

OPEN PEER REVIEW

Revisiting the Model of Criminal Prosecution in the Context of Social Crises: A Comparative Study of International and Regional Human Rights Instruments and Practices

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1. Round 1

1.1. Reviewer 1

Reviewer:

The paragraph beginning with “International human rights instruments, particularly the International Covenant on Civil and Political Rights...” provides a useful overview of international standards; however, it lacks direct engagement with primary jurisprudence. The argument would be significantly strengthened by citing and analyzing specific Human Rights Committee communications, General Comment No. 29 paragraphs, and landmark judicial decisions rather than relying primarily on general statements regarding supervisory practice.

In the final paragraph of the introduction, the authors formulate three research questions. However, the article does not subsequently demonstrate a clear methodological pathway for answering each question. The manuscript should include a dedicated methodological subsection explaining how comparative legal analysis was conducted, how sources were selected, and what criteria were used to evaluate the Iranian criminal prosecution model against international standards.

In Section 2.1, the sentence “The concept of ‘social crisis’ in legal and social science literature is a fluid and multidimensional concept for which no single and comprehensive definition has been provided” accurately identifies conceptual ambiguity, but the discussion remains broad. The authors should compare at least three competing definitions from legal theory, sociology, and emergency governance literature and explain why the adopted conceptualization is preferable for criminal justice analysis.

In the paragraph discussing the distinction between “real social crisis” and “security-driven crisis construction,” the article introduces an important analytical concept. Nevertheless, the notion of “security-driven crisis construction” is insufficiently operationalized. The authors should provide measurable indicators, empirical examples, or jurisprudential criteria

demonstrating how decision-makers can distinguish between objectively verifiable crises and politically constructed security narratives.

In Section 5.1.1, the claim that paragraph “th” of Article 64 permits prosecution on the basis of intelligence reports “lacking effective oversight” is significant and potentially controversial. The authors should support this assertion with judicial practice, scholarly commentary, or documented case examples demonstrating how this provision has been interpreted and applied in practice.

The discussion of Articles 65–68 of the Criminal Procedure Code appropriately highlights risks associated with crisis conditions. However, several conclusions appear speculative. For example, the statement that Article 65 “can easily become an instrument for eliminating political opponents” requires empirical support. The authors should either provide documented examples or qualify the statement as a potential risk rather than an established consequence.

The subsection “Crisis as an Exceptional Situation: The Theory of the Collapse of Criminal Procedure” introduces a highly significant theoretical framework. Yet the origins of this theory, its principal proponents, and its relationship to existing scholarship are not adequately explained. The authors should provide a dedicated theoretical discussion identifying the intellectual foundations of this concept and differentiating it from other theories of emergency criminal justice.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The section entitled “Indicators of Social Crisis” presents several characteristics of crises, including disruption of social order, broad social impact, and systemic intervention requirements. However, these indicators are presented descriptively without supporting literature or analytical hierarchy. The authors should explain whether all indicators possess equal weight, whether they are cumulative or alternative criteria, and how they interact in determining the existence of a legally relevant social crisis.

The operational definition proposed in Section 2.3 is one of the most original contributions of the article. Nevertheless, the definition appears to merge descriptive and normative elements. For example, the requirement that intervention be carried out within legality, necessity, and proportionality is not merely descriptive of a crisis but rather a normative condition governing state response. The authors should clarify whether the definition concerns the crisis itself or the legally acceptable response to a crisis.

In Section 2.5, the authors write that “criminal prosecution acquires a preventive-repressive function.” This statement is analytically important but requires conceptual clarification. The manuscript should distinguish more carefully between preventive prosecution, preventive detention, administrative prevention, and traditional criminal prosecution, since these concepts have distinct legal implications under international human rights law.

The subsection “The Principle of the Rule of Law and the Prohibition of Unregulated Suspension of Criminal Prosecution” contains strong normative assertions regarding legality and judicial control. However, the discussion would benefit from a deeper engagement with the literature on emergency powers and constitutional exceptionalism. The authors should address counterarguments suggesting that certain temporary procedural restrictions may be compatible with rule-of-law principles during severe emergencies.

In the section on non-discrimination, the authors argue that selective prosecution may transform the prosecution authority from a “law-oriented” institution into an “expediency-oriented” institution. This argument is compelling but remains theoretical. The manuscript would be strengthened by incorporating concrete examples from comparative jurisprudence demonstrating how selective prosecution has been identified and remedied by international or regional courts.

The discussion of judicial oversight in Section 3.3 appropriately emphasizes independence and access to remedies. Nevertheless, the authors should engage with the practical difficulties of judicial review during large-scale crises. For example, how can substantive judicial oversight be maintained when courts face overwhelming caseloads, communication disruptions,

or emergency administrative constraints? Addressing these practical considerations would increase the realism of the proposed model.

In Section 4.1, the sentence “The Universal Declaration of Human Rights, by lacking a derogation clause, is also regarded as placing its provisions... among the ‘hard core’ of human rights” requires additional legal justification. Since the Universal Declaration itself is not a treaty and does not contain a formal derogation mechanism, the authors should explain the legal basis for treating its provisions as non-derogable and discuss any doctrinal controversies surrounding this interpretation.

The comparative analysis of the European, Inter-American, and African systems is valuable; however, it remains predominantly descriptive. The article should include a more systematic comparative methodology explaining why these three systems were selected, what variables are being compared, and how comparative findings are translated into recommendations for Iran.

Table 1 provides a useful summary of regional approaches, but several categories require greater precision. For example, the classification of the African system as recognizing “practically all rights” as non-derogable is an oversimplification. The authors should provide a more nuanced explanation of the legal consequences arising from the absence of a derogation clause in the African Charter and distinguish between formal non-derogability and practical enforcement realities.

The paragraph beginning “After explaining international and regional standards, it is necessary to assess the conformity of the Iranian legal system...” introduces the evaluation framework. However, the article does not specify how compliance is measured. The authors should develop explicit evaluation criteria or indicators and apply them consistently throughout the Iranian case study to avoid impressionistic assessments.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor’s decision: Accepted.

Editor in Chief’s decision: Accepted.