



COLOMBIA

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RECOMMENDATIONS
FOOD DONATION
LAW AND POLICY

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Authors

This report was written by the following staff and students at the Harvard Law School Food Law and Policy Clinic (FLPC): Emily M. Broad Leib, Melissa Shapiro, Nomin Jagdagdorj, and Jordan Hill.

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About The Global Food Donation Policy Atlas

The Global Food Donation Policy Atlas is a first-of-its-kind initiative to promote better laws on food donation to help address food loss and food insecurity. This project maps the laws affecting food donation in countries across the globe in order to help practitioners understand national laws relating to food donation, compare laws across countries and regions, analyze legal questions and barriers to donation, and share best practices and recommendations for overcoming these barriers. The project is a collaboration between Harvard Law School Food Law and Policy Clinic and The Global FoodBanking Network. To learn about and compare the food donation laws and policies for the countries FLPC has researched to date, visit atlas.foodbanking.org.

About the Harvard Law School Food Law and Policy Clinic

FLPC serves partner organizations and communities by providing guidance on cutting-edge food system legal and policy issues, while engaging law students in the practice of food law and policy. FLPC focuses on increasing access to healthy foods, supporting sustainable food production and food systems, and reducing waste of healthy, wholesome food. For more information, visit www.chlpi.org/FLPC.



About The Global FoodBanking Network

The Global FoodBanking Network is an international non-profit organization that nourishes the world's hungry through uniting and advancing food banks in more than 40 countries. GFN focuses on combating hunger and preventing food waste by providing expertise, directing resources, sharing knowledge and developing connections that increase efficiency, ensure food safety, and help food banks reach more people facing hunger. For more information visit www.foodbanking.org.



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ABOUT THESE RECOMMENDATIONS

This document is a product of *The Global Food Donation Policy Atlas* project, a partnership between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN).¹ The Atlas project is an innovative partnership designed to map the laws and policies affecting food donation in 15 countries over the course of two years and to provide a comparative legal analysis based on these findings. For each of these countries, the Global Food Donation Atlas project produces a Legal Guide to identify the laws relevant to food donation in that country. While the landscape differs across geopolitical borders, the Legal Guides recognize universal issues that impact efforts to reduce food loss and waste and increase food recovery. These issues include food safety, date labeling, liability, taxes, and government grants or funding programs.

In-country interviews with relevant stakeholders, including food banks and other food recovery organizations, food donors, government officials, and legal experts, further informed the content of the Legal Guide and revealed priority actions for law and policy change. Based on these findings, FLPC developed specific recommendations for each country. These recommendations are intended to serve as a companion to the Legal Guides, though both documents may stand alone. The purpose of these recommendations is to highlight select actions for improving upon laws, policies, and programs relevant to food loss, waste, and donation.

This document sets forth recommendations focused on Colombia, where 9.76 million tons of food² are lost or wasted each year³ and an estimated 54.2% of the population was food insecure before the novel coronavirus (COVID-19) pandemic.⁴ The discussion below provides a brief overview of the legal issues most pertinent to food donation, which are explained in more detail in the Colombia Legal Guide. The recommendations included in this report are not exhaustive, but offer select best practices and policy solutions to reduce food loss and waste and combat food insecurity through stronger food donation laws and policies in Colombia.



SUMMARY OF RECOMMENDATIONS

The recommendations contained in this document aim to provide a starting point for stakeholders in Colombia to strengthen the legal and policy framework relevant to food donation. Food banks and other organizations whose mission is to reduce food waste and increase food donation (collectively referred to as “food recovery organizations”), donors, and policymakers should consider additional opportunities to advance food donation and reduce food waste.

To ensure that food is donated safely and does not pose risks to recipients, as well as provide clarity to encourage food donors, the government should:

- Amend Law 9/1979 and food safety regulations to feature a donation-specific section.
- Draft regulations to Law 1990/2019 that elaborate on food safety for donations.
- Develop and disseminate clarifying guidance on food safety requirements relevant to donation.

To ensure that quality-based date labels do not result in the disposal of food that is otherwise safe for consumption or donation, the government should:

- Update regulations on labeling for prepackaged foods, distinguishing between safety-based and quality-based date labels.
- Amend Law 1990/2019 to allow the donation of food within five days of the safety-based date and after the quality-based date.
- Issue guidance encouraging supply chain actors to donate rather than discard food after the quality-based date.
- Promote consumer education on and awareness of the meaning of date labels.

To ensure that liability concerns related to donating food do not deter potential donors, the government should:

- Amend Law 1990/2019 to provide comprehensive liability protections for food donors and qualifying intermediaries.
- Remove the “no charge” requirement imposed on receiving institutions in Law 1990/2019.
- Extend liability protection to donors who directly donate to final recipients.
- Protect the past-date donation of foods if the label relates to quality rather than safety.

To ensure that food donors and food recovery organizations are sufficiently incentivized to engage in food donation, rather than discard food that is suitable for human consumption, the government should:

- Provide an enhanced benefit for food donation or tiered tax benefits consistent with the food recovery hierarchy.
- Develop and disseminate guidance to help food recovery organizations apply for VAT-exempt status.

To ensure that food donors partner with food recovery organizations to promote greater food donation, the government should:

- Ensure that Law 1990 creates a clear, tailored, and reasonable donation requirement.

