



DOMINICAN REPUBLIC

DOMINICAN REPUBLIC **RECOMMENDATIONS** FOOD DONATION LAW AND POLICY

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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

GFN 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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TABLE OF CONTENTS

- About These Recommendations.....1**
- Summary of Recommendations.....2**
- Introduction.....3**
- Legal Challenges and Policy Recommendations.....4**
 - Food Safety for Donations.....4
 - Issue Overview.....4
 - Recommended Policy Actions.....5
 - Date Labeling.....6
 - Issue Overview.....6
 - Recommended Policy Actions.....6
 - Liability Protection for Food Donations.....8
 - Issue Overview.....8
 - Recommended Policy Actions.....8
- Taxes.....9**
 - Issue Overview.....9
 - Recommended Policy Actions.....9
- Miscellaneous.....10**
 - Issue Overview.....10
 - Recommended Policy Actions.....11
- Conclusion.....11**

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 countries around the world and to provide a comparative legal analysis based on these findings. For each of these countries, The Global Food Donation Policy 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 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 has developed specific recommendations for each country. These recommendations are intended to serve as a companion to the Legal Guide, 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 the Dominican Republic, where 1.1 million kilograms of food is lost each week² and an estimated quarter of the population, or more than 3.1 million people, were living below the poverty line prior to the novel coronavirus (COVID-19) pandemic.³ The discussion below provides a brief overview of the legal issues most pertinent to food donation, which are explained in more detail in the Dominican Republic 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 the Dominican Republic.



SUMMARY OF RECOMMENDATIONS

The recommendations contained in this document provide a starting point for stakeholders in the Dominican Republic 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 and to provide clarity to encourage food donors, the government should:

- Amend the General Regulation for the Control of Food and Beverage Risk to further explain the food safety standards applicable to food donation.
- Adopt a Dominican technical standard (NORDOM) on food safety for donated food.
- Produce and disseminate clarifying guidance on the food safety regulatory framework relevant to food 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:

- Amend NORDOM 53 on General Labeling for Prepackaged Products to feature a dual date labeling scheme that distinguishes between safety-based and quality-based dates.
- Update NORDOM 53 on General Labeling for Prepackaged Products or adopt nonbinding guidance to explicitly permit food donation after the affixed quality-based “minimum duration date.”
- Promote consumer education and awareness on the meaning of date labels.

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

- Adopt national legislation that establishes clear liability protection for food donors and authorized nonprofit food recovery organizations that act in good faith.

To ensure that food donors and food recovery organizations are sufficiently incentivized to donate food, the government should:

- Increase the tax deduction available for qualifying food donations and expand the benefit to include associated expenses.
- Offer tax credits for food donations made to “authorized receiving entities” and other food recovery organizations.

To ensure that food donation is prioritized as a solution to hunger, food insecurity, and food loss and waste, particularly in the most remote communities, the government should:

- Adopt a national law for the prevention of food loss and waste and the promotion of food donation that balances hunger reduction and food system sustainability.

INTRODUCTION

Food loss and waste represents a major environmental, economic, and social challenge in the Dominican Republic. Although there are no official food loss and waste data in the Dominican Republic, the Food and Agriculture Organization of the United Nations (FAO) estimates that 1.1 million kilograms of food is wasted every week,⁴ 93% of which is lost in the production phase and 7% in processing and retail.⁵ At the same time, more than 25% of the population, or more than 3.1 million people, was living below the poverty line and unable to access affordable, nutritionally adequate food prior to the COVID-19 pandemic.⁶ Situations of hunger and malnutrition have likely worsened due to the pandemic, as the national poverty rate was expected to increase by at least 1.4 percentage points by the end of 2020.⁷ While not all food that is lost or wasted is suitable for human consumption, recovering even a portion of this food and redirecting it to those who need it most could help address overlapping nutrition problems.⁸

In recent years, the Dominican Republic has increased its attention to addressing both issues of food insecurity and food loss and waste. For example, the Dominican government developed the 2019-2022 National Plan for Food and Nutrition Sovereignty and Security,⁹ which targets the drivers of food insecurity and malnutrition, including limited access to food, education, insufficient food regulations, inequality, and poverty.¹⁰ The 2019-2022 National Plan also calls for the development of a national food donation legal framework, recognizing the need to address both issues of food loss and waste and food insecurity and hunger.¹¹ At the time of this writing, the Dominican government had not adopted such a framework. However, two bills related to food waste reduction had recently been introduced into the Senate,¹² including Initiative No.1305-2020 (“*Proyecto de Ley para la Reducción de la Pérdida y Desperdicio de Alimentos*” or Food Loss and Waste-Reduction Bill), which had received support from FAO.¹³

IN THE ABSENCE OF A NATIONAL LEGAL FRAMEWORK ON FOOD LOSS, WASTE, OR DONATION, THE DOMINICAN GOVERNMENT HAS ADVANCED THESE PRIORITIES THROUGH PARTNERSHIPS WITH PRIVATE ACTORS.

In the absence of a national legal framework on food loss, waste, or donation, the Dominican government has advanced these priorities through partnerships with private actors. The National Committee for the Prevention and Reduction of Food Losses and Waste (*Comité Nacional de Prevención de Pérdidas y Desperdicios de Alimentos*),¹⁴ for example, comprises over 10 institutions including the vice presidency, the Ministry of Agriculture, Merca Santo Domingo, Pro Consumidor, and private-sector actors such as Grupo Ramos, Nestlé, and Fundeco. It has also developed an action plan to end food loss and waste with technical assistance from FAO.¹⁵ The Dominican Food Bank (*Banco de Alimentos República Dominicana* or BARD) has been the focal point for this initiative, providing over 1.3 million meals and feeding over 7,000 beneficiaries daily in 2019.¹⁶ This impact has significantly increased in the midst of the COVID-19 crisis, as BARD supplied over 34,000 meals in the first week of April 2020 alone.¹⁷

Adopting policy interventions to strengthen these existing authorities will ultimately contribute to greater food recovery and food donation in the Dominican Republic. The following sections briefly summarize some of the most common legal issues relevant to food donation, as identified and described in more detail in the Legal Guide, and offer policy recommendations to address these challenges.

