THE RIGHT TO ONLINE EDUCATION IN KUWAIT, REVISITED IN LIGHT OF COVID-19

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I.   INTRODUCTION

In response to the growing apprehension concerning the coronavirus disease, formally known as COVID-19, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) has reported that 185 countries have closed their schools and universities, affecting eighty-nine

percent of the worldwide student population.[1] In response to UNESCO's call to continue facilitating education, particularly to students from vulnerable and disadvantaged groups, many countries that are members of UNESCO, referred to as UNESCO Member States (States), have had to begin an unprecedented move towards distance learning.[2] In the United States, online learning is not a new phenomenon, at least with respect to higher education.[3] However, for many of the Arab countries, including Kuwait, the move to online education has not been taken lightly.[4] While the government of Kuwait has ultimately decided to temporarily allow remote learning, this has not been without restrictions.[5] This affects not only the education of students in all stages of education, including primary, secondary, and tertiary levels, but these restrictions will also have a negative impact on Kuwaiti students studying abroad.[6] Students studying abroad are required to adhere to additional regulations set forth by the Kuwaiti government should they choose to take online summer classes.[7] Thus, where students in the United States, for example, are moving classes online for the upcoming fall semester, the Kuwait Ministry of Higher Education's (MOHE) regulations restrict students to only taking a certain number of credits online.[8] These regulations thereby disadvantage Kuwaiti students studying abroad as

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1.   Stefania Giannini, *Covid-19 school closures around the world will hit girls hardest*, U.N. EDUC., SCI. & CULTURAL ORG. [UNESCO] (Mar. 3, 2020), https://en.unesco.org/news/covid-19-school-closures-around-world-will-hit-girls-hardest.

2.   *Education: From disruption to recovery*, UNESCO, ·https://en.unesco.org/covid19/ educationresponse (last visited Sept. 27, 2020); *see* UNESCO, *Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO)*, arts. I–V, VII–VIII, X; *see also* UNESCO, *Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO)*, *in* BASIC TEXTS Q (2020), https://unesdoc.unesco.org/ark:/48223/pf0000372956/PDF/372956eng.pdf.multi.

3.   RICHARD GARRETT, ONLINE HIGHER EDUCATION IN THE UNITED STATES – EXPLAINING MARKET SUCCESS AND DIAGNOSING MARKET FRICTION 3 (2013).

4.   Rasha Faek, *Coronavirus Outbreak Forces Arab Countries to Consider Long-Ignored Online Educ.*, AL-FANAR MEDIA (Mar. 12, 2020), https://www.al-fanarmedia.org/2020/03/coronavirus-outbreak-forces-arab-countries-to-consider-long-ignored-online-education/.

5.   *See id.;* Dalal Al-Taweel et al., *Multidisciplinary academic perspectives during the COVID-19 pandemic*,   INT'L   J.   HEALTH   PLAN.   MGMT.   1,   3   (2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7436209; *see also* Ahmed Al-Hunaiyyan ·et al., *Perceptions and Challenges of Mobile Learning in Kuwait*, 30 J. KING SAUD UNIV. – COMPUT. & INFO. SCI. 279, 281–82 (2018) (discussing the restrictions Kuwait government has added to online learning).

6.   Faek, *supra* note 4; *see* MINISTRY HIGHER EDUC., SCHOLARSHIP RULES AND REGULATIONS (2013) art. 4, §§ 9–13 (KW).

7.   SCHOLARSHIP RULES AND REGULATIONS, *supra* note 6, art. 4, §§ 9–13 (2013) (KW).

8.   SCHOLARSHIP RULES AND REGULATIONS, *supra* note 6, art. 4, §§ 9–13 (2013) (KW); *see also* Benjamin Herold, *The Scramble to Move America's School Online*, EDUC. WEEK (Mar. 27, 2020), https://www.edweek.org/ew/articles/2020/03/26/the-scramble-to-move-americas-schools-online.html.

compared to their non-Kuwaiti counterparts.[9] Moreover, the MOHE has made online learning optional, such that students—at all levels of education—are not required to continue their spring semester classes online, but may instead opt to return to classes once the situation warrants a return to in-class education.[10]

These restrictions on online education will undoubtedly disadvantage Kuwaiti students.[11] Scholars have found that a return to learning, after a halt, hinders learning and takes years to recover the knowledge that was lost.[12] Moreover, UNESCO predicts that based on lessons learned from the Ebola crisis, women and girls worldwide will face the biggest risk of being disadvantaged by closures.[13] UNESCO predicts that many of these girls will drop out after a return to in-class education.[14] Thus, UNESCO has called on States that do not have adequate access to technology to provide educational materials to individuals at home and allow for self-paced learning so that education is not halted at this time.[15]

The right to education, at all levels, is one that is recognized as a fundamental human right and one that is protected through various international instruments.[16] Thus, it could be argued that the right to remote education during times of a national emergency is vital to the full realization of this right.[17] Nonetheless, to guarantee proper education for all and to warrant that in times of emergency governments are equipped with the proper resources to facilitate a move toward remote learning, countries like Kuwait

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9.   *See* Abdullah Alelyan, *The Problem with Kuwait's Higher Education*, ARABIA HIGHER EDUC. (Oct. 29, 2016), http://www.arabiahighered.com/index.php/home-news/all-news/139-kuwait/657-the-problem-with-kuwait-s-higher-education.

10.   *See Distance Education Optional, Fees Must Be Paid at End of School Year, Says MOE*, ARAB TIMES (Apr. 2, 2020), http://www.arabtimesonline.com/news/distance-education-optional-fees-must-be-paid-at-end-of-school-year-says-moe.

11.   *See* Anya Kamenetz, *9 Out Of 10 Children Are Out Of School Worldwide. What Now?*, NPR (Apr. 2, 2020), https://www.npr.org/2020/04/02/824964864/nine-out-of-10-of-the-world-s-children-are-out-of-school-what-now.

12.   Press Release, World Bank, COVID-19 Could Lead to Permanent Loss in Learning and Trillion of Dollars in Lost Earnings (June 18, 2020) (on file with author).

13.   Giannini, *supra* note 1.

14.   *Id.*

15.   *Id.*

16.   G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 26(2) (Dec. 10, 1948) [hereinafter UDHR].

17.   *See* U.N. SUSTAINABLE DEV. GROUP [UNSDG], POLICY BRIEF: EDUCATION DURING COVID-19 AND BEYOND 3 (2020), https://unsdg.un.org/resources/policy-brief-education-during-covid-19-and-beyond [hereinafter EDUCATION DURING COVID-19].

must reconsider blanket bans on online education.[18] Only then may the full implementation of the right to education be achieved.[19] UNESCO has called on States, especially in the Arab region, to cooperate with others to mitigate the inequity resulting from unequal access to technology and resources.[20] The obligation to cooperate is iterated by General Comment No. 13 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR).[21] States should therefore not only preserve the availability of online learning, but are also under obligations to guarantee that all States have the capacity to provide the right to basic education, encompassing "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels."[22] This capacity may only be found where States, such as Kuwait, are equipped to deal with online education before, during, and after a pandemic.[23]

As such, the time is ripe for Kuwait to depart from the *status quo* and begin to approve distance learning, even after the crisis is over. In arguing for such, this paper is divided into four parts. Section II will examine the right to education in international human rights law, specifically the right to online education. Section III will discuss the effects of the state of the current pandemic on the right to online education and provides examples of international organizations' responses that have been undertaken in response to COVID-19. Section IV will address the situation of online learning in Kuwait and examine the current and regular regulations governing Kuwaiti students studying inside and outside of Kuwait. Lastly, Section V will conclude with a discussion on the challenges that pertain to online learning in the Arab States, with an emphasis on justifications that are often cited as to why countries in the region, including Kuwait, are fearful of moving toward online education.

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18.   *Education Ministry Faces Crisis Due to Ban on 31 Countries*, ARAB TIMES (Aug. 3, 2020), https://www.arabtimesonline.com/news/education-ministry-faces-crisis-due-to-ban-on-31-countries.

