

# **The Constitutionality of Free Education in Namibia: A Statutory Review**

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**Abstract:** The concept of free education in Namibia has not been understood correctly, owing to lack of proper explanation and context. The objective of this review was to analyse the concept of free education in Namibia from constitutional and statutory perspectives, to generate an undoubted constitutional definition of free education. This review was necessitated by diverse misinterpretations of free education in Namibia, and by assertions that the concept was birthed by certain political personalities in recent times. In addition, citizenry did not know the difference between the constitutional ‘free education’ and the statutory ‘parental contribution’ to School Development Fund, which lack of knowledge compromised the quality education in public schools. The review was carried out by documentary analysis of the relevant Article of the Constitution of the Republic of Namibia, coupled with an analysis of the relevant Sections, Sub-sections and Regulations of the Education Act of the Republic of Namibia. Relevant media articles on free education were also reviewed. The findings were analysed thematically, presented and discussed according to similarities. Key findings revealed that the Namibian citizenry was short of an ideal constitutional and statutory interpretation of free education concept, which unfortunately instigated stakeholders, particularly parents, to neglect their statutory mandate in respect of educational provisions. This neglect ultimately compromised the quality of education for their children. Even politicians who engineered the statutes failed to appreciate an ideal definition of free education and distinguish it from statutory parental contribution to School Development Fund. Recommendations points to the broad Namibian citizenry to assimilate an ideal constitutional and statutory interpretation of free education, and play their part in contributing meaningfully to the pursuit of quality education in Namibian public schools.

**Keywords:** Free education, Education Act No. 16 of 2001, school development fund, primary education, public schools

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## **1. Background**

Education is regarded as a human right in most countries of the world, which enable human beings to be proficient in basic and advanced numeracy and literacy. For this reason, primary education has been made a statutory entitlement to human beings in most countries around the globe. Like other countries of the world, Namibia has committed itself to make primary education a fundamental human right for all its residents. Being a human right also implies that primary education was to be provided for free among public schools in Namibia, which then brought the concept of ‘free education’ to the fore. The concept of free education has not been understood correctly across quarters of the country, owing to lack of proper explanation of the concept, lack of literacy and pursuance of personal and political gratification. In addition, constitutional free education was misconstrued with statutory parental contribution to school development fund.

The inaccurate interpretation of free education unfortunately have had a cripple effect on the overall quality of education in the country, as teaching and learning processes has not been impressive. In addressing this gap, this review sought to differentiate constitutional free education from statutory parental contribution to School Development Fund, in order to provide firstly, an ideal context of free education and secondly, an ideal context of statutory parental contribution to School Development Fund. The aim of differentiating and creating ideal contexts for the two constructs is to commit parents to their statutory educational obligations for the realisation of effective teaching and learning in public schools. This necessitated a review of relevant constitutional tools, with the purpose of harvesting an ideal context and interpretation of the concept of free education in Namibia, to eventually present into public knowledge, the scope of free education and how citizenry can build on that scope to meaningfully contribute to the quality of education in public schools.

## **2. Conceptualisation of free education in Namibia: The genesis**

The Constituent Assembly drafted the Constitution of the Republic of Namibia, regarded as the ‘Mother of all laws’, in 1989, prior to the advent of an independent Namibia in 1990. The Namibian Constitution, Article 20 (2), prescribes that “*primary education shall be compulsory and the State shall provide reasonable facilities to render effective this right for every resident within Namibia, by establishing and maintaining State schools at which primary education will be provided free of charge*”. In view of this

constitutional provision, free primary education implies that the State provides the required inputs and bears the expenses for teaching and learning in public primary schools. In implementing free primary education provisions, the government of the Republic of Namibia is mandated in terms of Section 38 (1) of the Education Act (Act No. 16 of 2001), to ensure that *“all tuition provided for primary and special education in state schools, including all school books, educational materials and other related requisites, must be provided free of charge to learners until the seventh grade, or until the age of 16 years, whichever occurs first”*. *“Must be provided free of charge to learners”* implies that no parent or guardian has to incur costs for his or her children attending primary education in public schools, and this is what characterise and define constitutional free education at face value.