LEGAL CHALLENGES AND 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. The Dominican Republic's food safety regulatory framework is among the most complex in Latin American and the Caribbean, causing food system actors to cite "confusion about food safety rules" as a major obstacle to donation.¹⁸

Most food safety standards are derived from the General Health Law (*Ley General de Salud, No. 42-01*),¹⁹ which broadly requires oversight of imports, production, and retail of all food and beverage items.²⁰ The General Health Law establishes that everyone has the right to demand that food is healthy—not adulterated, altered, or contaminated—and corresponds in quality, nature, and security to its labeling.²¹ It does not explicitly reference food donation but confirms that *all* food products are subject to its provisions²² and its regulatory developments, as well as to relevant Dominican technical standards (*Normas Dominicanas* or NORDOMs) and to standards developed by the *Codex Alimentarius*.²³

This includes the General Regulation for the Control of Food and Beverage Risk (*Reglamento General para Control de Reiscos en Alimento y Bebida* or General Food Regulation) approved through Presidential Decree No. 528-01.²⁴ Pursuant to the General Health Law, the State Secretariat on Public Health and Social Assistance (*Secretaría de Estado de Salud Pública y Asistencia Social* or SESPAS) under the Ministry of Public Health and Social Assistance is responsible for implementing the General Food Regulation. SESPAS executes its oversight through the General Directorate of Drugs, Food, and Health Products (*Dirección General de Medicamentos, Alimentos y Productos Sanitarios* or DIGEMAPS), which was created in 2015 to bring clarity and coherence to the food and drug safety system.²⁵

Unlike the General Health Law, the General Food Regulation features a handful of provisions that specifically address food safety in the context of donation.²⁶ However, these articles are quite general and establish vague parameters that are not clearly defined in the Regulation. For example, the Regulation states that all food donations must come from "reliable sources" and comply with relevant quality standards and regulations.²⁷ It does not elaborate on either of these conditions and leaves open for interpretation who may donate and which safety standards they must follow. The lack of tailored, clear guidance offered in the General Food Regulation may be challenging for food producers, importers, and distributors on which the Regulation places responsibility for ensuring the quality of food products.²⁸

This challenge is heightened by the fact that food donors and food recovery organizations must also consider the safety standards encompassed in other frameworks, including nonbinding technical standards developed under the Dominican Quality System (*Sistema Dominicano para la Calidad* or SIDOCAL). Law 166-12, which established SIDOCAL as the country's quality-control infrastructure, tasks the Dominican Institute for Quality (*Instituto Dominicano para la Calidad* or INDOCAL) with developing NORDOMs that safeguard product quality in alignment with other relevant standards, such as those adopted by the *Codex Alimentarius*.²⁹ To date, the Dominican Republic has not adopted a NORDOM that explicitly references food donation or provides concrete food safety guidance for donated food. As a result, food donors and food recovery organizations must

discern which NORDOMs apply to donated food and ensure compliance with both those standards and the food safety rules contained in the General Health Law and General Food Regulation.

Recommended Policy Actions

1. AMEND THE GENERAL REGULATION FOR THE CONTROL OF FOOD AND BEVERAGE RISK TO FURTHER EXPLAIN THE FOOD SAFETY STANDARDS APPLICABLE TO FOOD DONATION.

In order to impose food safety requirements that are better aligned with the donation process, the Dominican government should amend the donation-specific section of the General Food Regulation to offer clearer, more detailed food safety standards for donated food. As written, the General Food Regulation offers minimal and ambiguous guidance to food donors on how to safely donate food.³⁰ The Dominican president should therefore adopt a new decree approving amendments to the General Food Regulation that identify the specific regulatory provisions that will help food donors and food recovery organizations avoid food safety risks and will also enable greater food recovery and donation. SESPAS should draft such amendments to offer clear and specific guidance on government oversight, confirming that DIGEMAPS is primarily responsible for inspecting and certifying the safety of donated food that is recovered from the domestic food supply chain as well as imported from foreign markets.³¹

2. ADOPT A DOMINICAN TECHNICAL STANDARD (NORDOM) ON FOOD SAFETY FOR DONATED FOOD.

While the Dominican Republic's food safety regulatory framework is already quite extensive, adopting a distinct NORDOM focused on foods safety for donation would benefit food donors and food recovery organizations. INDOCAL currently manages more than 800 NORDOMs, over 20 of which concern food safety and sanitation.³² For example, NORDOM 662 establishes hygiene practices for eggs and egg products; NORDOM 647 addresses the safe transportation of bulk and semipackaged foods; and NORDOM 581 establishes minimum sanitary requirements for harvesting, handling, processing, storing, transporting, distributing, and selling food for human consumption.³³ Absent from the catalogue is a NORDOM that exclusively addresses food donation or elaborates on the food safety rules most relevant to food donors and food recovery organizations. INDOCAL could therefore publish a new NORDOM to fill this gap, compiling or cross-referencing other NORDOMs relevant to food donors and food recovery organizations. This nonbinding standard could also help clarify the food safety standards contained in the General Health Law and General Food Regulation, thus further eliminating confusion among donors and food recovery organizations.³⁴