19.   *See id.*

20.   *See Alternative Solutions to School Closures in Arab Countries to Ensuring that Learning Never Stops: Covid-19 Education Response*, UNESCO 1, 3 (2020), https://en.unesco.org/sites/default/files/alternative_solutions_to_school_closure_in_arab_countries_-_final.pdf.

21.   *See* UNESCO, General Comment No. 13: The Right to Education, at ¶ 13, U.N. Doc E/C/12/1999/10 (1999) [hereinafter General Comment No. 13: The Right to Education].

22.   *Id.* at ¶ 57.

23.   *Call for Participation: Rethinking Social Transformations: Inequalities in the Arab Region in Light of COVID-19*, UNESCO (Sept. 4, 2020), https://en.unesco.org/news/call-participation-rethinking-social-transformations-inequalities-arab-region-light-covid-19.

II.   THE RIGHT TO ONLINE EDUCATION

The United Nations Universal Declaration of Human Rights (UDHR) has established education as a fundamental human right,[24] one that is indispensable for the achievement of interrelated human rights, such as the right to freedom of expression and opinion,[25] and the right to be able to participate effectively in a free society.[26]   While the UDHR is not binding, the right to education is affirmed in several binding international treaties, including the ICESCR,[27] the Convention Against Discrimination in Education,[28] and the Convention on the Rights of the Child[29]—all binding on Kuwait as a State party.[30]   In General Comment No. 13, the Committee on Economic, Social and Cultural Rights (CESCR) obliges State parties to ensure that education is available to all, citing specifically distance learning as one way of ensuring accessibility.[31]   The CESCR specifically states that "[i]f higher education is to respond to the needs of students in different social and cultural settings, it *must* have flexible curricula and varied delivery systems, such as distance learning" (emphasis added).[32]   Therefore, the CESCR requires State parties to make education as flexible as possible, so as to make it easier to adapt in times of societal changes, requiring that, in both secondary and higher education, education be available "in different forms."[33]   Establishing a culture of remote learning becomes integral to the achievement of this goal.[34]   This was recognized in 1997, when the General Conference, consisting of representatives of the States, established the UNESCO Institute for Information Technologies in Education (IITE),

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24.   UDHR, *supra* note 16, art. 26(1).

25.   *See, e.g.,* G.A. Res. 2200 (XXI) A, International Covenant on Civil and Political Rights, art. 19(2) (Dec. 16, 1966).

26.   *See, e.g.,* General Comment No. 13: The Right to Education, *supra* note 21, at ¶ 13; *see, e.g.,* G.A. Res. 61/106, Convention on the Rights of Persons with Disabilities, art. 24 (1)(a), (c) (Dec. 13, 2006).

27.   General Comment No. 13: The Right to Education, *supra* note 21, at ¶¶ 2, 4.

28.   *See generally* Convention against Discrimination in Education 1960, Dec. 15, 1969, 429 U.N.T.S. 93.

29.   *See* G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989) [hereinafter CRC].

30.   *See* G.A. Res. 2200 (XXI) A, International Covenant on Economic, Social and Cultural Rights, art. 13 (Dec. 16, 1966); *see* Convention Against Discrimination in Education, *supra* note 28; *see also* CRC, *supra* note 29, art. 28.

31.   *See* General Comment No. 13: The Right to Education, *supra* note 21, at ¶ 6(b).

32.   *Id.* at ¶ 18.

33.   *Id.* at ¶¶ 6(d), 18.

34.   *See id.* at ¶ 18.

encouraging the use and implementation of distance learning programs, and providing support for these programs, especially as it pertains to developing countries.[35] More recently, the Incheon Declaration of 2015 reaffirmed its commitment to education.[36]   With respect to online education, the Declaration calls for "[a] well-established, properly regulated tertiary education system supported by technology, open educational resources and distance education" to "increase access, equity, quality and relevance."[37] The Incheon Declaration has now become the grounding framework for Sustainable Development Goal 4 (SDG 4), which has the objective of ensuring education for all by 2030.[38] A proper manner in which to ensure education for all is to provide resources "to facilitate a learning environment at home," and to "[d]evelop policies and [programs] for the provision of quality distance learning in tertiary education, with appropriate financing and use of technology, including the internet, massive open online courses and other modalities that meet accepted quality standards to improve access."[39] This, therefore, lends more credibility to the proposition that the right to education has naturally expanded to cover online education as well.[40]

In addition, the fundamental right to education is deemed so necessary in times of armed conflict that the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War has called on parties to the conflict to ensure that children under the age of fifteen continue to have access to education "in all circumstances."[41] Thus, the existence of a major crisis is not an excuse to hinder access to education, but instead, must be recognized as a priority in such situations.[42]

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35.   *See generally* Statutes of the UNESCO Institute for Information Technologies in Education (ITTE) art. 2, Dec. 6, 2013.

36.   UNESCO, INCHEON DECLARATION AND FRAMEWORK FOR ACTION FOR THE IMPLEMENTATION OF SUSTAINABLE DEVELOPMENT GOAL 4, 10, 31 U.N. DOC. ED-2016/WS/28 (2016), http://uis.unesco.org/sites/default/files/documents/education-2030-incheon-framework-for-action-implementation-of-sdg4-2016-en_2.pdf [hereinafter INCHEON DECLARATION].

37.   *Id.* at 41.

38.   *See generally* UNESCO, UNPACKING SUSTAINABLE DEVELOPMENT GOAL 4 EDUCATION 2030, at 1, 3, ED-16 / ESC-PCR / GD / 1 REV. (2017); *see The 2030 Agenda for Sustainable Development,* UNSDG, https://sdg4education2030.org/the-goal (last visited Oct. 20, 2020).

39.   INCHEON DECLARATION, *supra* note 36, at 46.

40.   *See generally id.*

41.   Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 24, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

42.   *See id.*

The right to education is confirmed in applicable regional documents as well.[43]   In 2000, the participants of the Arab Regional Conference on Education for All recommended that Arab States keep "pace with technological advancements," including the use of "distance education to get access to populations in geographically remote areas."[44] Moreover, the Arab Charter on Human Rights (Arab Charter), to which Kuwait is a party, stipulates that "[t]he States parties shall guarantee the establishment of the mechanisms necessary to provide ongoing education for every citizen."[45] Accordingly, online education may be necessary to provide ongoing education, especially during a global crisis.[46] Thus, in times of public emergency, whether in peacetime or wartime, the right to access education should not stop.[47] One way to ensure this is to move education online.[48]

The need for distance learning has also been expressly iterated in Africa by the African Youth Charter, which calls for African Union States parties to diversify the forms of education available to youth, with explicit mention of distance learning as one method, so as "to meet the diverse needs of young people."[49] With respect to higher education, the African Youth Charter mandates that State parties "[m]ake higher education equally accessible to all including establishing distance learning centres of excellence."[50]

Still, technological disparities exist among States, such that many States lack the tools required to begin the process of e-learning.[51] Not every student has equal access to computers and internet data plans.[52] To combat this discrepancy, countries with inadequate access to the internet and laptops,

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43.   *See* UNESCO, DAKAR FRAMEWORK FOR ACTION 51, U.N. Doc. ED-2000/WS/27 (2000) https://sustainabledevelopment.un.org/content/documents/1681Dakar%20Framework%20for%20Action .pdf. [hereinafter DAKAR FRAMEWORK]; *see* League of Arab States, *Arab Charter on Human Rights* art. 41 para. 6 (2004) *translated in* Dr. Mohammed Amin Al-Midani & Mathilde Cabanettes, *Arab Charter on Human Rights 2004*, 24 B.U. INT'L. J. 147, 160.

44.   *See* DAKAR FRAMEWORK, *supra* note 43, at 61.

45.   *See* Arab Charter on Human Rights, at art. 41 para. 6.

46.   Cathy Li & Farah Lalani, *The COVID-19 Pandemic has Changed Education Forever. This is how,* WORLD ECON. F. (Apr. 29, 2020), https://www.weforum.org/agenda/2020/04/coronavirus-education-global-covid19-online-digital-learning.

47.   Rebecca Winthrop & Mary Mendenhall, *Education in Emergencies: a critical Factor in Achieving the Millennium Development Goals, in* THE COMMONWEALTH MINISTERS REFERENCE BOOK 2006 2 (Commonwealth Secretariat, 2006).