In fulfilling its mandate, the State provided classrooms, teachers and instructional materials at its own cost, with no parents having to pay for the construction of classrooms or pay tuition fees in public primary schools. This is what defines constitutionally free primary education in Namibia and in the context of an independent Namibia, this free primary education provisioning came into effect at the implementation of the Namibian Constitution in 1990. It has been free primary education in public schools all along in Namibia, since independence in 1990. On this basis, free primary education is parented by the members of the Constituent Assembly, who crafted the Constitution of the Republic of Namibia. The Constituent Assembly is thus the father of free education in Namibia, and not the late Minister of Education, Dr. Abraham Iyambo, whom Mashuna (2014), would want him to be remembered as the *“Father of Free Primary Education in Namibia”*.

The late Dr. Abraham Iyambo was also not part of the Constituent Assembly that engineered the Constitution. Hence, the late Dr. Abraham Iyambo cannot be linked to the birth of free education in Namibia in any way. The late minister is reported to have announced in 2012 that primary education will be free as from 2013 (Tjitemisa & Nakale, 2015). This created a false impression in Namibian that primary education has never been free, and that free education in Namibia was then introduced as from 2012 by the late minister of education, Dr. Abraham Iyambo. This was an unfortunate impression that has no legislative value and constitutional substance in it, and nobody should have taken cognisance of it.

In the context of Article 20 (2), of the Namibian Constitution, and Section 38 (1) of the Education Act (Act No. 16 of 2001), free education ends up to where primary educational levels ends, which in the context of the Education Act, primary education ends in the seventh grade or until the age of 16 years, whichever occurs first. Section 38 (2) of the Education Act (Act No. 16 of 2001) stipulates that *“a learner to whom education, other than primary education, is provided in any state school, centre or class or the person responsible for such learner's education, must pay such fees as the Minister may determine”*. This implies that from the eighth grade which is classified as a secondary education, free education is not applicable, and the state is not charged with the responsibility of rendering effective free education at secondary level as it does with the free education at primary level.

As a matter of observation, the state has extended its scope of responsibility beyond the limit specified by the Constitution and the Education Act, by ensuring that all tuition provided for public secondary schools and special education in state schools, including all school books, educational materials and other related requisites, must be provided free of charge to learners. Free of charge implies that parents and guardians of learners schooling at public secondary schools, do not incur any cost, as the state provides classrooms, teachers and instructional materials at its own cost. Though not legislated, this is a commendable humane gesture from the Namibian government to render assistance, in its pursuit for ensuring an educated nation. In practice, the State has extended the constitutional provisions of free education from primary phase, to both junior and senior secondary phases.

Literature reveals that former President Hifikepunye Pohamba, with the support of late Dr Abraham Iyambo, announced free primary education in 2013, while President Dr. Hage Geingob declared free secondary education in 2016 (Immanuel, 2017; Pogisho, 2013). These are factually inaccurate, politically-motivated pronouncements and an indication of the fact that, citizenry including politicians who were part of the Constituent Assembly that crafted the Constitution, has no ideal understanding of the constitutional provisions they claim to have engineered and championed. Free education has already been in existence right from independence up to now, at both primary and secondary education levels in public schools. Free education has always been manifested by the government's commitment to build schools and ensure the deployment of staff, the cost of tuition and provision of instructional resources to schools are made possible with no costs incurred by parents. The misunderstandings among citizenry and politicians comes about when they attempted to mix constitutional free education and the statutory parental contribution to the School Development Fund, which fund is clarified next.

### **3. The School Development Fund contribution: A statutory parental requirement**

An understanding that primary education and by extension secondary education has not been free in Namibia, was generated from a mix up of the Constitutional provision on free primary education as enshrined in Article 20 (2) of Constitution of the Republic of Namibia, and the statutory parental contribution to the School Development Fund as contemplated in Section 25 of the Education Act (Act No. 16 of 2001) of the Republic of Namibia. The fact that parents have been making contributions to the School Development Fund has unfortunately been taken out of context and misconstrued to imply that education was not free, and conclude parents were paying for the education of their children.