INTRODUCTION

Food loss and waste represents a major environmental, economic, and social challenge in Colombia. While 22% of Colombians faced moderate to severe food insecurity before the COVID-19 pandemic,⁵ one-third of the food produced is lost or wasted each year.⁶ A 2016 study published by the National Planning Department of the Colombian government (*Departamento Nacional de Planeación*) revealed that more than 6 million tons of food are lost at the production, processing, and distribution stages, about 40% of which are fruits and vegetables.⁷ An additional 3.54 million tons of food are wasted at the retail and consumer levels.⁸ Similar to other Latin American countries, most of this upstream food loss and waste in Colombia occurs due to a lack of certification, quality control standards, appropriate infrastructure, and personnel training; inefficient or inadequate management, transportation, distribution, and storage systems; and inappropriate packaging material and practices.⁹

While the full impact of the COVID-19 pandemic is not yet known, the crisis has significantly disrupted supply chains in Colombia and around the world. Reports from Colombia warn of new barriers to food access and a rise in poverty and extreme hunger, especially among the most rural and isolated communities.¹⁰ The federal government has necessarily adopted emergency response measures to temporarily alleviate these issues. Yet, even before the pandemic, the federal government demonstrated an interest in promoting progressive legislative and policy initiatives that combat food loss and waste while also tackling issues of food insecurity and hunger.¹¹ In August 2019, Colombia adopted Law 1990, which established a Policy Against Food Loss and Waste (*Política Contra la Pérdida y el Desperdicio de Alimentos*).¹² Law 1990 promotes food donation as an important solution to food and nutrition security and introduces measures to reduce food loss and waste at every level of the supply chain.¹³ The Intersectoral Commission of Food and Nutritional Security (CISAN)¹⁴ was tasked with developing enabling regulations and setting forth the Policy's design and implementation by the end of 2020, but had not done so at the time of writing.¹⁵

LAW 990 PROMOTES FOOD DONATION AS AN IMPORTANT SOLUTION TO FOOD AND NUTRITION SECURITY AND INTRODUCES MEASURES TO REDUCE FOOD LOSS AND WASTE AT EVERY LEVEL OF THE SUPPLY CHAIN.

This legislative development has the potential to advance the ongoing efforts by private-sector actors and existing public-private partnerships that are committed to greater food recovery. The Network of Colombian Food Banks (*Asociación de Bancos de Alimentos de Colombia* or ABACO), for example, has rescued an estimated 25,089 tons of food for 650,054 beneficiaries throughout the country.¹⁶ ABACO works with more than 3,000 donors and organizations, building alliances between the public and agricultural, industrial, retail, and restaurant sectors to improve food and national security in Colombia.¹⁷ While ABACO's efforts help reduce food waste and food insecurity, strengthening the laws and policies relevant to food donation can guarantee this sustainable solution will be used whenever possible.

The following sections summarize some of the most common and complex legal issues relevant to food donation, as identified and described in more detail in the Legal Guide. This document also offers policy recommendations to address those challenges.

LEGAL CHALLENGES & POLICY RECOMMENDATIONS

Food Safety for Donations

Issue Overview

A key barrier to food donation in many countries is the lack of knowledge or readily available guidance regarding safety procedures for food donation. Potential donors are often uncertain as to which food safety regulations apply to donated food, as opposed to purchased food, as well as the steps necessary to safely donate food in compliance with applicable regulations. As a result, safe, surplus food that could have been redirected to populations in need is instead destined for landfills.

Food safety laws in Colombia are mostly contained in Law 9/1979, which sets forth requirements related to human health, food safety, aquaculture, and the environment.¹⁸ Title V of Law 9 specifically establishes rules for the transportation, manufacture, sale, labeling, and packaging of all food.¹⁹ For purposes of promoting food safety, Law 9 establishes that altered, adulterated, and contaminated foods, as well as foods with other “abnormal characteristics that may affect the health of the consumer,” are not considered “suitable for human consumption.”²⁰

The Law also confers regulatory authority to the Ministry of Health and Social Protection (*Ministerio de Salud y Protección Social* or MSPS), tasking the National Institute for Food Safety, Drugs, and Cosmetics (*El Instituto Nacional de Medicamentos y Alimentos* or INVIMA) with oversight and enforcement.²¹ MSPS adopted Resolution 2674 in 2013, elaborating on the sanitary requirements applicable to persons and entities engaged in the storage, distribution, transportation, marketing, and handling of food.²² The regulations provide specific guidance on the avoidance of adulteration and contamination as well as processes for ensuring that all food sold is safe for human consumption.²³

While neither Law 9 nor its enabling regulation explicitly reference food donation, Law 1990 calls for compliance with these frameworks to ensure that all donated food is “suitable for human consumption.”²⁴ However, Law 1990 does not specify which of Law 9 or Resolution 2674’s provisions apply to donated food or whether food may still be donated if not all requirements are met. This lack of specification may create some uncertainty for donors or food recovery organizations, particularly if the requirement does not clearly implicate food safety (e.g., provisions that address damage to packaging that does not necessarily impact the integrity of the food).²⁵ Without a clear delineation of food safety provisions applicable to donated food, food donors may avoid donating food even if it is still safe for human consumption.

Recommended Policy Actions

1. AMEND LAW 9/1979 AND FOOD SAFETY REGULATIONS TO FEATURE A DONATION-SPECIFIC SECTION.

In order to eliminate uncertainty regarding which food safety requirements apply to donated food, the government should update the current food safety framework. The Colombian legislature could propose an amendment to Law 9, delineating which of the Title V provisions concern food safety and which apply to food donation operations. Such an amendment would require action at the highest level of government with leadership from Congress and presidential approval.

MSPS could also use its delegated authority to promulgate clarifying regulations, consistent with INVIMA's current oversight of food donation operations.²⁶ This may involve an update to Resolution 2674 to further interpret Law 9's food safety requirements in the context of food donation.²⁷ MSPS could also issue an updated resolution that focuses exclusively on food donation operations, enumerating which of Law 9's provisions pertain to food safety and apply to food donors and food recovery organizations.

2. DRAFT REGULATIONS TO LAW 1990/2019 THAT ELABORATE ON FOOD SAFETY FOR DONATIONS.

The recently adopted Law 1990 alludes to Law 9 by requiring all donated food to be "suitable for human consumption."²⁸ However, Law 1990 does not explain which of Law 9's sanitary safeguards or other regulatory requirements will enable food donors and food recovery organizations to meet this general safety standard. Accordingly, the government should incorporate a food safety section into Law 1990's regulations, which were still in the drafting stage at the time of this writing.

