



THE GLOBAL FOOD DONATION POLICY ATLAS

Executive Summary: Guatemala

More than enough food is produced to feed every person, yet one-third of all food is wasted. Redirecting safe, surplus food is an effective and compassionate solution, but it can be complicated because food is a heavily-regulated product.

To help address the most pressing and universal legal and policy questions surrounding food recovery and donation, the **Harvard Law School Food Law and Policy Clinic (FLPC)** and **The Global FoodBanking Network (GFN)** have partnered to create The Global Food Donation Policy Atlas. This innovative partnership will map the laws and policies affecting donations in 15 countries over the course of two years. The project aims to: identify and explain national laws relating to food donation, analyze the most common legal barriers to promoting greater food donation and share best practices and recommendations for overcoming these barriers.

GUATEMALA FOOD LOSS AND WASTE

Each year approximately 52 million tons (14-16%) of all food in Guatemala is either lost or wasted along the supply chain. Much of this food is still safe for human consumption and could be redirected to those experiencing hunger and chronic malnutrition throughout the country. The benefits of greater food recovery and donation are particularly apparent in Guatemala, where 45% of the population was moderately or severely food insecure prior to the novel coronavirus (COVID-19) pandemic. By the end of 2020, despite government interventions, more than 1 million people were in need of emergency food assistance and expected to slip into poverty.

While the Guatemalan government has successfully adopted national legislation to address issues of food insecurity and malnutrition, it has yet to adopt a similar framework to promote food donation or prevent food loss and waste, despite attempts to do so. A national food donation law was proposed in 2018 (*Iniciativa que Dispone Aprobar Ley para la Donación de Alimentos* or “Food Donation Bill”), and in 2019 Congress introduced a bill to help prevent food loss and waste (*Iniciativa que Dispone Aprobar Ley de Prevención de Pérdidas y Desperdicios de Alimentos* or “Food Loss and Waste-Prevention Bill”). By the start of 2021, Guatemala had not adopted either of these proposed laws. Private actors in the food system, including food banks and other food recovery organizations, are nevertheless leveraging food donation to mitigate food loss, food waste, and food insecurity in Guatemala.

Guatemala: By the Numbers

- Population: 17,247,807
- GDP: \$78.46 billion
- Poverty Rate: 59.3%
- Prevalence of Food Insecurity: 45.2%
- Global Food Security Index: 60.6
- FLW Estimates: 52 million tons

GUATEMALA FOOD DONATION POLICY HIGHLIGHTS

FOOD SAFETY: Guatemala is one of the few countries that directly addresses food donation in its national food safety framework. The Health Code (*La Código de Salud*) and its Food Safety Regulation (*Reglamento para la Inocuidad de los Alimentos* or RSA) set forth general food safety standards that apply to donated food and also feature donation-specific provisions. These provisions offer general commentary on food donation. They designate the Ministry of Public Health and Social Assistance (*Ministerio de Salud Pública y Asistencia Social* or MSPAS) with ensuring that all donated food meets applicable quality and safety standards.

ACTION OPPORTUNITY: The donation-specific provisions in the Health Code and the RSA do not offer specific guidance on which food safety standards apply to donated food. Accordingly, MSPAS and the Ministry of Agriculture, Livestock and Food (*Ministerio de Ganadería y Alimentación* or MAGA) should amend the RSA to elaborate on the minimum suitability standard for donated food set forth in the Health Code and to clearly identify which food safety standards are relevant to food donors and food recovery organizations. The government could also adopt clarifying guidance to this effect.

DATE LABELING: Guatemala standardizes date labels under the RSA, which follows the Central American Technical Regulation for the General Labeling of Prepackaged Foods (*Reglamento Técnico Centroamericano, RTCA 67.01.02:10, Etiquetado General de los Alimentos Previamente Envasados (Preenvasados)*). The Technical Regulation applies to all countries that are part of the Central American Economic Integration System. It is intended to harmonize national legislation with the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods. Unfortunately, the Technical Regulation has not been updated to align with the 2018 version of the *Codex Alimentarius* General Standard, which designates the “expiration date” as a safety-based label and “best before” as an indication of quality. As a result, manufacturers in Guatemala continue to use the “expiration date” to reflect quality rather than safety.

ACTION OPPORTUNITY: Guatemala should coordinate with the Secretariat for the Central American Economic Integration (*Secretaría de Integración Económica Centroamericana* or SIECA) to introduce a dual date labeling scheme in the Central American Technical Regulation for the General Labeling for Prepackaged Foods. This labeling scheme should align with the 2018 update to the *Codex Alimentarius* General Standard and clarify that the “expiration date” is a safety-based label. Guatemala should amend the RSA to reflect this interpretation and to introduce an alternative quality-based date after which food may be donated provided it is still suitable for human consumption.