48.   *See generally* Li & Lalani, *supra* note 46.

49.   African Youth Charter, 2 July 2006, art. XIII(II) *available at* https://www.un.org/en/dev elopment/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf.

50.   *Id.* art. XIII(IV)(f).

51.   EDUCATION DURING COVID-19, *supra* note 17, at 7.

52.   *Id.* at 8.

such as Mongolia, Kenya, and India, have turned to education through the use of television programming.[53] In addition, certain education platforms are created so that they are able to be opened on phones rather than on laptops.[54]

All of these examples point to the importance of ensuring that students—at all levels of education—are able to continue their education. Disruptions in education are harmful to students' learning capabilities.[55] Thus, State and international organization responses are critical to guarantee that the right to education is not hindered by COVID-19.

III.   THE EFFECT OF COVID-19 ON THE RIGHT TO ONLINE EDUCATION

COVID-19 took the world by surprise.[56] Countries were forced to deploy resources to sustain the situation with the focus being on health and virus spread containment.[57] This has led many States to adopt measures such as shelter-in-place and stay-at-home directives, as well as partial or total lockdown and social distancing orders.[58] These measures have impacted the operation of learning institutions including schools, colleges, and universities.[59] The disruption of education has been taken seriously by the United Nations (U.N.).[60] The U.N. 2030 Agenda for Sustainable Development has seventeen goals.[61] It requires education to empower people

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53.   Sharon Zacharia & Alex Twinomugisha, *Educational television during COVID-19: How to start and what to consider*, WORLD BANK (Apr. 24, 2020), https://blogs.worldbank.org/education/educational-television-during-covid-19-how-start-and-what-consider.

54.   *More on UNESCO's COVID-19 Education Response*, UNESCO, https://en.un esco.org/covid19/educationresponse/solutions (last visited Sept. 2, 2020).

55.   Simon Burgess & Hans Henrik Slevertsen, *Schools, Skills, and Learning: The Impact of COVID-19 on Education*, VOXEU (Apr. 1, 2020), https://voxeu.org/article/impact-covid-19-education.

56.   *See* Margaret MacMillan, *Making history: How a pandemic took the world by surprise*, GLOBE AND MAIL (May 8, 2020), https://www.theglobeandmail.com/opinion/article-making-history-how-a-pandemic-took-the-world-by-surprise.

57.   *See id.*; *see* Dorothèe Allain-Duprè et al., *The Territorial Impact of Covid-19: Managing the Crisis Across Levels of Government*, OECD 1, 2, 14, 17, 44 (June 16, 2020), https://read.oecd-ilibrary.org/view/?ref=128_128287-5agkkojaaa&title=The-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government.

58.   Katie Canales, *Here are the do's and don'ts for going outside under the different lockdown or shelter- in-place restrictions as countries across the world battle the coronavirus*, BUS. INSIDER (Mar. 25, 2020), https://www.businessinsider.com/coronavirus-lockdown-shelter-in-place-stay-at-home-order-2020-3?IR=T.

59.   *See generally* Li & Lalani, *supra* note 46.

60.   *See generally* Dept. of Glob. Comm., *U.N. Working to Fight COVID-19 and Achieve Global Goals*, UNITED NATIONS (Mar. 23, 2020), https://www.un.org/en/un-coronavirus-communications-team/un-working-fight-covid-19-and-achieve-global-goals.

61.   G.A Res. 70/1, Transforming our World: The 2030 Agenda for Sustainable Development, pmbl. (Sept. 25, 2015).

and achieve the defined goals.[62] "Education is a human right and a force for sustainable development and peace."[63] Accordingly, the U.N. dedicated the fourth sustainable development goal to education.[64] The goal of SDG 4 is "to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all" by 2030.[65] The U.N. has issued statements that education should never stop, not even under a pandemic that disrupts the learning experience of about 1.6 billion children and youth.[66] For many State governments, before COVID-19, online and distance learning was a second-rate option, which was met with very strong skepticism.[67] Now, it is the main platform relied upon for learning under the COVID-19 lockdown and stay-at-home orders.[68]

The U.N., through UNESCO, devised several initiatives to safeguard the continuation of learning and education.[69] On March 10, 2020, during UNESCO's global videoconference, consisting of higher education officials, UNESCO's Assistant Director-General for Education emphasized the importance of continuing education during the current pandemic and minimizing learning interruptions worldwide.[70] She urged, "[w]e need to come together not only to address the immediate educational consequences of this unprecedented crisis, but to build up the longer-term resilience of education systems."[71]

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62.   *Leading SDG 4 – Education 2030*, UNESCO, https://en.unesco.org/themes/education2030-sdg4 (last visited Sept. 2, 2020).

63.   *Id.*

64.   G.A. Res. 70/1, *supra* note 61, ¶ 59.

65.   *Id.*

66.   *See 4 Quality Education*, UNITED NATIONS, https://www.un.org/sustainabledevelopment/education/ (last visited Sept. 2, 2020).

67.   *See generally* Paul Fain, *Takedown of Online Education*, INSIDE HIGHER ED (Jan. 16, 2019), https://www.insidehighered.com/digital-learning/article/2019/01/16/online-learning-fails-deliver-finds-report-aimed-discouraging.

68.   EDUCATION DURING COVID-19, *supra* note 17, at 2.

69.   *With one in five learners kept out of school, UNESCO mobilizes education ministers to face the COVID-19 crisis*, UNESCO (Mar. 10, 2020), https://en.unesco.org/news/one-five-learners-kept-out-school-unesco-mobilizes-education-ministers-face-covid-19-crisis [hereinafter *UNESCO Mobilizes Education*]; *see also UNESCO Rallies International Organizations, Civil Society and Private Sector Partners in a Broad Coalition to Ensure #LearningNeverStops*, UNESCO (Mar. 26, 2020), https://en.unesco.org/news/unesco-rallies-international-organizations-civil-society-and-private-sector-partners-broad [hereinafter *UNESCO Coalition*].

70.   *UNESCO Mobilizes Education, supra* note 69.

71.   *Id.*

Subsequently, UNESCO launched the COVID-19 Global Education Coalition.[72]   The U.N. family, civil society organizations, media, and multilateral partners joined this coalition to share best practices and measures to tackle content and connectivity gaps.[73]   This coalition aims to help countries design and deploy innovative and content-sensitive solutions that leave no one behind, so as to ensure compliance with the international human rights law framework of safeguarding equal access to education for all.[74]

Another initiative was launched by the UNESCO IITE.[75] The UNESCO IITE, along with its global partners, joined in action to ensure the continuation of education during the current pandemic by providing "a communication platform for government officials, teachers, students at schools and universities, as well as education and technology specialists to share experience in responding to this new emergency, provide recommendations and technical support."[76]   The initiative is known as "Combat COVID-19: Keep learning."[77]   As an example, the Hamdan Bin Mohammad Smart University in the United Arab Emirates (UAE), one of the global partners and one of the few universities in the Arab region with fully online courses, launched an online course for teaching and academic personnel to learn how to become online tutors in twenty-four hours.[78]   The course has been made available in several languages, which include "English, Arabic, Russian, Spanish and French."[79]   The university also offers another course on how to design an online course that focuses on developing online classrooms and planning and designing online lessons by using modern and advanced educational tools.[80]   For countries, like Kuwait, that have the tools to move forward with online learning, these practices should be utilized so

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72.   *See UNESCO Coalition, supra* note 69.

73.   *See id.*

74.   *Id.*

75.   *UNESCO: Combat COVID-19: Keep learning. Together we are on the move!*, UNESCO, https://iite.unesco.org/combating-covid-19-together-we-are-on-the-move/ (last visited Sept. 2, 2020). [hereinafter *UNESCO: Combat COVID-19*].

76.   *Id.*

77.   *Id.*

78.   *Launching the Crash Course on Online Tutoring for Teachers*, UNESCO INST. FOR INFO. TECH. EDUC. (Apr. 3, 2020), https://iite.unesco.org/news/launching-the-crash-course-on-online-tutoring-for-teachers/; Emma Procter, *Hamdan Bin Mohammed Smart University offers first fully online degree programmes,* GULF NEWS (Aug. 30, 2020), https://gulfnews.com/uae/education/hamdan-bin-mohammed-smart-university-offers-first-fully-online-degree-programmes-1.1598446454665.