Parents were indeed fulfilling their statutory obligation to School Development Fund as stipulated in the Education Act, No. 16 of 2001, Section 25 (8) and (9) (a). The fact that parents were making contributions to the School Development Fund as fulfilment of their statutory obligations should not be taken out of context to imply that they were paying for the education of their children. Equating statutory parental contribution to School Development Fund with paying for the education, implies a lack of understanding of what is meant by free education, and how free education is disconnected from statutory contributions to School Development Fund, a misunderstanding that this review paper is attempting to rectify.

Curiosity may try to understand why the School Development Fund was established and needed, if education is then constitutionally free. In terms of the Education Act, No. 16 of 2001, Section 25 (1) (a) and (b), schools should seek to improve their sport, cultural and educational facilities. This requires more requisites than the government can provide. In addition, different schools have different needs as related to sport, culture or improvement of recreational facilities and instructional resources to ensure a holistic development of learners. As such, it was legitimate for schools to establish development funds to support school development efforts, in terms of Section 25 (1) of the Education Act.

Section 25 (2) contemplates the sources of moneys that should constitute this fund, and this includes moneys received in respect of contributions received from parents; moneys received from donations, bequests or any other source; and interest earned on investments of money standing to the credit of the fund. Section 25 (9) (a) makes it categorically clear that the School Board should liaise with parents in determining the School Development Fund contribution amount payable by parents. The contribution amount is regulated by Regulation 10 (1), (2) and (3) of the General Regulations of the Government Notice 187 of 2002, as amended by Government Notice 15 of 2004. Henceforth, parents are obliged to contribute to the School Development Fund, for the school to be able to improve its facilities and sustain operations.

In view of Section 25 (9) of the Education Act, with its standing Regulations, parents' contribution must not be misconstrued to imply that parents were paying for the education of their children. If a parent is unable to make contribution to the School Development Funds due to socio-economic reasons, Section 25 (10) and (11) clarifies procedures for exempting parents from making contribution to the School Development Fund. The exemption of parents in respect of making contribution to School Development Fund as contemplated in the Section 25 (10) and (11) of the Education Act, is regulated by Regulation 11 (1) and (2) of the General Regulations of the Government Notice 187 of 2002, as amended by Government Notice 15 of 2004. Regulation 11 (1) states that *"a school board that considers to fully or partially exempt a parent from payment of the School Development Fund contribution under section 25 (10) of the Act, apart from the procedure the school board may determine under section 25 (9) (b) of the Act, must follow the procedure set out in this regulation"*. Whereas Regulation 11 (2) postulates that *"a parent may apply to the school board in writing for full or partial exemption on a form determined by the school board..."*. Hence, in view of the standing Regulations of the Act, any efforts to influence parents to neglect their statutory contribution to School Development Fund, is unconstitutional and illegitimate.

Despite some parents not making contribution to School Development Fund and also not being exempted from making contribution, it was observed that their children continued attending schools, because education is free at face value, from a parental perspective. It is the duty of the school board to exempt a parent from making contribution to the School Development Fund and not a duty of a minister of education, as the minister's duty is to partially or fully exempt any learner or any category of learners from payment of tuition, boarding or any other fees, in terms of Section 39 of the Education Act.

Section 25 (12) of the Education Act details punitive consequences for parents who fails to make contributions to the School Development Fund without any exemption granted. In the interest of innocent learners, the punitive implementation of Section 25 (12) is regulated by Regulation 9 of the General Regulations of the Government Notice 187 of 2002, as amended by Government Notice 15 of 2004, which asserts *"subject to sections 25 (12) and 59 of the Act, a principal or teacher of a state school may not, in any way, prejudice a learner or discriminate against a learner on the reason that a parent has failed or refused to pay the School*

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*Development Fund contribution for such learner*". This reveals that the act of parents making contribution to the School Development Fund, is above board and duly constitutional.