As noted above, CISAN is tasked with developing regulations setting forth the design and implementation of the Policy Against Food Loss and Waste.²⁹ CISAN has flexibility to draft regulations that define the Policy, and which further elaborate on certain provisions of Law 1990. CISAN is comprised of several agency representatives who can help develop a donation-specific food safety section, including representatives from MSPS, which implements Law 9, and INVIMA, which oversees compliance with food safety rules. Featuring a specific food safety for donation section will provide food donors and food recovery organizations much-needed clarity on which of Law 9's provisions apply when donating food.

Drafting regulations that address food safety for donations will also help reinforce Law 1990's food recovery hierarchy.³⁰ Article 3 of Law 1990 places the recovery of food for human consumption above alternative uses such as compost and animal feed; as previously noted, however, the Law makes it clear that only food that is "suitable" or safe for human consumption is eligible for donation.³¹ CISAN can use its regulatory mandate to ensure that donors and food recovery organizations confidently and safely donate surplus food, consistent with the hierarchy.

3. DEVELOP AND DISSEMINATE CLARIFYING GUIDANCE ON FOOD SAFETY REQUIREMENTS RELEVANT TO DONATION.

Differentiating which regulations for food safety apply specifically to donated food can be confusing and onerous for food donors and other stakeholders. Clear guidance from oversight and enforcement agencies on which food safety requirements apply to donated food would ease concerns of food donors and food recovery organizations and support increased and safer donation. For example, INVIMA could issue guidance explaining the extent to which organizations that facilitate the "free donation of food," as defined under Law 1990, are subject to the registration, authorization, and verification standards required of other food establishments.³²

Developing such guidance is not unprecedented. In June 2020, MSPS issued provisional guidance on food safety for donations during the COVID-19 pandemic.³³ The guidance provides nutritional and safety recommendations for administrative and health authorities as well as others involved in food donation logistics during the pandemic. Pursuant to the guidance, which refers to both Law 9 and Law 1990, food may not be donated when there is visual evidence of alteration or contamination, among other factors. MSPS and INVIMA should consider developing broader food safety guidance that applies not just during the pandemic but to all instances of donation.

Date Labeling

Issue Overview

A major driver of food waste and obstacle to food donation is the general misconception about date labels such as “sell by,” “use by,” or “best by” on food products. Many donors and consumers interpret these date labels as indicators of food safety. Yet for the vast majority of foods, date labels indicate freshness or quality rather than food safety, and few foods become more likely to carry foodborne illnesses over time. Cautious donors and food recovery organizations, however, may discard food once the date has passed even if the food is perfectly safe to donate and consume.

In other countries that have measured the impact of date labels, research shows that consumers generally confuse date labels with indicators of safety rather than quality. In the United Kingdom, for example, researchers found that consumers discard about 22% of food that they could have eaten due to confusion over date labeling.³⁴ Similarly, 84% of Americans report throwing away food after the expiration date due to safety concerns even if there is minimal risk of a foodborne illness at that time.³⁵ This confusion occurs in the home but also impacts food businesses’ willingness to donate as well as stigma against past-date food among food donation recipients.

The date labeling legal regime in Colombia perpetuates this cycle of confusion and waste despite efforts to standardize date labels. The government has imposed date label requirements as part of the country’s participation in the Andean Community (*Comunidad Andina* or CAN) trade bloc, comprised of Bolivia, Colombia, Ecuador, and Peru.³⁶ Under Decision 562, CAN member countries agreed to develop, adopt, and apply Technical Regulations for packaging and labeling products to promote greater uniformity and support the free flow of trade.³⁷ Accordingly, MSPS adopted Resolutions 2652/2004 and 5109/2005, which establish labeling requirements for packaged food and raw materials intended for human consumption.³⁸ These Resolutions require manufacturers to select either a “minimum duration date” (“*fecha de duración mínima*”)³⁹ or a “deadline for use” (“*fecha límite de utilización*”)⁴⁰ (also referred to as the “expiration date”) for most packaged foods.⁴¹

The option to choose between these two date labels resembles the dual date labeling scheme adopted by the European Union and endorsed by the Consumer Goods Forum as an effective model to reduce food waste.⁴² Yet in practice, Colombia’s scheme falls short of this model, failing to clearly differentiate between foods that should receive a safety-based versus a quality-based label. Under Colombia’s date labeling scheme, neither the regulatory definitions for the “minimum duration date” nor the “deadline for use” clearly convey the last date on which the labeled food is *safe* to eat.

Recognizing that food is no longer marketable after the “deadline for use,”⁴³ Law 1990 encourages the donation of food that is unlikely to be sold “preferably five days before” this date.⁴⁴ However, many retailers are contractually required to return food products to their manufacturers once items cannot be sold, including items that are approaching their “deadline for use.” Further, provisional guidance issued by MSPS on food donation during the COVID-19 pandemic confirms that the government interprets Law 1990 as prohibiting the donation of food products within five days of the date.⁴⁵

Law 1990 also broadly prohibits the donation of food after the “expiration date.”⁴⁶ The Law is silent as to whether food may be donated after the “minimum duration date” and does not distinguish between the two date labels. As a result, regardless of whether the affixed date refers to quality or safety, food donors are unlikely to donate food once the date passes. Food recovery organizations are also unlikely to accept past-due foods out of precaution.

Recommended Policy Actions

1. UPDATE REGULATIONS ON LABELING FOR PREPACKAGED FOODS, DISTINGUISHING BETWEEN SAFETY-BASED AND QUALITY-BASED DATE LABELS.

Despite standardizing date labels at the national level through Resolutions 2652/2004 and 5109/2005, the existing labeling scheme does not effectively ensure that all safe, surplus food will be donated rather than discarded. To clarify which label conveys the last date on which the food is safe to consume, MSPS, which is responsible for issuing packaging and labeling regulations, should issue updated regulations imposing a proper dual date labeling scheme. Such a scheme should state that the current “minimum duration date” is a quality-based label and that the “deadline for use” is a safety-based label.