79.   Emma Procter, *supra* note 78; *UNESCO: Combat COVID-19, supra* note 75.

80.   *UNESCO: Combat COVID-19, supra* note 75.

that all students are able to continue their education online, now and after the pandemic is over.[81]

IV. ONLINE LEARNING IN KUWAIT

In Kuwait, colleges and universities, both public and private, are administered by the MOHE.[82]   The public institutions include Kuwait University (KU)—the main public university—and the Public Authority for Applied Education and Training (PAAET), which supervises vocational training and hosts one of the 250 International Centers for Technical and Vocational Education and Training (UNEVOC) of UNESCO.[83] The private higher education institutions began in 2002 and now consist of eight colleges and four universities.[84] The higher education institutions in Kuwait adopt formal training, encompassing traditional in-class education.[85]   Some universities, in both the public and private sectors in Kuwait, have adopted e-learning, but only to supplement in-class education and/or provide online training.[86]   With that said, truly remote learning has never been viewed favorably in the Arab region, and Kuwait is no exception.[87]

A.   Before COVID-19

Many of the Arab States, including Kuwait, view online learning with skepticism, significantly distrusting the system of online learning.[88] Therefore, many of the schools and universities in Kuwait, with very few exceptions, did not have the capacity to engage in online learning, prior to COVID-19.[89]   In addition, due to the distrust that exists, the Kuwaiti government restricts students who are studying abroad from taking online classes during their higher education studies.[90]   For example, Kuwait

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81.   *See* Li & Lalani, *supra* note 46.

82.   OXFORD BUS. GROUP, *Costs a Concern as Demand Expands in Kuwaiti Education, in* THE REPORT: KUWAIT 2015 (2015), https://oxfordbusinessgroup.com/overview/head-start-demand-projected-continue-increasing-bringing-down-costs-key-concern [hereinafter *Kuwaiti Education*].

83.   SALAH AL-SHARHAN, *Kuwait, in* E-LEARNING IN THE MIDDLE EAST AND NORTH AFRICA (MENA) REGION 196-97 (Alan S. Weber & Sihem Hamlaoui eds. 2018).

84.   *Kuwaiti Education, supra* note 82.

85.   Faek, *supra* note 4; AL-SHARHAN, *supra* note 83, at 205.

86.   *See* Faek, *supra* note 4.

87.   *Id.*

88.   *Id.*

89.   *See* AL-SHARHAN, *supra* note 83, at 209.

90.   *See* Faek, *supra* note 4; *see* SCHOLARSHIP RULES AND REGULATIONS, *supra* note 6, art. 4, § 2, ¶ 9 (2013) (KW).

currently allows students to enroll in a maximum of four courses or twelve credits of independent study and/or online classes.[91] This arrangement is subject to the approval of the Kuwaiti Cultural Office, which is set up to oversee students who are studying abroad.[92] In addition, other forms of non-traditional education are viewed more than favorably in the United States but prohibited by the Kuwaiti government.[93] If a student enrolls in an educational program that is prohibited by the government, then his or her degree will not be accredited by the government upon his or her return to Kuwait.[94] For example, in choosing a university, Kuwaiti students studying abroad, whether or not they are sponsored by the government, must be enrolled in "a full time regular program offered in the main campus."[95] Therefore, online and other forms of distance learning are not approved for accreditation.[96] In addition, full-time enrollment must be through traditional means only.[97] This means that universities offering the same versions of their traditional programs through hybrid or summer-only programs, despite the fact that students will do the same coursework that will lead to the same degree, will result in the student's degree not being authenticated by the government, no matter how highly ranked the university or globally recognized the program.[98] This accreditation is important for students who

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91.   SCHOLARSHIP RULES AND REGULATIONS, *supra* note 6, art. 4, § 2, ¶ 9 (2013) (KW).

92.   SCHOLARSHIP RULES AND REGULATIONS, *supra* note 6, art. 4, § 2, ¶ 9 (2013) (KW); *Ministry of Higher Education Department: Overview*, KUWAIT CULTURE OFF., http://www.kuwaitculture.com/mohe/home (last visited Sept. 4, 2020).

93.   *See* Alison K. Varty & Susannah B. Johnson-Fulton, *Why Teach Natural History Through Hybrid and Online Courses?*, 11 J. NAT. HIST. EDUC. & EXPERIENCE 5, 5–6, 11–12 (2017); *see also* U.N.C. CHAPEL HILL, REPORT OF THE TASK FORCE ON ONLINE LEARNING TO IMPROVE ACCESS AND SUCCESS, 3–4 (2014), https://beta.provost.unc.edu/wp-content/uploads/2018/02/Online-Task-Force-2014-Report.pdf; *see generally Information for Students, Graduate Program*, U. ARIZ., https://ais.arizona.edu/graduate-program (last visited Sept. 13, 2020) (examples of interdisciplinary degrees offered by the University of Arizona, which is also providing online sessions during the COVID-19 pandemic); *University Search*, KUWAIT CULTURAL OFF., https://sis.kuwaitculturedc.org/kc_university/ext_mcpf_list.php?orderby=aCOLNAM;aMajorSpcl;aSpecialtySpcl (last visited Sept. 4, 2020); *University Selection Process*, KUWAIT CULTURAL OFF., http://www.kuwaitculture.com/university-listings/university-selection-process (last visited Sept. 4, 2020).

94.   *University Search, supra* note 93.

95.   *University Selection Process, supra* note 93.

96.   *University Search, supra* note 93; *University Selection Process, supra* note 93.

97.   *University Search, supra* note 93; *University Selection Process, supra* note 93.

98.   SCHOLARSHIP RULES AND REGULATIONS, *supra* note 6, art. 1, art. 4, § 2, ¶ 13 (2013) (KW); *University Search, supra* note 93; *University Selection Process, supra* note 93.

wish to work using their degrees in the State of Kuwait.[99] These restrictions thereby disadvantage professionals who are unable to take off during the regular academic year.[100] Kuwaiti students will be disadvantaged due to the government's choices, along with restrictions on online learning, by deterring students from enrolling in internationally renowned programs.[101] If countries like Kuwait are to be competitive in the field of education, Kuwait must allow students to enroll in the same highly regarded programs as others.[102] Thus, by allowing more students to enroll, Kuwait will remain competitive in the education field by increasing options available to students.[103]

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99.   *See generally* OXFORD BUS. GROUP, *Government Reforms to Change Kuwait's Education Sector, in* THE REPORT: KUWAIT 2017 (2017), https://oxfordbusinessgroup.com/overview/ time-transition-extensive-government-reforms-signal-change-kuwait%E2%80%99s-education-sector (obtaining certifications with international accreditations has significant value for Kuwaiti graduates seeking employment). For example, the University of California-Berkeley offers a professional LL.M. track program designed for lawyers who are interested in studying at Berkeley Law but cannot leave their employment during the regular academic year. The course load and the degree are exactly similar to that offered during the regular academic year, except that students enroll in two consecutive summer semesters rather than a fall and spring semester.   *LL.M. Executive Track*, BERKELEY L., https://www.law.berkeley.edu/academics/llm/exec-track/ (last visited Aug. 30, 2020); *see also LL.M. Program Response to COVID-19*, BERKELEY L., https://www.law.berkeley.edu/academics/llm/covid-19-response/ (last visited Sept. 4, 2020) (Berkeley Law's professional track and hybrid LL.M. programs were collectively rebranded in 2020 as the "Executive Track"). Despite the fact that Berkeley Law is one of the top law schools in the world, Kuwaiti students would normally be deterred from enrolling in the professional track program, due to the fact that the government will not authenticate their degrees upon their return to Kuwait.   *QS World University Rankings by Subject 2020:   Law*, QS TOP U., https://www.topuniversities.com/university-rankings/university-subject-rankings/2020/law-legal-studies (last visited Sept. 4, 2020); *see also LL.M. Program Response to COVID-19*, BERKELEY L., https://www.law.berkeley.edu/academics/llm/covid-19-response/ (last visited Sept. 4, 2020) (Berkeley Law's Executive Track LL.M. program in 2020 is a completely remote summer online-learning program); *see also* SCHOLARSHIP RULES AND REGULATIONS, *supra* note 6, art. 4, § 2, ¶ 13 (2013) (KW) (the MOHE's scholarship regulations require that Kuwaiti students attending educational programs abroad do not exceed two summer courses); *see also University Selection Process, supra* note 93 (the Kuwaiti government requires its citizens studying abroad to attend full-time "regular" or "traditional" in-person programs).

