

VIOLATION OF THE HUMAN RIGHT TO ADEQUATE FOOD DRESSED IN A ROBE

WE WILL NOT ACCEPT HUNGER AND INJUSTICE ON STUDENTS' PLATES

When deciding the Precautionary Measure in the Suspension of Injunction number 1.360 in Rio de Janeiro, Supreme Court justice Dias Toffoli, denied public school students of the State of Rio de Janeiro the right to school meals during the COVID-19 pandemic.

The obligations arising from the Human Right to Adequate Food, inscribed in national and international Normative Texts, oblige the three State powers: Executive, Legislative and Judiciary and, equally, the three entities of the Federation (Union, States and Municipalities).

By not fulfilling the Judiciary's duty to guarantee fundamental human social rights, such as adequate food, the Minister left the Supreme Court (STF) itself in an embarrassing situation, exposing it to the international human rights system. Adequate food is provided for in article 11.1.2 and the immediate right to be free from hunger is provided for in article 11.2, in the International Covenant on Economic, Social and Cultural Rights (UN / 1966). Likewise, the Convention on the Rights of the Child (UN / 1989) provides for this right in Articles 24 and 27.

As widely publicized by media outlets and civil society organizations, the State of Rio de Janeiro has systematically shied away from its duty to provide resources and logistics to ensure the distribution of school meals to all public school students during the pandemic. The School Food Council of Rio de Janeiro not only revealed this fact, but also that the supply of school food is extremely precarious, serving a small portion of students and very low percentages per school unit. Such a situation violates the universality of the National School Meals Program and the entirety of national and international legislation regarding adequate food. In doing so, the State of Rio de Janeiro breaches the principle of legality, one of the constitutional pillars that govern public administration.

Institutions such as the Public Defender's Office and the Public Ministry of Rio de Janeiro have been seeking, through legal disputes, to guarantee school meals for all students in the public school system in this pandemic period.

Despite the praiseworthy decision of the Rio de Janeiro Court of Justice-TJRJ to guarantee the right, by forcing the distribution of school meals to students, the appeal filed by the State of Rio de Janeiro, in frank violation of students' rights, was preliminarily approved by Minister Dias Toffoli, an affront in the face of what hunger and food insecurity represent in the lives of these children and adolescents.

The Minister recognizes the competence of the STF, since it deals with the constitutional rights to food and education, and then he washes his hands, drying them in a distorted view of the doctrine of the separation of powers and the discretion of public administration, promoting hunger and injustice disguised as “jurisdictional provision“.

Minister Toffoli, public administration discretion refers only to how to do it, how to carry out public policy, there is never any discretion to legitimize or justify the non-realization of constitutional rights by those who have a duty to implement them.

The first foundation of public policy is the realization of constitutional rights. Legitimizing the position of the State of Rio de Janeiro to generically serve “the most vulnerable” violates the principle of legality that guides public administration, since school meals are governed by universality.

The allegation of the violation of the separation of powers cannot be invoked when the State is silent and inefficient in the provision of public policy, leaving students lacking their most fundamental right to be free from hunger.

The obligation of the Judiciary, under the Federal Constitution and International Treaties, is precisely to guarantee rights of this magnitude, when the other powers fail or prove to be inefficient. It is not a question of replacing the State in carrying out public policy, but of compelling the State of Rio de Janeiro to effectively guarantee the right to school meals for students. If this is not the role of the Judiciary, especially the STF, in relation to fundamental human social rights, such as food and education, what is?

Minister, in your decision, you recognize the insufficiency of the amounts transferred by the National School Meal Program / PNAE and the need for additional resources from other federative units. However, this does not help and, in practice, unceremoniously undoes the determination of the TJRJ, which ensured the reach of school meals and their delivery logistics outside schools during the pandemic and suspension of classes, thus passing from being a guarantor to a violator of this right.

Given the obvious relevance of the Human Right to Adequate Food, even with classes suspended due to the pandemic, there was express authorization by law to, exceptionally, distribute foodstuffs to parents or guardians of public school students of basic education, under the terms of Law No. 13.987 / 2020. However, the representative of the STF, disconnected from reality, decided to disregard the relevance of school meals in the context of the pandemic.

To state in the decision that "only possible illegalities or violations of the current constitutional order should merit judicial sanction, in order to correct directions ..." is to capitulate. What would be illegalities if not affronts to the legislation? Is there another way of looking at it? Does not the violation of International Treaties signed by Brazil and the constitutional text itself violate the constitutional order?