The amount that parents pay to the School Development Funds is quite little, as a contribution by an individual learner may not even afford a textbook or a chair. Therefore, the little contribution parents have been making should not be misinterpreted to imply that parents were paying for the education of their children, as the contribution amount they advanced could not sustain school operations alone. The contribution parents made was merely for the development fund, which is essentially to improve school facilities and parents are key stakeholders in the viability and sustainability of the fund.

Legally, it is legitimate for parents to make contributions to School Development Funds as no amendments have been made to the statutory sections that oblige parents to make a contribution to the School Development Fund. The purported announcement by politicians that education will be free were misleading as primary and secondary education has been free in Namibia since independence. What the late Dr. Iyambo and other like-minded politicians have thought of, has nothing to do with free primary education provisions as stated in Article 20 (2) of the Constitution of Namibia and Section 38 (1) of the Education Act No. 16 of 2001. Perhaps, what these politicians thought of, has to do with parents' contributions to School Development Funds as contained in Section 25 (8) and (9) (a) of the Education Act No. 16 of 2001. Hypothetically, the intention of the late Minister were to exempt parents of primary learners from making contributions to School Development Funds as their statutory requirement. However, Namibia is a rule of law country. The minister do not have the power to effect the exemption of parents from making contribution to the School Development Fund, as that is the prerogative of the School Board in terms of the Education Act. Such ministerial attempts were grossly unconstitutional and illegal, as the minister's power to exercise exemption is limited to tuition and boarding fees, and not to statutory parental contribution to School Development Fund.

Procedurally, the intentions of default exemptions of all parents countrywide from contributing to School Development Funds were supposed to be tabled by the minister, and debated in parliament and then succeeded by amending relevant Sections, such as Section 25 of the Education Act of 2001, to exempt parents from making contributions to the School Development Fund. Legally, this is what is supposed to have happened and every politician and law maker knows that quite well. Had the exemption gone through, it was on that basis that the late Minister's heroism was going to be based upon, and not on free primary education as alluded to, as primary education has been free for eons, way back before the late Minister took over the mantle of the ministry of education.

As stated earlier, even with exemption, the minister do not have any power to exempt parents from making contribution to School Development Fund, as that is the prerogative of the school board. Constitutionally, the minister's action regarding withdrawing statutory parental contribution to School Development Fund, would not have been an above board decision in any way. By any standard, Namibia is not yet at a stage of development to exempt parents from making contribution to public schools, and leave everything to the State to provide. For all purposes and intents, that move would not have been sustainable. However, such developments created an impression that have had adverse consequences on the quality of education in Namibia, as highlighted next.

#### **4. Misinterpreted free education: The consequences**

The mixing of free education concept with the parental contribution to School Development Fund have had its fair share of consequences to the quality of education among public schools in Namibia. Notably, there has been a great deal of negative consequences due to a lack of an ideal understanding and interpretations of free education and School Development Fund, as well as an appreciation of the nexus between the two constructs. The majority of the parents and guardians in Namibia hails in rural areas. As such, their level of understanding about the legal frameworks regulating educational provisions is very limited, and thus depend on educational officials and politicians for directions and guidance on educational matters.

As a result of the alleged announcements of free education in Namibia by politicians, most parents were excited and unfortunately abandoned their statutory obligations of making contribution to the School Development Fund, under the pretext that the government was now going to provide all resources required for teaching, learning and improving school facilities. Unfortunately, the government has not been able to live up to the tasks of providing required resources to schools to sustain operations and improve performance levels as it claims. As soon as parents have withdrawn their statutory contribution, public schools have been placed in a resource-stricken position, ultimately compromising the quality of education offered in public schools as well as diminishing school development efforts.

Most schools have then been operating with limited instructional resources in the absence of parental contribution as illegally withdrawn by politicians' statements. Ultimately, schools were not performing as

required and school facilities could not be improved, but rather deteriorated and dilapidated. This was all caused by the illegal withdrawal of statutory parental contribution to the School Development Fund, at the hands of the politicians. The challenges that are faced by schools can thus be regarded as having been caused by politicians. The words of Ben Carson bears relevance to this scenario, that *"we have been conditioned to think that only politicians can solve our problems. But at some point may be we will wake up and recognise that it was politicians who created our problems"*. Ultimately the quality of education in public schools had deteriorated to an alarming level, as learners were now failing in public schools due to lack of resources, their parents having been instructed by politicians to stop supporting schools as education was allegedly now free.