GUATEMALA FOOD DONATION POLICY OPPORTUNITIES

LIABILITY PROTECTION FOR FOOD DONATIONS: Guatemala currently lacks comprehensive national liability protections for food donors and food recovery organizations. As a result, such actors may perceive food donation as an unnecessarily risky endeavor and elect to discard rather than donate safe, surplus foods. The Consumer Protection Law (*Ley de Protección al Consumidor y Usuario* or CPL) is unlikely to impose liability on food donors or food recovery organizations that offer donations free of charge and comply with relevant law, even if such actors are negligent. However, without clear protections, food donors and food recovery organizations may perceive food donation as too risky.

ACTION OPPORTUNITY: To ensure that food donors and recovery organizations are adequately protected against potential legal liability arising from claims of harm, Guatemala should adopt legislation that protects those that act in “good faith” (“*buena fe*”) and adhere to relevant laws, similar to protections offered in Argentina. Guatemala should also expand upon liability protections seen in Argentina and the United States, removing the “no charge” requirement to protect donations offered for a nominal fee.

TAX INCENTIVES AND BARRIERS: Although Guatemala has removed the value-added tax (VAT) as a potential barrier to food donation, the tax benefits available to food donors are insufficient to incentivize donation. Under the Tax Law (*Ley de Actualización Tributaria*), donors may claim a tax deduction of up to five percent of the donor’s annual gross income for monetary or in-kind donations made to qualified receiving institutions. The charitable deduction is capped at 500,000 quetzales (approximately US\$65,000) per year, and for in-kind donations it may not exceed the “basis value” (i.e., the cost of acquiring or producing the donated good as valued on the date of donation).

ACTION OPPORTUNITY: Guatemala should expand the charitable deduction to allow donors to recover the costs of transportation, storage, and other associated expenses and should raise the deduction cap placed on in-kind donations made to qualifying nonprofit entities. The government could also introduce tax credits that would benefit a broader group of donors.

GUATEMALA FOOD DONATION POLICY: HOW DOES IT COMPARE?

Guatemala’s recent attempts to adopt a national food donation law and national law for the prevention of food loss and waste demonstrate momentum for policy change. While Guatemala works toward this comprehensive, national framework, it should pursue more targeted improvements to existing law and regulations that impact food donation. In particular, introducing a dual date labeling scheme, setting liability protections for donors and food recovery organizations, and increasing tax benefits for donation may significantly increase food donations in Guatemala.

| Food Safety for Donations | Date Labeling | Liability Protection for Food Donation | Tax Incentives | Tax Barriers | Donation Requirements or Food Waste Penalties | Government Grants and Incentives |
|---------------------------|---------------|--|----------------|--------------|---|----------------------------------|
| Weak policy | Weak Policy | No Policy | Weak Policy | No | No policy | No Policy |

For more detail on how Guatemala measures up against the other countries evaluated in The Global Food Donation Policy Atlas project, check out atlas.foodbanking.org. For more information about the food donation legal framework in Guatemala and policy recommendations for strengthening this framework, check out the Guatemala Food Donation Legal Guide and the Guatemala Food Donation Policy Recommendations.

BACKGROUND INFORMATION: MAJOR LEGAL ISSUES IMPACTING FOOD DONATION

Food Safety for Donations: A key barrier to food donation is lack of knowledge regarding safety procedures for donated food. All donated food should be safe for consumption and comply with applicable food safety laws. Potential donors, however, are often uncertain which food safety regulations apply to donated food and the steps necessary to comply.

Date Labeling: Date labels, such as “use by,” “best before,” “sell by,” and “expires on,” are a major driver of food waste and obstacle to donation. For the majority of foods, date labels are used by manufacturers to reflect freshness or quality rather than safety, yet without standard labels delineating safety versus quality, safe food often goes to waste rather than being donated.

Liability Protection for Food Donations: A significant barrier to food donation is the fear among donors that they will be liable if someone becomes sick after consuming donated food. Many countries are moving to adopt liability protections to mitigate this concern. In such countries, donors and food recovery organizations may still face uncertainty as to the parameters of this protection.

Tax Incentives and Barriers: Donating surplus food can be expensive, as food donors must allocate time and money to glean, package, store, and transport surplus food that otherwise would be discarded, usually at no cost. Tax incentives (deductions or credits), can help offset these costs and make donation a more attractive option. In some countries, such as several countries with a value added tax, tax schemes are themselves a barrier to donations.

Donation Requirements or Food Waste Penalties: Some countries have employed food donation requirements or impose monetary penalties for food that is sent to the landfill (often known as organic waste bans or waste taxes) in order to influence business behavior and promote more sustainable solutions such as food donation and recovery.

Government Grants and Incentives: Grants and incentive programs funded at the national or local level offer another important resource for food donation initiatives. This is particularly true in countries where donors consider tax incentives to be insufficient to offset the costs of donation or where a lack of infrastructure limits food recovery efforts.

THE GLOBAL FOOD DONATION POLICY ATLAS PROJECT SUPPORT

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