The Convention on the Rights of the Child, Article 227 of the Federal Constitution and Article 4 of the Statute of the Child and Adolescent ensure absolute priority for children and adolescents and, among other rights, that to food. Does claiming the subversion of the administrative order of Rio de Janeiro, as the decision does, serve as a legal basis for flagrantly violating the constitutional rights of subjects who enjoy absolute priority?

The Brazilian Supreme Court is the guardian of the Federal Constitution and not a faithful guard dog of the Executive Branch. Isn't the breach of the principle of legality practiced by the State of Rio de Janeiro in itself a subversion of the legal order?

In choosing to use "consequences for the state budget" in his decision, the Minister regrettably disregards the serious consequences of the absence of school meals in the integral development of public school students in Rio de Janeiro. In many cases, this is the only substantial meal of the day. Yet, such common knowledge was not enough to overcome such insensitivity.

The application of the maximum available resources, cooperation, including international if necessary, and the removal of restrictions on state accounts, situations expressly provided for in the legal system, were beyond his understanding.

The adopted position is, at the same time, doubly mistaken, from both a human and legal point of view, by disregarding the immense struggle of civil society in the construction of the Human Right to Adequate Food, thus generating the realization that its decision to not guarantee school meals for students, at such a painful time for everyone, violates - itself - the Human Right to Adequate Food.

We alert to the risk that the foundations of this decision serve as a basis for other States and / or Municipalities to feel encouraged to violate, like Rio de Janeiro, the Human Right to Adequate Food guaranteed by the National School Food Policy, counting , again, with the approval of the country's Supreme Court. The immediate modification of Minister Toffoli's decision is urgent.

For organized civil society, the struggle for Human Rights and, in particular, the Human Right to Adequate Food is permanent. Students demand dignified treatment and adequate school meals assuring that thirty percent of food purchases come from family farming, as provided by law.

The violation wore a robe, shaming the righteous who make up the Justice System.

We will not accept the non-justiciability of the Human Right to Adequate Food.



SIGNATORIES

1. NATIONAL NETWORKS, MOVEMENTS and ORGANIZATIONS

Fórum Brasileiro de Soberania e Segurança Alimentar e Nutricional – FBSSAN

Plataforma Brasileira de Direitos Humanos – DHESCA Brasil

FIAN Brasil

Campanha Nacional pelo Direito à Educação Ação da Cidadania

Agentes de Pastoral Negros - APNs

Aliança pela Alimentação Adequada e Saudável

Articulação Nacional de Agroecologia - ANA

Articulação no Semiárido Brasileiro - ASA

Articulação para o Monitoramento dos Direitos Humanos no Brasil

Associação Brasileira de Agroecologia - ABA

Associação Brasileira de Juristas pela Democracia - ABJD

Associação de Ex-Conselheiros e Conselheiros da Infância - AECCI

Brigadas Populares – BPs

Caritas Nacional

Central de Cooperativas Unisol Brasil

Centro de Tecnologias Alternativas da Zona da Mata - CTA/ZM

Coletivo Transforma Ministério Público

Comissão Pastoral da Terra - CPT

Confederação Nacional dos Trabalhadores Rurais Agricultores e Agricultoras - CONTAG

Conselho de Missão entre Povos Indígenas - COMIN

Conselho Nacional de Igrejas Cristãs do Brasil - CONIC

Coordenadoria Ecumênica de Serviço - CESE

Federação de Órgãos para Assistência Social e Educacional - FASE

Fórum Nacional de Segurança Alimentar e Nutricional dos Povos Tradicionais de Matriz Africana (FOSANPTMA)

Fundação Luterana de Diaconia

Instituto de Estudos Socioeconômicos - INESC

Instituto Políticas Alternativas para o Cone Sul - PACS

Movimento dos Pequenos Agricultores - MPA

Movimento Nacional da População em Situação de Rua - MNPR

Movimento Nacional de Direitos Humanos – MNDH

Rede Brasileira de Pesquisa em Soberania e Segurança Alimentar e Nutricional - Rede PenSSAN

Rede de Mulheres Negras para a Segurança Alimentar e Nutricional - REDESSAN

Sempreviva Organização Feminista - SOF

Serviço Social do Comércio - SESC

Terra de Direitos

Transforma Ministério Público - Transforma MP

2. REGIONAL, STATE and LOCAL NETWORKS, MOVEMENTS and ORGANIZATIONS

Associação de Mulheres Solidárias do Assentamento 17 de Abril

Fazenda Boa Sorte Associação dos Produtores Rurais do Vale do Sapucaí

Associação Quilombola e Afrodescendente da Restinga Centro de Ação Comunitária - CEDAC