Hypocritically, most of the politicians who directed parents and guardians not to make a contribution to School Development Fund of public schools, had their children attending private schools, where these politicians pays sums of money to ensure a constant supplies of instructional resources and guarantee quality education for their children. Yet, the children of in public schools in Namibia are made by politicians to endure poor quality education characterised by lack of resources by ordering parents to refrain their statutory obligations, which statutory obligations could have helped their children a great deal of success.

## 5. Conclusion

The Namibian politicians did not have an ideal understanding of the constitutional free education concept, and did not know the dichotomy and nexus between constitutional free education and statutory parental contribution to School Development Fund. This gap was then passed on by politicians, to the broad citizenry which seems to place all trust in politicians. It is however not convincing that politicians did not conceptualise free education, when these are the very same people who formed the Constituent Assembly which drafted the Namibian Constitution. On this basis, this paper submits that the order by politicians to have parents abandon their statutory contribution to School Development Fund, was a deliberate error by Namibian politicians for their political convenience. Their political convenience efforts has unfortunately not only disregarded the statutes governing public education in Namibia, but has also compromised the quality of teaching and learning taking place in Namibian classrooms.

The order given to parents by politicians not to undertake their statutory contribution, was a mere political statement by politicians in a political environment with political ambitions, as they thought such ambitions were only to be realised by making deliberate legislative errors. Unfortunately, the large part of the population of the Namibian parents is made up of parents whose level of education cannot comprehend legislative frameworks, and thus take most instructions by politicians as final without any critique and second thought. A political statement is an expression made by a politician in a political environment, for purposes of political ambitions and conveniences, when such expression may generally lack good intents, clarity of purpose and judgement.

Therefore, it is clear that the majority of the parents whose children attends public schools were misled by political statements made by politicians in Namibia, and these statements did not have a good cause as it compromised the quality of education in Namibian public schools. In addition, careful judgement was not exercised by politicians to detect that the political statements they were making to parents were unconstitutional and illegal, and thus undermining the legislative instruments governing the provision of public education in Namibia.

Generally, quality education comes at a cost. It was thus ironical for politicians to order parents to withdraw from contributing to School Development Fund, and order school principals not to request parents to further continue making contributions to School Development Fund, but expect public schools to provide quality education. Nothing is for free in this world, someone is paying for it. The fact that learners are taught in classrooms using instructional materials whose cost are not incurred by their parents, and taught by teachers whose salaries are not paid by their parents, should not qualify anyone to believe that education is generally free.

The fact that the provisions of all educational services are paid for by government, might seem to be free education from the general public perspective at face value, but at closer look, it is actually not free education because the government pays for it. By virtue of that payment the government is paying for educational provisions, education is thus not free, someone in the name of 'government' is paying for it on behalf of everyone. Even welfare states of the world where education is claimed to be free from basic to high level, it is basically not free education as the governments of those countries have ways such as increased taxation, to raise enough funding for such education provisions. Such education is now generally perceived as free education when it is actually not free education, as increased taxation and donation pays for it.

Parents and guardians especially those of rural areas, needs to be vigilant and critical, and be able to recognise political statements made by politicians for their political convenience, disregard the illegitimate

statements and continue to perform their statutory educational obligations for the best interests of their children, whose future is yet to be. This vigilance is necessary as at the end of the day, it is the lives of the parents and their children that are at stake, and not the lives of the politicians and their children. If parents failed to use the resources at their disposal to invest into the education of their children, but rather allow politicians to gamble endlessly with the future of their children, surely parents should not expect any return of good investment in the form of high academic results and professional achievements. Parents will have no one else to blame, but themselves for having allowed themselves to be misled by politicians and neglect the education of their children.