100.   *See LL.M. Executive Track, supra* note 99 (Berkeley Law's Executive Track LL.M. program is designed for professionals who are unable to leave existing commitments to attend a regular academic year).

101.   *See* SAMAR FARAH & SORAYA BENCHIBA, ONLINE LEARNING IN THE ARAB WORLD: AN EDUCATIONAL MODEL THAT NEEDS SUPPORT 1, 6 (2020), https://connectedlearning4refugees.org/wp-content/uploads/2020/03/AGFE-Policy-Brief-English.pdf.

102.   *See generally id.* at 1–2, 8. This article does not argue that Kuwait must authenticate all online or other forms of non-traditional degrees, but the questions about whether to authenticate non-traditional degrees should be considered on a case-by-case basis, considering factors such as the reputation of the university, the location of the university, and the reputation of the program. *Id.*

103.   *See generally id.* at 8–9.

As for Kuwaiti students studying in Kuwait, prior to COVID-19, both the MOHE and the universities in Kuwait have worked on integrating technology into education, such that, as described above, some universities had an e-learning system that students were able to access.[104] However, this system was not meant to replace in-class learning, but to supplement it.[105] One of these universities recognized the benefit and necessity of e-learning: "[i]n the era of technological information, it goes without saying that academic institutions should prepare new generations for what is waiting outside: a sharp and competitive world where globalization has made it difficult to remain isolated."[106] Nonetheless, with restrictions placed on online learning by the Kuwaiti government, it becomes much harder to achieve the goal of fostering a culture of education that is open and ready to prepare for advances in technology.[107]

B.   During COVID-19

With the emergence of the coronavirus, additional obstacles have emerged with the move toward online education.[108] First, for students studying abroad, only full-time undergraduate university students are allowed to enroll in online classes in the summer.[109] Thus, students in community colleges are not allowed to register for online classes, no matter the circumstances.[110] Yet, the MOHE offers no explanation as to why community college students are excluded and thereby disadvantaged.[111] Second, even for undergraduate students who are allowed to take summer courses online, a maximum of three courses (or nine credits) are allowed for transfers and four courses (or twelve credits) for those who are graduating in summer 2020.[112] Thus, while the MOHE has somewhat tried to address the

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104.   AL-SHARHAN, *supra* note 83, at 205, 207.

105.   *Id.*

106.   *What is eLearning?*, GUST E-LEARNING CTR. EXCELLENCE, https://mygust.gust.edu.kw/ece.php (last visited June 1, 2020).

107.   Nidal Al Haj Sleiman, *Inequity and Inaccessibility: What COVID-19 Reveals About the Gulf Education Systems*, GULF INT'L F. (June 26, 2020), https://www.printfriendly.com/p/g/AnLFZf.

108.   *See* Letter from Mohammed AlRashidi, Cultural Counselor/Director, Consulate General of the State of Kuwait, to Kuwaiti Undergraduate Students, (Apr. 21, 2020) (on file with Kuwait Cultural Off. L. A., http://kuwaitculturela.org/Downloads/2020/Summer%20Courses%20Guideline%20Final%20E.pdf).

109.   *See id.*

110.   *Id.* ¶ 2.

111.   *Id.*

112.   *Id.* ¶ 3. The MOHE has noted that the courses taken online in the summer will not count toward the four-course limit allowed under normal circumstances. *See* AlRashidi, *supra* note 108.

current state of education in accordance with these exceptional circumstances, imposing additional restrictions on students during this heightened time of anxiety is not the proper response.[113]   Moreover, the current state has shed light on whether the MOHE's regular restrictions, such as the four-course limit or prohibiting all types of education unless it is in traditional form, are the proper ways to effectuate the learning of students abroad.[114]   Surely, approving only one form of conducting education should no longer stand, especially in the era of advancing technology.[115]   These restrictions would, therefore, hinder students as they are sent to learn abroad, alongside colleagues who are able to study without these restrictions.[116]

As for students who are studying in Kuwait, irrespective of the level of education, the government has made distance learning optional for students studying in private universities and private schools.[117]   Students who do not wish to enroll in online courses must be allowed to return to in-class learning to complete the semester.[118]   The government has pushed forward the next academic year, such that students who will return to complete the spring semester are due to come back in August 2020.[119]   Students who have continued the spring semester online will join them and come back for the next academic year, beginning in December 2020.[120]   Students in public schools and universities do not have the option of attending online courses, and the semester has been canceled entirely until August 2020.[121]   This creates a divide, furthering inequality among public and private school students, one that is prohibited by international law.[122]   Moreover, mandating

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113.   *Id.*

114.   *See* FARAH & BENCHIBA, *supra* note 101, at 6; *see also* Al Haj Sleiman, *supra* note 107; *see also* AlRashidi, *supra* note 108 ¶ 3.

115.   *See* FARAH & BENCHIBA, *supra* note 101, at 8–9; *see also* Al Haj Sleiman, *supra* note 107; *see also* AlRashidi, *supra* note 108 ¶ 3.

116.   *See* FARAH & BENCHIBA, *supra* note 101, at 8–9; *see also* Al Haj Sleiman, *supra* note 107; *see also* AlRashidi, *supra* note 108 ¶ 3.

117.   A Saleh, *MoE: E-learning optional, classes to resume in Aug*, KUWAIT TIMES (Apr. 6, 2020), https://www.pressreader.com/kuwait/kuwait-times/20200406/281539408069775.

118.   *Id.*

119.   Khitam Al Amir, *Coronavirus: Kuwait extends suspension of schools and other educational institutions until August 4*, GULF NEWS (Mar. 19, 2020), https://gulfnews.com/world/gulf/ kuwait/coronavirus-kuwait-extends-suspension-of-schools-and-other-educational-institutions-until- august-4-1.70505788.

120.   *Id.*

121.   *See MOE WARNS OF 'DISTANCE LEARNING' TECH*, ARAB TIMES (Mar. 6, 2020), https://www.arabtimesonline.com/news/moe-warns-of-distance-learning-tech.

122.   UNESCO, THE RIGHT TO EDUCATION: LAW AND POLICY REVIEW GUIDELINES, UNESCO U.N. Doc. ED.2014/WS/18 (2014), https://unesdoc.unesco.org/ark:/48223/pf0000228491 [hereinafter LAW AND POLICY REVIEW].

students to continue their spring semesters online would have allowed for an easier return to normalcy once the situation is under control.[123] Yet, due to Kuwait's distrust of online classes, the government has preferred to instead make the online system voluntary, so as not to disturb the *status quo*.[124]

Let us now turn to the reasons pertaining to why Kuwait, and Arab countries in general, continue to hesitate to open up to other forms of learning, that would allow Kuwait to offer the same advantages other countries have offered for decades.[125]

V.   CHALLENGES TO ONLINE LEARNING IN THE ARAB STATES

E-learning provides challenges to educators worldwide, due to the complexity of its environment requiring both pedagogical and technical capacities.[126] The availability of internet access and computers can prevent those that are seeking to enroll in digital learning.[127] A resource gap exists between students of some countries and even between students within the same country.[128] As an example, ninety-five percent of students in Austria, Norway, and Switzerland have a computer, but only thirty-four percent of students in Indonesia do.[129] Some governments, such as New South Wales and Australia, are able to provide digital equipment to those who need it, yet, in other countries such as in the United States, nearly twenty-five percent of disadvantaged students do not have a computer.[130] Thus, if States are to comply with their international law obligations to ensure equal access to

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123.   *See generally* Yasmena Al Mulla, *COVID-19: Kuwait government to end 2019–2020 public school year*, GULF NEWS (July 15, 2020), https://gulfnews.com/world/gulf/kuwait/covid-19-kuwait-government-to-end-2019-2020-public-school-year-1.72606389. In addition, the MOHE, in making e-learning optional, has not provided explanations on how students are expected to retain information that was learned in the early months of spring (January and February) upon their return to the classroom in August. *Id.*

124.   *See* Saleh, *supra* note 117; *see* FARAH & BENCHIBA, *supra* note 101, at 3, 6, 9.