3. PRODUCE AND DISSEMINATE CLARIFYING GUIDANCE ON THE FOOD SAFETY REGULATORY FRAMEWORK RELEVANT TO FOOD DONATION.

The overlapping regulations for food safety can be confusing and onerous to food donors and other stakeholders. Clear guidance from food safety enforcement agencies on what food safety requirements apply to donated food, and which government authorities are responsible for oversight and enforcement, would ease concerns of food donors and food recovery organizations. Developing such guidance would fall under the authority of DIGEMAPS, pursuant to its intended purpose. DIGEMAPS should coordinate with INDOCAL, which also plays a significant role in ensuring compliance with technical standards (including NORDOM 53, which imposes *binding* food labeling requirements, as discussed below). Private food industry actors and food recovery organizations should also have an opportunity to contribute to the guidance, thus ensuring that the resource addresses the most common food safety questions that arise during the donation process. The guidance issued by these agencies should align other guidance that the government has issued on food safety or food donation.

Date Labeling

Issue Overview

A major driver of food waste and an 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 after the date 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 as indicators of safety rather than quality. In the United Kingdom, researchers found that consumers discard about 22% of food that they could have eaten due to confusion over date labeling.³⁵ 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.³⁶ This confusion occurs in the home but also impacts food businesses’ willingness to donate and creates a stigma against past-date food among food donation recipients.

This cycle of confusion and waste occurs in the Dominican Republic under the current date labeling regime, which is set forth in the General Food Regulation and NORDOM 53 on General Labeling for Prepackaged Products.³⁷ Both of these binding³⁸ regulations require the use of quality-based date labels, but they are not aligned on how this label is expressed. The General Food Regulation requires all prepackaged foods to feature a “use deadline” (“*fecha límite de utilización*”), referred to as the “recommended consumption deadline” (“*fecha límite de consumo recomendable*”).³⁹ The General Food Regulation explains that this is the last date on which food is marketable⁴⁰ and that it may still be safe to consume after the date.⁴¹ NORDOM 53 also specifies⁴² that the “use deadline,” is not required on particular products, but instead requires most prepackaged food items⁴³ to feature a “minimum duration date,”⁴⁴ which is defined as the last date on which food is fully marketable and retains its quality attributes.⁴⁵

Not only are the General Food Regulation and NORDOM 53 not aligned, but also the required use of quality-based date labels under each framework fails to adhere to the *Codex Alimentarius*’s labeling standards.⁴⁶ The 2018 update to the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods, in particular, features a dual date labeling scheme that distinguishes between safety-based and quality-based labels.⁴⁷ This General Standard provides that the “expiration date,” a safety-based label that may be expressed as “use by,” can only be used for foods that pose an increased risk to health after the affixed date.⁴⁸ The General Standard also features a quality-based date, expressed as “best before” to be used on food that is still safe to consume and distribute past the date. The Dominican Republic’s date labeling scheme does not recognize a safety-based label. Rather, the Dominican Republic exclusively focuses on quality-based labels; however it coopts the term “use by” to instead express a quality-based date.⁴⁹

As the Dominican Republic’s date labeling scheme does not clearly convey whether food is unsafe to consume after the affixed date, cautious donors and food recovery organizations are likely to discard food after either date label, despite the fact that food past a quality-based date label is still generally safe and edible. Clarifying the date labeling scheme may therefore help avoid unnecessary waste of safe food that is still suitable for donation.

Recommended Policy Actions

- 1. AMEND NORDOM 53 ON GENERAL LABELING FOR PREPACKAGED PRODUCTS TO FEATURE A DUAL DATE LABELING SCHEME THAT DISTINGUISHES BETWEEN SAFETY-BASED AND QUALITY-BASED DATES.**

To eliminate confusion surrounding the application of date labels in the Dominican Republic, the government should adopt a mandatory dual date labeling scheme consistent with the 2018 update to the *Codex Alimentarius*

General Standard for the Labeling of Prepackaged Foods. Many other countries and the food industry are moving toward this dual date labeling scheme as a way to reduce unnecessary food waste. 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.⁵⁰ 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.⁵¹

To implement this scheme in the Dominican Republic, INDOCAL should amend NORDOM 53 to clarify that the “minimum duration date,” expressed as “best before,” is not a required label for all prepackaged foods.⁵² Instead, the technical standard should permit manufacturers to only affix this date to foods that do not pose an increased risk to health over time. Alternatively, for foods that should not be consumed after a certain date due to quality *and* safety reasons, the amended NORDOM should require the use of an “expiration date.” Consistent with the *Codex Alimentarius*, this safety-based label may be expressed as “use by” and should convey the last date on which food is no longer suitable for human consumption.⁵³ The Dominican government should also amend the General Food Regulation to either reiterate this scheme or simply eliminate the regulatory provision that defines the “use deadline” as a quality-based date, so it does not conflict with the proposed updates to NORDOM 53.

2. UPDATE NORDOM 53 ON GENERAL LABELING FOR PREPACKAGED PRODUCTS OR ADOPT NONBINDING GUIDANCE TO EXPLICITLY PERMIT FOOD DONATION AFTER THE AFFIXED QUALITY-BASED “MINIMUM DURATION DATE.”

Any amendments to the date labeling scheme under NORDOM 53 and the General Food Regulation should clarify that food may be safe to consume and thus safe to donate, after the quality-based date. Accordingly, if the Dominican Republic introduces a dual date labeling scheme, the amended technical standard and Regulation should explicitly state that food may be donated after to the “minimum duration” or “best before” date, provided it is still suitable for human consumption. The Dominican government can alternatively issue separate guidance that clarifies this position.

