



PLATAFORMA DE DIREITOS HUMANOS  
ECONÔMICOS, SOCIAIS, CULTURAIS E AMBIENTAIS

## SCHOOL FEEDING IS A HUMAN RIGHT:

### VIOLATIONS IN THE STATE OF RIO DE JANEIRO IN PANDEMIC TIMES

The National School Food Program (PNAE), responsible for offering school food to all students of public basic education, is one of the most relevant public policies aimed at guaranteeing the Human Right to Adequate Food and Nutrition (RtFN), and a of the few that resist the systematic dismantling of rights that is happening in Brazil. The program serves approximately 41 million students, with financial transfers to 27 states and 5,570 municipalities, in the order of R \$ 4 billion annually (USD 718958920) . For many of these students, it is at school that the only or main meal of the day is made, which is extremely relevant for guaranteeing the rights of children and adolescents.

Law 11,947 (PNAE Law) enacted in 2009, is considered an important milestone in the fight for the guarantee of economic, social, cultural and environmental human rights (ESCEHR)). Based on the principles of Food and Nutritional Security (FNS), the new legal framework institutionalized school feeding as a human right to be guaranteed, universally, to all students in the public school system. The law also ensures the principle of social participation, when creating school feeding councils (SFC), with the objective of supervising the application of resources and the fulfillment of the program's objectives.

PNAE is also strategic in structuring supply networks for family farming. 30% of the PNAE resources, approximately R \$ 1.2 billion annually (USD 215687676) , are destined to the direct purchase of food from family farming, with positive repercussions on several aspects that favor FNS, such as the generation of income and the dynamization of local economies, as well as better nutritional quality and enhancement of regional food culture.

#### ***PNAE in the COVID-19 pandemic***

As a result of the COVID-19 pandemic, in March 2020, state and municipal governments decreed a state of emergency and interrupted face-to-face classes in the public school system, as a way to prevent the spread of the new coronavirus. The correct decision to suspend classes led to the interruption of the supply of meals in schools, which represented a serious risk to FNS and the health of millions of students, as well as to the income and local supply circuits of family farming, in a time of severe economic crisis, rising unemployment and poverty.

On April 8, 2020, Law No. 13,987 / 2020 was approved by the National Congress and sanctioned by the Presidency of the Republic, which authorized, “exceptionally, during the period of suspension of classes due to an emergency or public calamity, the distribution of **foodstuffs** purchased with PNAE resources to parents or guardians of students in public schools of basic education ”. In a subsequent resolution, the National School Development Fund (FNDE / Ministry of Education - MEC) regulated the law, with some fundamental determinations for RtFN's guarantee in the distribution of kits / baskets, with regard to the



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nutritional and sanitary quality of food (“with respect to eating habits, local culture and, preferably, composed of fresh and minimally processed foods”), regularity and access to information for right holders, and the continuity of acquisition of foodstuffs from family farming.

Despite the rapid response with the necessary legal authorizations, and the continuity of financial transfers to the federated entities, the Federal Government did not guarantee an additional budget so that there was an adaptation / expansion of the PNAE in the context of the pandemic, when it is known that the cost of distributing food outside the school environment, according to the nutritional parameters established by law, is much higher, in addition to the additional expenses with the logistics of distribution and provision of personal protective equipment (PPE).

### ***Violations in the State of Rio de Janeiro***

The state education network in Rio de Janeiro serves approximately 661,600 students, in a total of 1,168 schools. To do this, it receives approximately R \$ 59 million annually (USD 10604644) from the FNDE, a budget that is supplemented with its own resources from the state government, totaling an insufficient per capita of R \$ 1.00 (USD .18/per meal). The program is managed in a decentralized manner, that is, FNDE transfers the funds to the State Education Secretariat (SEEDUC), which in turn transfers them directly to the school units, which are responsible for the purchase of food. It is the responsibility of SEEDUC to publish Public Tender directed to the purchase of products from family farming, and the contracts and the effective purchase are made directly by schools with selected farmers and traders.