125.   *See* Chrysi Rapanta et al., *Online University Teaching During and After the Covid-19 Crisis: Refocusing Teacher Presence and Learning Activity*, POSTDIGITAL SCI. EDUC. (2020), https://link.springer.com/content/pdf/10.1007/s42438-020-00155-y.pdf; *see also* Suzanne Woolley et al., *U.S. Schools Trying to Teach Online Highlight a Digital Divide*, BLOOMBERG (Mar. 26, 2020), https://www.bloomberg.com/news/articles/2020-03-26/covid-19-school-closures-reveal-disparity-in-access-to-internet; *see* Li & Lalani, *supra* note 46.

126.   Rapanta et al., *supra* note 125.

127.   Woolley et al., *supra* note 125.

128.   *See* Li & Lalani, *supra* note 46.

129.   *Id.*

130.   *Id.*

education for all, cooperation among States becomes ever-so necessary, especially during a state of emergency.[131]

In addition to worldwide challenges, e-learning provides region-specific challenges as well.[132] The Arab States have traditionally viewed online education as being inherently western, such that there is much distrust with respect to e-learning.[133] In Qatar, for example, one of the most advanced Arab countries with respect to technology, the Qatari culture was slow to endorse technological advances because of the fear "of the dissemination of pornography and anti-Islamic and anti-government views."[134] This attitude changed, however, with the advent of social media, bringing along with it an increase in online learning management systems in both the secondary and tertiary levels of education.[135] This is due in pertinent part to the arrival of the American branch campuses to Qatar, which include Georgetown School of Foreign Service, Qatar, and Northwestern University, Qatar, that brought with them a culture of online learning.[136] This helped to speed the process of e-learning in Qatar.[137] Still, like most Arab States in the region, Qatar does not have a fully online degree or certificate program in the university system, due to government regulations.[138]

Faculty at Kuwait University are divided between those who are with and those who are against adopting online education in the current state of emergency.[139] Some professors have argued that the system of e-learning is not suitable for implementation because it lacks organization, official regulations, and a framework for monitoring and evaluation.[140] These professors have argued that engaging in online education in the current state of emergency will pose threats to some faculty members because of the added

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131. *See generally* LAW AND POLICY REVIEW, *supra* note 122.

132. *See* ALAN S. WEBER, *Qatar*, *in* E-LEARNING IN THE MIDDLE EAST AND NORTH AFRICA (MENA) REGION, *supra* note 83, at 338–39; *see also* AL-SHARHAN, *supra* note 83, at 210.

133. *See* WEBER, *supra* note 132, at 338.

134. Omar Faridi, *Yousuf Mohamed al-Jaida, the Chief Executive at Qatar Financial Center, Says Country Aims to Leverage Potential of Fintech Sector in Bangladesh, India, Pakistan*, CROWDFUND INSIDER (July 17, 2020), https://www.crowdfundinsider.com/2020/07/164158-yousuf-mohamed-al-jaida-the-chief-executive-at-qatar-financial-center-says-country-aims-to-leverage-potential-of-fintech-sector-in-bangladesh-india-pakistan; WEBER, *supra* note 132, at 338.

135. WEBER, *supra* note 132, at 338.

136. *Id.* at 339–40.

137. *Id.*

138. *Id.* at 349.

139. Faek, *supra* note 4.

140. *Dr. Ibrahim Al-Hamoud: Distance Education and E-Learning are in Breach of the Educational System at Kuwait University*, ACADEMIA NEWSPAPER KUWAIT (Mar. 10, 2020), https://acakuw.com/التعليم-عن-بُعد-والحمود-ابراهيم-د/ (translated).

risk that they may violate local laws (including the laws of public universities and audiovisual and cybercrime laws), alleging that those who teach in the College of Law and the College of Political Science are especially at risk.[141] These laws impose criminal responsibility on individuals who provide political comment, which is deemed as insulting to public officials.[142] Thus, for professors of law and political science, there is the added risk of violating laws prohibiting certain types of political comments based on the nature of the specialization, as the open environment of online learning naturally produces a greater risk for prosecution.[143]

In 2015, Kuwait's Parliamentary Committee of Education, Culture and Guidance conducted a panel discussion to evaluate the legality of the audio-visual law.[144] The committee members agreed to invite higher education and research institutions in the nation in order to seek their views and discuss the implications of implementing the audio-visual law.[145]   Even though discussions were opened five years ago, to date no major steps have been taken to review these laws and their implications in the higher education context.[146]

From another perspective, former Minister of Education and Higher Education Ahmed Al-Mulaifi stated that online education is complementary to traditional education, and that it will not replace it.[147] Ahmed Al-Mulaifi stressed the importance of not stopping education during this time and that there is no provision in the law stipulating that online learning is prohibited; he goes on to further suggest that the current Minister of Education form four teams, consisting of experts from various countries, to develop e-learning policies for higher education.[148]

The lack of consistency with respect to views on e-learning can be traced back to the skepticism with which Arab States view e-learning.[149]

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141.   *See generally* Alaa Khalifa, *Al-Hammoud for finding a mechanism that protects the faculty members who will use the educational platforms from electronic laws*, ALANBA NEWS (June 20, 2020), https://www.alanba.com.kw/ar/kuwait-news/education/975806/20-06-2020 (translated).

142.   *Kuwait: Draft Law Threatens Free Speech*, HUM. RTS. WATCH (May 15, 2013), https://www.hrw.org/news/2013/05/15/kuwait-draft-law-threatens-free-speech.

143.   *See generally id.*

144.   *Educational decides to hold a panel discussion to discuss the modifications of the audio-visual and electronic media*, ALANBA NEWS (Feb. 10, 2015), https://www.alanba.com.kw/ar/kuwait-news/parliament/535845/10-02-2015.

145.   *Id.*

146.   *See generally id.*

147.   Hamad Al-Abdali, *Ahmed Al-Mulaifi: E-learning is supportive, not an alternative*, ALJARIDA (May 12, 2020), https://www.aljarida.com/articles/1589213789792854500/ (translated).

148.   *Id.*

149.   *Id.*

Arab State governments distrust the online learning system for many reasons.[150] One of these is the high degree of fraud associated with the conferral of degrees, whether obtained online or traditionally.[151] In Kuwait, the government has rightfully cracked down on degree-related fraud in recent years that individuals have forged their diplomas—from bachelor's degrees to PhDs[152]—to obtain prestigious positions in both public and private sectors.[153] This has been a persistent problem, and the Kuwaiti government has taken a stance to ensure that all individuals with forged degrees are held accountable and prosecuted.[154] Thus, to provide an example, in July 2018, Kuwait uncovered 400 fake university degrees, most ironically in the field of law.[155] In July 2016, 270 cases of forged certificates came from the fields of medicine and engineering.[156] Most worrisome, it is speculated that "the degrees of more than 1,400 faculty members in Kuwait" are forged.[157] If this is the case, then the country must impose strict restrictions to deal with this matter of urgency.[158] However, one way the government has decided to counter this fraud is to place strict restrictions on non-traditional programs, such as summer-only programs—even if such programs are offered by highly ranked universities—and online learning programs, since these programs make it much easier for fraudulent conduct to take place.[159]

After a student graduates from an online degree program or from a traditional program with which the student has taken some online courses or from a summer-only program, the government can easily validate the degree by requesting a certificate of authentication or validation from the university itself.[160] This would help to counter such fraud without going to the extreme

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150. *Investigations reveal millions spent on fake degrees*, KUWAIT TIMES (June 1, 2019), https://www.timeskuwait.com/news/investigations-reveal-millions-spent-on-fake-degrees/ [hereinafter *Investigations*].

