

What happens when a province is not meeting its constitutional obligations?

# Section 100 of the Constitution

The National Executive can intervene in a province if the province is not meeting its obligations

In terms of section 100 of the Constitution, when provinces do not fulfil their obligations, the National Executive can intervene in two ways:

**The National Executive can:**

- ✓ issue a directive to the province with specific steps that must be taken by the province to meet their obligations (this is section 100(1)(a))

OR

- ✓ the National Executive can take over the province's function under certain circumstances (this is section 100(b)).

## why is this useful?

In the Eastern Cape and Limpopo Provincial Departments of Education, we have seen issues such as bad infrastructure, wasteful spending, no scholar transport and no textbooks for learners.

By using section 100 of the Constitution, the National Executive can address these violations of the right to basic education (or other rights) and try and remedy the problems in a province.

## What can be done?

To address some of these challenges, Equal Education and the Equal Education Law Centre have submitted that section 100 of the Constitution be changed/amended as follows:

1. The Constitution should make it compulsory for there to be a law that sets out the details of what should happen during section 100 interventions.
2. The National Council of Provinces must review the progress of the intervention quarterly.
3. The National Executive must report quarterly on progress, challenges and steps being taken.

These proposals have been placed before Parliament to consider. EE and EELC are keeping track of how Parliament responds to our recommendations.

## What are some of the challenges?

1. We know that the interventions are meant to be temporary and that the purpose of the intervention is for the province to carry on fulfilling their obligations themselves. However, we have seen that section 100 interventions can carry on for a long time and that there is sometimes uncertainty as to whether it is still in place!
2. During an intervention, there is sometimes confusion as to who is responsible for delivering the obligations and who is accountable.
3. It is not clear when the National Executive must report to the Legislature (the National Council of Provinces) on the progress of the intervention, and it is also not clear how often the National Council of Provinces should be reviewing the effectiveness of the intervention. This means that there are no clear oversight procedures to make sure the intervention is working.

These challenges can limit the success of national interventions, which can have a negative impact on service delivery.