Face-to-face classes were suspended in the State of Rio de Janeiro (ERJ) on March 11. Since then, what has been experienced is a trajectory of a lot of misinformation and decisions taken unilaterally by the then secretary of education, Pedro Fernandes, without any type of dialogue with the school community, the school feeding council, or the farmers who supply the program. .

At first, the secretary of education came to the public to announce that the strategy adopted to serve the students would be the distribution of food aid in the amount of R \$ 100.00 (USD 18), exclusively to students whose families were registered in the Single Registry of Social Policies and beneficiaries of the Bolsa Família Program (PBF). However, for budgetary reasons, this action was not authorized by the Civil cabinet and the State Attorney General of Rio de Janeiro (PGE RJ), therefore it was not carried out. As a result, SEEDUC restricted its strategy to passing on FNDE resources to schools, without additional supplementation due to the pandemic. At this very moment, the decision of the executive branch was to focus, which violates the principle of universality of the program.

Through a communiqué issued on May 28, SEEDUC guides the school units, reproducing basic guidelines of the FNDE. The minimum composition of the kits is also defined, consisting of basic foods such as rice, beans, soy oil, salt, sugar, flour, pasta, biscuits, powdered milk and canned goods, with an estimated value of R \$ 80.71 (USD 14 and 51 cents). Regularity is not defined, the only guideline being that the



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number of kits is the result of dividing the PNAE parcels transferred, by the unit value of each kit. The communiqué also determines that the social selection of students with a view to receiving the kit is the sole responsibility of the Director of the School Unit, throwing on the shoulder of these civil servants the guarantee of a right, without the due conditions of being fulfilled, since the resources transferred are insufficient to ensure universality. It also announces the interruption of public procurement processes for family farming acquisitions. In addition to the non-universality, from RtFN's point of view, the irregularity of distribution, the quality of the suggested food, and the non-acquisition of fresh and healthy food from family farming, as recommended in the PNAE law, are also questionable.

Faced with this scenario, the School Feeding Council (CAE RJ) conducted an online survey with the directors of state schools on the situation of the supply of school food during the pandemic, to which the directors of 1,096 School Units (UE) of the ERJ responded. According to the survey, 58% of schools distributed the food stored in the first month of school suspension, through diverse and spontaneous strategies, especially to parents who sought help in schools, there are also cases of donation to non-governmental organizations and philanthropic entities. However, few schools continued to buy food and distribute it. Most schools are not making purchases during the pandemic, with 36% of them reporting the suspension of food purchase contracts, and 99.8% of them not purchasing perishable products such as fruits and vegetables. According to the survey, as of June 15, only 19,940 kits had been distributed throughout the state school system. Principals' reports indicate a large number of families in need and an increase in hunger among schoolchildren, and the challenge of having to deal with a much larger number of families in need, than the number of baskets available. 60% of principals reported that parents of students went to schools in search of food baskets.

The External Ombudsman of the Public Defender's Office of the State of Rio de Janeiro carried out an extensive listening process that had two main instruments: i) complaint channel based on a questionnaire on the provision of school meals for students from the municipal and state public networks of Rio de Janeiro during the pandemic, ii) scripted listening to favelas and peripheries, with leaders from the metropolitan region.

As of August 11, 3,285 people, including guardians and students, had answered the questionnaire. It is not possible to identify whether the answers refer to state or municipal schools, and the majority of the answers came from the municipality of Rio de Janeiro (79.8%). 53% replied that they had not received any kind of aid. Another 47% replied that "they received some kind of aid, but in an insufficient way". Regarding the insufficiency of the aid, comments were noted that point to a large number of people who received only a basket/kit in April, families who only received aid for one student and not all of the family; insufficient financial value or quantity of food in the basket to ensure the schoolchildren's food. . In the process of listening to favelas and peripheries, reports were unanimous about the difficulty families face in ensuring the feeding of children and adolescents who are students of the public



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elementary school system, without meals in schools. Hunger in favela and periphery families was a problem that was almost always reported.

In addition to the challenges and uncertainties inherent to the Covid-19 pandemic, the ERJ also faces a major crisis and political instability, which among other things led to an impeachment process by the State Governor, Wilson Witzel, as well as the arrest of the State Secretary of Education, Pedro Fernandes, for allegations of corruption in previous administrations.