Centro de Apoio e Promoção da Agroecologia - CAPA/FLD

Centro de Ciência e Tecnologia em Soberania e Segurança Alimentar e Nutricional e DHANA do Nordeste

Centro de Defesa dos Direitos Humanos da Serra Centro de Integração na Serra da Misericórdia - CEM

Coletiva de auto Cuidado Margaridas do Silêncio Coletivo Akpalô - Educadoras Negras

Comissão de Direitos Humanos de Passo Fundo CDHPF

Comitê Popular de Proteção dos Direitos Humanos - ES

Conselho de Segurança Alimentar e Nutricional do Estado do Espírito

Santo Conselho Estadual de Promoção da Igualdade Racial ES

Conselho Estadual de Segurança Alimentar e Nutricional - CONSEA MA

Culinafro UFRJ - Núcleo de Pesquisa e Extensão

Escola de Nutrição da Universidade Federal de Ouro Preto – UFOP

Federação das Associações de Favela do Estado do Rio de Janeiro - FAFERJ

Forum Baiano de Direito Humano a Alimentação Adequada- FBDHAA

Forum Chico Prego da Serra

Fórum Paraibano de Soberania e Segurança Alimentar e Nutricional

Fórum Paulista de Soberania e Segurança Alimentar e Nutricional

Grupo de Estudos Sobre Desigualdades na Educação e na Saúde - Gedes/UFRJ

Grupo de Estudos em Promoção da Saúde - GEPS

Instituto Elimu Professor Cleber Maciel

Mães de Itaboraí nenhum direito a menos

Movimento Nacional de Direitos Humanos - MNDH - ES

Núcleo de Estudos Plurais em Alimentação, Educação e Humanidades - NESPORA

Núcleo de Educação em Saúde - NES/UNIRIO

Núcleo de Estudos Afro-brasileiro e Indígena da Cidade Universitária de Macaé - NEABI

Núcleo de Segurança Alimentar e Nutricional da Escola de Nutrição - NUSAN/UNIRIO

Observatório de Políticas de Segurança Alimentar e Nutrição - OPSAN/UnB

Organização de Direitos Humanos Projeto Legal - ODH Projeto Legal

Ouvidoria Externa da Defensoria Pública RJ

Pais que se Apoiam - em busca da Merenda Escolar

Ponto de Cultura Alimentar Iacitá

Rede Amazônica de Cultura Alimentar – RAMA

Rede de Agroecologia da UFRJ

Rede de Mulheres Negras do Paraná - RMN-PR

Rede Ecológica

Rede Estadual de Alimentação e Nutrição Escolar - REANE/RJ

Sindicato dos Professores em Educação Pública do Espírito Santo

THEMIS - Gênero, Justiça e Direitos Humanos

3. INTERNATIONAL NETWORKS, MOVEMENTS and ORGANIZATIONS

Associação para a Cooperação e o Desenvolvimento Portugal – ACTUAR
(Portugal)

Al-Haq - Palestine

Amazon Watch Sweden

Asociación Interamericana para la Defensa del Ambiente - AIDA-Américas
Campaña Guatemala sin Hambre

Centro Agrícola Cantonal de Quevedo (Colombia)

Centro de Documentación en Derechos Humanos Segundo Montes Mozo
S.J. - CSMM

Centro de Servicios Estudios Rurales y Defensa de Derechos Humanos -
CSERDH (Paraguay)

Construisons Ensemble Le Monde (DRC)

FIAN Internacional

FIAN Austria

FIAN Belgium

FIAN Colombia

FIAN Ecuador

FIAN Germany

FIAN Indonesia

FIAN Paraguay

FIAN Sri Lanka

FIAN Sweden

FIAN Switzerland

Foro Ciudadano de Participación por la Justicia y los Derechos Humanos -
FOCO INPADE (Argentina)

Forum Tunisien Pours Les Droits Economiques et Sociaux Fundación
Promoción Humana (Argentina)

Global Initiative for Economic, Social and Cultural Rights - GI-ESCR
Indonesia for Global Justice - IGJ

Instituto Latinoamericano para una Sociedad y un Derecho Alternativos - ILSA
Lawyers for Human Rights Manipur (India)

Network Movement

for Justice and Development (Sierra Leone)

Participatory Research Action Network- PRAN (Bangladesh)

Right to Education Initiative (UK)

Terra Nuova (Italy)