Many other countries and the food industry are moving toward a dual date labeling scheme that allows manufacturers to choose between a safety-based label and a quality-based label consistent with the 2018 update to the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods.⁴⁷ For example, the European Union requires manufacturers to select only one of two standard labels. “Best before” is required for foods where the label indicates quality, while “use by” or “expiration date” is required if the food safety risk increases after the date.⁴⁸ Several EU Member States have also issued guidance clarifying the impact of these dates on food donation and others have introduced legislation that explicitly allows for donation after the “best before” date (but not after the “use by” date).⁴⁹ The Consumer Goods Forum, a global network of 400 consumer goods companies across 70 countries, has also called for a standardized dual date labeling system with separate quality and safety date label phrases.⁵⁰

Colombia should adopt this dual date labeling scheme to clarify the intended meanings of the “minimum duration date” and “deadline for use” and further explain the parameters for donating past-due foods.⁵¹ This labeling scheme would provide greater certainty to consumers, food donors, and food recovery organizations as to the meaning of these dates and may reduce the amount of food that is thrown away.

2. AMEND LAW 1990/2019 TO ALLOW THE DONATION OF FOODS WITHIN FIVE DAYS OF THE SAFETY-BASED DATE AND AFTER THE QUALITY-BASED DATE.

Recognizing the ambiguity within the current date labeling regime, Colombia’s legislature should amend Law 1990 to ease the prohibition on donating food within five days of the “deadline for use.” This broad prohibition fails to acknowledge that many manufacturers are currently misusing the “deadline for use” to indicate quality rather than safety. It also prevents the donation of food that is still be safe to eat in the days prior to the affixed safety-based date. Further, Law 1990 is currently silent on whether food may be donated after the “minimum duration date.” This allows donors to assume that they cannot safely donate food after this date, even though it indicates quality rather than safety. As Colombia better distinguishes the “deadline for use” as a safety-based date and the “minimum duration date as a quality-based date, Congress should update Law 1990 to explicitly allow the donation of food after the quality-based date.

3. ISSUE GUIDANCE ENCOURAGING SUPPLY CHAIN ACTORS TO DONATE RATHER THAN DISCARD FOOD AFTER THE QUALITY-BASED DATE.

Even if Colombia updates its date labeling regulatory regime and Law 1990 to explicitly permit food donations after the quality date, many retailers may still be contractually required to return unmarketable food to the manufacturer. Retailers in Colombia report that such arrangements are common.⁵² For example, some retailers

may agree to a contract term that requires retailers to return unsold food product to the manufacturer one week before the affixed date. While the retailers wish to donate this food that is quickly losing its commercial value, such contractual provisions prohibit this charitable action. To ensure that food retailers can donate food that is no longer marketable but still suitable for human consumption, CISAN should issue guidance that encourages food industry actors to promote donation rather than return as part of their contractual arrangements.

4. PROMOTE CONSUMER EDUCATION ON AND AWARENESS OF THE MEANING OF DATE LABELS.

Given that the “minimum duration date” and the “deadline for use” are currently used interchangeably,⁵³ the government should facilitate consumer education and literacy on their intended and respective meaning. CISAN and INVIMA should develop such guidance under the framework of Law 1990 to inform donors, food recovery organizations, and consumers that not all dates convey safety, but may instead indicate quality.

If MSPS adopts a new resolution to create a dual date labeling scheme, consumer education will also be necessary to clarify the difference between quality-based and safety-based labels. Joint public- and private-sector initiatives may help ensure that stakeholders understand that date labels should not pose a barrier to donation. Any clarification or standardization of this regime, such as the introduction of a dual labeling requirement, will also require education and awareness campaigns for donors, food recovery organizations, and consumers.

Liability Protection for Food Donations

Issue Overview

A significant barrier to food donation is the fear among donors that they will be found liable if someone becomes sick after consuming donated food. Other countries, including Argentina and the United States, have established comprehensive protections for both food donors and food recovery organizations.⁵⁴ These protections limit the likelihood that these actors will be held legally or financially responsible for any resulting harm, provided that they act in accordance with relevant laws. Colombia has not developed such comprehensive liability protection for donors and intermediaries; however, it does offer limited protections for donors in the event that a beneficiary alleges harm.

In Colombia, Article 18 of Law 1990 provides a “limitation of liability,” which establishes extracontractual duty over donated food based on its chain of custody.⁵⁵ Article 18 explains that receiving institutions—only legally registered nonprofit institutions whose purpose is to collect food to be distributed free of charge to populations in need⁵⁶—are responsible for the receipt, storage, and quality of food to be delivered to beneficiaries.⁵⁷ Designating the receiving entities as responsible for the donated food ultimately limits the responsibility imposed on donors once the intermediary takes possession of the donation. However, this burden shift does not explicitly preclude the possibility that a food donor may be held liable for purposeful, reckless, or negligent acts leading up to the moment of donation. For example, food donors are not clearly shielded from liability for acts leading to the contamination or adulteration of food during the manufacture, package, or transport stages.

Law 1990 does not include similar limits for food recovery organizations. Unlike Argentina’s Food Donation Law, which protects food recovery organizations that act in good faith (and adhere to applicable food safety laws and other conditions),⁵⁸ Colombia’s Law 1990 is silent on the issue of intent or food faith. Thus, food recovery organizations may be found strictly liable for harm regardless of whether they act negligently or are without fault.

Recommended Policy Actions

1. AMEND LAW 1990 TO PROVIDE COMPREHENSIVE LIABILITY PROTECTIONS FOR FOOD DONORS AND QUALIFYING INTERMEDIARIES.

The inclusion of Article 18's limited liability provision in Law 1990 indicates that Colombia is cognizant of potential liability concerns about food donors. Unfortunately, the provision as written falls short of offering comprehensive protection for food donors that act in good faith and adhere to relevant laws. To ensure that potential liability does not deter food donation, the Colombian legislature should amend Article 18 of Law 1990 to provide more robust protection, akin to that offered in Argentina or the United States.⁵⁹ The provision should protect food donors adhering to provisions of Law 1990 and to applicable food safety regulations. Colombia should limit other protections so that donors who "willfully" violate the law, for example, may still be held liable for harm to beneficiaries.