For example, several EU Member States have issued guidance clarifying the impact of these dates on food donation, in addition to or instead of legislation that explicitly allows for donation after the “best before” date (but not after the “use by” date).⁵⁴ INDOCAL and DIGEMAPS could coordinate on this guidance, explaining to food donors and receiving organizations when each date is appropriate to use and ensuring that retailers, consumers, and beneficiaries are accurately interpreting these labels and understand that donation is safe and legal past the date for foods with a quality-based date.

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

According to FAO, 37% of food is wasted in the Dominican Republic as a result of consumer confusion over the meaning of the date label.⁵⁵ National consumer education is critical to help donors, food recovery organizations, and consumers understand that the country’s current date labeling regime requires only a quality-based date that does not necessarily reflect product safety. Especially if the Dominican Republic adopts a dual date labeling scheme, joint public- and private-sector awareness campaigns may be necessary to clarify which dates refer to safety and which refer to quality.

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.⁵⁶ These protections limit the likelihood that these actors will be held legally or financially responsible for any resulting harm, provided they act in accordance with relevant laws. The Dominican Republic has not adopted such comprehensive protections for food donors and food recovery organizations. In a country where consumer safety and protection is highly prioritized,⁵⁷ the lack of such protections may significantly deter potential donors and may create uncertainty for food recovery organizations receiving donated food.

Generally, most claims for damages are brought under the General Law 358-05 on the Protection of the Rights of the Consumer and User (hereinafter “Consumer Protection Law”).⁵⁸ The Consumer Protection Law sets forth robust rights owed to consumers. Chapter X of the Law explains that suppliers and providers that act recklessly and with the intention of causing harm may owe compensation for damages.⁵⁹ The Law also recognizes strict liability of producers, importers, distributors, and suppliers if an injury results from a product defect or insufficiency and further acknowledges the potential for criminal liability to arise from consumer offenses.⁶⁰ The Law narrowly defines “consumer or user” to include only those persons or entities that consume, use, or enjoy products *for consideration* (e.g., monetary payment). A strict interpretation of the Law would therefore exclude most food donation beneficiaries that receive food free of charge from its protections.⁶¹

Nevertheless, many food donors and food recovery organizations in the Dominican Republic have interpreted the Consumer Protection Law as applicable to food donation and sought to fulfill obligations accordingly. In 2012, the intergovernmental and multisectoral National Institute for the Protection of Consumers (*Instituto Nacional de Protección de los Derechos del Consumidor* or Pro Consumidor),⁶² which is responsible for overseeing compliance with the Consumer Protection Law and other safety-related frameworks,⁶³ reportedly developed “acceptance criteria” for food donations.⁶⁴ At the time of writing, documentation of this criteria was not readily available to the public.

The Food Loss and Waste-Reduction Bill referenced earlier in this document would feature additional guidance for food donors on acceptable actions when donating food to help these actors avoid potential sanctions and liability.⁶⁵ However, this proposed Law would not provide comprehensive liability protections for either food donors and food recovery organizations. An alternative Food Waste Bill would provide civil and criminal liability protections for food donors, extending a presumption of good faith (*buena fe*) in the event of harm and requiring proof of serious fault or intent in order to award damages.⁶⁶ As this Bill was not enacted and still pending in the Senate at the time of this writing, food donors are not entitled to such protections. Thus, potential donors may prefer to discard rather than donate food to avoid risk of liability.

Recommended Policy Actions

- 1. ADOPT NATIONAL LEGISLATION THAT ESTABLISHES CLEAR LIABILITY PROTECTION FOR FOOD DONORS AND AUTHORIZED NONPROFIT FOOD RECOVERY ORGANIZATIONS THAT ACT IN GOOD FAITH.**

To dispel potential concerns about liability arising from food donation, the government should adopt legislation that establishes comprehensive liability protections for donors and food recovery organizations similar to those offered in Argentina and the United States. In Argentina, for example, comprehensive liability protections apply so long as donations are made in accordance with conditions set forth in the country’s Food Donation Law (i.e., donations are made free of charge to a qualified intermediary and benefit populations in need).⁶⁷

Argentina affords donors and food recovery organizations a presumption of good faith (*buena fe*) absent any willful misconduct or negligence resulting in harm to a beneficiary.⁶⁸ The Dominican Republic should enact legislation similar to Argentina’s Food Donation Law, shifting the burden onto the recipient alleging wrongdoing to prove that the donor or intermediary did not act in good faith or comply with relevant law.⁶⁹ Offering such liability protection could better assuage the fears of food donors as well as and food recovery organizations that may be subject to obligations set for in the Consumer Protection Law.

While the Food Waste Bill pending in the Senate at the time of this writing would offer protections for food recovery organizations, neither this proposed law nor the Food Loss and Waste-Prevention Bill supported by FAO provide comprehensive protections for food donors. Should Congress enact either of these laws, it should amend the text to feature the aforementioned liability protection. Any future legislative proposal focused on food donation or food loss and waste prevention should similarly include a scope of liability protection that will promote greater food recovery and donation.

This coverage may even expand beyond the protections offered in Argentina, by permitting the donation of past-date food—provided the date refers to quality—and allowing intermediaries to charge a small fee for donated food. Argentina conditions its liability protection on a “no charge” requirement (i.e., food donors and food donation intermediaries lose liability protection if they charge final recipients even a small or nominal fee for the donated food).⁷⁰ However, this “no charge” restriction ultimately hinders food recovery efforts, as it eliminates a potential funding source for food recovery organizations that could be used to support operations or develop innovative models of food recovery and donation, such as nonprofit “social supermarkets.”⁷¹ The Dominican Republic should ensure that any liability protections not only provide the requisite assurance for food donors, food recovery organizations, and beneficiaries but also enable innovative solutions to food loss, waste, and hunger.

