

ANTICIPATING THE “RIGHT TO BE FORGOTTEN”; INITIATIVES BY KENYA LAW ON THE IMPLICATION OF THE RIGHT ON OPEN ACCESS TO INFORMATION

BY LINDA AWUOR,
SENIOR LAW REPORTER
NATIONAL COUNCIL FOR LAW REPORTING (KENYA LAW)

ABSTRACT

The right to be forgotten is a concept discussed and put into practice in the European Union (EU) and Argentina since 2006. The issue has arisen from desires of individuals to determine the development of their life in an autonomous way, without being perpetually or periodically stigmatized as a consequence of a specific action performed in the past. The term refers to the European Union law that aims to protect privacy by requiring search engines to remove links to certain personal data. This right by design, limits public access to information.

Kenya Law is a state corporation in the Judiciary of Kenya mandated to report on Kenya's jurisprudence through the publication of the Kenya Law Reports, to publish the laws of Kenya and other related publications. It is a focal point institution in providing access to Kenya's public legal information – which includes the judgments delivered by the superior courts and the Laws of Kenya. In partnership with the Kenya National Assembly and the Government Press, the Council also publishes parliamentary proceedings (the Hansard) and the Kenya Gazette on its website. Kenya Law has a constitutional and legal obligation to provide access to public legal information to all citizens. Other than its website, Kenya Law uses various online platforms for sharing and exchange of information like Facebook, Twitter, Youtube.

Over the years, Kenya Law has received very many requests to pull down information, most usually judicial opinions from its website, www.kenyalaw.org and to have the cases deleted from Google search engine. The requests range from cases listed for hearing on the daily cause lists published on the Kenya Law website, judicial opinions which had previously been heard but were later dismissed and cases that had not been redacted. This makes us realize that in as much as the concept of the right to be forgotten has not yet made it across the Atlantic, it is already at play in Kenya in a limited way.

Kenya Law has developed guidelines to aid the National Council for Law Reporting staff in anonymizing judgments prior to publication of the Kenya Law Reports. However, this seems to not be sufficient to deal with the issue as Kenya Law only seeks to redact certain judgments off personal and private details to protect the identity of vulnerable groups in society. Kenya Law has taken the approach that decisions on whether information should be removed from search

engines depend on the nature of the information in question and its sensitivity and the interest of the public in having that information available.

This is something Legal Information Institutes (LII's) are going to be dealing with more and several considerations, legal or otherwise need to be factored in the decision to delete information from websites and search engines.

This paper seeks to look at the challenges Kenya Law has faced with regard to balancing universal accessibility and open access while at the same time ensuring private interests are protected. The paper will conclude with a summary of where Kenya Law is today and where it anticipates the open access debate will go next. This will end up in an open discussion on good practices that LII's can adopt while enhancing open access.