In addition to providing more robust protections for food donors, the government should extend the provision to certain intermediaries that similarly demonstrate compliance with applicable law. The current formulation of Law 1990 leaves food banks and other food recovery organizations open to "strict liability" in the event that a beneficiary claims damages. While the shift in responsibility seems intended to provide assurance to food donors, it disregards the care that intermediaries take to safely receive, handle, and distribute donated food.⁶⁰ Accordingly, Colombia should extend liability protection to include food banks and food recovery organizations. Such protection may be limited to those nonprofit organizations that have registered with the government as having a charitable purpose, including the promotion of health, environmental protection, human rights, social development, and poverty reduction.⁶¹

2. REMOVE THE "NO CHARGE" REQUIREMENT IMPOSED ON RECEIVING INSTITUTIONS IN LAW 1990/2019.

To expand liability protections in Law 1990, Colombia should amend the language to expressly permit food donations that are offered to beneficiaries for a nominal fee. This amendment would require removing the Law's "no charge" requirement. Article 18 explains that shifting the burden of responsibility from the donor to receiving institutions only applies if the receiving institutions distribute donations "free of charge" to populations in need.⁶² Accordingly, food donors may retain responsibility if they donate to an organization that charges a nominal fee for the donation. This limitation may deter food donors from working with innovative recovery models such as social supermarkets (nonprofit groceries) or other low-cost, market-based operations.

Removing the "no charge" requirement would better enable CISAN to promote Law 1990's food loss and waste objectives. The Law specifically endorses innovative projects and solutions intended to reduce food loss, waste, and insecurity. Organizations pursuing such innovation should be permitted to charge a low price for donated food in order to cover startup costs and sustain operations. Charging a nominal fee would enable receiving institutions (with missions consistent with Law 1990's purpose) to generate funds to support their self-sufficiency and ultimately benefit the country's food-insecure populations. Extending liability protections to cover donations made to these organizations will help support their operations.

3. EXTEND LIABILITY PROTECTION TO DONORS WHO DIRECTLY DONATE TO FINAL RECIPIENTS.

Colombia's Congress should amend Law 1990 to not only protect food donors that deliver food to qualified receiving institutions, but also those donors that deliver food directly to those in need, provided they adhere to relevant law. Colombia's food banking network plays a critical role in facilitating food donation. Yet expanding

food donation operations may require innovative solutions that streamline food recovery efforts and enable food donors to distribute food directly to beneficiaries. For example, Eatcloud, a startup company, and ABACO developed an app that relies on cloud-based technology to monitor the food supply and connect food donors to eligible beneficiaries.⁶³ Such innovative solutions do not replace intermediaries such as ABACO, but offer a service to retailers and producers to more directly offload safe, surplus food to beneficiaries. Amending Law 1990 to permit and protect supply chain actors that use these resources to streamline food donation will ultimately further the Law's objectives.

4. PROTECT THE PAST-DATE DONATION OF FOODS IF THE LABEL RELATES TO QUALITY RATHER THAN SAFETY.

As previously explained, Colombia's existing date labeling regime fails to clearly distinguish between safety-based and quality-based labels. The prohibition on donation of foods that are within five days of the "deadline for use" may also lead to needless waste of safe, surplus food. Accordingly, as the government necessarily clarifies the intended meanings of these dates, it should also expand liability protection to food donors and food recovery organizations that distribute food after a quality-based date and prior to a safety-based date.

Tax Incentives and Barriers

Issue Overview

Food donation helps mitigate the costs of hunger and stimulate the economy, but it can also be expensive, as food donors must allocate time and money to recover, package, store, and transport surplus food that otherwise would be discarded, usually at no cost. Tax laws can either help offset these expenses and incentivize donation, or they can create an additional barrier to donation, contributing to greater food loss and waste. Corporate donors may be more likely to donate surplus food to food banks if they receive a charitable deduction to offset the cost of transportation and logistics.

Colombia offers such benefit under the national tax statute. Article 257 of the Tax Law provides for a tax credit equivalent to 25% of the value of donations in the taxable year or period for donations made to nonprofit entities registered as engaging in the promotion of health, environmental protection, human rights, social development, and poverty reduction.⁶⁴ This includes ABACO and other nonprofit food recovery organizations. A few years before the 2016 tax reform, the Directorate of National Taxes and Customs (*Dirección de Impuestos y Aduanas Nacionales* or DIAN), approved a deduction of 125% of the value of donations made to ABACO's member food banks during the year or taxable period.⁶⁵ In 2018, DIAN indicated that donations previously eligible for this enhanced benefit may only receive the 25% tax credit set forth in Article 257.⁶⁶ The enforceability of this ruling remains subject to consideration.⁶⁷

Law 1990 reiterates that food donations made to nonprofit entities are eligible for benefits set forth in the Tax Law, although it does not state the specific benefits that donors receive.⁶⁸ It also calls for the creation of a tax scheme that incentivizes agricultural and industry actors as well as consumers to not destroy food that may be recovered consistent with the Law's recovery hierarchy.⁶⁹ The Law does not detail this tax scheme or promote an enhanced benefit that will incentivize taxpayers to prioritize donation over other forms of food recovery.

The Law is also silent on the value-added tax (VAT) scheme, from which most food donations are exempt. Colombia imposes a standard VAT rate of 19% but exempts most food items that comprise the "family basket."⁷⁰ The Tax Law also carves out an exemption for food donations made to legally recognized nonprofit entities, provided certain conditions are met.⁷¹ Donors may be precluded from claiming the exemption if MSPS determines that the food is not suitable for human consumption or if the donation is made to a food recovery organization that is not registered as a nonprofit entity.⁷²

Recommended Policy Actions

1. PROVIDE AN ENHANCED BENEFIT FOR FOOD DONATION OR TIERED TAX BENEFITS CONSISTENT WITH THE FOOD RECOVERY HIERARCHY IN LAW 1990.

