extraordinary,’ ‘exceptional,’ ‘crisis,’ and ‘emergency’ are sometimes used interchangeably” requires considerably greater conceptual precision. These expressions are not necessarily legally equivalent, particularly in constitutional law and international human-rights law. A “crisis,” a constitutionally declared “state of emergency,” and a situation permitting derogation under Article 4 of the ICCPR may overlap factually but produce different legal consequences. The manuscript should construct a definitional hierarchy distinguishing factual emergency, legally proclaimed emergency, constitutional emergency powers, restrictions on rights, and treaty derogation. This distinction is essential because several later conclusions concerning Iran’s compliance with Article 4 depend on whether Iran was legally derogating from Covenant obligations or merely restricting rights within their ordinary limitation clauses.

The paragraph asserting that “For a situation to qualify as an ‘emergency,’ the mere occurrence of a crisis is insufficient” appropriately identifies several criteria, but the legal sources and normative status of those criteria should be differentiated. At present, exceptional threat, imminence, temporariness, expanded governmental authority, and possible suspension of rights are presented as though they derive from a single unified doctrine. The authors should identify which requirements derive from Article 4 of the ICCPR, which are associated with the Siracusa Principles or comparative constitutional doctrine, and which represent characteristics identified in scholarly literature. This would prevent the conflation of descriptive features of emergencies with legally mandatory conditions for derogation and would strengthen the doctrinal foundation of the subsequent analysis.

The discussion of the three categories of emergencies—"natural crises," "human-made and anthropogenic crises," and "biological crises and epidemics"—would benefit from a stronger explanation of why this taxonomy is legally relevant to criminal procedure. The manuscript later argues, persuasively, that different emergencies should generate differentiated procedural responses, but the introduction does not specify the procedural variables associated with each category. The authors should indicate, for example, how natural disasters primarily affect physical accessibility and institutional continuity, how security emergencies create heightened risks of coercive state power and diminished defense safeguards, and how biological emergencies generate distinctive tensions between physical presence and public health. Establishing these analytical links at the outset would make the later proposal for "differentiated criminal procedure under emergency conditions" much more theoretically coherent.

In the literature-review paragraph, the claim that "what still appears to be absent from the domestic literature is an integrated, multilayered analysis" is central to the manuscript's originality but is currently asserted rather than demonstrated. The authors should systematically categorize the reviewed literature into normative, human-rights, technological, prison-management, and comparative strands and show precisely where each strand stops short of the proposed integrated model. The novelty claim would be considerably stronger if the manuscript explicitly compared its contribution with major Iranian studies cited in the paragraph and demonstrated that none simultaneously examines the four proposed dimensions. A brief literature matrix or structured narrative synthesis could make the research gap verifiable rather than declaratory.

In Section 1.1, the paragraph stating that "although Article 79 of the Iranian Constitution refers to 'emergency conditions,' it provides no definition of what those conditions entail" should engage much more closely with the constitutional text, its legislative history, and competing doctrinal interpretations. Article 79 is pivotal to the entire normative argument, yet the manuscript largely treats its meaning as self-evident. The authors should examine whether Article 79 establishes a general emergency regime or merely regulates temporary governmental restrictions under specified circumstances, explain the constitutional significance of parliamentary authorization and temporal limits, and address how Article 79 interacts with Article 176 concerning the Supreme National Security Council. This doctrinal analysis is necessary before concluding that the governmental response effectively "marginalized" Article 79.

The sentence "The Human Rights Committee has also emphasized that essential judicial guarantees necessary to protect non-derogable rights must remain available during emergencies" should replace or substantially qualify the broader proposition appearing elsewhere in the manuscript that fair-trial rights as a whole are non-derogable. General Comment No. 29 does not simply render every element of the right to a fair trial categorically non-derogable in exactly the same manner as Articles 6 or 7 of the ICCPR. Rather, certain fundamental requirements of fair trial and judicial protection cannot be displaced where doing so would circumvent non-derogable rights or fundamental principles of legality. The manuscript should accurately identify which procedural guarantees remain indispensable under emergency conditions and which may be modified subject to strict necessity and proportionality.

Section 2.2 contains several important empirical claims concerning prisons, including that "approximately 85,000 prisoners were granted leave" and that electronic monitoring increased "from approximately 800 before the pandemic to around 3,000." These figures are consequential to the assessment of Iran's prison policy but require transparent sourcing, temporal specification, and contextualization. The authors should identify the official source for each figure, clarify whether the 85,000 represents simultaneous release, cumulative leave permissions, or another administrative category, and provide the relevant dates. Likewise, the electronic-monitoring figures should be linked to a defined period. Empirical claims of this magnitude should not be presented without sufficient documentary support, particularly because they underpin the normative assessment of decarceration policy.

