



THE GLOBAL FOOD DONATION POLICY ATLAS

Executive Summary: Peru

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.

PERU FOOD LOSS AND WASTE

While Peru has not published official food loss and waste data, estimates suggest that the country loses or wastes 9 million tons of food each year. At the same time, more than 3.1 million people were suffering from food insecurity prior to the novel coronavirus (COVID-19) pandemic—a global emergency that has since severely exacerbated poverty, hunger, and food loss and waste in Peru.

The Peruvian government has responded to these challenges, adopting major legislative frameworks to combat issues food loss and waste, and incentivize food donation. In 2016 the Peruvian government adopted Law 30498 to promote food donation and facilitate the transport of donations in situations of natural disasters (*Ley que Promueve la Donación de Alimentos y Facilita el Transporte de Donaciones en Situaciones de Desastres Naturales* or “Food Donation Law”). Enabling regulations for this law are still under development.

More recently, in 2019 Peru adopted Law 30988, which promotes the reduction and prevention of food loss and waste (*Ley que Promueve la Reducción y Prevención de Pérdidas y Desperdicios de Alimentos* or “Law Against Food Loss and Waste”). Regulations of the Law Against Food Loss and Waste promote food donation as a critical solution and call for coordinated action with the Food Donation Law.

Peru: By the Numbers

- Population: 31,915,000
- GDP: \$226.8 billion
- Poverty Rate: 20.5%
- Prevalence of Food Insecurity: 3.1 million
- Global Food Security Index: 63.3
- Food Sustainability Index: N/A
- FLW Estimates: 9 million tons

PERU FOOD DONATION POLICY HIGHLIGHTS

FOOD SAFETY FOR DONATIONS: Most of Peru's food safety standards are contained in the Food Safety Act (*Ley de Inocuidad de los Alimentos*), the General Health Law (*Ley General de Salud*), and their corresponding regulations. While neither the Food Safety Act nor the General Health Law explicitly references food donation or feature a donation-specific section, both authorities broadly apply to food that is distributed or offered free of charge. The regulation of the Food Safety Act speaks directly to food donation, briefly detailing the oversight to which receiving entities are subject. The Food Donation Law further confirms the application of these food safety standards to donated food, reiterating that all food intended for human consumption must meet the general standard of suitability set forth in the food safety laws.

ACTION OPPORTUNITY: Food donors in Peru express some uncertainty as to which food safety standards apply to donated food. The national government should offer clarification by amending the regulation of the Food Safety Act to further detail the food sanitary standards to which donated food is subject. Government ministries responsible for food safety oversight can also produce and disseminate clarifying guidance to identify which food safety standards apply to food donation.

LIABILITY PROTECTION FOR FOOD DONATIONS: Peru limits potential liability that may be imposed on food donors and food recovery organizations in the event that a beneficiary is harmed. Under the Food Donation Law, food donors are only held civilly or criminally liable for damages if there is proof of gross negligence or fraud (willful misconduct) associated with the delivery of the donated food. Once a receiving entity assumes possession of the donation, the burden of potential liability shifts to that entity, which may be held civilly or criminally liable for damages resulting from gross negligence or imputable fraud. This liability scheme is more protective than those offered in other countries where food donors and food recovery organizations may be held strictly liable for harm regardless of whether they acted in good faith.

ACTION OPPORTUNITY: Despite limiting the potential liability that food donors and food recovery organizations may face, Peru should adopt comprehensive liability protections akin to those offered in Argentina and the United States. The Peruvian government should amend the Food Donation Law to establish clear, comprehensive liability protections for food donors and food recovery organizations that act in good faith and comply with relevant law. This amendment should also remove the "no charge" requirement for donation, allowing intermediaries to charge a nominal fee for the donated food. This model of low-cost donations ultimately supports food recovery operations that otherwise lack sustainable funding.