Taxes

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, 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 or credit to offset the cost of transportation and logistics. While the Dominican Republic currently offers limited tax benefits to incentivize this donation, such benefits are generally perceived by donors as insufficient for food recovery and donation.

Dominican law provides tax incentives for donors and intermediaries through its Tax Code, which offers a deduction of up to 5% of the donor’s net income for the value of charitable donations made to registered institutions.⁷² To qualify for this deduction, donations must be made to entities declared of public interest or whose purpose includes charity, religion, literary endeavors, art, education, or science.⁷³ Food donations made to nonprofit food banks should fall within these categories, provided the receiving organization is registered with the national tax authority and complies with appropriate procedure.⁷⁴ Even if donors are aware of organizations that have received this status, the modest tax benefit available for donations may be an insufficient incentive.

Recommended Policy Actions

- 1. INCREASE THE TAX DEDUCTION AVAILABLE FOR QUALIFYING FOOD DONATIONS AND EXPAND THE BENEFIT TO INCLUDE ASSOCIATED EXPENSES.**

In light of the potentially high costs associated with donating food, the Dominican Republic should amend its Tax Code to offer an increased or enhanced tax deduction for food donors. This benefit should not only feature a

higher deduction cap but should also allow donors to deduct the costs associated with storing and delivering the donated food. The Food Waste Bill referenced earlier in this document offers a starting point for considering such an amendment, calling for a full income tax exclusion and a higher deduction cap of up to 40% of the donor's net income (at a rate of 75% of the value of the donation) for qualifying donations.⁷⁵ Even if the Dominican Republic does not adopt this legislative proposal, it should consider an independent revision to the Tax Code to increase the charitable deduction available for food donation.

Tax schemes in other countries may offer models for this change. For example, a 2020 tax reform in Chile clarified that companies engaged to manufacturing, importing, or selling food may deduct the total value of food donated, provided the food has lost commercial value and is still safe for consumption.⁷⁶ In the United States, food donors may claim an “enhanced tax deduction” of up to 15% of their taxable income for qualifying food donations.⁷⁷ This deduction also allows donating businesses to deduct the lesser of (a) twice the basis value of the donated food or (b) the basis value of the donated food plus one-half of the food's expected profit margin (if the food were to be sold at a fair market value).⁷⁸ This is in contrast to the general deduction in the U.S., allowed for other in-kind donations aside from food, for which donors are only able to claim the basis value of the donated goods. Offering more substantial benefits such as these may help the Dominican Republic incentivize greater donation among potential donors.

2. OFFER TAX CREDITS FOR FOOD DONATIONS MADE TO “AUTHORIZED RECEIVING ENTITIES” AND OTHER FOOD RECOVERY ORGANIZATIONS.

While an increased tax deduction may incentivize food donation among certain corporate donors, offering a tax credit for food donations is more likely to encourage donation among farmers and smaller donors that may not generate a lot of income during the year. Compared with a tax deduction, which reduces a taxpayer's taxable income and is then used to determine the amount of taxes that must be paid, a tax credit is a direct dollar-for-dollar subtraction from the taxes owed.⁷⁹ Tax credits are also applied evenly across tax brackets and would therefore have a greater impact for small, low-income businesses than a tax deduction.

A tax credit could be offered at the federal or provincial levels and could vary in design. For example, the federal government may elect to limit the total credit that a business could claim in a given tax year by setting a percentage of the value of donated food that can be claimed or by setting a cap on the total dollar amount of percentage of income of the credit that can be claimed by a business. Before adopting such limits, the government should balance the benefit with the potential deterrent effect that they may have on food donation.

Miscellaneous

Issue Overview

While countries are increasingly supporting food donation through a myriad of policy interventions, adopting a national framework has the potential to significantly advance this effort. A national food loss or waste law or policy can help create a more unified, comprehensive approach to preventing food loss and waste and promoting food recovery and donation. Specifically, such a framework can help clarify food safety rules, standardize date labels, define liability protections for food donors and food recovery organizations, and set forth additional tax benefits to which donors may be entitled under relevant law. A national food waste law or policy can also serve as a foundation for government grant programs and awareness campaigns focused on food system sustainability and food security.

The Dominican Republic has demonstrated momentum toward such a framework. Currently in effect, for example, is the 2019-2022 National Plan for Food and Nutrition Sovereignty and Security,⁸⁰ the 2030 National Development Strategy,⁸¹ and the Social Assistance Plan of the Presidency.⁸² These national initiatives target

the drivers of food insecurity and malnutrition, including limited access to food, education, insufficient food regulations, inequality, and poverty.⁸³ The 2019-2022 National Plan, in particular, explicitly calls for the development of a national food donation legal framework, recognizing the need to address both issues of food loss and waste and food insecurity and hunger.⁸⁴

At the time of this writing, the Dominican Republic had not adopted such a law for food waste. However, two bills related to the reduction of food waste were recently introduced in the Dominican Senate: the first bill, referred to as the “Law Project for the Reduction of Food Loss and Waste, Initiative No.1305-2020” (“*Proyecto de Ley para la Reducción de la Pérdida y Desperdicio de Alimentos*” or Food Loss and Waste-Reduction Bill)⁸⁵ received support from FAO and was approved by Congress in January 2020. The second bill, referred to as “Law Project against Food Waste, Initiative No.01291-2020” (“*Proyecto de Ley contra el Desperdicio de Alimentos*” or Food Waste Bill),⁸⁶ was directly introduced by two senators in early 2020 and awaits a decision from the Senate. If enacted, either of these very different proposals could help increase the visibility and resources of food donation operations. However, amendments may be necessary to more effectively address the legal issues discussed in this document.