151. *Id.*

152. *Id.*

153. Robert Anderson, *Kuwait cracks down on fake degrees*, GULF BUS. (July 31, 2018), https://gulfbusiness.com/kuwait-cracks-fake-degrees/.

154. *Id.*

155. *Kuwait uncovers 400 fake university degrees*, MIDDLE E. MONITOR (July 23, 2018), https://www.middleeastmonitor.com/20180723-kuwait-uncovers-400-fake-university-degrees/.

156. *Id.*

157. Aisha Elgayar, *In Kuwait, a War Against Fake University Degrees*, AL-FANAR MEDIA (Mar. 29, 2016), https://www.al-fanarmedia.org/2016/03/in-kuwait-a-war-against-fake-university-degrees/.

158. *Id.*

159. *See Investigations, supra* note 150; *see also University Selection Process, supra* note 93.

160. *See generally* Elgayar, *supra* note 157; *see* Anderson, *supra* note 152; *see also Investigations, supra* note 150.

extent of banning all online programs or online courses or all summer-only programs. By imposing such strict measures, the Kuwaiti government is punishing not only those who deserve punishment for their fraudulent conduct, but also innocent individuals.[161] For example, students who have chosen to obtain an authentic degree from a reputable university, but failed to adhere to the regulations with respect to the number of online courses allowed or which semesters to obtain their degrees, would be unfairly penalized.[162] A balance must be reached in this case to ensure that individuals are not forging their degrees but are also able to study in the way most suited for them, whether that means online, in-person, or through summer-only programs.[163] The UAE model would better facilitate this goal.[164]

As previously mentioned, the UAE already has a university that is immersed fully in online learning, the Hamdan Bin Mohammad Smart University.[165] It is accredited by the UAE Ministry of Higher Education and Scientific Research (MOHESR), and teaches classes across a variety of disciplines, resulting in undergraduate, master's, and doctorate degrees.[166] Other universities in the UAE are also accredited to teach online.[167] More relevant to this discussion, however, is the fact that "MOHESR has released a list of 105 accredited foreign online universities recommended for UAE students."[168] This list includes universities in the United Kingdom, the United States, Australia, and New Zealand.[169] Thus, UAE residents wishing to complete their degree online are able to do so, but only as long as the university is accredited by the MOHESR.[170] This is a great method that Kuwait could incorporate to combat degree fraud. Instead of banning online education entirely, Kuwait should look at each university on a case-by-case basis and decide on accreditation using a similar process to that which has been implemented in the UAE.[171]

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161. *See Investigations, supra* note 150.

162. *See University Selection Process, supra* note 93.

163. *See* Elgayar, *supra* note 157; *see generally* Alelyan, *supra* note 9 (Kuwaiti students pursuing degrees have limited options available).

164. JENNIE LAVINE & RICHARD CROOME, *United Arab Emirates, in* E-LEARNING IN THE MIDDLE EAST AND NORTH AFRICA (MENA) REGION, *supra* note 83, at 437.

165. *Id.*

166. *Id.* at 438.

167. *See id.* at 440.

168. *Id.*

169. LAVINE & CROOME, *supra* note 164, at 440.

170. *Id.*

171. *Id.*

Another challenge to e-learning, which is perhaps more difficult to change, pertains to cultural resistance, especially with respect to privacy concerns in conducting student learning assessments online.[172] The president of Emirates College of Technology has elaborated that "the biggest challenge was the assessment, especially through synchronous camera proctored exams, as they are seen to be intrusive."[173] For generally private societies, online assessments that intrude into the homes of individuals are seen as significantly invasive.[174] Thus, the president of Applied Science University in Bahrain, who is emphatic about the viability of online examinations, said "[w]e just need a different mindset . . . [m]any techniques are being developed to address the issue of authenticity through image and voice recognition."[175] Changing mindsets, however, is hard to achieve.[176] Nonetheless, a good starting point would be to foster a culture of understanding that education is an important right, one that should continue even during crises.[177]

Finally, faculty acceptance of technologies pertaining to e-learning is yet another interrelated challenge.[178] Studies have found that "many academics are slow to embrace new technologies."[179] This resistance is a result of many issues including risk of potential failure, perceived value, lack of confidence, general anxiety associated with technology, workload and time constraints, and lack of support.[180] With better training and support, faculty mindsets could also change to embrace the advantage of e-learning.[181]

These challenges that are brought about by e-learning are anticipated but not fatal.[182] To combat these challenges, States must ensure that concerns raised are adequately addressed, including privacy concerns, faculty and student training concerns, and cultural concerns.[183] To foster these changes,

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172. Senthil Nathan, *Where Does Higher Education Go from Here?*, AL-FANAR MEDIA (May 11, 2020), https://www.al-fanarmedia.org/2020/05/future-higher-education-go-from-here/.

173. *Id.*

174. *Id.*

175. *Id.*

176. Marco Nink, *To Be Agile, You Need Fewer Processes and Policies*, GALLUP (Jan. 18, 2019), https://www.gallup.com/workplace/246074/agile-need-fewer-processes-policies.aspx.

177. General Comment No. 13: The Right to Education, *supra* note 21, at ¶ 1.

178. Helen Flavell et al., *Empowering Academics to Be Adaptive with eLearning Technologies: An Exploratory Case Study*, 35 AUSTRALASIAN J. EDUC. TECH. 1, 2 (2019).

179. *Id.*

180. *Id.*

181. *See id.*

182. *See* Li & Lalani, *supra* note 46.

183. Kamal Abouchedid & George M. Eid, *E-learning challenges in the Arab world: revelations from a case study profile*, 12 QUALITY ASSURANCE EDUC. 15, 16–17 (2004).

one could look to the suitability of e-learning during past emergencies.[184] Such measures took place in 2005 when Hurricane Katrina hit the city of New Orleans in the United States and physically damaged twenty-seven colleges in the Gulf of Mexico region and the State of Texas.[185] Again, in 2009, face-to-face classes were substituted with online classes due to the spread of swine flu (H1N1).[186] Recently, with the COVID-19 pandemic, most universities around the world responded by transitioning from face-to-face classes to virtual instruction.[187]

Unfortunately, that was not the case for Kuwait, where Kuwait's public higher education institutions (KU and PAAET) closed until in-class teaching could resume later in the year, and online learning has been made optional for private universities and schools, to the detriment of the future of education in Kuwait.[188]

VI. CONCLUSION

Education is not only a human right in and of itself, but it is a means to the realization of other fundamental rights as well.[189] Thus, the right to education must be respected at all times, whether in a state of emergency or not.[190] Learning, whether conventional or unconventional, is essential for the development of human capacity and ensuring the well-being of individuals, communities, and nations.[191] The current COVID-19 pandemic is a worldwide challenge that affects the lives of everyone.[192] Such a major world event is often an inflection point for rapid innovation.[193] In today's current fast-paced societies, everything seems to revolve around technology

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184.   *See* Katrina A. Meyer & Jeffery L. Wilson, *The Role of Online Learning in the Emergency Plans of Flagship Institutions*, 14 ONLINE J. DISTANCE LEARNING ADMIN. 1, 7 (2011).

185.   *Id.*

186.   *Id.*

187.   Andrew Smalley, *Higher Education Responses to Coronavirus (COVID-19)*, NAT'L CONF. ST. LEG. (July 27, 2020), https://www.ncsl.org/research/education/higher-education-responses-to-coronavirus-covid-19.aspx.

188.   AL-SHARHAN, *supra* note 83, at 205.

189.   General Comment No. 13: The Right to Education, *supra* note 21, at ¶ 1.

190.   MARY PIGOZZI, EDUC. IN EMERGENCIES AND FOR RECONSTRUCTION: A DEVELOPMENTAL APPROACH 2, U.N. Doc. UNICEF/PD/ED/99-1 (1999).

191.   *See* Elizabeth King, *Education is Fundamental to Development and Growth*, WORLD BANK BLOGS (Jan. 28, 2011), https://blogs.worldbank.org/education/education-is-fundamental-to-development-and-growth.

192.   *Everyone   Included: Social   Impact   of   COVID-19*, UNITED NATIONS, https://www.un.org/development/desa/dspd/everyone-included-covid-19.html (last visited Nov. 1, 2020).