PERU FOOD DONATION POLICY OPPORTUNITIES

DATE LABELING: Peru's date labeling scheme fails to provide food donors and food recovery organizations with clear direction on the proper meaning and application of available date labels. The national Labeling Law (*Ley de Etiquetado y Verificación de los Reglamentos Técnicos de los Productos Industriales Manufacturados*) and Technical Rule 209.038 (*Norma Técnica Peruana NTP 209.038*) require perishable packaged foods to feature an "expiration date," but the regulatory definition does not clearly define this as a safety-based date. The Food Donation Law does not prohibit the donation of past-due foods, yet regulations for the Law adopted by the Ministry of Environment and Finance (*Ministerio de Economía y Finanzas or MEF*) in 2017 prohibit taxpayers from receiving the available tax deduction for food donated after the "expiration date." In light of the Technical Rule's quality-based definition of the "expiration date," the MEF's regulatory restriction causes donors to discard rather than donate food that is safe for human consumption.

ACTION OPPORTUNITY: The Peruvian government should establish a dual date labeling system that clearly distinguishes between safety-based and quality-based date labels. This requires updating the Technical Rule on labeling to clearly define the "expiration date" as a safety-based date, consistent with the *Codex Alimentarius*. The government should subsequently permit and promote the donation of food after the quality-based date. For example, MEF should amend its regulations to permit donors to claim tax benefits under the Food Donation Law for food donated after the quality-based date.

TAX INCENTIVES AND BARRIERS: The Food Donation Law introduces a tax scheme that allows donors to claim a benefit for food donations that have lost commercial value and for associated costs such as storage and transportation. Corporate donors may claim up to 10% of their net income, with the deduction not to exceed 1.5% of the total value of net food sales made by the donor during the fiscal year. To qualify for the benefit, donors must provide the food to qualified organizations that have registered with the government tax authority (*Superintendencia Nacional de Aduanas y de Administración Tributaria* or SUNAT) as donation-receiving entities. Donors can also claim the general sales tax credit (*Impuesto General a las Ventas* or IGV) on donated food, thus removing a common barrier to donation. During a “state of emergency” following a natural disaster, the Peruvian government may trigger the application of the special donation regime set forth in Chapter III of the Food Donation Law, which also permits donors to exclude donated food from income tax calculations.

ACTION OPPORTUNITY: Despite the extensive amendments to the Income Tax Law (*Texto Único Ordenado de la Ley del Impuesto a la Renta*) outlined in the Food Donation Law, the national government should further adjust the tax benefit regime to more effectively incentivize food donations. The national government should increase the tax deduction available to food donors. This would ensure that donating food is an economical alternative to throwing it away. Peru should clarify and expand upon the tax benefits available during the Food Donation Law’s Chapter III “state of emergency” donation regime, which largely mirror those benefits available under Chapter II. The government should also ensure that this special donation regime applies in all “states of emergency, including public health crises such as the COVID-19 pandemic.”

DONATION REQUIREMENTS OR FOOD WASTE PENALITES: Peru introduced a donation requirement imposed on food storage facilities and supermarkets as part of the Food Donation Law. This requirement was intended to go into effect in August 2019, three years after the Law’s enactment. At the time of writing, however, the government had not yet issued final regulations defining the application and enforcement of the requirement.

ACTION OPPORTUNITY: The Ministry of Development and Social Inclusion (*Ministerio de Desarrollo e Inclusión Social* or MIDIS) should reconvene its efforts to develop a regulatory framework that will implement the donation requirement contained in the Food Donation Law. MIDIS should consult with other government ministries and key stakeholders to ensure that the regulations do not impose an onerous burden on those subject to the requirement.

PERU FOOD DONATION POLICY: HOW DOES IT COMPARE?

Peru’s Food Donation Law and Law Against Food Loss and Waste offer critical legal frameworks through which to promote and strengthen food donation operations. Fragmented and missing regulations, however, hinder the potential efficacy of these laws. Clarifying food safety requirements, defining date labeling rules, and adopting more competitive tax benefits for food donation will further support food recovery and donation efforts.

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	Weak Policy	Weak Policy	No	Weak policy	Weak Policy

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