Recommended Policy Actions

1.

ADOPT A NATIONAL LAW FOR THE PREVENTION OF FOOD LOSS AND WASTE AND THE PROMOTION OF FOOD DONATION THAT BALANCES HUNGER REDUCTION AND FOOD SYSTEM SUSTAINABILITY.

The Dominican government should aim to adopt a comprehensive national law or policy focused on leveraging food donation as a solution to hunger and food loss and waste. If adopted, the Food Loss and Waste-Prevention Bill, in particular, could serve this purpose. As written, however, the proposal does not adequately address many of the legal issues set forth in this document and described further in the Legal Guide. For example, the proposal does not introduce a dual date labeling scheme consistent with the *Codex Alimentarius*, does not offer comprehensive liability protections for food donors and food recovery organizations, and does not offer a more enticing tax benefit for qualifying food donations. If the current proposal is enacted, Congress should consider making legislative amendments or relevant agencies should take regulatory action to account for the recommendations contained in this document. The National Committee for the Prevention and Reduction of Food Losses and Waste⁸⁷ could assist with any amendments and implementation.

CONCLUSION

While these policy recommendations are intended to help strengthen food donation in the Dominican Republic, 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 the support of 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 COMITÉ NACIONAL PARA LA PREVENCIÓN Y REDUCCIÓN DE PÉRDIDAS Y DESPERDICIOS DE ALIMENTOS (PDA) EN REPÚBLICA DOMINICANA, TALLER DE PRESENTACIÓN Y VALIDACIÓN DE LA PROPUESTA DE PLAN DE ACCIÓN 2017-2018 DEL COMITÉ NACIONAL. NOTA CONCEPTUAL 1 (2017), http://www.fao.org/fileadmin/user_upload/FAO-countries/Republica_Dominicana/docs/NotaConceptual_TallerCN_PDA_24.08.17.pdf.
- ³ FOOD & AGRIC. ORG. OF THE U.N., ET AL., *Panorama de la seguridad alimentaria y nutricional en América Latina y el Caribe 2018* 42 (2018), <http://www.fao.org/3/CA2127ES/CA2127ES.pdf>.
- ⁴ *La FAO acompaña al Gobierno dominicano en el desarrollo de la región Suroeste*, FAO (May 13, 2019), <http://www.fao.org/republica-dominicana/noticias/detail-events/es/c/1194272>.
- ⁵ *República Dominicana refuerza compromiso con la prevención y reducción de pérdidas y desperdicios de alimentos*, FAO (Aug. 29, 2017), <http://www.fao.org/republica-dominicana/noticias/detail-events/en/c/1033080>. This number was estimated through a study encompassing the entire food chain, including farms, processors, importers, agribusinesses, wholesalers, hotels, and restaurants. See RELATORÍA DEL SENADO DE LA REPÚBLICA, TERCER DIÁLOGO REGIONAL “UN ESFUERZO COMPARTIDO HACIA LA PREVENCIÓN Y LA REDUCCIÓN DE PÉRDIDAS Y DESPERDICIOS DE ALIMENTOS,” 6-8 DE JUNIO DE 2017 4 (June 21, 2017), https://centroilbertobosques.senado.gob.mx/docs/Relatoria_Perdidas_Alimentos_060617.pdf.
- ⁶ FAO, *supra* note 3 at 42.
- ⁷ *Dominican Republic: Overview*, THE WORLD BANK (Oct. 29, 2020), <https://www.worldbank.org/en/country/dominicanrepublic/overview>.
- ⁸ The World Food Programme reports that chronic undernutrition, overweight, and anemia are all prevalent among children and adolescents in the Dominican Republic. See *Dominican Republic*, WFP, <https://www.wfp.org/countries/dominican-republic> (last visited Feb. 15, 2021).
- ⁹ MINISTERIO DE LA PRESIDENCIA, PLAN NACIONAL PARA LA SOBERANÍA Y LA SEGURIDAD ALIMENTARIA Y NUTRICIONAL 2019-2022 (2018), <https://minpre.gob.do/wp-content/uploads/2018/10/Plan-SSAN-2019-2022-VF-WEB-1.pdf> [hereinafter “2019-2022 NATIONAL PLAN”].
- ¹⁰ See, e.g., WORLD FOOD PROGRAMME, DOMINICAN REPUBLIC COUNTRY STRATEGIC PLAN (2019-2023), WFP/EB.1/2019/8-A/5 (2019), https://docs.wfp.org/api/documents/WFP-0000101927/download/?_ga=2.161783673.437142015.1612971021-581077688.160800882.
- ¹¹ 2019-2022 NATIONAL PLAN, *supra* note 9 at 51.
- ¹² See Senado de la República Dominicana, Proyecto de Ley para la Reducción de la Pérdida y Desperdicio de Alimentos, No.01305-2020-PL-SE (Feb. 10, 2020), <http://www.senado.gov.do/wfilemaster/Ficha.aspx?IdExpediente=30012&numeropagina=1&ContExpedientes=1964&Coleccion=53>; originally approved and submitted by Congress on January 29, 2020 as initiative No.07124-2016-2020-CD, registered with No.00793 [hereinafter “Food Loss and Waste-Reduction Bill”]; see also Senado de la República Dominicana, Proyecto de Ley contra el Desperdicio de Alimentos, No.01291-2020-PL-SE (Jan. 30, 2020) [hereinafter “Food Waste Bill”].
