So Where is Namibia?

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In February of 1998, the chief justice of Tanzania invited me to make a presentation on automation and court management at an International Conference on the Rule of Law he was hosting in Dar es Salaam. Present were most of the chief justices from southern and eastern Africa. A lengthy conversation over lunch with the Namibian judge present led, a year later, to a formal invitation from the minister of justice of Namibia to visit his country, familiarize myself with their system, and make recommendations about how to improve court administration and case management there. I spent two weeks in July in Windhoek, the capital of Namibia, trying to quickly master a very different judicial system.

In part because it is one of the newest countries in the world, Namibia is not a place with which most of my acquaintances have been instantly familiar. Nevertheless, it has a fascinating history. Originally a German colony, it was known as German South-West Africa. When Germany was stripped of its colonies after its defeat in World War I, South-West Africa became a protectorate of the League of Nations. Administration of the protectorate was assigned to South Africa, which treated the country as its fifth province for most of the twentieth century. After the demise of the League of Nations, the status of the country was in dispute; South Africa took the view that it was now free to annex the former colony. Most of the rest of the world asserted that the United Nations had succeeded to the role of the League of Nations, and that South-West Africa should remain a protectorate. The issue went before the International Court of Justice on three separate occasions, with the South African position eventually rejected. Under enormous diplomatic pressure, and in the face of a growing internal liberation movement, South Africa grudgingly gave up control in the late 1980s. Elections were held in 1989, and the independent country of Namibia came into existence in 1990.

The country is starkly beautiful, with most of the population living in a central plateau; the Namib Desert, one of the driest places on earth, separates the plateau from the Atlantic Ocean on the west. On the east, the Kalahari Desert provides a natural barrier between Namibia and its neighbor, Botswana. Although roughly twice the size of California, the entire country only has 1.7 million people. This is largely because less than five percent of the land is arable.

Although a new country, Namibia has substantial resources and a good infrastructure. It is rich in minerals, and mining (particularly diamonds) provides a quarter of the national revenue. It has an excellent system of tar and local roads that make its stunning scenery easily accessible, charming restaurants and inns, and good communication and banking systems. It is also very safe. One of the recent guidebooks claims that there is not a single documented incident of an American ever being mugged anywhere in the country, and I felt perfectly comfortable moving about the capital city and surrounding country on my own.

The law Namibian constitution is hailed by scholars as one of the most progressive in the world. It abolishes capital punishment, forthrightly permits affirmative action, guarantees equality of the sexes, and contains a litany of personal rights not dissimilar from our Bill of Rights. It has been interpreted broadly, its provisions used to outlaw corporal punishment in schools and prohibit any use of leg irons on prisoners. In the later ruling, the Supreme Court said that leg irons were too reminiscent of the manner in which earlier generations had been forced into slavery to be tolerated today in a civilized African democracy. Fortunately, democracy exists not just on paper. A recent international survey rated Namibia first among countries in central and southern Africa in its "index of dem-
formality supresses vigorous advocacy, as
even oral arguments on substantive matters
tend to be the delivery of set pieces rather
than give-and-take with the court. Not sur-
prisingly, the judges appreciate the deference
shown them.

One of the pleasures of my visit was the
opportunity to spend a fair amount of time
with Namibian lawyers. They are a small
group, only 2,388 licensed legal practitioners
in the entire country. Until 1994 the bar was
dual, separated into advocates and barristers.
Although the distinction is now abolished,
there is a de facto bar of about 20 lawyers who
do most of the litigation in the High Court.
One of the residual effects of apartheid is that
the bar is overwhelmingly still white, with less
than 10 percent of its membership black.
These percentages will soon change dramati-
cally, as the University of Namibia produced
its first set of law graduates only last year.
Before the law program there started, it was
very difficult for a black Namibian to obtain
a legal education. At the time of independ-
ence, all of the judges and magistrates were
white, although whites make up only about
seven percent of the population. Six of the
eight High Court judges are now black, but
this was accomplished largely by appointing
non-Namibians to the bench. Judges there
now are from Zambia, Zimbabwe, and
England. The judges are also predominantly
male, more so than in many African coun-
tries. Only one of the eight High Court
judges is female, although half of the magis-
trates in Windhoek (including the senior res-
ident magistrate) are women. The law school
demographics in Namibia are similar to here,
with about half of the students female, so
these numbers will eventually change.

Namibia is the third African country in
which it has been my privilege to work with
its judiciary, so it no longer comes as a sur-
prise to realize that the United States is often
not the dominant player when it comes to
foreign aid. As generous as we are, many
countries contribute a much higher percent-
age of their GNP to international develop-
ment efforts. In Namibia, where the need for automation in their courts is evident to everyone, the German government is mounting a multimillion dollar effort to install hardware and develop software for both case management and general court administration. Both the new Supreme Court building, and the new magistrate court under construction in the former township, are being built by the Chinese. The United States is a modest player there, with our aid now anticipated to terminate entirely in another three years.

My time there was both exhausting and exhilarating. Days started early and ended late, usually with discussions continuing over dinner. I met with over three dozen judges, lawyers, administrators, academics, and politicians in an attempt to grasp their system quickly, and spent my spare time reading their criminal code and rules of civil practice. At the end, the chief justice and I agreed on two possible future efforts: to reconstitute the High Court Rules Committee to explore procedural simplification and aggressive case management, and to work as a resource person on the overall automation effort. Realistically, whether I return depends not only on an invitation from the Namibians, but also on the pressure of my docket here and the vagaries of American funding. Nonetheless, I again come away struck by how much we take for granted the pivotal role courts play in our society, and how critical it is to the survival of fledgling democracies that they similarly institutionalize the rule of law. It is a remarkable privilege to be a small part of that effort.

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