In accordance with its delegated authority under Law 1990, CISAN should coordinate with DIAN to develop a tax regulatory framework that effectively promotes food recovery consistent with the Law's food recovery hierarchy. Specifically, the government should ensure that donors are eligible for an enhanced tax benefit for food donations as opposed to other forms of food rescue and recovery. Colombia already has a precedent for this tax scheme: as mentioned above, in 2013, DIAN approved a tax deduction equal to 125% the value of donations made to ABACO and other organizations dedicated to the promotion of human rights during the year or taxable period—a benefit that may no longer be available pursuant to a 2018 decision by the tax authority. To incentivize greater donations under Law 1990, the government should either clarify the continued availability of this enhanced deduction or reinstate this benefit for qualifying food donations.

Alternatively, Colombia's Congress can amend the Tax Law to introduce a tiered-benefit scheme that reinforces the food recovery hierarchy set forth in Law 1990. For example, Colombia can limit the highest deduction offered to those who make monetary and in-kind donations to ABACO or registered food assistance organizations. Lesser benefits will still be available for food donated for animal feed or other purposes that reduce food waste. The tiered taxation scheme can also reflect prevailing nutrition guidance established in the Food-Based Dietary Guidelines for the Colombian Population (*Las Guías Alimentarias Basadas en Alimentos para la población colombiana* or GABAS), offering a higher benefit for donating perishable goods, such as fruits, vegetables, and healthy proteins.⁷³ MSPS recently applied these guidelines to promote nutritional donations as part of its COVID-19 guidance.⁷⁴

In addition to or in lieu of these amendments, CISAN and DIAN should issue guidance encouraging taxpayers to prioritize food donation when seeking to claim a charitable tax benefit. Regulations to Law 1990 should also remind taxpayers that deductions are available for in-kind and monetary donations made to ABACO and other registered food recovery organizations.

2. DEVELOP AND DISSEMINATE GUIDANCE TO HELP FOOD RECOVERY ORGANIZATIONS APPLY FOR VAT-EXEMPT STATUS.

Since the VAT is not a practical deterrent to donating food in Colombia, DIAN should ensure that food donors and food recovery operations are aware of the existing exemptions. Specifically, DIAN should issue clarifying guidance to explain the benefits of the VAT exemption to which registered nonprofits may be entitled and provide detailed steps to apply for this exemption status. The guidance should list necessary documentation, templates for relevant forms, an estimated timeline for the review process, and points of contact within DIAN. Finally, it should remind tax-exempt entities of their obligation to resubmit relevant documentation when their authorized status expires and provide an explanation of the consequences for failure to do so.

Donation Requirements or Food Waste Penalties

Issue Overview

Some countries have created food donation requirements or impose monetary penalties for food that is sent to landfills (often known as organic waste bans or waste taxes) to influence business behavior and promote sustainable food systems. Colombia's Law 1990 obligates food donors to *consider* donating surplus food to

reduce food loss and waste, but it falls short of mandating donation or banning food waste.⁷⁵ Article 17 explains that DIAN may impose sanctions for failure to comply with the measures against food loss and waste contained in the Law.⁷⁶ However, without an explicit or enforceable donation requirement, DIAN is unlikely to impose such sanctions on those who waste safe, surplus food.

Recommended Policy Actions

1. ENSURE THAT LAW 1990 CREATES A CLEAR, TAILORED, AND REASONABLE DONATION REQUIREMENT.

The current language of Law 1990 suggests that taxpayers may be sanctioned for failure to comply with the Law's food waste prevention and food recovery objectives. As written, however, the Law falls short of creating an actionable donation requirement. While such requirements are not always supported by private-sector actors who prefer voluntary partnerships with food recovery organizations, conversations with industry stakeholders in Colombia revealed support for a mandatory donation requirement. In fact, there is concern that without such requirement, the Law will not succeed.⁷⁷ To ensure that such a requirement is sufficiently tailored to meet the Law's objectives without being too onerous on food donors, CISAN should consult with private-sector actors such as ANDI (*Asociación Nacional de Empresarios de Colombia*) to develop a clarifying, balanced regulation. If necessary, Congress should amend the Law to ensure agency oversight, enforcement, and, ultimately, industry compliance with the donation requirement.

CONCLUSION

While these policy recommendations are intended to help strengthen food donation in Colombia, they are not exhaustive. Those committed to reducing food loss and waste and promoting food recovery should seek the advice of legal experts, policymakers, and other stakeholders to identify the most effective and feasible policy interventions.