- ¹³ Food Loss and Waste-Reduction Bill.
- ¹⁴ CELAC, THE CELAC PLAN FOR FOOD AND NUTRITION SECURITY AND THE ERADICATION OF HUNGER 2025 (2014), <http://www.fao.org/3/a-bo925e.pdf>.
- ¹⁵ Comité Nacional para la Prevención y Reducción de Pérdidas y Desperdicios de Alimentos, *Representantes del Comité Nacional para la Prevención y Reducción de Pérdidas y Desperdicios de Alimentos en la República Dominicana validaron su plan de acción para mitigar las pérdidas y desperdicios de alimentos que se producen en el país* (August 24, 2017), <https://www.flickr.com/photos/faodominicana/albums/72157685562549144>; Comité Nacional para la Prevención y Reducción de Pérdidas y Desperdicios de Alimentos (PDA) en República Dominicana, *supra* note 2.
- ¹⁶ BANCO DE ALIMENTOS REPÚBLICA DOMINICANA, <https://bancodealimentosrd.org/page/home> (last visited Feb. 19, 2021).
- ¹⁷ Perla Tamares, *El Banco de Alimentos RD entregó en una semana más de 34,000 raciones alimenticias a instituciones necesitadas en medio de Covid-19*, RC NOTICIAS (April 14, 2020), <https://robertocavada.com/nacionales/2020/04/14/el-banco-de-alimentos-rd-entrego-en-una-semana-mas-de-34000-raciones-alimenticias-a-instituciones-necesitadas-en-medio-de-covid-19>.
- ¹⁸ According to a survey of Dominican stakeholders, on file with FLPC.
- ¹⁹ Ley General de Salud, No. 42-01, *Gaceta Oficial* No.10075 (Mar. 10, 2001) [hereinafter “General Health Law”]; Decreto No. 528-01 que aprueba el Reglamento General para Control de Riesgos en Alimentos y Bebidas en la República Dominicana (May 11, 2001), and the modifying Decreto No. 82-15 que crea la Dirección General de Medicamentos, Alimentos y Productos Sanitarios, bajo la dependencia del Ministerio de Salud Pública y Asistencia Social, *Gaceta Oficial* No. 10794 (Apr. 30, 2015) [hereinafter “General Food Regulation”].
- ²⁰ General Health Law, art. 128.
- ²¹ *Id.* art. 125.
- ²² *Id.* art. 127. This article uses the expression “suministro a cualquier título.” Although there is no perfect translation for “a cualquier título,” in this context it refers to any form of supply, whether against payment or for free. It is therefore the authors’ understanding that the provision is also referring to food provided for free, in the form of a donation.
- ²³ *Id.*
- ²⁴ General Food Regulation.
- ²⁵ Prior to 2015, SESPAS acted through its General Directorate for Environmental Health (*Dirección General de Salud Ambiental* or DIGESA) and its technical Department of Food and Beverage Risk Control (*Departamento de Control de Riesgos en Alimentos y Bebidas*). Since Decreto No. 82-15 was passed, SESPAS acts through the newly created DIGEMAPS; Decreto No. 82-15 que crea la Dirección General de Medicamentos, Alimentos y Productos Sanitarios, bajo la dependencia del Ministerio de Salud Pública y Asistencia Social, *Gaceta Oficial* No. 10794 (Apr. 30, 2015).
- ²⁶ General Food Regulation, arts. 393-396.
- ²⁷ *Id.* art. 394.
- ²⁸ *Id.* art. 463; This article should be read in conjunction with Article 167 of the General Health Law.
- ²⁹ Ley del Sistema dominicano para la Calidad (SIDOCAL), No.166-12, *Gaceta Oficial* No.10681, art. 1 1), (July 13, 2013). Recent proposed legislative developments would develop the role of the Dominican Council for Quality (*Consejo Dominicano para la Calidad* or CODOCA) as a mixed private-public institution. See Proyecto de Ley 01003-2019, Ley que modifica la Ley No. 166-12, del 12 de Julio de 2012, del Sistema Dominicano para la Calidad (SIDOCAL) (Mar. 11, 2019).
- ³⁰ General Food Regulation, art. 394.
- ³¹ *Id.* art. 396.
- ³² INDOCAL, *Catálogo de Normas Ilustrado versión 2017* (Oct. 2017), <https://www.indocal.gob.do/publicaciones/catalogo-de-normas>.
- ³³ NORDOM 581, Higiene de los Alimentos. Principios Generales de Higiene de los Alimentos (Sept. 29, 2003), http://www.cedaf.org.do/globalgap/guia_globalgap_rd/leyes_reglamentos/Nordom%20581.pdf.
- ³⁴ Ley del Sistema dominicano para la Calidad (SIDOCAL), No.166-12, *Gaceta Oficial* No.10681, Disposiciones Transitorias, Décimo Primero [sic] (July 13, 2013).

35 US GAO, DATE LABELS ON PACKAGED FOODS: USDA AND FDA COULD TAKE ADDITIONAL STEPS TO REDUCE CONSUMER CONFUSION, GAO-19-407 (SEPT. 2019), <https://www.gao.gov/assets/710/701238.pdf>.

36 HARV. L. SCH. FOOD L. & POL'Y CLINIC & NAT. RES. DEF. COUNCIL, DON'T WASTE, DONATE: ENHANCING FOOD DONATIONS THROUGH FEDERAL POLICY 19 (2017).

37 NORDOM 53, Etiquetado general de los alimentos previamente envasados (pre envasados), (Nov. 27, 2014) <https://www.indocal.gob.do/2017/10/16/nordom-53>.