### ***Political and judicial enforceability***

Despite the neglect of the state government, actions of political enforceability on the part of councils and civil society are significant, see the previously reported monitoring initiative by CAE RJ and the recommendation documents sent by the Food and Nutritional Security Council (Consea RJ) to the State Government Crisis Office. The counselors' reports are of absolute lack of dialogue on the part of SEEDUC and even of intimidation. There were also two public hearings organized by the Education Commission of the Legislative Assembly of the State of Rio de Janeiro (ALERJ), the main referral being the decision by a meeting with the vice-governor and the State Secretariat of Finance, with the objective of debating issues related to the expansion of the budget for school meals, which has not yet happened.

The Coordination for the Defense of the Rights of Children and Adolescents of the Public Defender of the Public Defender of the State of Rio de Janeiro (DP RJ) initiated an exemplary action in relation to the PNAE since the beginning of the pandemic, issuing recommendations on the need for guarantee universal access for all students. All 92 municipalities and the State of Rio de Janeiro were notified. Municipalities that have not responded or that have not provided information or that have refused to guarantee students' right to food are being sued by the Defender. By July 20, 2020, favorable court decisions had already been taken, forcing the supply of school meals to the State of Rio de Janeiro, and 12 municipalities.

The judicial process regarding the state of Rio de Janeiro begins with a letter from DP RJ to the State Department of Education (SEEDUC) and to the State Department for Social Development and Human Rights, with recommendations for ensuring the right to food for students basic education. Among the recommendations, the letter included the provision of weekly basic baskets, whose composition should respect the nutritional minimum established by the program; the eventual increase in the amount passed on to families, if the option were for income transfer; and the need for clear communication to the right holders about the actions taken, as well as the execution schedule.

By choosing to serve only a portion of the students, SEEDUC failed to comply with the universality guideline provided for in the PNAE. For this reason, the Public Defender's Office filed a Public Civil Action (ACP) that determined that all students of the state public school system must be provided with adequate food, which was accepted by the Judiciary Power, after a favorable manifestation by the Public



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Ministry (MP), under penalty fine of R \$ 10,000/day. The decision is of May 23. After granting the request, the Secretary of Education Pedro Fernandes publicly expressed his dissatisfaction in a media strategy whose objective is to hold the Public Prosecutor and the Public Defender responsible, for an alleged reopening of schools for offering meals to students. In view of the injunction, the state government filed an interlocutory appeal, based on an argument of budgetary insufficiency, with a request for suspensive effect, which was denied by the 15th Civil Chamber of the Rio de Janeiro Court of Justice. At the same time, the SRJ, claiming risk to public order and economy, requests the suspension of an injunction (provided for by Law 8,437), which is denied by the Presidency of the Court of Justice - RJ (decision of July 22), leading to the repetition of the request to the Federal Supreme Court (STF).

On September 1st, the then president of the STF, Minister Dias Toffoli, suspended the decision of the TJ-RJ that obliged the distribution of food to all students in the state school system, under the justification that this action would cause risk to the finances that the decision on the universal supply of food to schoolchildren rested with the executive branch, and the Judiciary branch cannot replace the Administrator. On September 8, the news of the STF's decision gained repercussion, and DP / RJ filed an appeal, not yet judged, with the argument based on the right to food as a fundamental right, and that, therefore, would be up to the power the judiciary to intervene in the face of this violation. It was also argued that it was the existential minimum, after all many students have school meals as their main meal, as well as being the target children of the right to absolute priority, according to the doctrine of full protection provided for in the Federal Constitution, and the Convention on the Rights of Child, 1989. Unfortunately, with the decision of the highest court in the country, the forced execution of the court remained interrupted, which can pose a risk to the food and nutritional security of many children.

Civil society also reacted, manifesting itself publicly through an open letter and holding a popular hearing with the participation of the UN Special Rapporteur on the Human Right to Food, Michael Fakhri, called by the Brazilian Forum on Food and Nutrition Sovereignty and Security (FBSSAN) , Dhesca Platform, National Campaign for the Right to Education and FIAN.