ENDNOTES

- ¹ The Global Food Donation Policy Atlas project would not be possible without support from the Walmart Foundation. The Walmart Foundation is not responsible for the content of this document or the views contained herein. The content of this document should not be interpreted as legal advice. Those seeking legal advice should speak to an attorney licensed to practice in the applicable jurisdiction and area of law.
- ² DEPARTAMENTO NACIONAL DE PLANEACIÓN, PÉRDIDA Y DESPERDICIO DE ALIMENTOS EN COLOMBIA: ESTUDIO DE LA DIRECCIÓN DE SEGUIMIENTO Y EVALUACIÓN DE POLÍTICAS PÚBLICAS (2016), https://mrv.dnp.gov.co/Documentos%20de%20Interes/Perdida_y_Desperdicio_de_Alimentos_en_colombia.pdf.
- ³ *Id.*
- ⁴ INSTITUTO COLOMBIANO DE BIENESTAR FAMILIAR, *Encuesta Nacional de la Situación Nutricional ENSIN 2015*, 22 (2015), https://www.icbf.gov.co/sites/default/files/ensin_2015_final.pdf.
- ⁵ *Id.* Due to the novel coronavirus (COVID-19) pandemic, food insecurity has likely increased in Colombia. The long-term impacts of the pandemic, however, were not yet known at the time of this writing.
- ⁶ DEPARTAMENTO NACIONAL DE PLANEACIÓN, *supra* note 2.
- ⁷ *Id.* at 22.
- ⁸ *Id.*
- ⁹ FOOD & AGRIC. ORG. OF THE U.N., *FOOD LOSSES AND WASTE IN LATIN AMERICA AND THE CARIBBEAN* (2015), <http://www.fao.org/3/a-i4655e.pdf>.
- ¹⁰ Dennis Zevallos, *Action Against Hunger warns of rising hunger in Latin America due to COVID-19 pandemic*, Action Against Hunger, Peru (Jul. 17, 2020), <https://www.actionagainsthunger.org/story/action-against-hunger-warns-rising-hunger-latin-america-due-covid-19-pandemic>.
- ¹¹ *FAO in Colombia: Programs in Colombia*, FOOD AND AGRIC. ORG. OF THE U.N. (2019), <http://www.fao.org/colombia/programas-y-proyectos/programa/en>.
- ¹² L. 1990/2019, agosto 2, 2019, DIARIO OFICIAL [D.O.] (Colom.) [hereinafter “Law 1990”].
- ¹³ *Id.* art. 1.
- ¹⁴ *Id.*
- ¹⁵ *Id.* art. 5.
- ¹⁶ *Nosotros*, ASOCIACIÓN DE BANCOS DE ALIMENTOS DE COLOMBIA (Sept. 8, 2020, 10:43 AM), <https://www.bancosdealimentosdecolombia.com/about>.
- ¹⁷ *Id.*
- ¹⁸ L. 09/79, art. 1, enero 24, 1979, DIARIO OFICIAL [D.O.] (Colom.) [hereinafter “Law 9”].
- ¹⁹ *Id.* art. 243.
- ²⁰ *Id.*, art. 304.
- ²¹ Moises Huerta, U.S. DEP’T OF AGRIC., FOREIGN AGRIC. SERV., *Colombia: Food and Agricultural Import Regulations and Standards (FAIRS) Annual Country Report*, GAIN No. CO1826 (2019).
- ²² R. 2674/2013, julio 22, 2004, art. 1, DIARIO OFICIAL [D.O.] (Colom.) [hereinafter “Resolution 2674/2013”].
- ²³ *Id.* tit. 1.
- ²⁴ Law 1990, art. 6.
- ²⁵ Resolution. 2674/2013, art. 27(c); *see also* Law 9, art. 267.
- ²⁶ ABACO has confirmed this interpretation and holds food banks in the network subject to the sanitary requirements set forth in Resolution 2674/2013 and Law 9.
- ²⁷ Resolution 2674/2013. As noted above, Resolution 2674/2013 does not address food donation or the free delivery of food. Nor does it feature a donation-specific section.
- ²⁸ Law 1990.
- ²⁹ *Id.* art. 5.
- ³⁰ *Id.* art. 3.
- ³¹ *Id.* art. 6.
- ³² *See, e.g.*, Law 9, art. 143.
- ³³ MSPS, LINEAMIENTOS PROVISIONALES PARA LA DONACIÓN DE ALIMENTOS Y BEBIDAS PARA CONSUMO HUMANO EN EL CONTEXTO DE LA PANDEMIA POR COVID-19 EN COLOMBIA (June 2020), <https://www.minsalud.gov.co/ministerio/institucional/procesos%20y%20procedimientos/gips40.pdf>.
- ³⁴ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-19-407, *DATE LABELS ON PACKAGED FOODS: USDA AND FDA COULD TAKE ADDITIONAL STEPS TO REDUCE CONSUMER CONFUSION* (2019), <https://www.gao.gov/assets/710/701238.pdf>.
- ³⁵ HARV. L. SCH. FOOD L. & POL’Y CLINIC & NAT. RESOURCES DEF. COUNCIL, *DON’T WASTE, DONATE: ENHANCING FOOD DONATIONS THROUGH FEDERAL POLICY*, 19 (2017), <https://www.nrdc.org/sites/default/files/dont-waste-donate-report.pdf>.
- ³⁶ Formerly referred to as the Andean Pact, the trade bloc includes Bolivia, Colombia, Ecuador, and Peru.
- ³⁷ ORGANIZACIÓN DE LOS ESTADOS AMERICANOS: SISTEM DE INFORMACIÓN SOBRE COMERCIO, *Decision 562: DIRECTRICES PARA LA ELABORACIÓN Y ADOPCIÓN DE REGLAMENTOS TÉCNICOS EN LOS PAISES MIEMBROS DE LA COMUNIDAD ANDINA Y A NIVEL COMUNITARIO* (jun. 25, 2003), <http://www.sice.oas.org/trade/junac/Decisiones/Dec562s.asp> (providing guidelines for the development, adoption, and application of Technical Regulations in the Andean Community Member Countries and at the community level).
- ³⁸ R. 5109/2005, diciembre 29, 2005, 46.150, DIARIO OFICIAL [D.O.] (Colom.) (updating R. 2652/2004, agosto 20, 2004, 45.652, DIARIO OFICIAL [D.O.] (Colom.)) [hereinafter “Resolution 5109/2005”].
- ³⁹ *See* R. 2652/2004, agosto 20, 2004, 45.652, art. 5.7, DIARIO OFICIAL [D.O.] (Colom.) (expressing the “minimum duration date” as “consume preferably before” (“Consumir preferentemente antes de/ [del final de]...”).
- ⁴⁰ *Id.* (Expressing the “deadline for use” as either the “expiration date” (“fecha de vencimiento” or “fecha de caducidad”) or “recommended deadline for consumption” (“fecha límite de consume recomendada”).
- ⁴¹ Dates do not need to be affixed to the following foods: fresh fruits and vegetables, bakery and pastry products, vinegar, salt, sugar, among others.
- ⁴² *See* COMMISSION FINAL MARKET REPORT ON DATE MARKING AND OTHER INFORMATION PROVIDED ON FOOD LABELS AND FOOD WASTE PREVENTION (Jan. 2018), <https://op.europa.eu/en/publication-detail/-/publication/e7be006f-0d55-11e8-966a-01aa75ed71a1/language-en>. The European Union requires “best before” to indicate quality, while it requires “use by” for foods that may increase in food safety risk after the date; *see also* *RELEASE: Companies Commit to Simplify Food Date Labels Worldwide by 2020, Reducing Food Waste*, WORLD RESOURCES INTERNATIONAL (Sept. 20, 2017), <https://www.wri.org/news/2017/09/release-companies-commit-simplify-food-date-labels-worldwide-2020-reducing-food-waste>.
- ⁴³ FLPC conversations with government ministries, private-sector partners, and food banks (Jan. 2020).
- ⁴⁴ Law 1990, arts. 10, 11.2.
- ⁴⁵ MSPS, *supra* note 32 at FN 5.
- ⁴⁶ Law 1990, art. 8.2