The discussion asking whether prisoners convicted of serious offenses could be excluded from temporary leave "solely on the basis of the offense" needs a more nuanced proportionality and equality analysis. The manuscript currently risks implying that offense-based distinctions are presumptively discriminatory under Article 4 of the ICCPR, whereas the prohibited discrimination grounds listed in Article 4(1) do not automatically encompass every classification based on criminal conviction. The stronger argument would examine whether exclusion criteria were rational, individualized, proportionate to public-safety objectives, and compatible with the state's continuing positive obligations concerning life, health, and humane detention. The authors should therefore distinguish prohibited discrimination from potentially arbitrary or disproportionate differentiation.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The paragraph discussing the creation of the “National Coronavirus Task Force” contains one of the manuscript’s strongest but most legally consequential claims: that its “legal basis ... was open to doubt” and that its resolutions occupied an ambiguous position within the hierarchy of legal norms. This proposition requires a much more precise analysis of the legal instrument establishing the Task Force, the authority under which its decisions became binding, their relationship to Supreme National Security Council resolutions, and whether approval or endorsement by higher constitutional authorities altered their legal status. The article should distinguish between questioning the Task Force’s institutional competence and questioning the binding force of individual resolutions. Otherwise, the conclusion that its measures were “extra-statutory” may appear broader than the doctrinal evidence supports.

The statement that “citizens were therefore deprived of any effective mechanism for judicial redress” in the paragraph concerning the exclusion of certain resolutions from review by the Administrative Justice Court is too categorical and should be qualified. Exclusion from review by the General Assembly of the Administrative Justice Court does not necessarily establish the complete absence of every possible form of judicial, constitutional, administrative, or incidental review. The authors should identify precisely which avenues of review were unavailable, whether ordinary courts could examine the applicability or legality of particular measures in specific disputes, and whether other accountability mechanisms existed. If the authors maintain that no effective remedy existed, this should be demonstrated institutionally rather than inferred exclusively from one jurisdictional exclusion.

Section 1.2 asks an important question: “on the basis of which explicit legal provision did the judiciary consider itself authorized temporarily to suspend or restrict the right to be physically present at trial, the right to meet with counsel, or the principle of public hearings?” The manuscript should answer this question through a measure-by-measure legality analysis rather than treating the judiciary’s pandemic response as a single category of “soft law.” Each major circular or directive should be examined according to its issuing authority, statutory basis, substantive content, effect on individual rights, temporal duration, and relationship with the Code of Criminal Procedure. Such an analysis would permit the authors to distinguish legitimate administrative implementation of existing legislation from measures that effectively modified statutory procedural rights without legislative authorization.

In Section 1.3, the comparison with France—“France responded during the first days of the crisis by enacting the Public Health Emergency Act ... and subsequently issuing Ordinance No. 2020-303”—is potentially valuable but remains too brief to support the manuscript’s comparative implication. The authors should explain whether the French emergency criminal-procedure measures actually preserved fair-trial guarantees more successfully, whether any of those measures were constitutionally or judicially contested, and which specific elements could realistically be transplanted into the Iranian constitutional system. Otherwise, France functions mainly as an illustrative contrast rather than a genuine comparative case. The article would benefit from identifying transferable design principles rather than implying that the mere existence of emergency legislation resolved the French system’s procedural difficulties.

The human-rights analysis requires a sharper distinction between “restriction” and “derogation.” The sentence “Article 4 of the Covenant permits States Parties ... to take measures derogating from their obligations” is correct as a general framework, but the manuscript subsequently analyzes many COVID-19 measures as though every limitation necessarily constituted an Article 4 derogation. Rights such as privacy, public hearings, movement, and aspects of family contact may under certain circumstances be subject to ordinary limitations without formal derogation, provided the specific treaty requirements for limitation are satisfied. The authors should therefore classify each disputed measure as either an ordinary restriction or a purported derogation and then apply the appropriate legal test. This distinction is indispensable to the article’s central finding that Iran’s failure formally to declare an emergency created an international-law deficiency.

The paragraph stating that “Iran did not formally notify the United Nations of a state of emergency or communicate a list of derogated rights to the international community” should distinguish two separate requirements under Article 4: domestic

official proclamation of a public emergency under Article 4(1) and international notification of derogation through the Secretary-General under Article 4(3). These are legally distinct obligations and should not be merged into a single concept of “formal declaration.” Moreover, the manuscript should clarify whether its position is that Iran actually exercised powers amounting to derogation without fulfilling Article 4 procedures, or that Iran remained within ordinary limitation regimes but failed to provide sufficient domestic legality. That distinction would substantially improve the doctrinal precision of the human-rights assessment.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor’s decision: Accepted.

Editor in Chief’s decision: Accepted.