193.   *See* Li & Lalani, *supra* note 46.

adaptation.[194] One of the biggest risks nations face is to act slowly in response to existing challenges while others forge ahead. Governments need to be transparent and agile to realize appropriate solutions. These solutions need not necessarily be optimum, especially in times of crisis. It is incumbent upon all to be more adaptive, especially during emergency situations, as extraordinary times call for extraordinary measures.

The COVID-19 pandemic required rapid state response in many areas, including health, economy, security, and education.[195] While the Kuwaiti government's efforts are proactive in terms of virus spread containment, its efforts in public higher education are lagging.[196] Developing countries, like Kuwait, can seek guidance from UNESCO or other bodies to not reinvent the wheel and capitalize on the existing knowledge and experience. E-learning may only be successful in times of emergency when States already have the system in place prior to any such emergencies.[197]

The current crisis will eventually accelerate the integration of technology in education.[198] Due to the massive offerings of free online educational courses that were provided, governments have increased the general acceptance of e-learning modalities.[199] This will speed up the inclusion of e-learning as an integral component of education.[200]

E-learning will contribute strongly to higher education in the years ahead.[201] Looking beyond the COVID-19 pandemic, one wonders if once educational institutions acquire the needed experience and develop the ability

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194. DJ Wardynski, *Technology and Society: How Technology Changed Our Lives*, BRAINSPIRE (Oct. 24, 2019), https://www.brainspire.com/blog/technology-and-society-how-technology-changed-our-lives.

195. *See Everyone Included: Social Impact of COVID-19*, *supra* note 192.

196. *See generally Kuwait schools and universities to close until August*, ARAB NEWS, https://www.arabnews.com/node/1644186/middle-east (last visited Sept. 12, 2020); *see generally* Hannah Ritchie et al., *Kuwait: Coronavirus Pandemic Country Profile*, https://ourworldindata.org/coronavirus/country/kuwait?country=~KWT (last visited Sept. 12, 2020) (highlighting the progress Kuwait has made in controlling the spread of COVID-19).

197. *See* Shivangi Dhawan, *Online Learning: A Panacea in the Time of COVID-19 Crisis*, 49 J. EDUC. TECH. SYS. 5, 5 (2020); *6 Challenges to Distance Learning During the COVID-19 Outbreak and Tips to Overcome Them*, KAJEET (Sept. 13, 2020), https://www.kajeet.net/6-challenges-to-distance-learning-during-the-covid-19-outbreak-and-tips-to-overcome-them/.

198. *See generally* Dhawan, *supra* note 197, at 5.

199. *See* Li & Lalani, *supra* note 46; *see also* Michael P.A. Murphy, *COVID-19 and Emergency eLearning: Consequences of the Securitization of Higher Education for Post-pandemic Pedagogy*, 41 CONTEMP. SECURITY POL'Y 492, 501 (2020).

200. *See* Li & Lalani, *supra* note 46.

201. *See* Vijay Govindarajan & Anup Srivastava, *What the Shift to Virtual Learning Could Mean for the Future of Higher Ed*, HARV. BUS. REV. (Mar. 31, 2020), https://hbr.org/2020/03/what-the-shift-to-virtual-learning-could-mean-for-the-future-of-higher-ed.

to use technology to serve their students, will they abandon e-learning? In the future, there might not be any distinction between online and traditional in-class learning, as governments capitalize on the opportunity to serve students at all times, in good times and in times of crisis.[202]

The emergency e-learning protocols that evolved in response to the COVID-19 pandemic will expedite the transition of face-to-face classes to online learning systems when necessary and the adoption of e-learning to complement the conventional face-to-face education system.[203] We envision that traditional in-class learning and e-learning can go hand in hand and a new hybrid model of education will emerge.[204]

Governments need to rethink the future of education and the role of technology to make paradigm shifts. Governments that will be successful are the ones that understand that it takes a systematic approach to technology-mediated learning and teaching.[205] To that end, the international human rights law framework remains an essential tool to ensure that the right to education is respected at all times.[206] Specifically, the right to online education must be included in that framework to achieve the full realization of the right of education.[207] States must respect the right to education, even during states of emergency.[208] COVID-19 may have exposed inequality within the system of education and may have forced States to rapidly evolve their education systems. This unprecedented move toward online education must ensure equal education for all—well after the pandemic is over—and in line with international human rights law.[209] Thus, while education is a domain that was traditionally ignored, the Arab States, including Kuwait, must ensure that the right to education remains intact, both during and after the current crisis.[210] The situation created by COVID-19 has provided an opportunity that has forcefully expanded the culture of online learning to the Arab States.[211] This necessary transformation is the best possible avenue to

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202. *See id.*

203. *See* Li & Lalani, *supra* note 46.

204. *Id.*

205. *See* Curtis R. Henrie, *Measuring Student Engagement in Technology-Mediated Learning: A Review*, 90 COMPUT. EDUC. 36, 36 (2015).

206. *See* U.N. EDUC. SCI. & CULTURAL ORG., A HUMAN RIGHTS-BASED APPROACH TO EDUCATION FOR ALL, at 1, U.N. Sales No. E.08.XX.2 (2007).

207. *See* General Comment No. 13: The Right to Education, *supra* note 21, at ¶ 6(d).

208. Pigozzi, *supra* note 190, at 2.

209. *See* Michael Power, *The Emergence of a Blended Online Learning Environment*, 4 MERLOT J. OF ONLINE LEARNING AND TEACHING 503, 503–04 (2008).

210. *See* Faek, *supra* note 4.

211. *See id.*

ensure that States are better equipped to deal with emergencies in the future and to ensure respect for human rights at all times.[212]

With that said, the Kuwaiti government should remove any further barriers that would make e-learning difficult. For example, the government of Kuwait should reconsider regulations requiring undergraduate university students studying abroad to take a limited set of online courses and banning community college students from online courses.[213]

Kuwait's Parliamentary Committee of Education, Culture and Guidance should revisit its plans concerning the addition of online education in higher education. Kuwait should evaluate available national laws that potentially hinder the adoption of online education, assess available collaborative opportunities such as the ones provided by UNESCO, and learn from examples in the region and the world at large.[214] The committee should then propose a law to the government concerning online education to address both the current situation and the future of online education in the country.

The time is ripe for online courses to be considered just as effective as traditional learning and is necessary for equality among all students.[215] Moreover, for Kuwaiti students studying within Kuwait, the government should opt for a mandatory online system, at least while the state of emergency persists.[216] After COVID-19 is no longer a threat, Kuwait should reconsider its general rules prohibiting or limiting online education, both within and outside of Kuwait.[217] Now is the perfect time to adopt new regulations and ensure that e-learning may be utilized, not only in times of emergency but also well thereafter.

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212.   *See generally id.*

213.   *See* SCHOLARSHIP RULES AND REGULATIONS, *supra* note 6, art. 4, § 2, ¶ 9 (2013) (KW); *see generally MINISTRY OF HIGHER EDUCATION (MOHE) SCHOLARSHIP APPLICATION REQUIREMENTS AND CHECKLIST FOR STUDENTS CURRENTLY ATTENDING A COMMUNITY COLLEGE OR UNIVERSITY,* KUWAIT CULTURAL OFF., http://www.kuwaitculture.com/mohe/mohe-scholarship-application-requirements/mohe-scholarship-application-requirements-and-checklist-students (last visited Sept. 13, 2020).

214.   *See generally COVID-19: 10 Recommendations to Plan Distance Learning Solutions,* UNESCO (Mar. 6, 2020), https://en.unesco.org/news/covid-19-10-recommendations-plan-distance-learning-solutions; *see* Faek, *supra* note 4.

215.   *See generally* Dhawan, *supra* note 197, at 11, 13.

216.   *See generally* Mubarak M. Alkharang & George Ghinea, *E-learning in Higher Educational Institutions in Kuwait: Experiences and Challenges,* 4 INT'L J. ADVANCED COMPUTER SCI. AND APPLICATIONS 1, 2 (2013) (discussing the benefits of shifting to online learning).

217.   *See generally* Al Mulla, *supra* note 123.