⁴⁷ See FAO and WHO, CODEX ALIMENTARIUS INTERNATIONAL FOOD STANDARDS: GENERAL STANDARD FOR THE LABELING OF PREPACKAGED FOODS, CXS 1-1985, 2 (Rev. 2018), http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?Ink=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fstandards%252FCXS%2B1-1985%252FCXS_001e.pdf; but see notes 38 and 39 for labeling terms used in Colombia.

⁴⁸ Commission Regulation No. 1169/2011, 2011 O.J. (L 304) 18 (EC).

⁴⁹ See EUROPEAN COMMISSION, MARKET STUDY ON DATE MARKING AND OTHER INFORMATION PROVIDED ON FOOD LABELS AND FOOD WASTE PREVENTION: FINAL REPORT (2018), https://ec.europa.eu/food/sites/food/files/safety/docs/fw_lib_srp_date-marking.pdf.

⁵⁰ *Release: Companies Commit to Simplify Food Date Labels Worldwide by 2020, Reducing Food Waste*, WRI (Sept. 20, 2017), <https://www.wri.org/news/2017/09/release-companies-commit-simplify-food-date-labels-worldwide-2020-reducing-food-waste>.

⁵¹ The European Union offers Spanish-language date labels that comply with the dual labeling scheme: “consumir preferentemente antes del . . .” or “consumir preferentemente antes de finales de . . .” for quality-based labels; “fecha de caducidad” to convey safety.

⁵² Conversations with food retailers in Colombia, January 2020.

⁵³ See also Law 1990 (which refers to the “*fecha de vencimiento*” (a term used to convey the “deadline for use”) but does not refer to the “minimum duration date.”).

⁵⁴ See The Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C.A. § 1791(c)(1) [United States]; Law 25989, Dec. 16, 2004 [30564] B.O. 1 [Argentina].

⁵⁵ Law 1990, art. 18.

⁵⁶ *Id.* art. 8,2.

⁵⁷ *Id.* art. 18.

⁵⁸ Law 25989, Dec. 16, 2004, [30564] B.O. 1 [Argentina], <http://servicios.infoleg.gob.ar/infolegInternet/anexos/100000-104999/102664/texact.htm> [<https://perma.cc/ED5J-EE4H>], amended via the National Plan for Food Loss and Waste (Law No. 27454).

⁵⁹ See, See Law 25989, Art. 9, Dec. 16, 2004, [30564] B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/100000-104999/102664/texact.htm> [<https://perma.cc/ED5J-EE4H>]; see also The Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C.A. § 1791(c)(1) [United States].

⁶⁰ Law 1990, art. 18 (requiring that intermediaries comply with regulatory requirements concerning the handling, preservation, and distribution of food suitable for human consumption).

⁶¹ ESTATUTO TRIBUTARIO NACIONAL (Colom.), art. 359 [hereinafter “Tax Law”].

⁶² Law 1990, art. 18, 2.

⁶³ EATCLOUD, <https://www.eatcloud.com/> (last visited Dec. 18, 2020); See also Juan Carlos Yepes, *Eatcloud fue ganadora en los Premios Latinoamérica Verde*, PORTAFOLIO (Sep. 1, 2020), <https://blogs.portafolio.co/negocios-e-inspiracion/eatcloud-premios-latinoamerica-verde>.

⁶⁴ Tax Law, art. 359.

⁶⁵ Tax Law, art. 126-2.

⁶⁶ See DIRECCIÓN DE IMPUESTOS Y ADUANAS NACIONALES – DIAN, ENTIDADES SIN ÁNIMO DE LUCRO-ESAL - DONACIONES: CONCEPTO UNIFICADO No. 000481 (Apr. 27, 2018), <https://cijuf.org.co/sites/cijuf.org.co/files/normatividad/2018/Concepto%20Unificado%20DIAN%20000481%20de%202018%20-%20Regimen%20Tributario%20Especial.pdf>.

⁶⁷ There is some question as to whether DIAN, an administrative agency, has the authority to rescind the application of the enhanced benefit and to resolve this issue of interpretation.

⁶⁸ Law 1990 art. 8.2, par. 1.

⁶⁹ *Id.* arts.3, 6, par. 16.

⁷⁰ Tax Law, art. 424; See also, DIRECCIÓN DE IMPUESTOS Y ADUANAS NACIONALES – DIAN, REFORMA TRIBUTARIA ESTRUCTURAL: TABLA IVA CANASTA FAMILIAR (2016), <https://www.dian.gov.co/impuestos/Reforma%20Tributaria%20Estructural/Listado%20completo%20IVA%20Canasta%20Familiar.pdf>.

⁷¹ Decreto 1625/2016, octubre 11, 2016, sec. 1.3.1.12.13, GESTOR NORMATIVO, <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=83233> (amend. 21 aug. 2020). Per these sections, donations to food banks are VAT-exempted.

⁷² *Id.*

⁷³ INSTITUTO COLOMBIANA DE BIENESTAR FAMILIAR, LAS GUÍAS ALIMENTARIAS BASADAS EN ALIMENTOS PARA LA POBLACIÓN COLOMBIANA MAYOR DE 2 AÑOS (2018), <https://www.icbf.gov.co/programas-y-estrategias/nutricion/guias-alimentarias-basadas-en-alimentos-para-la-poblacion>.

⁷⁴ MSPS, *supra* note 32.

⁷⁵ Law 1990, art. 17.

⁷⁶ *Id.*

⁷⁷ FLPC conversation with industry stakeholders (Jan. 2020).



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