38 NORDOM 53 is the only regulatory standard with a binding character; most technical standards are voluntary in nature. See General Health Regulation, art. 53; see also Ley del Sistema dominicano para la Calidad (SIDOCAL), No.166-12, *Gaceta Oficial* No.10681, Disposiciones Transitorias, Décimo Primero (July 13, 2013).

39 General Health Regulation, art. 35(c).

40 *Id.*

41 *Id.* art. 469, g) (May 11, 2001); see also the definition of “food suitable for consumption” under Title IX, Chapter XII “On Definitions”(6).

42 As noted above, NORDOM 53 is the only technical standard with binding character. NORDOM 53, Etiquetado general de los alimentos previamente envasados (pre envasados), 5.8.1 f) (Nov. 27, 2014) <https://www.indocal.gob.do/2017/10/16/nordom-53/>.

43 NORDOM 53, Etiquetado general de los alimentos previamente envasados (pre envasados), 3.19 (Nov. 27, 2014), <https://www.indocal.gob.do/2017/10/16/nordom-53>. The date label is not required for items including fresh fruits and vegetables, alcoholic beverages, bakery goods, and seasonings such as solid sugar, vinegar, and salt.

44 *Id.*

45 *Id.* The date of minimum duration may be expressed as either “best before...” or “consume preferably before the end of...” depending on the product’s shelf life. INDOCAL is responsible for harmonizing NORDOMs with standards developed by the *Codex Alimentarius*. See Decreto No. 170-01 que crea e integra el Comité Nacional del Codex Alimentarius (CONCA), y pone en vigor el Reglamento de Funcionamiento del mismo, art. 14, 15 (Jan. 31, 2001).

47 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/?nk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fstandards%252FCXS%2B1-1985%252FCXS_001e.pdf.

48 *Id.*

49 General Food Regulation, art. 35(c).

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

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52 NORDOM 53, Etiquetado general de los alimentos previamente envasados (pre envasados), 3.19 (Nov. 27, 2014), <https://www.indocal.gob.do/2017/10/16/nordom-53>.

53 FAO and WHO, *supra* note 46 at 2.

54 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.

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56 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].

57 See General Law 358-05 on the Protection of the Rights of the Consumer and User [hereinafter “Consumer Protection Law”], establishing expansion protections for consumers that are to be applied and interpreted “in favor of the consumer.” Ley General de Protección de los Derechos del Consumidor o Usuario, No. 358-05, art. 5 (Sept. 9, 2005); see also Decreto No. 236-08, implementing Law No 358-05.

58 Consumer Protection Law, art. 5.

59 *Id.* art. 101.

60 *Id.* art. 104.

61 *Id.* art. 3 d).

62 *Id.* art. 5.

63 Ley del Sistema dominicano para la Calidad (SIDOCAL), No.166-12, *Gaceta Oficial* No.10681, art. 109 (July 13, 2013). Pro Consumidor includes members of the Ministry of Industry and Commerce, the Ministry of Environment and Natural Resources, and representatives from the health sector, product-making companies, service providers, and consumer defense organizations. *Id.* art. 9.

64 *Pro Consumidor orienta sobre criterios para aceptación de donaciones de alimentos*, EL NACIONAL (Abril 20, 2012), <https://elnacional.com.do/pro-consumidor-orienta-sobre-criterios-para-aceptacion-de-donaciones-de-alimentos>.

65 Food Loss and Waste-Reduction Bill, art. 10.

66 Food Waste Bill, art. 19.

67 See 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).

68 *Id.*

69 *Id.*

70 Decree No. 246/2019, Art. 3, April 3, 2019. [34088] B.O. 2 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/320000-324999/321761/norma.htm> [<https://perma.cc/AG6A-DDCX>].

71 In Europe, for example, nonprofit grocery stores known as “social supermarkets” sell donated food at a significantly reduced price.

72 Código Tributario, Título II, Impuesto Sobre la Renta, Capítulo I, Sujeto y Objeto del Impuesto, art. 287, i).

73 *Id.*

74 *Id.*

75 Food Waste Bill, art. 25, 26.

76 Chile modernized its Income Tax Law via Ley No. 21.210, Moderniza La Legislación Tributaria, art. 31, Feb. 24, 2020, DIARIO OFICIAL [D.O.] (Chile).

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79 HARV. L. SCH. FOOD L. & POL'Y CLINIC, KEEPING FOOD OUT OF THE LANDFILL: POLICY IDEAS FOR STATES AND LOCALITIES 19-20 (2016).

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82 Decreto No. 54-89 que crea el Departamento de Asistencia Social Adscrito a1 Poder Ejecutivo (Feb. 7, 1989); Decreto No. 179-05 dispone que en lo adelante el Plan Presidencial contra la Pobreza, se denominara Plan de Asistencia Social de la Presidencia (Mar. 21, 2005). Both can be found at <http://www.pasp.gob.do/index.php/sobre-nosotros/marco-legal>. Plan de Asistencia Social de la Presidencia de la República (PASP).

- ⁸³ See, e.g., WORLD FOOD PROGRAMME, DOMINICAN REPUBLIC COUNTRY STRATEGIC PLAN (2019-2023), WFP/EB.1/2019/8-A/5 (2019), https://docs.wfp.org/api/documents/WFP-0000101927/download/?_ga=2.161783673.437142015.1612971021-581077688.160800882.
- ⁸⁴ 2019-2022 NATIONAL PLAN, *supra* note 9 at 51.
- ⁸⁵ Food Loss and Waste-Reduction Bill.
- ⁸⁶ Food Waste Bill.
- ⁸⁷ CELAC, *supra* note 14.



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