As of the current Education Act No. 16 of 2001, together with its standing General Regulations of the Government Notice 187 of 2002 as amended by Government Notice 15 of 2004, it is still legitimate for law abiding school principals in Namibia to demand without fear or favour, parents to make contributions to School Development Funds, as there is no statutory amendment yet to Section 25 of the Education Act. Article 20 (2) of the Namibian Constitution as well as Section 38 (1) and Section 53 (1) of the Education Act No. 16 of 2001, are perfectly in line with the universal free primary education objectives. The statutory parental contribution to School Development Fund is not interfering in any negative way, with the objectives of the universal free primary education. In fact, School Development Fund advances the intentions of the universal free primary education by complementing and sustaining the resources the government has made available to render effective free primary education provisions. The intentions to abolish School Development Fund as revealed by Pogisho (2013), are out of context as that literally means schools will not develop as there are no fund to spearhead the required development. This will in return defeat the intentions of the universal free primary education as the resources government provides needs to be preserved and improved with the means from the School Development Fund.

Namibia is a rule of law country and if politicians wants parents to stop making contribution to School Development Funds, they should follow the rules of amending statutes instead of making themselves guilty of violating standing statutes and Regulations. Unfortunately, Namibia as a country marred by corruption, unequal distribution of resources, income disparities, unabated poverty levels, to mention but a few, did not have the resources to cater for the needs of every public schools in the absence of parental support. Ordering parents not to make contribution to the school development efforts was thus a political statements with far reaching detrimental effects.

It should therefore be taken note by all Namibians that free education in Namibia implies that the government provide the required resources to render effective education in public schools with no cost incurred by parents and guardians. Free education has been in existence at the onset of the Namibian Constitution in 1990, and did not come into being in 2013 courtesy of the late Minister of Education, Dr. Abraham Iyambo, as alluded to, or by any other affiliate politicians as earlier mentioned. As a matter of fact, the late minister violated the sections of the Education Act by making illegitimate pronouncements outside a standing statute and its regulations, when such statute was not amended as yet. In addition, the contributions parents were making to the School Development Funds were statutory obligation in terms of the standing statute and regulations, and their contribution should not be misconstrued to imply that parents were paying for the education of their children. The point that the ordering of parents to refrain from making contribution to the School Development Fund was a political statement, is evident in the fact that the succeeding ministers who took on the education ministry after the late minister, emphasised parents to make contribution to public schools to help schools meet the educational requirements (Nampa, 2016). This appeal was made in spite of the fact that, previously schools were instructed by politicians not to ask any contribution from parents. This reveals how parents were misled by politicians to neglect the education of their children.

## **6. Recommendations**

In view of the above conclusion, the following recommendations were made:

- The Namibian citizenry should embrace an ideal interpretation and context of constitutional free education.
- The Namibian citizenry should embrace an ideal interpretation and context of the statutory parental contribution to School Development Fund.
- The difference between the constitutional free education and statutory parental contribution to School Development Fund should be well internalised by all Namibians.
- The nexus between constitutional free education and statutory parental contribution to School Development Fund should equally be well internalised by all Namibians and cemented.
- Political officer bearers should refrain from making unsubstantiated political statements for their own convenience and political ambitions, as that is detrimental to the quality of public education in the country.

- Parents and guardians should be vigilant and critical of statements issued by politicians and establish legitimacy of purposes and intents before compliance.
- Parents and guardians should disregard the fact that education is now free, as it has always been free, and instead resume making their statutory contribution to School Development Fund for improved quality of output in public schools.
- Namibian parents and guardians should recognise that nothing is for free in this world, someone is paying for it. Therefore, parents should invest in the education of their children in anticipation of quality education, as quality education comes at a cost.
- Education is a shared responsibility, and no one should be allowed to claim sole capabilities in education provisioning, when available evidence do not prove such capability. Government and the parent community should join hands in ensuring the availability of resources to render effective education to all learners.
- School principals of public schools in Namibia should compel without fear, parents and guardians to make their statutory contribution to School Development Fund for improved school infrastructure and better learning outcomes in public schools.

It is believed that if the above recommendations are acted upon as required, education stakeholders will start to play their roles meaningfully in pursuit of quality education in public schools, as we seek to make learners our paragons of virtues and beacons of hope.

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